

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Mushir Alam  
Mr. Justice Yahya Afridi  
Mr. Justice Qazi Muhammad Amin Ahmed

**Criminal Petition No.907 of 2020 and**  
**Civil Petition No.1965 of 2020**

*(Against the order dated 08.06.2020 passed by the  
Lahore High Court Lahore in CrI. Misc. No.  
74081-B/2019 and W.P. No.51049 of 2019)*

***Mian Haroon Riaz Lucky& another***

*(In Cr.P. No.907 of 2020 & C.P. No.1965 of 2020)*

***...Petitioner(s)***

**Versus**

***The State, etc.***

*(In Cr.P. No.907/2020& C.P. 1965/2020)*

***...Respondent(s)***

For the Petitioner(s):  
*(In both cases)*

Mr. Abid Saqi, ASC along with  
petitioners.  
Ch. Akhtar Ali, AOR

For the State:

Rana Arif Kamal Noon,  
Prosecutor General Punjab  
Rana Abdul Majeed,  
Addl. P.G. Punjab  
Mirza Abid Majeed,  
Deputy Prosecutor General Punjab  
with Ihsan Ullah, DSP

For the Complainant:  
*(In both cases)*

In person

For S.N.G.P.L.:

Ch. Hafeez Ullah Yaqub, ASC  
Mr. Ali Rukh Khattak, L.O. SNGPL

On Court Notice:

Mr. Sajid Ilyas Bhatti,  
Addl. Attorney General for Pakistan

Date of hearing:

30.09.2019.

**JUDGMENT**

**Qazi Muhammad Amin Ahmed, J.-** Mian Haroon Riaz  
Lucky and Mian Salman Riaz, real brothers, petitioners herein, run

an ice factory under the name and style of Sartaj Ice Factory, within the precincts of Police Station Baghbanpura Lahore. The factory is powered by natural gas and it is alleged that the owners have regularly been siphoning off natural gas to the detriment of public exchequer, facing a number of criminal cases albeit with impunity. A raiding party, headed by Sharafat Ali, Distribution Officer, UFG, Sui Northern Gas Pipelines Limited, Lahore Region, carried out the raid on the premises on 29.5.2019 at 3:00 p.m. to detect a gas pipeline, stealth underneath the road, connected with the main supply, surreptitiously linked with the factory across the road. The operation, during the process, was resisted by the petitioners, joined by four lawyers to obstruct excavation on the pretext of an injunctive order; the police were called in, however, the accused, contumaciously denied access to the police contingent and locked themselves inside the premises. Despite fierce resistance, nonetheless, the raiding party succeeded to secure, vide inventory, the paraphernalia employed for the theft. A formal case was registered vide FIR No.938 of 2019 under section 462-C of the Pakistan Penal Code, 1860 with Police Station Baghbanpura, cancellation whereof, was prayed for through Writ Petition No.51049 of 2019, titled as Mian Haroon Riaz Lucky, etc. Vs. The Station House Officer, etc. The petitioners inordinately avoided arrest despite successive dismissals of their pre-arrest bail petitions, both in the Court of Session as well as by the High Court.

2. Learned counsel for the petitioners contends that registration of the impugned FIR, being abuse of process of law, calculated for motives, oblique and unjust, cannot legally sustain after advent of the Gas (Theft, Control and Recovery) Act, 2016 (Act No.XI of 2016) **“the Act”** that came into force on the 23<sup>rd</sup> of March, 2016 much earlier than the alleged date of occurrence i.e. 29.5.2019. It is argued that the Act has introduced a new category of offences in order to cope with the crimes relating to tampering with gas pipelines or theft thereof, trial whereof, falls within the exclusive domain of the Gas Utility Court constituted under section 4 thereof. According to the learned counsel, the new mechanism left no scope for registration of a First Information Report and investigative steps, purported to be consequent thereupon in view

of specific bar provided under subsection 2 of section 5 of the Act that mandatorily required assumption of cognizance of an offence by a Gas Utility Court only on a complaint made in writing by a person duly authorized in this behalf by a gas company in respect whereof the offence was committed. It is next argued that the Act replaced the procedure for search of any premises suspected as being used for theft of gas in view of power of search conferred under section 23 of the Act on an officer or employee of a gas utility company not below BPS-17, specifically authorized to carry out the search; he has finally referred to section 31 of the Act to demonstrate overriding application of the Act. It is argued that combined reading of above provisions of the Act unmistakably confirms that the police were divested of the authority either to register a First Information Report, carry out search or arrest an accused suspected for the commission of theft of gas and, thus, the impugned First Information Report is liable to be quashed to prevent abuse of process of law as well as for being in contravention of the law currently applicable to the alleged offence. While arguing Criminal Petition No.907 of 2020, it is submitted that, be that as it may, the petitioners had long ago leased out the factory through a duly documented transaction and, thus, were not responsible for any wrong if done at all by the lessee. Since no complaint, as contemplated by the Act, has since been filed till date, the petitioners' remission into custody would serve no purpose except to bring disrepute to them, respectable citizens of stature, concluded the learned counsel. Reliance has been placed on the cases reported as M.D. Tahir Vs. Federal Government and 12 others (1989 CLC 1369), Sher Ali Baz and another Vs. The Secretary, Establishment Division and others (PLD 1991 S.C. 143), Messrs A.M. Industrial Corporation Limited Vs. Aijaz Mehmood and others (2006 SCMR 47), Muhammad Mohsin Ghuman and others Vs. Government of Punjab through Home Secretary, Lahore and others, (2013 SCMR 85), Muhammad Arslan Ahmad Vs. The State (2017 P.Cr.L.J. 434), Muhammad Shah and others Vs. Federal Investment Agency and others (2017 SCMR 1218), General Manager SNGPL Vs. Safeer Ullah Khan and others (2018 YLR 1721), Syed Mushahid Shah & others Vs. Federal Investigation Agency & others (2018

SCMR 1812) and Wajid Khan Vs. The State and others (2020 P. Cr.L.J. 454).

3. The learned Additional Attorney General for Pakistan assisted by the learned Prosecutor General Punjab contested the motions in a unison. According to the learned Law Officers, the legislature in its wisdom has introduced a new regime with a view to effectively prosecute/deal with the cases of theft of a valuable national resource as well as recovery of outstanding arrears by setting up tribunals comprising a District & Sessions Judge with exclusive jurisdiction to follow procedures speedy as well as expeditious in jurisdictions both civil as well as criminal. Changes in nomenclatures of offences, constitution of a new tribunal with exclusive jurisdiction and a special procedure on a fast track, to take assumption of cognizance, introduced by the Act, nonetheless, does not relegate procedural plenary powers vesting in the police, under the Code of Criminal Procedure 1898 to register a criminal case, carry out searches and effect arrest of offenders in order to investigate the case to be placed before the Gas Utility Court through the procedure provided under the Act. The learned Law Officers surveyed subsection 4 of section 5 in conjunction with section 24 of the Act to argue that except in cases of theft by a domestic consumer, not a case in hand, the provisions of the Code of Criminal Procedure, 1898 (*Act V of 1998*) for the registration of a criminal case, arrest of the accused for the purpose of investigation, were applicable with full force; the only rider placed by the Act was *requirement of a complaint, in writing by an authorized person*. It is submitted that the new requirement was for assumption of cognizance by the Court through taking on board an officer with technical know-how. Introduction of a new penal regime to cope with the cases of theft of natural gas does not imply abolition of the crime warranting cancellation of the First Information Report recorded under the previous provisions of law, concluded the learned Law Officers. Reliance has been placed on the cases reported as The State Vs. NH Poori & others (PLD 1959 (W.P.) Karachi 392), Muhammad Nazeer Vs. Fazal-e-Karim & others PLD 2012 SC 892), Nadil Wali Vs. Sumaya Gul & another (2020 SCMR 414).

4. Heard. Record perused.

5. In the wake of supply/provision of natural gas as a new source of energy to the domestic and commercial consumers, the Pakistan Penal Code, 1860 was amended through Criminal Law (Amendment Act) 2011 (*Act XX of 2011*) so as to incorporate a penal regime to cope with cases of theft, pilferage, interference and tampering, etc. with the distribution system and matters ancillary therewith, covering wide spectrum of products under the definition of petroleum. It provided a mechanism for prosecution of offences set out in the newly inserted chapter i.e. Chapter XVII A. Through Act No.XI of 2016, the parliament enacted *The Gas (Theft, Control & Recovery) Act 2016* which came into force throughout Pakistan on 23<sup>rd</sup> of March, 2016. The new law comprehensively deals with the cases of theft, tampering with auxiliary or distribution gas pipelines and with meters thereof including causing wastage or damage thereto. It sets up a tribunal comprising a District & Sessions Judge to prosecute both offences as well as claims for recovery of loss to the public exchequer. A comparative analysis of changes brought about by the Act clearly illustrates that the new regime under exclusive jurisdiction solely deals with the cases of gas with no change in the generic character of the offences earlier enlisted under the Chapter XVII A of the Pakistan Penal Code, 1860 except that it provided a new mechanism for assumption of exclusive jurisdiction by the Gas Utility Court to try offences as a Court of Session under the Code of Criminal Procedure, 1898 (*Act V of 1898*), however, it required a complaint, in writing by a person authorized in this behalf by a Gas Utility Company. The offences listed above remained cognizable as well as non-bailable with only immunity extended to a domestic consumer, otherwise liable to be dealt with in accordance with the provisions of the Code *ibid*. It is in the backdrop of above statutory changes, the petitioners sought annulment of First Information Report on the grounds enumerated above.

6. Survey of above regime unmistakably confirms that a listed offence under the new regime by a commercial consumer, notwithstanding statutory changes remain a cognizable offence defined under section 4 (1)(f) of the Code of Criminal Procedure, 1898, as under:

**“Cognizable offence”. “Cognizable case.”** “cognizable offence” means an offence for, and cognizable case” means a case in, which a police-officer, may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant:

As pointed out above, the only concession available under the new regime is available to a domestic consumer which is not a case before us, as is amply evident from the contents of First Information Report, reproduced below:

"بخدمت جناب SHO صاحب تھانہ باغبانپورہ مقدمہ بر خلاف سلمان ریاض + میاں ہارون سکند سر تاج آفس فیکٹری شیر شاہ روڈ نزد دھوبی گھاٹ سٹاپ باغبانپورہ، لاہور، جنبل عالی گزارش ہے کہ بندہ چوہدری شرافت علی ڈسٹری بوشن آفیسر UFG سوئی نادرن گیس پائپ لائنلنڈنگ گلیگبرگ آفس ریجن لاہور میں خدمات سرانجام دے رہا ہوں، آج کل سوئی نادرن گیس نے سوئی گیس چوروں کے خلاف آپریشن شروع کر رکھا ہے اسی سلسلہ میں UFG کی ٹیم نے مورخہ 29.5.2019 کو دوپہر تین بجے ریڈ کیا۔ بائی پاس کی اطلاع تھی عمر طارق سپروائزر UFG2 افتخار ارشد فز کی سربراہی میں ریڈ کیا گیا موقع پر کھدائی کروائی گئی جس میں ایک عدد ڈریلنگ ہیوی مشین اور ایکسی ویٹر کا استعمال کیا گیا جیسے ہی کھدائی شروع کی گئی تقریباً آدھے گھنٹے بعد صارف کی طرف سے شدید مزاحمت شروع کر دی گئی تھوڑی دیر بعد صارف کی طرف سے 4 عدد دوکیل آگئے اور کھدائی کرنے سے منع کرنے لگے اور کہنے لگے ہمارے پاس بے آرڈر ہے آپ یہاں کھدائی نہیں کروا سکتے جس پر سوئی گیس کے وکلاء کو موقع پر بلایا گیا جس پر فیکٹری کے ساتھ کھدائی نہ کرنے کا کہا گیا تو سڑک کی دوسری طرف کھدائی کروائی گئی جس طرف ہماری 2 انچ کی مین لائن تھی فیکٹری کے سامنے سڑک کی دوسری طرف تقریباً 5 فٹ گہرائی میں کھدائی کروانے پر 2" کی مین لائن پر بائی پاس لگا ہوا تھا۔ مین لائن پر (آڈو والو) (بال والو) 2" کا لگا ہوا تھا جو کہ سوئی گیس کی کمپنی کا نہیں تھا، پرائیویٹ طور پر سوئی گیس کی لائن کو ڈی گنچ کر کے لگایا گیا ہے۔ بال والو کے آگے 2 انچ کا پائپ لگایا ہوا تھا جس کا رخ صارف کی فیکٹری کی طرف جا رہا ہے۔ صارف نے فیکٹری کے اندر نہیں جانے دیا جس پر پولیس کو بلایا گیا پولیس نے بڑی کوشش کی لیکن صارف نے سارے گیٹ بند کر دیے۔ صارف ایک عادی چور ہے اس سے پہلے بھی اس پر پے ہو چکے ہیں۔ صارف کے خلاف C-462 کے تحت مقدمہ درج کیا جائے تاکہ سوئی نادرن گیس کو لاکھوں کروڑوں کا نقصان پہنچانے والوں کو کیفر کر داری تک پہنچایا جاسکے۔ دستخط بحروف انگریزی چوہدری شرافت علی ڈسٹری بوشن آفیسر UFG سوئی نادرن گیس پائپ لائنلنڈنگ گلیگبرگ آفس ریجن لاہور"

Similarly, restriction placed by section 23 of the Act ibid is merely directory in nature, to be followed having regard to the exigencies of a particular situation, as far as practicable; non-compliance whereof, cannot be interpreted to have vitiated the process of law as such a construction cannot be visualized without incurring the possibility of loss of evidence regarding theft/pilferage of a precious public resource, a situation never contemplated by the law makers. Similarly, there is a wide variety of offences both under the Pakistan Penal Code, 1860 as well as under various special laws that require prior sanction for prosecution for the purposes of assumption of cognizance by the trial Court, the requirement does not stand in impediment to the registration of First Information Report, arrest of an offender or commencement of investigation thereof as the clog of sanction transiently relates to the steps

preparatory thereto by the authority designated under the Statute; in the present case, a procedure to be routed through section 5 (2) of the Act.

Argument that the petitioners had long before leased out the premises to a third party and as such were not responsible for any wrongdoing, if at all, by the lessee is beside the mark. These are factual controversies which the High Court has rightly declined to attend. There are no shortcuts in criminal prosecutions and it is certainly far less than expedient to pre-empt designated tribunals to exercise jurisdiction so as to try offences on the strength of evidence brought-forth by the prosecution, the only known method both to establish the charge as well as to vindicate a defence. Similarly, while an accused is certainly entitled to a fair trial under “*Due Process of Law*”, it is also sovereign attribute of State to carry out prosecutions through its agencies in accordance with law with a reasonable opportunity to drive home the charge against the offenders to maintain/enforce its writ and effectively uphold majesty of laws within the realm. It is far more important when at risk is a resource commonly owned by the people. Equality before law without equal protection thereof is a travesty. We have found the High Court while declining the request well within the remit of law consistently expounded by this Court in the cases reported as *Umar Hayat Versus The State (1995 S C M R 1005)*, *Mst. Mehr un Nisa Versus Zain ul Abidin and 5 others (1995 SCMR 1139)* *Ahmed Saeed Versus The State and another (1996 S C M R 186)*, *Miraj Khan Versus Gul Ahmed and 3 others (2000 S C M R 122)*, *Shah Jehan Khetran Versus Sh. Mureed Hussain and others (2005 S C M R 306)*, *Muhammad Bashir Versus Muhammad Usman and others (2003 S C M R 1339)*, *Muhammad Yasin Versus S.S.P. and others (2004 S C M R 868)*, *Muhammad Saleem Bhatti Versus Syed Safdar Ali Rizvi And 2 Others (2006 S C M R 1957)*, *Industrial Development Bank of Pakistan and others Versus Mian Asim Fareed and others (2006 C L D 625)*, *Col. Shah Sadiq versus Muhammad Ashiq and others (2006 S C M R 276)*, *Rafique Bibi Versus Muhammad Sharif and others (2006 S C M R 512)*, *Muhammad Mansha Versus Station House Officer, Police Station City, Chiniot, District Jhang and others (P L D 2006 Supreme Court 598)*, *Khushi Muhammad Versus Abdul Ghafoor and others,*

(2006 S C M R 839), Muhammad Younas and others Versus Mst. Perveen alias Mano and others (2007 SCMR 393), Muhammad Bashir Versus Station House Officer, Okara Cantt. and others (P L D 2007 Supreme Court 539), The State Through Prosecutor General, Punjab, Lahore Versus Sultan Ahmed and others (P L D 2007 Supreme Court 48), Dr. Ghulam Mustafa Versus The State and others (2008 S C M R 76), Muaz Ahmad Versus Haji Muhammad Ramzan and others (2008 S C M R 529), Ajmeel Khan Versus Abdur Rahim and others (P L D 2009 Supreme Court 102), Muhammad Aslam (Amir Aslam) and others Versus District Police Officer, Rawalpindi and others (2009 S C M R 141), Akhlaq Hussain Kayani Versus Zafar Iqbal Kiyani and others (2010 S C M R 1835), Dr. Sher Afgan Khan Niazi Versus Ali S. Habib and others (2011 S C M R 1813), Rana Shahid Ahmad Khan Versus Tanveer Ahmed and others (2011 S C M R 1937), The State through D.G., A.N.F., Rawalpindi Versus Muhammad Saleem Khan (2011 S C M R 863), Rizwana Bibi versus The State and another (2012 S C M R 94) Director-General, Anti-Corruption Establishment, Lahore and others Versus Muhammad Akram Khan and others (P L D 2013 SC 401). Civil Petition No.1965 of 2020 fails. Leave declined.

As a natural corollary, Criminal Petition No.907 of 2020 stands dismissed.

**Judge**

**Judge**

**Judge**

Islamabad  
30<sup>th</sup> September, 2019  
Not approved for reporting  
Azmat/-