

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1264 OF 2016

AJANI KHAN S/O. JILANI KHAN
VERSUS
THE STATE OF MAHARASHTRA AND ANR

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Advocate for Petitioner/ Applicant : Shri Shaikh Mazhar A. Jahagirdar.
APP for Respondents/ State : Shri S.G.Karlekar.

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**CORAM: RAVINDRA V. GHUGE, J.
DATE :- 27th June, 2016**

Per Court:

1 The Petitioner is aggrieved by the order dated 30.09.2015 passed by the learned Additional Sessions Judge, Aurangabad by which process has been issued against the Petitioner for the offence punishable under Section 135 of the Indian Electricity Act, 2003.

2 This Criminal Application was filed on 23.02.2016. This Court has not granted any ad-interim protection to the Petitioner.

3 The grievance of the Petitioner is that there is no evidence even at the prima facie stage against the Petitioner and therefore, the order of issuance of process is perverse, unsustainable and abuse of the process of law.

4 The strenuous submissions of Shri Jahagirdar, learned Advocate for the Petitioner, having been considered indicate that his grievance is as under:-

- (a) There is no specific complaint under Section 151 of the Indian Electricity Act, 2003 as is mandatorily required to be filed against the Petitioner.
- (b) The particular meter which was seized on 29.04.2011 is not the meter at issue and Meter No.22249 which is the subject matter of adjudication is the newly installed meter.
- (c) Earlier meter seized was in the custody of the concerned Authorities and on 29.04.2011 when a surprise check was caused, the said meter was not in an installed condition.
- (d) The Police have not filed the charge sheet against the Petitioner and as such, the Special Court could not have invoked it's power to array the Petitioner as an accused.
- (e) When there is no iota of evidence against the Petitioner, the order of issuance of process needs to be interfered with under Section 482 of the Code of Criminal Procedure.
- (f) The complaint filed against the original accused or even against the Petitioner is not a complaint as is understood under Section 2(d) of the Code of Criminal Procedure.
- (g) A report about any act would not have the trappings of the

complaint.

5 The learned APP has supported the impugned order by
contending that the application filed by the Prosecution below Exhibit-20
was considered after taking into account the examination-in-chief of the
Complainant and based on the same, the Special Court has come to the
conclusion that the Petitioner deserves to be arrayed as an accused.
Hence, the process has been issued.

6 I have considered the submissions of the learned Advocates.

7 It requires no debate that in matters where the issuance of
process is challenged, the Court has to see as to whether, there is some
material before the learned Court for issuance of process. It is also well
settled that the entire merits of the matter are not to be gone into while
dealing with the order of issuance of process.

8 In the instant case, a specific application was filed on
30.09.2015 by the prosecution below Exhibit-20 after the examination and
cross-examination of the witness of the prosecution was completed. It was
revealed that on 29.04.2011 the Flying Squad inspected the work
premises which is a stone crushing factory of the Petitioner. Meter

No.22249 was allotted to the said stone-crusher. The Petitioner is said to be the owner of the said stone crushing factory. The son of the Petitioner, who is accused No.1, was present during the surprise inspection. He has participated in the said inspection and has signed on the papers with regard to the said inspection.

9 It was noticed by the Flying Squad headed by the officer, who was appointed by the Deputy Director, Vigilance and Security, that the meter at issue was tampered with and was operating at a slow speed to the extent of 32.93%. The owner of the stone crusher is the present Petitioner and the meter was also allotted to him as per the records available. Surprisingly, the charge sheet submitted to the Special Court did not array the present Petitioner as an accused and it appears that because the son of the present Petitioner, namely, Amjad Khan was present at the place and was said to be co-owner with the Petitioner, he alone was made an accused.

10 After examination and cross-examination of the incharge of the Flying Squad, namely, Mr.Doke, was completed, that the prosecution moved an application Exhibit-20 extensively stating therein as regards the circumstances and evidence available requiring the invoking of Section 319 of the Code of Criminal Procedure. The said material was considered

by the learned Special Court and by the impugned order dated 30.09.2015, process has been issued against the present Petitioner.

11 Even at this prima facie stage, I find that there is some material available against the present Petitioner. Insofar as the merits of the case are concerned, though the Petitioner appears to be very confident that he would be acquitted, the same would be subject matter of the trial. This Court is not required to go into the entire merits of the matter as if this Court is dealing with an appeal.

12 As such, I do not find that the impugned order could be termed as being perverse or erroneous. This Criminal Application being devoid of merit is, therefore, dismissed.

13 Needless to state, the observations of this Court are restricted only to the challenge posed by the Petitioner and which are at prima facie stage. The Trial Court shall not be influenced by any of these observations considering that it is expected to decide the proceedings on its own merits.