

Judgment Sheet
IN THE PESHAWAR HIGH COURT,
PESHAWAR
JUDICIAL DEPARTMENT

Criminal Appeal No. 259-P of 2017.

**General Manager SNGPL.Vs. Safeer Ullah Khan and
others**

JUDGMENT


Date of hearing...31/07/2017.

Appellant by Mr. Muhammad Arif Khan, advocate

Respondents by Mr. Bashir Ahmad Safi, advocate.


ISHTIAQ IBRAHIM, J:- This is an appeal under section
Thirteen (13) of the Gas (Theft Control & Recovery)
Act, 2016 by the appellants against the order/judgment
dated **12.4.2017** passed by learned Additional District &
Sessions Judge/Gas Utility Court, Peshawar whereby the
complaint filed by the appellants against the respondents
was disposed of.

2. A complaint was filed by the present
appellants under section **Five (5) the Gas (Theft**



Control & Recovery) Act, 2016 before the Additional District & Sessions Judge/ Gas Utility Court stating that they conducted a raid on the chips factory of respondents situated in Gulshan Abad, Kohat Road, Peshawar, made digging near the respondent/consumer's Hujra door and discovered another underground gas connection which was disconnected, the meter No.CU00049026 was removed/disconnected from the premises. It was prayed in the complaint that necessary action may be taken as per law against the accused and recovery be made as per **Gas (Theft Control & Recovery) Act, 2016**. The initial arguments were heard by the learned Additional District Judge-I/Gas Utility Court, Peshawar and disposed of the same holding that the appropriate way for the company would be to lodge report/complaint to the police of P.S concerned against the present respondents. Feeling aggrieved with the above order, the appellants have filed the instant Criminal Appeal before this Court.


3. Arguments of the learned counsel for the parties heard and record perused with their valuable assistance.



4. Learned counsel for the appellant submitted that its special law which has prevalence over common law. That the Gas (Theft Control & Recovery) Act, 2016, being special law provides procedure for the controversy in question according to which a complaint will be filed to Judge, Gas Utility Court under **section 5 sub section 2 of the Gas Theft, Control & Recovery Act, 2016**. He further argued that the proceedings before the Gas Utility Court shall be deemed to be judicial proceedings, therefore the ground given in the impugned judgement is not according to the law. That the learned court below has failed to properly appreciate complainant's arguments/evidence and material available on record in its true and correct legal perspective, therefore, liable to be set aside.

5. While repelling the arguments of appellant's counsel, respondent's counsel contended that the order of the learned lower court is well reasoned. He also produced bill wherein the respondents have been shown a domestic consumer. He further argued that the findings of the learned lower court is based on correct appreciation of law on the subject and material available on record, thus the complaint was rightly dismissed.

6. Record reveals that the present appellants filed a complaint before the learned Additional District Judge-I/Gas Utility Court, Peshawar against the respondents for taking action against them on the allegations that they had taken illegal gas supply connection for running their chips factory. The learned Gas Utility Court disposed the complaint vide order dated 12.4.2017 with the following observations:



“However, in view of the above the court observes that the appropriate way for the company would be to lodge report/complaint to the police of the P.S concerned where the police shall, after recording report of the complainant, proceed further as it usually proceeds in other Sessions cases by lodging FIR, arresting the accused, if necessary, investigating the matter as other cases are investigated and submit challan through the Illaqa/Magistrate, who shall forward that u/s 190 (2) of the Cr.P.C, if he deems apt, to this court for taking cognizance under the Gas (Theft Control & Recovery) Act, 2016 and try to the offence in

accordance with the procedure provided in the Cr.P.C.”


7. To deal with such like matters as the one before this court, a mechanism has been laid down in the Gas (Theft Control & Recovery) Act, 2016. The mode of proceedings to be conducted against a person who committed an offence under this Act is provided in **section 5 (2)** of the Act which is referred as under:

“Notwithstanding anything to the contrary contained in this Act, a Gas Utility Court shall not take cognizance of any offence punishable under this Act except upon a complaint made in writing by a person authorized in this behalf by a Gas Utility Company in respect of which the offence was committed.”

8. Similarly **Section 6 (1)** of the Act *ibid* further clarifies the mode of procedure in the following wordings:

“6. Procedure for complaints and suits for default before Gas Utility Courts. (1). Where a person is involved in an offence under this Act or where there are sums due or

recoverable from any person, or where a consumer has a dispute regarding billing or metering against a Gas Utility Company, a consumer or Gas Utility Company, as the case may be, may file a complaint or suit, as the case may be, before a Gas Utility Court as prescribed by the Code of Civil Procedure, 1908 (Act V of 1908) or the Code of Criminal Procedure 1898 (Act V of 1898).

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9. Reading of the above quoted sections would clarify that appellants herein being Gas Utility Company were required to file **complaint** before the Gas Utility Court against the present respondents who had allegedly taken illegal gas supply for their chips factory. Complaint as defined under section 4 (h) **Criminal Procedure Code, 1898** reads as under:-

“Complaint. “Complaint” means the allegation made orally or in writing to a Magistrate, with a view to this taking action under this Code, that some person whether known or unknown, has committed an offence, but it does not include the reports of a police-officer”

It is clearly embedded in section 4 (h) that there shall be allegation orally or in writing but shall not include a police report. The order of learned trial court that the appellants should have filed complaint to the local police and thereafter F.I.R should have been registered is against the provisions of Cr.P.C which has been made applicable by section 6 of the ibid Act.

10. Section Six (6) further lays down a mechanism for submission of complaint before the Gas Utility Court. Last three lines of section Six (6) of ibid Act are replicated as follow *“may file a complaint or suit, as the case may be, before a Gas Utility Court as prescribed by the Code of Civil Procedure, 1908 (Act V of 1908) or the Code of Criminal Procedure, 1998 (Act V of 1898)”* while section 200 and 201 Cr.P.C caters only with complaints which are to be filed before a Magistrate.

Section 200 and 201 of the Criminal Procedure Code read as under:

“200. Examination of complaint. A Magistrate taking cognizance of an offence on complaint shall at once examine the complaint upon oath,

and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by Magistrate.

“201. Procedure by Magistrate not competent to take cognizance of the case (1) if the complaint has been made in writing to a Magistrate who is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper Court with an endorsement to that effect.

(2). If the complaint has not been made in writing such Magistrate shall direct the complainant to the proper Court.”

11. The provisions of section 190 (3) Cr.P.C would operate only when the complaint is submitted under the general law and not under the special law as that of the present case, in the present case the special court has been constituted under section Three (3) (1) of the Act. The text of section 3 (1) is reproduced below:

“The Federal Government may, in consultation with Chief Justice of the High Court concerned, and by notification in the official gazette, establish as many Gas Utility Courts


in a district as it may deem necessary for the purpose of this Act and appoint a Judge for each of such Courts from amongst the District and Sessions Judges in that district."

Similarly section 4 deals with jurisdiction of the Gas Utility Court which is reproduced as under:-

"Exclusive Jurisdiction of Gas Utility Court. (1). A Gas Utility Court shall have exclusive jurisdiction with respect to all matters covered by this Act."

(2) The Court having jurisdiction under this Act shall be a Gas Utility Court having jurisdiction in the place in which the Gas Utility Company, consumer, gas producer or offender, as the case may be, is situated."

12. Under the Interpretation of Statutes "Special Law" shall have prevalence over the general law whenever there is conflict in between the two. Special Court is not required under the mandate of law to comply with the provisions of section 190 (3) Cr.P.C. Moreover, under the Illegal Dispossession Act, courts



directly take cognizance, without complying with the provisions of section 190 Cr.P.C. The Sessions Court was competent to entertain and try complaint, the Court could take cognizance itself as mentioned in Section 4 of said Act or entrust the same to Additional Sessions Judge and to generally follow procedure provided in Illegal Dispossession Act, 2005, however, provisions of Cr.P.C would be applicable during proceedings, but subject to provisions of the said Act and such complaint was not required to be routed through Magistrate under section 190 (2) and 193 Cr.P.C Reliance in this respect is placed on 2006 YLR-2686 "**Sardar Sajjad Haidar Khan and others vs Habibullah Aamir and others**". The said view was also reiterated in the following judgments of the different Courts.

1. 2012 P.Cr.L.J 1817 "**Anjum Mubashar Mughal vs Additional District & Sessions Judge, Islamabad and others**"
2. PLD 2007 Lahore-104 **Muhammad Nawaz vs The State and 3 others**" and
3. 2007 P.Cr.L.J 1881 "**Zahoor Ahmad vs Abdul Aziz and 8 others**"

13. The learned Additional District Judge being empowered under **section 3** of the Act *ibid* to act

as Gas Utility Court was required to take cognizance of the offence punishable under this Act and to entertain the complaint filed before it by the present appellants. So the learned Additional Sessions Judge, while deciding/disposing the complaint filed before it in a slipshod manner has landed into the field of error.

14. In view of the above, the instant appeal is accepted, the order of learned Additional Sessions Judge Judge-I/Gas Utility Court, Peshawar dated 12.4.2017 is set aside. The complaint filed before the said learned court is deemed to be pending with the direction to the learned ASJ-I/Gas Utility Court to decide the same strictly in accordance with the law on the subject. Parties are directed to appear before the learned ASJ-I/Gas Utility Court, Peshawar on 22.08.2017.

Announced.
Dt.31.07.2017.

Amir Khan

JUDGE

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09/8/17

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