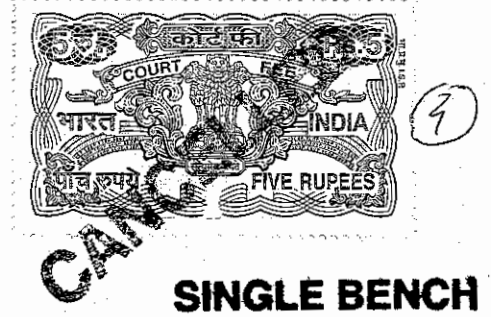
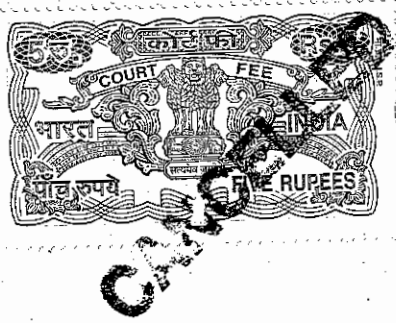




SINGLE BENCH

**IN THE HON'BLE HIGH COURT OF CHHATTISGARH AT
BILASPUR (C.G.)**

CR.M.P. NO. 1014 OF 2013

APPELLANT :

COMPLAINANT

Chhattisgarh Rajya Viddutta
Vitaran Company Maryadit,
through the Executive Engineer
Nagar Sambhag-I, East Bilaspur,
Chhattisgarh

10/11/13
Presented by Shri Pritam Kumar
dated 11/11/13

VERSUS

RESPONDENT :

Accused Person

Smt. Saguna Bai Yadav, aged
about 58 years, wife of Shri
Sukharam Yadav, resident of
Lakhmi Chowk Chingrajpara,
Bilaspur, Chhattisgarh

**APPLICATION FOR GRANT OF SPECIAL LEAVE TO
APPEAL UNDER SECTION 378 (4) OF THE CODE OF
CRIMINAL PROCEDURE 1973**



26.2.14

52

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench :Hon'ble Shri Justice P. Sam Koshy

Cr. M. P. No. 1014 of 2013

Petitioner

Chhattisgarh Rajya Viddutta
Vitaran Company Maryadit

VERSUS

Respondent

Smt. Saguna Bai Yadav

Shri Pritam Tiwari, Counsel for the petitioner.
None for the respondent.

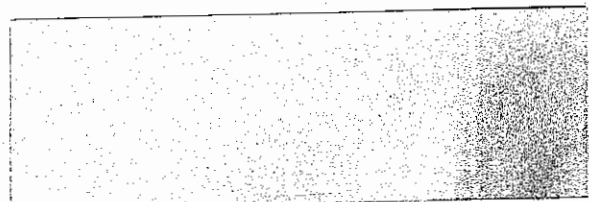
O R D E R

(04.02.2014)

By way of the instant petition the petitioner intends to challenge the judgment of acquittal dated 11.07.2013 passed by the Special Judge/First Additional Sessions Judge, Bilaspur in Electricity Criminal Case No. 52/2012.

2. Case of the petitioner in brief is that on 24.09.2010, Junior Engineer Hemlata Dewangan, lineman Khagendra Vishwakarma and Roshan Singh Assistant Grade-II conducted a raid at the premises of the respondent and found the respondent illegally consuming electricity without taking proper connection from the meter. For the said offence, Panchnama was prepared at the spot and a case was instituted under Section 135 of the Indian Electricity Act, 2003.

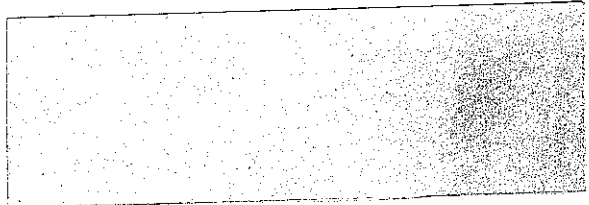
3. During trial the accused/respondent has challenged the proceedings on more than one grounds. The challenge initiated by the respondent on the ground that the person who had



42

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conducted the raid as well as submitted the Challan was not authorized to file the same as per the provision of Electricity Act, 2003 and the entire raid was conducted without any independent witnesses as required under the provisions of the said Act. Similarly, during the trial proceedings, the petitioner company also failed to give justifiable reasons as to why there would not be compliance as is required under the provisions of Electricity Act in respect of the requirement of two independent witnesses while preparing the Panchnama in respect of the electricity theft. It could not be established by the prosecution before the Court below that the Junior Engineer Hemlata Dewangan was authorized to file the complaint case before the Court for the reason that as per the requirement of C.G. State Electricity Rule, 2006, the complaint case can be filed only by the officer who is either a Divisional Electricity Inspector in the office of Chief Electrical Inspectorate of the State Govt. or an officer rank of Executive Engineer. However, the officers of the Electricity company failed to establish before the Court below as to how Ku. Hemlata who was a junior engineer was authorized to file the case. The petitioner company further failed to show that at the time of preparing Panchnama, there was any independent witness available and therefore in the absence of an independent witness to the Panchanama the Court below has not taken cognizance of the said Panchnama Ex.P-2. Similarly, the Court below has also found that there is a violation of Rule 7 (a) of the Chhattisgarh State Electricity Rules 2006 wherein notice





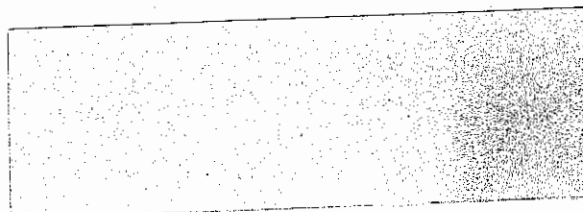
of interim penalty was to be issued before proceeding with the criminal case and this provision has also not been complied by the electricity department.

4. Taking all these facts into consideration, particularly the provisions of the Indian Electricity Act, the Court below reached to the specific finding that the petitioner Company has miserably failed to comply many mandatory requirements of the provisions of Electricity Act and the Rules framed therein and therefore giving the advantage of it to the respondent, the Court below vide its judgment dated 11.07.2013 acquitted the respondent of the charge under section 135 of the Electricity Act.

5. It is this judgment dated 11th July 2013 which the petitioner company intends to challenge in the instant Cr.M.P.

6. If we peruse the provisions of the Electricity Act it is evidently clear that Section 135 of the Electricity Act, 2003 deals with the theft of electricity offences and penalties therein. After report of the theft of electricity, cognizance of the offence under the Electricity Act is taken as per the provision of Section 151 of the said Act of 2003 which deals as to how cognizance of an offence has to be taken. For ready reference the provision of Section 151 is reproduced herein under:

151. Cognizance of offences.- No court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose:





1 [Provided that the court may also take cognizance of an offence punishable under this Act upon a report of a police officer filed under section 173 of the Code of Criminal Procedure, 1973:

Provided further that a special court constituted under section 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial.]

7. After taking cognizance of the offence, the matter is placed before the Special Court constituted for this purpose by the State Govt. as per the provision of 153 of the Electricity Act. Further, if we see the Rule framed under the said Act of 2003 known as Chhattisgarh State Electricity Rule 2006 which came into force w.e.f. 22.03.2006; Rule 5 deals with entry, search and seizure in respect of the unauthorized use and theft of electricity and Rule 7 lays on the procedure as to how assessment of charges for unauthorized use and theft of electricity and payment thereof has been enumerated. For ready reference, the relevant portion of Rule-7 is reproduced herein under:

7. (i) On inspection of the premises, if any consumer or person is found to indulged in unauthorized use of electricity, the assessing officer, taking into consideration the facts and circumstances of the case, shall may a provisional assessment of the charge payable by the owner or occupier the premises who is benefited by indulging in unauthorized use of energy may have given benefit to any other person.
- (ii) The provisional assessment shall be made by the assessing officer and the provisional assessment order shall be served upon the person in occupation or possession or incharge of the place or premises in Form 5.
- (iii) For the purpose of assessment, the following officers shall be the assessment officers:-
 - (a) Chief Electrical Inspector or an officer authorized by the Chief Electrical Inspector not below the rank of Assistant Electrical Inspector.
 - (b) Following officers of Board or distribution licensee:-
 - (i) Officers of the rank of Assistant Engineers for all LT connection upto 15 KW connected load.
 - (ii) Officers of the rank of Executive Engineers for all LT

(iii) connections of more than 15 KW connected load.
Officer of the rank of Superintending Engineers and above for all HT connections:

- (iv) The provisional order of assessment made by the assessing officer shall be served upon the person within a period of three (3) days from the date of inspection. Assessment shall be made as per the provisions contained in Section 126 of the Act.
- (v) The person to whom the order of provisional assessment has been served upon may file his objections or acceptance or partial acceptance within 7 days from the date of receipt of the provisional order. The assessing Officer may finally pass a final order in Form 6 after taking into consideration the objections/ acceptance/partial acceptance of the person/consumer within one month of the date of the order of provisional assessment. However, the assessing officer if he considers so necessary may allow personal hearing to the person/ consumer assessed.

8. If we peruse the documents that have been brought before the Court below in respect of the instant case, it is apparently clear that the petitioner has not been able to establish before the Court below as to how the requirement of law as is required under Section 151 and also under Rule 7 of the Act of 2003 has been complied with.

9. On due consideration of the evidences available on record and the grounds put forth by the respondent before the Court below, it is evidently clear that the petitioner company has failed to give any justifiable reason for non compliance of the provisions of Electricity Act which otherwise are mandatorily required. In view of the same, this Court is of the considered view that the finding arrived at by the Court below is purely in accordance with law and the Court below has not committed any error of law in reaching to the said conclusion of acquitting the respondent of the charge levelled against her.



10. For the foregoing reasons, the instant Cr.M.P. is rejected holding it to be devoid of merits.

Sd/-

P.Sam Koshy
Judge