

(2013) 12 GUJ CK 0189
In the Gujarat High Court

Case No : Special Criminal Application No. 2735 of 2012

Sajid Yakubbbhai Patel

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 10-12-2013

Acts Referred:

Citation : (2013) 12 GUJ CK 0189

Hon'ble Judges : Harsha Devani, J

Bench : Single Bench

Advocate : M.M. Saiyed, for the Petitioner No. 1, for the Appellant; H.K. Patel, Additional Public Prosecutor for the Respondent(s) No. 1, for the Respondent

Final Decision : Allowed

Judgement

Harsha Devani, J.—Rule. Mr. Himanshu Patel, learned Additional Public Prosecutor waives service of notice of rule on behalf of respondents No. 1 and 2. Despite service of notice, there is no appearance on behalf of respondents No. 3 and 4. Having regard to the facts of the case, it is not necessary to hear the said respondents. By this petition under Article 226 of the Constitution of India read with section 482 of the Code of Criminal Procedure, 1973, the petitioner seeks quashing of the first information report registered vide "B? Division Bharuch Police Station II-C.R. No. 107/2002 qua the present petitioner.

2. The Deputy Engineer of the respondent No. 3 lodged the above referred first information report against the petitioner and two others alleging commission of the offence punishable u/s 39 of the Indian Electricity Act, 1910. It appears that subsequently, the petitioner compounded the offence u/s 50A of the said Act pursuant to which a communication dated 17th December, 2007 was addressed by the Deputy Engineer (City), Dakshin Gujarat Vij Company Limited to the Police Inspector, "B? Division Police Station, Bharuch informing him that the petitioner herein had compounded the offence u/s 39 of the Indian Electricity Act and as such, no further proceedings are required to be taken in connection with the above referred first information report. It appears that despite the aforesaid

position, the respondent No. 2 - Investigating Officer is continuing to prosecute the petitioner in connection with the first information report in question.

3. Mr. M.M. Saiyed, learned advocate for the petitioner has invited the attention of the court to the provisions of section 50A of the Indian Electricity Act, 1910 to submit that once the payment as determined by the authorised officer under sub-section (1) of the said section has been made, the composition shall be held to amount to an acquittal of the accused person and no further proceedings can be taken against the accused person in respect of the said offence. It was submitted that despite the fact that the petitioner has compounded the offence, the Investigating Officer is still prosecuting the petitioner in connection with the first information report which is not permissible in law.

4. Mr. Himanshu Patel, learned Additional Public Prosecutor is not in a position to dispute the aforesaid position.

5. The facts are not in dispute. The above referred first information report came to be registered against the petitioner and two others alleging commission of the offence punishable u/s 39 of the Indian Electricity Act. Subsequently, the petitioner has taken resort to the provisions of section 50A of the said Act whereby the offence came to be compounded. Pursuant thereto, the concerned Deputy Engineer has forwarded a communication dated 17th December, 2007 to the Investigating Officer informing him that in view of the fact that the offence has been compounded, the proceedings pursuant the first information report are not required to be continued qua the present petitioner. Despite the aforesaid position, the Investigating Officer appears to be prosecuting the petitioner in connection with the said first information report.

6. Section 50A of the Indian Electricity Act, 1910 which came to be inserted vide section 8 of the Indian Electricity (Gujarat Amendment) Act, 2003 reads thus:-

50A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or section 50, any officer of the electricity utility authorised in this behalf by the electricity utility (hereinafter in this section referred to as "the authorised officer?) may, either before or after the institution of proceedings for any offence punishable u/s 39, 39A, 39AA or 44 accept from a consumer or person charged with offence by way of composition of the offence such sum as may be determined by the electricity utility and the sum so determined shall not be-

(a) less than the loss suffered by the electricity utility on account of non payment of the sum which would have been chargeable to the consumer or person by the electricity utility if the energy dishonestly abstracted, consumed, used or drawn by committing the offence, had been legally consumed or used by the consumer or person from the supply of energy by the electricity utility, and

(b) more than five times the loss so suffered.

Provided that the dishonest abstraction, consumption, use or draw of energy during a period exceeding twelve months prior to detection of offence shall not

be taken into account for the purpose of determination of the sum to be paid by a consumer or person under this sub-section.

(2) On payment of such sum as may be determined by the authorised officer under sub-section (1), the consumer or person, if in custody, shall be set at liberty and if any proceedings shall have been instituted against the consumer or person in any criminal court, the composition shall be held to amount to an acquittal of the accused person and no further proceedings shall be taken against the accused person in respect of the same offence.

7. On a plain reading of the above provision, it is apparent that it is permissible for the officer of the electricity utility either before or after institution of proceedings for any offence punishable under sections 39, 39A, 39AA or 44 to accept from the consumer or person charged with the offence by way of composition of the offence such sum as may be determined by the electricity utility. On payment of such sum, the composition shall be held to amount to an acquittal of the accused person and no further proceedings shall be taken against the accused person in respect of the same offence. Examining the facts of the present case in the light of the above statutory provisions, the respondents No. 3 and 4 have accepted from the petitioner, who has been charged with the offence in question, by way of composition of the offence, the sum as determined by the said authority. From the communication dated 17th December, 2007, it is apparent that the petitioner has paid such amount. Under the circumstances, the composition of the offence amounts to an acquittal of the petitioner and as such, no further proceedings can be taken against the petitioner in respect of the said offence. The Investigating Officer is, therefore, not justified in proceeding further against the petitioner pursuant to the first information report in question. For the foregoing reasons, the petition succeeds and is accordingly allowed. The first information report registered vide "B? Division Bharuch Police Station II-C.R. No. 107/2002 is hereby quashed qua the present petitioner - Sajid Yakubbbhai Patel only. Rule is made absolute accordingly.

Direct Service is permitted.