

Amit Aggarwal Vs. State and ors.

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Court : Delhi

Decided On : Dec-20-2001

Reported in : 95(2002)DLT368; 2002(61)DRJ454

Judge : Devinder Gupta and; Sanjay Kishan Kaul, JJ.

Acts : [Indian Electricity Act, 1910](#) - Sections 39 and 44; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 186, 323, 332, 353 and 379; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 162

Appeal No. : Crl. Writ Petition No. 915/2001 and Crl. M. 759/2001

Appellant : Amit Aggarwal

Respondent : State and ors.

Advocate for Def. : Mukta Gupta and ; N.S. Dalal, Advs.

Advocate for Pet/Ap. : S.K. Mittal, Adv

Disposition : Petition dismissed

Judgement :

Sanjay Kishan Kaul, J.

1. The petition is seeking a writ of certiorari for quashing the FIR No. 102/2001 under Section 39/44 of the [Indian Electricity Act, 1910](#) (for short the Act) read with

Section 379 of the Indian Penal Code and to direct registration of an FIR for alleged offence committed by the police officials and the officials of Delhi Vidyut Board imp led as respondents 4 to 6. The petition has also sought suitable compensation for his alleged illegal arrest.

2. The petitioner is the proprietor of M/s. Amit Electrical stated to be carrying on the electrical repairs business from shop situated at 2/38, Roop Nagar, Delhi. The petitioner alleges that he applied for an independent electricity connection in the year 2000 and pending such electricity connection was carrying on the job with the help of a generator. Inspection is stated to have been carried out by the officials of the DVB on 12.4.2001 when direct theft of electricity was found at various floors of the building constructed on 2/38, Roop Nagar, Delhi by putting direct hook on the electric poles. The petition also alleges that the petitioner was never involved with the theft of electricity and was further not involved with an altercation at the site which is stated to have occurred. An FIR was registered and subsequently the petitioner was granted anticipatory bail vide order dated 20.4.2001. The petitioner was arrested and was released on bail.

3. It is alleged that on 10.5.2001 the petitioner was picked up from his shop by the Junior Engineer of DVB and the police officials at about 4.00 P.M. and was wrongfully confined at the police station till about 7.30 P.M. It is stated that in order to cover up the said incident an FIR was registered which is sought to be quashed in the present petition. Bail was granted to the petitioner on 4.6.2001 in respect of the second FIR.

4. The grievance of the petitioner is that when an FIR relating to the inspection of premises on 12.4.2001 was already registered against the petitioner the registration of subsequent FIR on the same fact is illegal and unwarranted.

5. A reply affidavit has been filed under signatures of Mr. M. S. Dwivedi, SHO PS, Roop Nagar, Delhi stating that on 12.4.2001 at about 4.40 P.M. information was received from the PCR that some people were beating DVB officials at 2/38, Roop Nagar, Delhi which was recorded vide DD No. 14-A and entrusted to SI Jitender. When the SI reached the spot it was revealed that the PCR Van had removed the injured to the Hindu Rao Hospital. On reaching the hospital the Sub Inspector

obtained the MLCs of Amar Singh, Junior Engineer, DVB respondent no. 6 and one Om Prakash, photographer. The injured were declared fit for statement and Amar Singh stated that he along with Babu Ram Goel, Assistant Engineer, DVB had gone to the premises in order to check the theft of electricity and it was revealed that firm situated on the ground floor, Amit Electrical were stealing electricity by putting hooks on the wires. He called the photographer Om Prakash to take some photographs. It is stated that while Om Prakash was taking photographs the shopkeeper of Amit Electrical telephoned someone and after some time two persons came there and all the three started beating Amar Singh and Om Prakash. The bag containing the camera, film flash and the film rolls was stated to be removed by the said three persons. On the basis of the statements of Amar Singh FIR No. 81/2001 under Sections 186/353/332/323/379/34 IPC was registered and investigation was entrusted to SI Jitender. The supplementary statements were recorded of Om Prakash and Babu Ram Goel during the investigations who corroborated the version of the complainant. The accused could not be arrested despite efforts and in the meantime the petitioner was granted anticipatory bail.

6. It is also stated in the affidavit that on 10.5.2001 a complaint was received from Sh. Jatinder Kapoor, A.E. Zone 424, Shakti Nagar, Delhi that on inspection on 12.4.2001 the joint team of DVB officials had found M/s. Amit Electrical indulging in direct theft of electricity and requested the police authorities to register FIR against him. On the basis of the said complaint another case FIR No. 102/2001 under Section 39/44 of the Act read with Section 379 IPC was registered at PS Roop Nagar, Delhi and investigations were entrusted to SI Vipin Kumar. This arrest was made after seeking legal opinion from the Chief Public Prosecutor, North. It is also stated that complaint made by the petitioner on 12.5.2001 of being falsely implicated and illegally detained was enquired by the ACP, Public Grievance Cell, North District, Delhi and the allegations made by the petitioner were found to be false and baseless. The deponent has denied the allegations made against him. A separate affidavit has also been filed by SI Vipin Kumar, respondent no. 5 denying the allegations made against him.

7. We have heard Mr. S.K. Mittal, learned counsel for the petitioner, Ms. Mukta Gupta, learned counsel for respondents 1 to 5 and Mr. N S Dalal, learned counsel for respondent no. 6

8. Mr. Mittal, learned counsel for the petitioner, contended that the second FIR could not have been registered in view of the earlier FIR relating to the said incident and relied on the judgment of the Supreme Court in *T T Antony v. State of Kerala & Ors* : 2001 CriLJ3329 . On the other hand learned counsel for the respondents have sought to contend that the two FIRs do not relate to the same incident inasmuch as the first FIR related to the incident when the officials of the DVB and the photographer were assaulted while the second FIR related to the complaint made in respect of the theft of electricity. It is thus contended that the two incidents related to different offence and separate FIRs were permissible. It is also stated by Ms. Mukta Gupta, learned counsel for respondents 1 to 5 that the investigations are almost complete and the case is ready to be filed.

9. In *T T Antony's* case (supra) the Supreme Court was concerned with the proposition whether another FIR was permissible even when averments made in the earlier FIRs were same. It was held that second information would be filed under Section 162 Cr. P.C. and it would be registered as second FIR and consequently the second FIR was quashed leaving it open to the investigation agency to seek permission for further investigation in the original two FIRs. The Supreme Court observed that there could not be a fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrences or incidents giving rise to one or more cognizable offence. However, the offence should have been committed in the course of the same transaction or the same occurrences.

10. A perusal of the two FIRs would show that the first FIR related primarily to the incident when of finding theft of electricity being carried out the DVB officials and the photographer were assaulted by the proprietor of Amit Electrical and other persons causing hindrances to the persons in discharge of their official duty. The second FIR relates to the theft of electricity and for defaulting in making payments of direct theft by tapping illegally the Mains. Further it is stated in the FIR that Amit

Electrical had failed to make payments of the said direct bill and subsequently it was requested to register a case under Section 39/44 of the Act read with Section 379 IPC. In view of the aforesaid fact we are of the considered view that ratio of judgment of the Supreme Court in T T Antony's case (supra) would not apply. There is a complaint against the petition of assault and obstructing the officers in the conduct of their duties. Another complaint has also been made in respect of the theft of electricity and the raising of the Bill which has been raised in pursuance thereof.

11. Investigations are stated to be complete and it is stated that the case is being filed.

12. In view of these facts and circumstances we find no reason to quash the FIR No. 102/2001 or to register a FIR for the alleged offence stated to have been committed by respondents 4 to 6 except by reserving right to the petitioner to file a private complaint if he is so aggrieved. There can also be no cause for any compensation in view of disputed facts. The petitioner is at liberty to have appropriate remedy in accordance with law.

13. We find no merit in the petition. The petition is dismissed reserving right to the petitioner as aforementioned.