

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

Crl. Appeal No.S-3338-SB of 2013

Date of Decision: 03.11.2015

Sanjeev Vohra

....Appellant

Versus

State of Punjab

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. Karan Chaudhary, Advocate
for the appellant.

Ms. Ritu Punj, Addl. A.G., Punjab
for the respondent-State.

DAYA CHAUDHARY, J.

The present appeal has been filed to challenge the judgment of conviction and order of sentence dated 05.09.2013 passed by the Additional Sessions Judge (Ad hoc), Gurdaspur, whereby, the accused-appellant has been held guilty and convicted for an offence punishable under Section 135 of the Electricity Act, 2003 (here-in-after referred to as the `Act, 2003) and has been sentenced to undergo rigorous imprisonment for a period of one year with a fine of ₹ 2000/- and in default of payment of fine, he was further ordered to undergo rigorous imprisonment for a period of one month.

Briefly, the facts of the case are that on the basis of complaint made by Assistant Engineer, Administration City, Punjab State Electricity Board, Gurdaspur, FIR No.15 dated 31.05.2009 was registered at Police

Station Anti Power Theft Verka (Amritsar) under Section 135 of the Act, 2003.

As per allegations in the FIR, Sanjeev Vohra Medical Store, which was situated near Brahman Sabha, G.T. Road, was checked on 18.05.2009 by Engineer Enforcement, Batala and it was found that M&T Sealing Clamps and mechanism of the meter were tampered with and by suppressing real consumption, theft of electricity was being committed. On the basis of said complaint, the Enforcement checking report was prepared and the amount after assessment was found to be ₹ 60,059/-. The notice was sent to the consumer but he refused to accept the same and hence, the said amount was not deposited by him. Thereafter, a request was made to Station House Officer of the concerned Police Station to lodge FIR under Section 135 of the Act, 2003 against the accused-appellant.

After completing all formalities and on recording the statements of witnesses, the challan was presented against the appellant and thereafter, the charge was framed under Section 135 of the Act, 2003. The accused-appellant pleaded not guilty and claimed trial.

The prosecution examined as many as three witnesses i.e PW-1 Daljit Singh Khehra, PW-2 Manjit Singh-SDO and PW-3 ASI Balbir Singh, Investigating Officer and PW-4 Harjit Singh-Junior Engineer. Thereafter, the statement of accused was recorded under Section 313 Cr.P.C., wherein, he denied the allegations of the prosecution.

On appraisal of evidence available on record, the trial Court convicted and sentenced the appellant for an offence punishable under Section 135 of the Act vide judgment dated 05.09.2013 as mentioned above.

Aggrieved by the aforesaid judgment, the appellant has preferred the present appeal before this Court.

Learned counsel for the appellant submits that the offence under Section 135 of the Act, 2003 is compoundable and the appellant has deposited the assessed amount as well as the compounding fee which has been received by the complainant. Learned counsel further submits that the appellant is facing the agony of trial since October, 2009 and he is the first offender as no other case is pending against him. The appellant is the only bread winner of his family and after deposit of the abovesaid amount, he is entitled for acquittal, being compoundable offence.

Learned counsel for the respondent-State also submits that the amount assessed has been received by the complainant and the offence under Section 135 of the Act, 2003 is compoundable.

Heard the arguments of learned counsel for the parties and have also perused the judgment of the trial Court as well as other documents available on the file.

Notice of motion in the case was issued qua quantum of sentence on 04.10.2013. It was contended by learned counsel for the appellant that the appellant shall deposit the total amount of assessment of ₹ 60,059/- and the sentence of the appellant was suspended by this Court.

However, during pendency of the appeal, the appellant has deposited the total assessed amount. Thereafter, vide order dated 16.07.2015, the case was adjourned because of possibility of settlement between the appellant and complainant for compounding the offence. Notice was issued to the complainant-Assistant Executive Engineer, Administration City, Punjab State Electricity Board, Gurdaspur. The Sub Divisional Officer concerned appeared in the Court on 06.10.2015 and submitted that the amount of fine has been paid but for compounding the offence and the compounding fee was not deposited. Thereafter, the compounding fee was also deposited vide challan receipt dated

29.10.2015.

The offence punishable under Section 135 of the Act, 2003 is compoundable on deposit of the amount assessed by the complainant alongwith compounding fee and the same has been deposited by the appellant.

Under Section 152 of the Act, 2003, there is a provision for compounding of offence, which reads as under :-

“152. Compounding of offences.-(1)

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Appropriate Government or any officer authorised by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table below :

TABLE

Nature of Service	Rate at which the sum of money for compounding to be collected per Kilowatt (KW)/Horse Power (HP) or part thereof for Low Tension (LT) supply and per Kilo Volt Ampere (KVA) of contracted demand for High Tension (HT)
(1)	(2)
1. Industrial Service	twenty thousand rupees;
2. Commercial Service	ten thousand rupees;
3. Agricultural Service	two thousand rupees;
4. Other Services	four thousand rupees;

Provided that the Appropriate Government may,

by notification in the Official Gazette, amend the rates specified in the Table above.

(2)On payment of the sum of money in accordance with sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal court.

(3)The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973 (2 of 1974).

(4)The compounding of an offence under sub-section (1) shall be allowed only once for any person or consumer.”

A perusal of aforesaid section would show that the Appropriate Government or an officer empowered in this behalf is competent to assess the amount and accordingly, the offence can be compounded. The compounding of offence is considered as acquittal within the meaning of Section 300 of the Code of Criminal Procedure, 1973. However, it is made clear that as per Section 152(4) of the Act, 2003, the compounding of an offence is allowed only once for any person or consumer.

Accordingly, the appeal is allowed and the offence is compounded as the complainant has no objection in compounding of the same. The appellant is acquitted of the charge framed against him. The judgment of conviction and order of sentence dated 05.09.2013 passed by the Additional Sessions Judge (Ad hoc), Gurdaspur is set aside.

The appellant is already on bail as per order passed by this Court on 04.10.2013 and stands discharged from his bail/surety bonds.

03.11.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE