

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

CRIMINAL APPEAL NO. 66 OF 2008

Abhiman s/o Pandurang Waghmare,
Age : 56 years, Occu. Agri.,
R/o Andhora, Tq. Paranda,
District Osmanabad

APPELLANT

VERSUS

The State of Maharashtra,
through Police Station,
Paranda

RESPONDENT

Mr. P.B. Rakhunde, Advocate for the appellant
Mr. G.O. Wattamwar A.P.P. for the respondent/State

CORAM : SANGITRAO S. PATIL, J.

DATE : 14th AUGUST, 2017

ORAL JUDGMENT :

Heard the learned counsel for the appellant and
the learned A.P.P. for the respondent/State.

2. The appellant has challenged his conviction and
sentence for the offence punishable under Section 135
(1) (a) of the Electricity Act, 2003 ("Act", for short),
passed in Special Case No. 97 of 2006 by the learned
Special Judge, Osmanabad on 7th February, 2008.

3. It is alleged that the appellant committed theft of electricity by taking illegal connection from L.T. Supply Line upto his house. The electricity stolen by the appellant is stated to be 180 units.

4. After evaluating the evidence on record, the learned Special Judge held the appellant guilty of the said offence and punished him to suffer simple imprisonment for one month and to pay a fine of Rs. 1555/-, which was determined as civil liability as contemplated under Section 154 (5) of the Act. The appellant has deposited the fine amount in the Trial Court.

5. The learned counsel for the appellant, on instructions, submits that the appellant is not going to press the grounds of objections against his conviction. He submits that the period of more than eleven years has been elapsed after the date of commission of the alleged offence. The appellant is a poor person. He has deposited the amount determined towards the civil liability. He, therefore, submits that the leniency may be shown to the appellant and instead of sending him to jail, he may be ordered to pay additional fine amount.

6. The learned A.P.P. opposed the prayer made on behalf of the appellant.

7. The offence under clause (a) of sub-section (1) of Section 135 of the Act is punishable with imprisonment for a term which may extend to three years or with fine or with both. The alleged theft of electricity was committed on 31st October, 2006. Thus, the period of more than ten years has been elapsed after the date of commission of the offence. The appellant is a poor person. No previous conviction is standing to his credit. He is not a person of criminal antecedents. The informant i.e. the Maharashtra State Electricity Distribution Company Ltd. may be more interested in getting the loss suffered by the Company compensated in terms of money than seeing the accused behind the bars for such a small amount of theft of electricity. It is not that the appellant has committed theft of a huge quantity of electricity for running any business or industry. The theft is stated to have been committed for the use for domestic purpose in a small house. In the circumstances, the learned Special Judge ought to have used his discretion in the matter of inflicting punishment as provided under Section 135 of the Act

itself and instead of sending the appellant behind the bars, ought to have inflicted the punishment of heavy fine so that the Company also could have been duly compensated. Considering these facts and circumstances of the case, I am of the view that though the conviction of the appellant for the above mentioned offence needs no interference, the punishment of sending him behind the bars, being harsh, will have to be set aside and instead, he will have to be directed to pay additional fine amount, out of which the Company can be adequately compensated. In the result, I allow the appeal partly with the following order:-

O R D E R

- (i) The Criminal Appeal is partly allowed.
- (ii) The impugned order, convicting the appellant for the offence punishable under Section 135 (1) (a) of the Electricity Act, 2003, is confirmed.
- (iii) The impugned order of sentence passed against the appellant is quashed and set aside and instead of sentencing him to suffer simple

imprisonment for one month, he is ordered to pay additional fine of Rs.10,000/- (rupees ten thousand), in default to suffer simple imprisonment for three months.

- (iv) The appellant is granted time of four weeks from today to deposit the amount of fine before the Trial Court, failing which he shall surrender to his bail bonds by appearing before the Trial Court to undergo the sentence of imprisonment in default of payment of fine.
- (v) In case the appellant does not pay the fine amount as directed above and does not appear before the Trial Court within four weeks from today, the Trial Court shall issue coercive process against the appellant to secure his presence for compliance of this order.
- (vi) If the fine amount, as directed above, is deposited by the appellant or recovered from him, it be paid to the complainant – Maharashtra State Electricity Distribution Company Ltd., as compensation.

- (vii) On deposit of the fine amount by the appellant, as directed above, his bail bonds shall stand cancelled and he shall be set at liberty, if not required in any other case.
- (viii) The appeal is accordingly disposed of.

[SANGITRAO S. PATIL]
JUDGE

npj/criapl66-2008