

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

CRIMINAL APPLICATION NO. 1265 OF 2016

AMJAD KHAN S/O. AJANI 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 the first accused in Special Case No.90/2011 which is being adjudicated upon by the learned Special Court for the offence punishable under Section 135 of the Indian Electricity Act, 2003.

2 Shri Jahagirdar, learned Advocate for the Petitioner, has strenuously criticized the impugned order dated 09.02.2016 passed by the Special Court by which the application Exhibit-47 filed by the Petitioner seeking discharge from the proceedings, has been rejected.

3 He submits that the father of the Petitioner is the owner of the stone crushing factory. The electricity meter allotted to the factory has

consistently been in the name of his father. His father, namely, Ajani Khan has already been arrayed as accused No.2 by order dated 30.09.2015 passed by the Special Court in the said proceedings, by invoking Section 319 of the Code of Criminal Procedure. Criminal Application No.1264/2016 filed by Ajani Khan invoking the power of this Court under Section 482 of the Code of Criminal Procedure has been dismissed by this Court by an order dated 27.06.2016.

4 Shri Jahagirdar, therefore, strenuously submits that once, prima facie, it has been concluded that Ajani Khan is the owner of the stone-crusher and in whose name the electricity meter was allotted, consequentially it leads to an inference that the present Petitioner, who is son of Ajani Khan, is not concerned with the crime. He was merely present on 29.04.2011 when the Flying Squad of the Department conducted a surprise check. It was a coincidence that he was available when the meter was inspected, checked and found to be tampered with so as to make the meter run slowly by 32.93%. Merely because he is son of the factory owner and signed the papers as a representative of his father, would not make him an accused. From this point of view, there is no evidence against the Petitioner. He, therefore, submits that the impugned order deserves to be quashed and set aside and the proceedings as against the present Petitioner deserve to be closed.

5 The learned APP has supported the impugned order. The contention is that the reasons assigned in the impugned order are self explanatory. The learned Special Court was expected to consider whether, there is some material against the Petitioner. Having come to the conclusion that there is some material available, the impugned order has been passed.

6 He further submits that though the case was lodged in 2011, the application has been filed in 2016 and that too after the prosecution has commenced the examination of it's witnesses and the trial has also commenced. He, therefore, submits that after the charge has been framed and the trial has proceeded with, the application for discharge has been rightly rejected by the learned Special Court.

7 I have considered the submissions of the learned Advocates as have been recorded herein above. I have gone through the impugned order passed by the Special Court.

8 It is undisputed that the inspection of the electric meter installed in the factory was conducted on 29.04.2011. It is undisputed that the Petitioner was present when the electricity meter was inspected and

found to be tampered with. It is also undisputed that he had signed the inspection papers since he was present at the site and was representing his father.

9 In the above backdrop, prima facie, the meter appears to have been tampered with. The percentage at which the meter operated slowly on the basis of the tests conducted by the concerned Department is also on record. Eventually, at the end of the trial, the Special Court will have to decide as to who amongst the two accused have tampered with the meter or whether, both of them are party to the said offence. Since this issue is to be dealt with in a proper trial, I do not find that the impugned order could be termed as being perverse or erroneous.

10 This Criminal Application, therefore, fails and is dismissed.

11 Needless to state, the observations of this Court are at a prima facie stage and are restricted only to the extent of the challenge posed by the Petitioner in this Criminal Application and the Special Court shall not be influenced by these observations while deciding the case.