

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1008 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

J K T FABRICS PVT.LTD.

Versus

STATE OF GUJARAT

Appearance:

MR PR NANAVATI for Petitioners
MR LR POOJARI ADDL.PUBLIC PROSECUTOR
for Respondent No. 1
MR RC JANI for Respondent No. 2
MR MD PANDYA for Respondent No. 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 16/10/98

ORAL JUDGEMENT

By this application under Art.226 of the Constitution of India and Sec. 482 of Criminal Procedure Code, 1973, the petitioners against whom the F.I.R. in Vapi Udyognagar Police Station relating to the offence punishable under Sec. 379 of Indian Penal Code and

Sec.39 of Indian Electricity Act, 1910 is filed, pray for quashing of the same.

2. It is not necessary to set out all the facts in detail, suffice it would be, if in brief, the facts are stated. The petitioners are the consumers of the Gujarat Electricity Board- the opponent no.2. They have been given electric connections and their M.T.Consumer Number is 498. When a surprise checking was made, it was found that the meter was tampered with, as well as seals were broken and certain wires were found loosened. The Gujarat Electricity Board had, therefore a reason to believe that the petitioner had committed the theft of electric energy and made themselves liable for penal as well as civil action. Thereafter necessary tests in the Laboratory were carried out. The belief of the Electricity Board was found to have been confirmed. Hence a complaint against the petitioners was filed in Vapi Udyognagar Police Station which came to be registered as CR.No.I 78/90. Having come to know about the lodging of the complaint, the petitioners have preferred this application, whereby they pray to exercise the powers under Sec.482 of Criminal Procedure Code, 1973 or Art.226 of the Constitution of India, and quash the F.I.R.

3. Initially when the order was passed on 14th August, 1997, as submitted, the authority, lodging the complaint, was thinking to withdraw the same. Thereafter the matter was adjourned from time to time, but withdrawal of the complaint was not materialized because of the procedural hitch or statutory hurdles. Passing the order on 10th September, 1997, this court expressed its opinion that pursuant to the settlement arrived at between the parties, the District Magistrate ought to have dealt with the matter in that line and should have issued necessary directions for withdrawal. Thereafter also for one or another reason, the complaint was not withdrawn. Today, it is submitted that the dispute is settled finally between the parties and the petitioners have paid up the entire dues, nothing more now remains to be paid. The question that arises for consideration is whether in view of such facts, the complaint should be quashed ?

4. Before I proceed, it may be stated that the offence is not compoundable. Ordinarily, therefore, this court would be slow in quashing the complaint even exercising the powers under Art. 226 of the Constitution of India, because a wrong doer cannot be made scot-free by making the payment, but there may be peculiar

circumstances of a case which would justify exercise of powers in favour of the accused who prays for quashing of the complaint. When the dispute is both of civil and criminal nature and the criminal action is initiated because the wrong done also constitute the offence owing to some technicality, it would be just & proper to quash the complaint, if the civil dispute is settled. At this stage, two of the decisions on the point may be referred to. In the case of Maj. Bhim Raj Sharma Vs. State and others, 1992 CRI.L.J. 3977, the High Court of Delhi has held that if the criminal action is initiated out of the civil dispute and subsequently the civil dispute is settled, even if the offence is non-compoundable, it would be just and proper to quash the criminal proceeding, because to keep the criminal proceeding alive would serve no purpose or would be of no value. The High Court of Orissa in the case of Shrikant Kumar Panda vs. Saratulla Khan 1996 CRI.L.J. 2104 has held that if there is a delay of 13 years and no further progress is made in the case, the proceeding if allowed to be continued, would be nothing but sheer harassment to the accused. In that case, the proceedings are liable to be quashed on the sole ground of delay exercising the powers under Sec.482 of Criminal Procedure Code.

5. In view of these two decisions, looking to the peculiar facts and circumstances of the case, the powers are required to be exercised in favour of the petitioners but making it clear that this order would not assume the shape of precedent, because there may be the cases where the P.P. is really keen to proceed with the case but for the reasons beyond his control, he is helpless in proceeding or the accused would be the party of causing delay in the proceedings, or there may be the cases where looking to the gravity of the wrong done or alarming nature of the wrong done or because of peculiar facts & circumstances of the case, or keeping in mind the social interest, quashing of the complaint would be unjust or improper. In this case, main grievance of the Electricity Board is about the recovery of the amounts, which it is entitled to as a result of tampering of the meter. The amounts are, as submitted by the learned advocates representing the parties, paid up and the dispute between the two is now amicably settled. Nothing on the part of the petitioner is required to be paid. Secondly, though no stay was granted right from the initial stage, the Gujarat Electricity Board has not proceeded with the complaint in the lower court and for about more than seven years have passed, the Gujarat Electricity Board did nothing to proceed with the case though the petitioners were keen to proceed with the

matter. In view of this peculiar fact of the case, and keeping in mind that settlement of the dispute finally as well as payment made to Gujarat Electricity Board serves the ends of justice, and satisfies the purpose of lodging the complaint, it would be just & proper, if proceeding is quashed.

5. For the aforesaid reason, the petition is required to be allowed. It is accordingly allowed. Criminal Case No. 2553 of 1991 at present pending in the court of the Judicial Magistrate, First Class, at Pardi arising out of CR.No. I 78/90 of Vapi Udyognagar Police Station is hereby quashed. Rule accordingly made absolute.

Date: 16/10/1998. -----

(ccshah)