ORDER SHEET IN THE HIGH COURT OF SINDH, KARACHI Crl. Appeal No. 560 of 2022

Date

Order with signature of Judge

- 1. For orders on office objection a/w reply at flag "A"
- 2. For hearing of main case
- 3. For hearing of M.A. No. 11397 of 2022 (Stay/A)

27th October2022

Mr. Khawaja Shamsul Islam, advocate for the appellant alongwith M/s. Khalid Iqbal and Muhammad Khoso advocates.

Malik Sadaquat Ali Khan, Special Prosecutor Sui Southern Gas Company.

Appellant preferred an appeal against the order dated 05.09.2022 passed by learned Sessions Judge Karachi West in Sessions Case No.1144/2022 emanating from FIR No. 07/2022, under Sections 15, 17, 24 GTCR-2016 registered at P.S. SSGC Karachi for return of gas meter No.0326913; according to counsel for the appellant the respondent removed industrial gas meter as referred above on 04th February 2022 for the testing purpose and yet the same has not been returned, hence the appellant is suffering huge losses. He further contends that Sui Southern Gas Authorities were not competent to remove the gas meter installed on the premises of appellant on the pretext that the same was required to be tested to see if there was any tempering in the meter. In support of his contentions he has relied upon case laws reported as 2022 SCMR 584 and PLD 2021 Islamabad 378.

2. On the other hand learned Special Prosecutor Sui Southern Gas Company contends that the appellant has failed to participate in the proceedings as envisaged under the Act whereby at the time of laboratory testing appellant or his representatives' presence is mandatory and appellant is deliberately avoiding to appear before the authorities, yet the meter is to be examined and if any illegality is found they can proceed against the appellant otherwise they will return the same. Counsel for the appellant was controverted with this proposition that representative of appellant may appear before the concerned authority for lab examination of the gas meter but he refused on the plea that gas authorities were not competent to remove his gas meter and the trial

Court was competent to return the same. Learned trial Judge while deciding the application of appellant has categorically mentioned that meter No. 0326913 is not the part of any proceedings of FIR, therefore, that property cannot be termed as recovered property under that criminal case, hence, that court is not competent to grant such relief, which is beyond its jurisdiction.

3. I have privilege to examine the case law as referred above which speaks scope of authorities, however, factual aspects of the present case are different from the case as referred above, hence, both citations are not helpful for the appellant. Section 6 of the Gas (Theft Control and Recovery) Act, 2016 provides a mechanism and Section 23 of the Act authorized the authority to conduct search of any premises if there is a case of theft. Hence, return of meter in question is not the part of proceedings emanating from FIR No. 07/2022 and apparently, it is an independent action for which the appellant is at liberty to contest the same by approaching to the authorities and after lab testing procedure, if any action is taken by the authorities, the appellant would be competent to challenge the same before the competent forum. With regard to plea that procedure of removal of gas meter was contrary to law is of no worth consideration in the present case as present appeal is against the order of the trial Court whereby such application was declined on the plea that such property is not the case property. In these circumstances, the impugned order passed by learned trial Court does not require any interference by this Court, hence the instant Appeal being meritless is dismissed accordingly alongwith listed application.

JUDGE