

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2568 OF 2005

Zuber Baig s/o Kalim Baig,
Age: 25 years, Occu: Business,
R/o. Ashti, Tq. Ashti,
District Beed

...Applicant

versus

1. The State of Maharashtra
Through Public Prosecutor,
High Court, Aurangabad

2. Ganesh s/o Keshavlal Panpatil,
Age 34 years, Occ. Service
MSEB, A/401, Nikhileshwara Near
Vinus Cinema, Section 25, Ushanagar,
Thane (Summons to be served through
Junior Engineer, M.S.E.B. Ashti(
Taluka Ashti District Beed.

...Respondents

.....
Mrs. A.N. Ansari, advocate for the applicant,
Ms. R.P. Gour, A.P.P. for respondent No.1-State,
Mr. S.V. Mundhe, advocate for respondent No. 2
.....

CORAM : V. K. JADHAV, J.

**Date of Reserving
the Judgment : 26.08.2016**

**Date of pronouncing
the Judgment : 15.09.2016**

JUDGMENT:-

1. Being aggrieved by the order passed by learned J.M.F.C.
Ashti in R.C.C. No.119 of 2004 dated 20.12.2004 thereby issuing

process against the applicant accused for the offences punishable under Sections 135 and 138 (D) of Electricity Act 2003 and confirmed in Criminal Revision No. 129 of 2004 by the 4th Ad-hoc Additional Sessions Judge, Beed on 16.9.2005, the original accused has preferred this writ petition.

2. Brief facts, giving rise to the present writ petition are as follows:-

a) On 6.12.2004, the Junior Engineer, flying squad, M.S.E.B. Kalyan, had visited the ice factory of the accused and inspected the electric meter No. 576545 and found that the applicant is utilizing the meter power of 25.0 H.P. Though he was given supply of 18.00 H.P. It has alleged that the applicant used magnate on meter to stop the reading of the electric meter and complainant found that applicant committed theft of electric supply to the extent of 44,882 units. It is in these premises the complaint came to be filed against the applicant for the thief of electric supply, punishable under Sections 135 and 138 (D) of the Electricity Act 2003.

b) The learned J.M.F.C. on recording verification statement of the complainant, by impugned order dated 20.12.2004 directed issuance of process against the accused under Section 135 and 138

(D) of Electricity Act 2003. Being aggrieved by the said order, the accused preferred criminal revision application No. 129 of 2004 before the Sessions Court, Beed and the learned 4th Adhoc Additional Sessions Judge, Beed by order dated 16.9.2005 dismissed the said revision. Hence, this criminal application.

3. Learned counsel for the applicant submits that in view of amendment to Sections 153 and 154 of Electricity Act 2003, the Magistrate is not empowered to take cognizance of offences punishable under Sections 135 and 138 of Electricity Act 2003 and try those offences. The Special Courts are constituted for the trial of the offences referred to in Sections 135 to 140 and Section 150 and in view of the provisions of Section 153 of the Act 2003, the Special Court shall consist of single Judge, who shall be appointed by the State Government with concurrence of the High Court and a person shall not be qualified for appointment as a Judge of a Special Court unless he was, immediately before such appointment, an Additional District and Sessions Judge. In its application to the State of Maharashtra, in Section 153, after sub section (4), the State Amendment (Maharashtra) added sub-section (5) thereby making it clear that, where no Special Court for any area or areas has been constituted under sub-section (1), one or more Additional District and Sessions Judges, as may be designated by the High Court, for such area or areas, from time to time, shall exercise the powers of the Special Court under this Act and any

Judge so designated shall be deemed to be a Special Court for the purpose of this Act.

In view of provision of Section 151 of the Act of 2003, the Special Courts constituted under Section 153 shall be competent to take cognizance of the offence without the accused being committed to it for trial. In view of sub-section (1) of Section 154, every offence punishable under Sections 135 to 140 and Section 150 shall be triable only by the Special Court, within whose jurisdiction such offence has been committed. Despite such observations have been made by this court in the order dated 2.12.2005 while issuing Rule in connected matter i.e. Criminal Writ petition No. 227 of 2005, and even though learned A.P.P. was directed to obtain the instructions, either from the State or from the Registrar, General, High Court, Appellate Side, Bombay, whether any Special Courts are established and if not, whether any notifications have been issued under section 153(5) by the High Court, one letter dated 22.3.2004 issued by the Registrar (Legal), High Court, Bombay which is addressed to the Chairman, Maharashtra State Electricity Board on the subject of issuance of administrative direction for acceptance of cases involved offences under the Electricity Act 2003 and directions regarding grant of remand etc. produced before the court, wherein it is stated that the Electricity Board may file written complaint before the Magistrate through the person mentioned in Section 151 of the Electricity Act

and the Magistrate shall thereafter follow the procedure, as laid down in Sections 200 and 202 of Cr.P.C. Learned counsel submits that entire approach of the Magistrate of accepting the complaint and issuing process thereon is per-se illegal and thus liable to be quashed and aside.

Learned counsel submits that as per the provisions of Section 201 of Cr.P.C. if the complaint is made to the Magistrate, who is not competent to take cognizance of the offence, he shall, if the complaint is in writing, return it for presentation to the proper court with an endorsement to that effect and if the complaint is not in writing, direct the complainant to the proper court. Even the learned Magistrate has not followed the procedure as contemplated under Section 201 of Cr.P.C.

4. Learned counsel for respondent No.2 submits that as per the provisions of Section 151 of the Act of 2003, the cognizance of an offence punishable under this Act is barred by the court except upon a complaint in writing made by the 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. It is not disputed that the Junior Engineer of M.S.E.B. is an officer

authorized to file the complaint in writing before the court, as provided under the provisions of Section 151 of the Act 2003. By way of proviso to Section 151, it is made clear that Special courts constituted under Section 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial. Learned counsel submits that in view of sub-Section (2) of Section 154 of the Act 2003, if in the course of any enquiry or trial that an offence punishable under Sections 135 to 140 and Section 150 in respect of any offence that the case is one which is triable by a Special Courts constituted under this Act for the area in which such case has arisen, it shall transfer such case to such Special Court and thereupon, such case shall be tried and disposed of by such Special Court in accordance with the provisions of this Act.

In view of provisions of Section 190 of Cr.P.C. the Magistrate may take cognizance of any offences; (a) upon receiving a complaint of facts which constitute such offence; (b) upon a police report of such facts; (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. In absence of any notification/ designation of one or more Additional District and Sessions Judge, as a Judge of the Special Court as per sub section (5) of Section 153 of the Act 2003 (State Amendment to Maharashtra), the Magistrate is not debarred

from taking cognizance of offence upon receiving a complaint on facts, which constitute such offence. Learned counsel submits that in view of sub-section (2) of Section 154, as referred above, the Magistrate can transfer such cases to such Special Court and thereupon such case shall be tried and disposed of by such Special Court in accordance with the provisions of Act 2003. Learned counsel submits that in view of provisions of Section 460 of Cr.P.C. particularly clause (e), if the Magistrate is not empowered by law to take cognizance of offence under clause (a) or clause (b) of sub section (1) of Section 190 and done so, this irregularity does not vitiate the proceedings. Learned counsel submits that in any manner, this ground alone is not sufficient to quash and set aside the order of issuance of process passed by the Magistrate in this case.

5. I have also heard learned A.P.P. for the respondent-State.

6. Section 151 of Electricity Act deals with the cognizance of offence made punishable under the Act. Section 153 provides the constitution of special court and further Section 154 prescribes the procedure and power of the Special Court. Sections 151, 153 alongwith sub section (5) i.e. State amendment to Maharashtra and Section 154 sub section (1) and (2) are relevant for discussion in the present matter, which are reproduced below:-

“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.

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.

State Amendment- (Maharashtra) In its application to the State of Maharashtra, for S. 151 substitute the following section, namely;-

“151. Cognizance of offences.- No Court shall take cognizance of an offence punishable under this Act except,-

(a) Upon a complaint in writing made by Appropriate Government, or Appropriate Commissioner or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or a licensee or the generating company, as the case may be, for this purpose; or

(b) upon a police report of facts which constitute an offence;

Provided that, such police report is based on the First Information Report filed by a person who is authorized to file a

complaint under clause (a)."

153. Constitution of Special Courts.- (1) *The State Government may, for the purposes of providing speedy trial of offences referred to in sections 135 to 140 and section 150, by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.*

(2) *A Special Court shall consist of a single Judge who shall be appointed by the State Government with the concurrence of the High Court.*

(3) *A person shall not be qualified for appointment as a judge of a Special Court unless he was, immediately before such appointment, an Additional District and Sessions Judge.*

(4) *Where the office of the Judge of a Special Court is vacant, or such Judge is absent from the ordinary place of sitting of such Special Court, or he is incapacitated by illness or otherwise for the performance of his duties, any urgent business in the Special Court shall be disposed of--*

(a) by a Judge, if any, exercising jurisdiction in the Special Court;

(b) where there is no such other Judge available, in accordance with the direction of District and Sessions Judge having jurisdiction over the ordinary place of sitting of Special Court, as notified under sub-section (1).

State Amendment- (Maharashtra) *In its application to the State of Maharashtra, in S. 153 after sub-S.(4), add the following sub-section, namely:-*

"(5) Where No Special Court for any area or areas has been constituted under sub-section (1), one or more Additional

District and Sessions Judges, as may be designated by the High Court, for such area or areas, from time to time, shall exercise the powers of the Special Court under this Act and any Judge so designated shall be deemed to be a Special Court for the purposes of this Act.”

154. Procedure and power of Special Court.- (1) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under sections 135 to 140 and section 150 shall be triable only by the Special Court within whose jurisdiction such offence has been committed.*

(2) *Where it appears to any court in the course of any inquiry or trial that an offence punishable under sections 135 to 140 and section 150 in respect of any offence that the case is one which is triable by a Special Court constituted under this Act for the area in which such case has arisen, it shall transfer such case to such Special Court, and thereupon such case shall be tried and disposed of by such Special Court in accordance with the provisions of this Act:*

Provided that *it shall be lawful for such Special Court to act on the evidence, if any, recorded by any court in the case of presence of the accused before the transfer of the case to any Special Court:*

Provided further that *if such Special Court is of opinion that further examination, cross-examination and re-examination of any of the witnesses whose evidence has already been recorded, is required in the interest of justice, it may resummon any such witness and after such further examination, cross-examination or reexamination, if any, as it may permit, the witness shall be discharged.”*

(3)

(4)

(5)

(6)”

7. Learned counsel for the petitioner, in view of the provisions of Section 151 which is about cognizance of offence by the Special Court without accused being committed it for trial and further as per the provision of Section 153 wherein the designation of one or more Additional District and Sessions Judges as a special Court for any area or areas by the High Court, submits that the order of issuance of process by the Magistrate by taking cognizance of the complaint of the offence made punishable under the Electricity Act itself is illegal and thus liable to be quashed and set aside.

8. Section 190 of Cr.P.C. provides that the Magistrate may take cognizance of offence, upon receiving a complaint or upon police report or on information received from the person other than a police officer, or upon his own knowledge. Thus, cognizance is taken at the initial stage when the Magistrate peruse the complaint with a view to ascertain whether the commission of any offence is disclosed.

9. As per the provisions of Section 153 of Electricity Act, the Additional District and Sessions Judge shall be competent to be appointed as a Judge of Special court and if no special court has been constituted under sub-section (1) of Section 153, then in view of State Amendment (Maharashtra) of sub-section (5) of Section 153, the High Court may designate one or more Additional District and Sessions Judges to exercise the powers of Special court under the Act and any Judge, so designated, shall be deemed to be special court for the purpose of the Act of 2003. Further, in view of the provisions of Section 151, more specifically proviso 2, the special court, as constituted under the provisions of Section 153, shall be competent to take cognizance of offence without accused being committed to it for trial. In ordinary course, the special court, being the court of Sessions, would not take cognizance of the offence without accused being committed it for trial. The same would be defeating the object of speedy enquiry or trial of offence explicit under the provisions of Section 153 of the Electricity Act. Thus, there is enabling provision under Section 151 proviso as above, empowering that the special court to take cognizance of offence without the accused being committed to it for trial. It is also necessary to note that the power of the Magistrate to take cognizance under Section 190 of Cr.P.C. is not excluded. The same is also evident from the provisions of sub-section (2) of Section 154

of the Act 2003 that in the course of any enquiry or trial, if it appears to any Court that an offence punishable under Sections 135 to 140 and Section 150 of the Act 2003 in respect of any offence that the case is one which is triable by the special court constituted under the Act of 2003 for the area in which such case has arisen, it shall transfer such case to such special court, and thereupon such case shall be tried and disposed of by such Special Court in accordance with the provisions of this Act.

10. Learned counsel for the petitioner submits that in view of section 201 of Cr.P.C. if the complaint is made to a Magistrate, who is not competent to take cognizance of the offence, he shall if the complaint is in writing, return it for presentation in the proper court with an endorsement to that effect. It is well settled that expression "take cognizance" would mean that take the notice of offence and would include (a) take the notice of offence in judicial capacity with a view to initiate judicial proceedings against offender in respect of that offence or (b) take the notice of offence by Magistrate in an executive capacity or (c) take the notice of offence for other purposes. As per the provisions of Act of 2003 the powers of the Magistrate to take cognizance under Section 190 of Cr.P.C. is not excluded and it is provided that the special Court constituted under the provisions of Section 153 shall be competent to take cognizance of offence without

the accused being committed to it for trial. Proviso to Section 151 of the Act of 2003 was inserted w.e.f. 15.6.2007 and the State Amendment (Maharashtra) to Section 151 of the Act 2003 w.e.f. 23.6.2005 simply provides that the court shall not take cognizance of offence except upon a complaint in writing made by a person as detailed in clause (a) of Section 151 (State Amendment - Maharashtra).

11. At present all Sessions Judges, Additional Sessions Judges and Adhoc Additional Sessions Judges, appointed to preside over the special Courts constituted under sub-section (1) of Section 153 of the Act to exercise jurisdiction and power under the said Act by notification dated 27.8.2014 issued in concurrence with the Hon'ble the Chief Justice of this Court. In view of the provision of Section 154 of sub-section (2) of the Act 2003 the Magistrate is bound to transfer the said cases to such special Court and thereupon such case shall be tried and disposed of by special court in accordance with the provisions of the Act of 2003.

12. As per the provisions of Section 460 of Cr.P.C. particularly clause (e), if any Magistrate is not empowered by law to take cognizance of offence under clause (a) or clause (b) of sub-section (1) of Section 190 of Cr.P.C. such irregularity do not vitiate the

proceedings.

13. In view of above discussion, I do not find any substance in the criminal application. The criminal application is thus liable to be dismissed. Hence, the following order:-

O R D E R

- I. Criminal application is accordingly dismissed with following directions:-

“The learned Judicial Magistrate, First Class, Ashti, District Beed in compliance with the provisions of sub-Section (2) of Section 154 of the Electricity Act 2003, shall transfer R.C.C. No.119 of 2004 to such special Court (Sessions Court at Beed) constituted under the Act of 2003 and thereupon the said case shall be tried and disposed of the such special Court in accordance with the provisions of Electricity Act 2003.”

- II. The criminal application is disposed of. Rule discharged.

(V. K. JADHAV, J.)