

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ Petition No.871/2021;
Date of Institution 10.03.2021;
Date of Decision 29.01.2025.

Israr Ahmed S/o Talib Hussain Caste Bamba
Rajput R/o Bango Dhara Tehsil Hajira District
Poonch.

Petitioner

VERSUS

1. Ex-Officio Justice of Peace/Sessions Judge, Poonch, Rawalakot Azad Jammu & Kashmir;
2. Deputy Inspector General of Police Poonch Region, Rawalakot;
3. Senior Superintendent of Police Poonch Rawalakot;
4. S.H.O. Police Station Hajira District Poonch;
5. Electricity Department through its Secretary Electricity having his office at New Secretariat Muzaffarabad;
6. Chief Engineer Electricity Department having his office at Old Secretariat Muzaffarabad;
7. Superintendent Engineer (SE) Electricity Poonch Division, Rawalakot;
8. Sub-Division Officer (SDO) Electricity Hajira Rawalakot;
9. Hafeez Butt Superintendent Engineer Poonch Division in 2020;
10. Muhammad Waqar Khan Executive Engineer in 2015;
11. Abdul Akber Tahir Executive Engineer in 2017;

12. Mubashar Sarfraz Executive Engineer in 2020;
13. Aftab Shah SDO in 2015;
14. Muhammad Sheeraz SDO in 2017;
15. Habib Khan SDO in 2020;
16. Tufail Hussain, Line Superintendent in 2015, 2017 & 2020.

Respondents

**WRIT PETITION UNDER ARTICLE 44 OF
THE AJ&K INTERIM CONSTITUTION 1974**

Before:- Justice Sardar Muhammad Ejaz Khan, J.

PRESENT:

Sardar Jam Sadiq, Advocate for the petitioner.

Raja Muhammad Kabir Kiani Legal Advisor Electricity Department.

A.A.G. for the official respondents.

JUDGEMNT:

Through the captioned writ petition addressed under Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974 the petitioner implored the following relief:-

“Keeping view of the above pleadings that by accepting the writ petition, an appropriate writ may kindly be issued in the following manner:-

- i. The impugned order dated 30.01.2021 passed by the Justice*

- of Peace may kindly be declared arbitrary, illogically, bad in law, without lawful justification, violative of the fundamental rights of the petitioner and same may kindly be struck down/quashed;*
- ii. The police department/ respondents No.2 to 4 may kindly be directed to initiate a criminal case under penal code and all other enabling laws against the authorities of Electricity Department (Respondents No.5 to 8) due to gross negligence resultantly the petitioner's son badly injured and now suffering disability of Itlaf-i-sahalaiyat-iudw;*
- iii. It is further prayed directing the Electricity Department/ respondents No.5 to 8 to compensate the petitioner for disability of his son due to departmental negligence who is still under treatment. Further be directed to immediately taken a step for shifting the high transmission (HT) electric line and install the same with some reasonable distance from the house of the petitioner along-with other residential area of state subjects in order to securing the life of the public. Any other relief which this Court deems fit may also be granted in favour of the petitioner. ”*

2. Synthesized facts, according the version of the petitioner, is that he is a 1st Class State

Subject and hails from village Bango Dhara Hajira District Poonch. It has been stated that high transmission (HT) electric lines pass through near 3 to 5 feet distance from his house, which are very dangerous for his family members for which he time and again requested the concerned authorities to change the HT lines through applications dated 02.12.2015 & 22.05.2017 but the needful was not done. It has further been stated that an incident took place at about 04:00 P.M. on 14.06.2020, when petitioner's son Farhan Israr having age 14 years was caught by high transmission lines and his body was completely burned due to electric shockwaves while he was, in critical condition, rushed to the CMH, Rawalakot, wherefrom he was referred to Burn Center PIMS, Islamabad. It has been averred that for saving life of petitioner's son, it was decided to get treatment from Fauji Foundation Hospital, Rawalpindi, where he was hospitalized till 24.07.2020 and now he is

still under medical treatment for plastic surgery while the petitioner submitted a written report to S.H.O. Police Station Hajira for registration of a case against the responsible authorities of Electricity Department on 18.06.2020 but no criminal case has been registered as provided under law and thereafter, the petitioner submitted applications before the high officials of police department for registration of a criminal case against the responsible authorities of electricity department on 03.10.2020 & 14.10.2020 who verbally refused to proceed on the same. It has been contended that on refusal of police for registration of a criminal case, the petitioner submitted an application under Section 22-A, Cr.P.C. before Justice of Peace Poonch, Rawalakot, which was dismissed vide impugned order dated 30.01.2021, hence, this writ petition.

3. Writ petition was admitted for regular hearing vide order dated 28.11.2024 and the

respondents were summoned for filing written statement who filed the same wherein the averments taken in writ petition by the petitioner were denied in toto and it has been craved for dismissal of writ petition.

4. Heard. Record perused.

5. A contemplate perusal of record shows that Electricity Department installed high voltage transmission wires (HT) were installed about 3/4 feet above the roof of petitioner's house on which he time and again made verbal requests for shifting the same to some other place for which he submitted applications to the concerned of Electricity Department on 12.12.2015 and 22.05.2017 (*annexure "PA" & PA/1*). On fatal day i.e. 14.06.2020 at about 04:00 P.M., son of petitioner studying in class 6th having age 14 years went to roof of house where he stood and pointed out the place raising his hand to his paternal cousin Adil standing on the ground where the ball

was lying and on the spur of moment, high transmission lines passing over him caught the petitioner's son on account of which he was severely burned by electric shock and he was rushed to the CMH, Rawalakot, wherefrom he was referred to Burn Center PIMS, Islamabad, however, on account of critical condition, he was hospitalized in Fauji Foundation Hospital Rawalpindi where he remained under treatment where he was advised for plastic surgery. This incident was reported by the petitioner to Police Station Hajira for registration of a criminal case against the responsible of electricity department and no action was taken on it and thereafter, he submitted applications before high official of police but all in vain. Feeling dissatisfied the petitioner filed an application under Section 22-A, Cr.P.C. before the learned Ex-Officio Justice of Peace, Poonch, Rawalakot, for registration of a criminal case against the then responsible on 12.11.2020

stating detailed facts, a relevant part of application submitted to S.H.O. Police Station Hajira is hereby reproduced as under:-

جناب والا! مورخہ 14/06/2020 بروز اتوار بوقت 4 بجے شام کا واقعہ ہے کہ سائل کا پسر محمد فرحان اسرار جس کی عمر 14 سال ہے اور جماعت ہشتم میں زیر تعلیم ہے مکان کی چھت پر گیا اور وہاں سے کھڑے ہو کر نیچے اپنے تایا زاد بھائی عادل کو نیچے پڑی ہوئی گیند کی طرف اشارہ کیا تو ایچ ٹی لائن کی تاروں سے تقریباً تین چار فٹ کی دوری پر ہیں تو 11 ہزار وولٹ کی برقی رو نے اسے اپنی طرف کھینچ لیا جس کی وجہ سے وہ تاروں سے لٹکتے ہوئے نیچے گرا کر کرنٹ کی وجہ سے باہاں ہاتھ گردن باہاں بازو پیٹ کے نیچے جسم کے نازک حصے اور دونوں ٹانگیں مکمل طور پر جھلس کر زخمی ہوا۔ گھر والوں نے دیکھا تو وہ بے ہوش ہو چکا تھا سائل کے برادران منظور حسین طفیل حسین اور ماموں زاد کفیل احمد ولد جھلاخان کبیر احمد ولد محمد شیر نے معہ دیگر افراد اسے پاس پڑی ہوئی ریت میں دبایا جس کی وجہ سے اس کا سانس بحال ہوا سائل ہجیرہ تھا پسر سائل کو ہجیرہ ہسپتال لایا گیا جہاں سے اسے راولا کوٹ اور راولا کوٹ میں طبی امداد دینے کے بعد اسے فوجی فاؤنڈیشن ہسپتال راولپنڈی ریفر کیا گیا جو ہنوز وہاں زیر علاج ہے محکمہ برقیات کے ذمہ داران اور اہلکاران نے جاننے اور سمجھتے ہوئے کہ برقی رو سے کوئی حادثہ ہو سکتا ہے اس جانب کوئی توجہ نہ دی اور شکایت کرنے پر سائل کے ساتھ ہی الجھتے رہے اور ذاتی عناد بنا کر لائن کو درست نہ کیا محکمہ کی غفلت لاپرواہی ہٹ دھرمی اور عناد کی وجہ سے سائل کا بیٹا زندگی اور موت کی کشمکش میں ہے اور انتہائی برے طریقے سے جل چکا ہے سائل اس لیے بروقت درخواست نہ دے سکا چونکہ سائل پسر کو لے کر راولپنڈی چلا گیا۔ چونکہ انسانی جان کا معاملہ تھا سائل آج ہی راولپنڈی سے واپس آیا ہے جس کی وجہ سے درخواست دینے میں تاخیر ہوئی۔

لہذا استدعا ہے کہ محکمہ برقیات ہجیرہ کے ذمہ داران کے خلاف قانونی کارروائی عمل میں لائی جائے۔

In addition to that the petitioner in para-4 of the application, submitted before the Ex-Officio Justice of Peace, drew attention towards earlier incident happened in 1994, hence, for ready reference, the

para-4 of the said application is usefully reproduced as under:-

"یہ کہ اس سے قبل سائل کے حقیقی بھائی جو اس وقت ملازم فوج تھے کو 1994ء میں اسی برقی روکی وجہ سے کرنٹ لگا تھا۔ اس وقت بھی سائل کے والد نے محکمہ برقیات والوں سے تبدیلی لائن کی استدعا کی تھی لیکن محکمہ برقیات والوں نے اس وقت بھی کوئی توجہ نہ دی تھی۔ تبدیلی HT لائن کو درخواست ہاگزارنے پر برقیات کے اہلکاران عنادی بنے ہوئے ہیں۔ متعدد مرتبہ غلط بلات دے کر سائل کو پریشان کر رہے ہیں۔ جس پر سائل نے متعدد درخواست ہا بخلاف میٹریڈرز دیں کہ وہ انتہائی نازیبا زبان استعمال کر رہے ہیں اور سائل کو جان سے مارنے کی دھمکیاں دے رہے ہیں۔ ان پر بھی کوئی کارروائی تاحال نہ کی گئی ہے۔"

6. On application, the concerned police officials were summoned who appeared before the learned Ex-Officio Justice of Peace and filed comments whereupon the learned Ex-Officio Justice of Peace vide impugned order dated 30.11.2021 dismissed the application, however, it was observed that the 'negligence' of the concerned responsible in discharging their duties cannot be ruled out. It reflects from record that the

concerned officials of electricity department have not denied the factum of such incidents occurred due to their negligence and casual attitude towards discharging their duties efficiently and diligently.

7. The point is yet to be determined that whether the impugned order dated 30.01.2021 of the learned Ex-Officio Justice of Peace, Poonch Rawalakot, has been passed in accordance with law or not and whether negligent conduct of responsible of electricity department constitutes a cognizable offence or not? Under the relevant provisions of law, Section 154 of Cr.P.C., every information relating to the commission of a cognizable offence given to an Officer Incharge of a concerned Police Station will be reduced to writing by him or under his direction. Whenever an information disclosing prima-facie cognizable offence is made out, the concerned Police Officer is duty bound to enter the same in prescribed book and proceed in accordance with law, hence, for

proper appreciation of the matter, Section 154 of Cr.P.C. is helpfully reproduced as under:-

“154. Information in cognizable cases. *Every information relating to the commission of a cognizable offence if given orally to an officer-in-charge of a police station, shall be reduced to writing by him or under his direction and be read over to the informant and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Provincial Government may prescribe in this behalf*

Provided that if the information is given by the woman against whom an offence under Section 336-B, Section 354, Section 354-A, Section 376 or Section 509 of the Pakistan Penal Code, 1860, (Act XLV of 1860) is alleged to have been committed or attempted, then such information shall be recorded by an investigating officer in presence of a female police officer or a female family member or any other person with consent of the complainant, as the case may be:

Provided further that if the information, given by the woman against whom an offence under Section 336-B, Section 354, Section 354-A, Section 376 or Section 509 of the Pakistan Penal Code, 1860 (Act XLV of

1860) is alleged to have been committed or attempted, is distressed such information shall be recorded by an investigating officer at residence of the complainant or at a convenient place of the complainant's choice in presence of a police officer or family member or any other person with consent of the complainant, as the case may be."

8. From bare reading the above quoted Section, it depicts that the police has a statutory duty under Section 154, Cr.P.C. to register F.I.R. regarding commission of any cognizable offence and its purpose is not meant decide guilt or innocence but to activate the law enforcing agencies to move for collection of evidence. Registration of case in a cognizable offence is the right of any aggrieved citizen through which he seeks help and redressal from the state authorities and the said right has been protected by provisions of Section 154, Cr.P.C. Provisions of the said Section are mandatory in nature, which postulate that every information relating to the commission

of a cognizable offence, if furnished orally or in written shape to the concerned police, will be reduced into writing by him while the purpose of registration of case is to set the law into motion where the given information of the informant discloses commission of a cognizable offence on which the Officer Incharge cannot refuse to register a case rather it is the statutory duty of the concerned officer to proceed with the matter as provided under law. It is relevant to mention here that F.I.R. is not a substantive piece of evidence, it is just information of an offence, it is not a requirement of law that complainant should provide full details to canvass the whole seen of the occurrence. It is prior duty of the investigating officer to dig out the truth on surface and collect all the evidence and after completion of investigation, a report as provided under law has to be submitted before the competent Court of law.

9. Punishment for negligent act and punishment for other hurt has been provided in Sections 337H and 337L, APC, hence, for more convenience, the said Sections are purposefully reproduced as under:-

“337. Punishment for hurt by rash or negligent act: (1) Whoever causes hurt by rash or negligent act, other than rash or negligent driving, shall be liable to arsh or daman specified for the kind of hurt caused and may also be punished with imprisonment of either description for a term which may extend to three years as ta'zir. (2) Whoever does any act so rashly or negligently as to endanger human life or the personal safety of other, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

337-L. Punishment for other hurt: (1) Whoever causes hurt, not mentioned hereinbefore, which endangers life or which causes the sufferer to remain in severe bodily pain for twenty days or more or renders him unable to follow his ordinary pursuits for twenty days or more, shall be liable to daman and also be punished with imprisonment of either description for a term which may extend to seven years. (2) Whoever causes hurt not covered by sub-section (1) shall be punished with

imprisonment of either description for a term which may extend to two years, or with daman, or with both.”

On the subject-matter, Section 5 of Cr.P.C. is very much clear, which is usefully reproduced as under:-

“5. Trial of offences under Penal Code.- *All words and expressions used herein and defined in the Penal Code (XLV of 1860), and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code.*

Trial of offences against other laws. *(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise, dealing with such offences.”*

10. The basic purpose of criminal law and criminal administration of justice is to save the society from evil to free it of crime. So ultimate object of criminal justice system is to make the society safer for its citizen. The purpose of criminal law is to provide a society with a set of

rules regarding legal and illegal behaviour. In other words, criminal law outlines what actions and behaviours are allowed. It defines what actions are crimes and how to punish those who commit these crimes. There are five objectives of the criminal law, which are usefully reproduced as under:-

- i. **RETRIBUTION:** *Retribution is the punishing of individuals who commit crimes, although not necessarily in the same manner inflicted on their victims. This is the most widely used today, as well as the oldest objective of the law;*
- ii. **DETERRENCE:** *Deterrence of future crimes is a term that has been around for a long time. There are two parts to this objective: individual and general deterrence. When a person commits a crime, a penalty is imposed to discourage the offender from future criminality, (which is the individual deterrence) but it can also serve as a discouragement to those in the general public not to commit such unlawful activities (general deterrence);*
- iii. **INCAPACITATION:** *This objective seeks to incapacitate or remove a criminal offender from society, in order to protect the public from dangerous behavior. In most*

societies, this is achieved through incarceration;

- iv. **REHABILITATION:** The rehabilitation approach aims to transform the offender to ensure that they will engage in gainful activities once they re-enter society, thereby preventing further crimes;*
- v. **RESTORATION:** Once a crime is committed, there are damages inflicted on the victim, which is why this objective tries to return the victim to their original position before the crime was committed against them.”*

11. After deep perusal of available record brought on file and taking into account the relevant provisions of law, at the first impression, *prima-facie*, a cognizable offence is constituted on account of negligence occurred on the part of concerned responsible of electricity department and when the learned Legal Advisor was confronted that when the such high voltage electric transmission wires were installed, any permission and consent of the landowner was obtained and if any approved map issued for its installation will be produced before the Court on 20.01.2024 vide

order dated 16.01.2025 but nothing has been brought on record in this regard. It is an admitted fact that high voltage electricity transmission lines have been installed and passed above the house of petitioner without taking into account the relevant provisions of law for which Section 12 of The Electricity Act, 1910 clearly bars the electricity department to lay down any electric supply line or other work without the consent of its owner or occupier. It would be more appropriate to reproduce Section 12 of Act, Ibid, which reads as under:-

“12.Provisions as to the opening and breaking up of streets, railways and tramways.-(1) Any licensee may, from time to time but subject always to the terms and conditions of his license, within the area of supply, or when permitted by the terms of his license to lay down or place electric supply-lines without the area of supply, without that area--

(a) open and break up the soil and payment of any street, railway or tramway;

(b) open and break up any sewer, drain or tunnel in or under

any street, railway or tramway;

(c) lay down and place electric supply-lines and other works;

(d) repair, alter or remove the same; and

(e) do all other acts necessary for the due supply of energy.

(2) Nothing contained in sub-section (1) shall be deemed to authorize or empower a licensee, without the consent of the local authority or of the owner and occupier concerned, as the case may be, to lay down or place any electric supply-line or other work in, through or against any building, or on, over or under any land not dedicated to public use whereon, where over or where under any electric supply-line or work has not already been lawfully laid or placed by such licensee:

Provided that any support of an aerial line or any stay or strut required for the sole purpose of securing in position any support of an aerial line may be fixed on any building or land or, having been so fixed, may be altered, notwithstanding the objection of the owner or occupier of such building or land, if the District Magistrate by order in writing so directs:

Provided, also, that, if at any time the owner or occupier of any building or land on which any such support, stay or strut has been fixed shows sufficient cause, the District Magistrate may by order in writing direct any such support, stay or strut to be removed or altered.

(3) When making an order under sub-

section (2), the District Magistrate shall fix the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(4) Nothing contained in sub-section (1) shall be deemed to authorize or empower any licensee to open or break up any street not repairable by ⁵[the, ⁶[Federal Government] or the Provincial Government] or a local authority, or any railway or tramway except such streets, railways or tramways (if any), or such parts thereof, as he is specially authorized to break up by his license, without the written consent of the person by whom the street is repairable or of the person for the time being entitled to work the railway or tramway unless with the written consent of the ⁴[Provincial Government]:

(5) Provided that the ⁴[Provincial Government] shall not give any such consent as aforesaid, until the licensee has given notice by advertisement or otherwise as the ⁴[Provincial Government] may direct, and within such period as the ⁴[Provincial Government] may fix in this behalf, to the person above referred to, and until all representations or objections received in accordance with the notice have been considered by the ⁴[Provincial Government].

(Underlining in mine)

12. A combined study of Act, Ibid and

Chapter VIII Aerial Lines of Electricity Rules, 1937 depicts that precautionary measures required for installation of high voltage of electric lines have not been taken by the concerned responsible of electricity department for which consent of owner and permission of District Magistrate for installation of high voltage of electric wires appear to have not been obtained, as stated earlier, neither the approved plan regarding installation of high transmission lines over the house of petitioner nor permission of District Magistrate has been brought on record while a comprehensive mechanism has been provided regarding the distance of aerial lines from ground to above and over the streets, houses and buildings where the insulated cables are required to be installed but all these mandatory provisions of law have not been complied with. So, I would like to reproduce Rules 65 to 69 of Electricity Rules, 1937 defined in Chapter-VIII Aerial Lines, which follow as under:-

“65. Minimum, strength of conductors of aerial lines. The owner of an aerial line shall not use it for the supply of energy unless each conductor has an actual breaking load of not less than 700 lbs:

Provided that, where the pressure is low and the span is of less than 50 feet and, is on the owner's premises a conductor having an actual breaking load of not less than 300 lbs may be used.

66. Maximum intervals between supports. The owner of an aerial line shall ensure that the conductors are attached to supports at intervals, exceeding the safe limits based on the actual breaking load of the conductor and the factor of safety prescribed in rule 68:

Provided that where such a line is erected in over, along or across any street, the interval shall not, without the consent in writing of the Inspector exceed 220 feet.

67. Connection with earth of metal supports and stay-wires. (1) The owner of every aerial line supported by metal supports shall ensure that these supports are permanently and efficiently earthed. For this purpose a continuous earth wire securely fastened to each support and connected with earth at four points in every mile, the spacing between the points being as nearly equidistant as possible, shall be provided, or alternatively each support shall be connected to an effective device.

(2) Each stay-wire shall be similarly earthed unless an insulator has been placed in it at a height of not less than ten feet from the ground.

68. Factors of safety. (1) The owner of every aerial line shall ensure that it has the following factors of safety.—

(i) for metal supports, at least 2.5;

(ii) for other supports, at least 3.5;

(iii) for guard-wires or bearer-wires, at least 3;

(iv) for conductors, at least 2;

under all conditions, and that the strength of support in the direction of the line is not less than one-fourth of the strength required in a direction transverse to the line.

(2) For the purpose of calculating the factors of safety:-

(a) the maximum wind pressure shall be specified by the Provincial Government in each case;

(b) for cylindrical bodies the effective area shall be taken as two thirds of the sectional area exposed to wind pressure;

(c) for lattice steel or other compound structures the wind pressure on the leeward members shall be taken as one-half of the wind pressure on the windward side members, and the factor of safety shall be calculated on the Gripping load of structures and upon the elastic limit of tension members;

(d) the temperature shall be taken at 30°F or such other temperature as the Provincial Government may specify.

(3) Notwithstanding anything in Sub-rules (1) and (2), in localities where aerial lines are liable to accumulations of ice or snow, the Provincial Government may, by order in writing, specify such factor of safety as it may think fit and the condition under which it is to be calculated.

69. Height from ground and distance from buildings. (1) Every conductor of an aerial line (not being a trolley-wire or a traction-feeder on the same support as a trolley-wire) shall be—

(a) at least 90 feet above the ground where it is over any part of a street or other public place;

(b) if not covered with insulating material inaccessible either from the ground or from any building or structure, whether permanent or temporary except by the aid of a ladder or other special appliance.]

(2) Where an aerial line is on a consumer's or an owner's premises, the height of every conductor from any mineral or refuse dump and from parts of buildings or structures to which persons have access shall, unless the conductors are adequately guarded, be not less than 15 feet or such greater heights as may be necessary to prevent danger.

(3) The owner of the aerial line shall be responsible for ensuring that the provisions of sub-rules (1) and (2) are observed.”

Underlining is mine

13. By taking into account the relevant provisions of Electricity laws and criminal law and its enabling provisions, the responsible staff and officials of electricity department appear to have been found negligent and this negligent act, *prima-facie*, constitutes a cognizable offence, which imposes criminal liability on them. It is important to note here that an act of negligence is not always simple particularly when the negligence results into costing lives of innocent, the degree of negligence shall vary in its consequence from person to person. The term 'negligence' as per Black's Law Dictionary (Ninth Edition) has been defined that:-

"1. The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregarding of others' right."

The terms '*advertent negligence*' has been defined in *Black's Law Dictionary*, which reads as under:-

"Negligence in which the actor is aware of the unreasonable risk that he or she is creating; RECKLESSNESS.-- Also termed willful negligence; supine negligence"

14. It is not out of place to mention here that the version of the petitioner taken in pleadings has not been denied specifically rather earlier incident took place in year 1994 by which brother of petitioner was electrocuted for which he verbally and in writing reported the matter time and again before the concerned official and staff of electricity department. It is also an admitted fact that the son of petitioner badly burned due to electric shockwave and remained under treatment in Fauji Foundation Hospital, Rawalpindi, where he has been admitted and discharged time and again because of treatment. As per report of concerned doctor, 12% vital parts of body of petitioner's son

were burned, which is so clear from the snapshots appended along-with writ petition (*annexure "PB"*).

Thus, the concerned staff and officials of electricity department appear to have been found negligent in discharging their duties efficiently and diligently rather they were fully aware of the consequences of such negligence, therefore, they, *prima facie*, appear to be guilty of '*advertent negligence*, which constitutes a cognizable offence.

15. It is apt to mention here that to constitute a criminal offence, existence of *mens rea* and *actus reus* is two essential ingredients and broad elements in most of the crimes. Every criminal offence requires both a criminal act, expressed in Latin as the *actus reus*, and a criminal intention, expressed as *mens rea*. *Mens rea* is often described as the "*mental element*" in a crime. It can include what used to be known as "malice aforethought", i.e. conscious planning or intent, as well as something culpable but less deliberate, such as

recklessness or negligence. In most of criminal cases, one of the following kinds of *mens rea* involves:-

- i. **INTENT:** This is the explicit and conscious desire to commit a dangerous or illegal act. **For example,** if a person targets and assaults someone with the goal of inflicting harm on the victim, he is displaying criminal intent;
- ii. **KNOWLEDGE:** This term applies if a person is aware that his or her actions will have certain results, but does not seem to care. **For example,** if a person violently lashes out at someone, inflicting harm may not be her primary goal. However, if she was aware that harm would be a predictable result of her actions, then she is guilty of having criminal knowledge;
- iii. **RECKLESSNESS:** Recklessness is the decision to commit a certain action despite knowing about associated risks. **For example,** if a person causes injury while driving drunk, he can be found guilty of recklessly causing harm. He did not intend to hurt anyone, and did not expect it to happen, but he knew he was taking the risk of hurting someone by driving while inebriated;
- iv. **NEGLIGENCE:** This is the mildest form of criminal culpability. A

*person commits negligence when he/she fails to meet a reasonable standard of behavior for his/her circumstances. **For example**, if a child is injured because his or her caretaker failed to perform her duties, she may be guilty of criminal negligence.”*

Actus reus is concerned with the actions of the perpetrator, not his mental state, as the same has been defined in criminal law in the following manner:-

"Actus reus" is a Latin phrase meaning "guilty act," referring to the physical act or omission that constitutes the criminal element of a crime, essentially the voluntary conduct that the law considers necessary to establish criminal liability, which must be accompanied by a guilty mind ("mens rea") to secure a conviction; it includes not only the action itself but also the surrounding circumstances and the resulting harm caused by that action.”

After close look of definitions of *mens rea* and *actus reus*, it is found that *mens rea* is the criminal act or awareness of wrong doing rather *actus reus* is

the actual physical act for a crime, it is also an act of omission such as abandonment or negligence.

16. I am not inclined with the contention of the Legal Advisor Electricity Department that the lines were installed before construction of new house of the petitioner because when the authorities were fully aware of the fact reported to them verbally and in writing, they were under the legal obligation to take precautionary measures and make sure the safety of citizens of the State on top priority basis. It cannot be said that no provision of law is available in the Electricity Act and Rules to take the cognizance of any negligent act done by authorities in performance of official duties or no Court of law has jurisdiction to take cognisance rather any incident takes place due to negligence on the part of concerned responsible of electricity department, which *prima-facie*, constitutes a cognizable offence and the concerned investigating agency can take its cognizance as

provided under law. However, in some exceptional cases, when any unfortunate incident happens in shape of natural disaster, which is not under human control i.e. storm, strong winds, sliding, earthquake etc. for which nobody can be penalized but knowing the consequences of negligence, it cannot be said that no criminal liability can be imposed in the given circumstances. It is prime duty of this Court to protect the fundamental rights of the citizens of the State by any means. If the matter is left unattended, meaning thereby that such negligent responsible staff and officials shall be given free hand and licence to play with human lives. It has been observed that everyday countless precious lives are lost due to electroshocks on account of negligence of concerned responsible of electricity department, hence, findings recorded by the learned Ex-Officio Justice of Peace, Poonch, Rawalakot, that no responsibility can be shifted on any individual or department for this incident are

not legally justified because the investigating agency is duty bound to proceed with the matter as provided under law and dig out the truth on surface while identifying the responsible. In this backdrop, the impugned order dated 30.01.2021 clearly calls for interference by this Court in exercise of powers conferred under Article 44 of the Azad Jammu & Kashmir Interim Constitution, 1974.

17. Be that as it may, the instant writ petition is accepted and the impugned order of Ex-Officio Justice of Peace, Poonch Rawalakot, dated 30.01.2021 is hereby *set-aside* while the S.H.O. Police Station, Hajira, District Poonch, is directed to register a criminal case in the light of application of the complainant and proceed further in accordance with law. In such like state of affairs, S.S.P. Poonch Rawalakot is also directed to supervise the investigation process himself and make sure the completion of investigation within a

period of one month from date of announcement of this judgment positively. An attested copy of this judgment shall be sent to concerned quarters for compliance.

Muzaffarabad:
29.01.2025(J.ZEB)

JUDGE

Approved for reporting.

JUDGE