

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.274 OF 2016
WITH
CRIMINAL APPLICATION NO.499 OF 2016
IN
CRIMINAL APPEAL NO.274 OF 2016**

KARAN BALAKRAM VERMA)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.Narendra Dubey, Advocate for the Appellant.

Mr.S.V.Gavand, APP for the Respondent – State.

Mr.Satish Kamat, Advocate for Respondent No.2.

CORAM : A. M. BADAR, J.

DATE : 7th MARCH 2017.

P.C. :

1 This is an appeal by original accused in Crime No.136 of 2015 registered with Kandivali Police Station for the offence punishable under Section 135 of the Electricity Act 2003

challenging the order dated 30th March 2016 rejecting his application on restoration of electricity supply, as not maintainable.

2 Heard the learned advocate appearing for the appellant / accused. He argued that there is no provision in the Electricity Act, 2003, to go for any other remedy and civil suit is barred. As such, his application made before the learned Special Judge, was not maintainable.

3 As against this, by relying on provisions of Section 135 of the Electricity Act, 2003, the learned advocate appearing for the respondent no.2 argued that restoration of electricity can be in terms of sub-section (1)(a) of Section 135 of the Electricity Act, 2003. For this purpose, he placed reliance on judgment of the Hon'ble Gujarat High Court in the matter of **Leenaben Soni vs. Ahmedabad Electricity Co. Ltd.**¹

1 AIR 2005 GUJARAT 40

4 On 14th July 2015, shop of the appellant came to be inspected by the officer of respondent no.2 Electricity Company. They came to the conclusion that appellant has indulged in theft of electricity and therefore, they lodged report with Police Station Kandivali on 14th July 2015 itself which has resulted in registration of Crime No.136 of 2015 against the appellant. The learned advocate for the appellant made a statement at bar that as yet investigation of this crime has not resulted in filing of any charge-sheet against the appellant / accused.

5 It is seen from the record that the appellant moved an application for restoration of electric connection and prayed for directing respondent no.2 electricity company to restore electricity supply to his premises till disposal of proceedings in Crime No.136 of 2015 registered against him with Police Station Kandivali. That application was moved before the Special court constituted under the Electricity Act, 2003, and same came to be registered as Miscellaneous Application No.18 of 2016.

6 The record shows that on 19th March 2016 the learned Special Judge on perusal of the application recorded in the order sheet that surprisingly the applicant moved M.A. for restoration of electricity and without applying mind, the concerned staff has registered the said M.A. Explanation was sought from the Superintendent of the court. On 30th March 2016 the application came to be filed and disposed of as not maintainable. There is no separate order disposing the application and by making notings in the order sheet, the application came to be filed. The notings in the order sheet dated 30th March 2016 recorded by the learned Special Judge reads thus :

“Adv.Narendra Dubey for applicant present.
APP for State / respondent no.1 absent. Adv.
Sanjay Upadhyay for respondent no.2 present.
Adv. for applicant is asked to go through the
previous roznama as well as the say of office.
K.B. L.O. Again called out. Applicant and adv.
are absent. Rest of the appearance is same. In
view of order dated 19/3/2016, the Office
Section put up note sheet below Exh.3 and
admits the blunder mistake on their part, while
registering present M.A. It appeared that the

instant application is not maintainable in the eyes of law. Hence, it is filed and disposed of accordingly.”

7 Perusal of notings in the order sheet, as such, goes to show that the learned Judge had not heard the learned advocate appearing for the applicant before him i.e. the appellant. He has not given any reasons for disposing of the application. Strange conclusion is recorded by the learned Special Judge to the effect that the office section put up a note sheet and admits the blunder mistake on their part while registering the present miscellaneous application. One line finding is that the application is not maintainable. This finding is not supported by any reason. It is seen that the learned advocate appearing for the appellant before the Special Judge was not heard while coming to this conclusion, unsupported by any reason. Recording of reason is heart and sole of the order and it reflects what transpired in the mind of the Judge while coming to a particular finding. This is completely missing from the impugned order. As such, I have no hesitation in holding that the impugned order suffers from total non-

application of mind by the learned Special Judge. In this view of the matter, the following order :

- i) The appeal is partly allowed.
- ii) The impugned order reflected from the order sheet of the Miscellaneous Application No.18 of 2016 recorded on 30th March 2016 is quashed and set aside.
- iii) The learned Special Court constituted under Section 153 of the Electricity Act, 2003, is directed to hear the parties in Miscellaneous Application No.18 of 2016 and decide the application on its own merit, according to law.
- iv) In view of disposal of this appeal, Criminal Application No.499 of 2016 stands disposed of.

(A. M. BADAR, J.)