

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 232 OF 2014

Mr. Sunil s/o. Laxman Somwanshi **....Petitioner.**

Versus

The State of Maharashtra & Anr. **....Respondents.**

Mr. R.F. Totala, Advocate for petitioner.

Mr. S.A. Ambad, APP for State.

Mr. A.S. Shelke, Advocate for respondent No. 2.

CORAM : T.V. NALAWADE, J.
DATED : 19th June, 2015.

ORDER :

1. The petition is filed for relief of quashing and setting aside the orders made on Exhs. 14 and 29 by the learned Additional Sessions Judge, Aurangabad in Spl. Case MSEB No. 64/2006. The prayer is also made for discharge of the petitioner. Both the sides are heard.

2. The cognizance of the matter is taken on the basis of police report and chargesheet is filed by CIDCO Police Station, Aurangabad for the offences punishable under sections 135 and 138 of Electricity Act, 2003. The crime was registered on the basis of report given by Satyajeet Nagare, Junior Engineer of this department. He had entered the premises of the accused on

2.9.2006 on receiving specific information that there was theft of electricity being committed in this premises. When he made examination of the service line and other things, he noticed that bye-pass was given to the electricity meter and the theft of electricity was committed. By doing such act, the supply was given to six shop premises and to staircase. It is contended that electricity was taken which was of 5400 watt and 22000 watt. He made assessment and he realized that there was theft of 27.4 k.w. electricity which was worth Rs. 6,64,848/-. As the petitioner/accused is the owner and also Chairman of the Society, the report was given and the crime was registered.

3. The learned counsel for petitioner placed reliance mainly on the circumstance that under section 135 (1) (a) and (b), only the officer of M.S.E.B., authorized by the State can enter, inspect and search the premises. He submitted that notification to give power to the officer was issued by the State Government on 26.9.2006 and so, the action of search taken on 2.9.2006 was not legal and so, the proceeding vitiates.

4. On the other hand, the learned counsel for M.S.E.B. drew the attention of this Court to the provision of section 151 of the Act which provides for taking cognizance of the offence. He

took this Court through the State Amendment (Maharashtra Amendment) to section 151. The amendment reads as 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 authorised by them or a Chief electrical Inspector or an Electrical Inspector or licensee or the generating company, a the case may be, for this purpose :

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.

151A.- Power of Police to investigate.- For the purpose of investigation of an offence punishable of this Act, the police officer shall have all the powers as provided in Chapter XII of the Code of Criminal Procedure, 1973.

151-B.- Certain offences cognizable and non-bailable.- Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offene punishable under sections 135 to 140 or section 150 shall be cognizable and non-bailable."

This amendment came in to effect from 23.6.2005.

5. In the present case, cognizance of the matter is taken by the Magistrate on the basis of report which was filed on 16.12.2006.

6. The entire proceeding can never vitiate only because, the person who inspected the premises and found that there was the theft of electricity, was not authorized by the State Government to examine the things. The things can vitiate only when the cognizance of the matter is not taken correctly and legally by the Criminal Court. Due to the irregularity in search, the material collected in search cannot be discarded by any Criminal Court. Whatever comes before the Court as substantive evidence will have to be considered by the Criminal Court. In view of these circumstances, this Court holds that there are no merits in the proceeding.

7. In the result, the petition stands dismissed.

[T.V. NALAWADE, J.]

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