

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

**APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.768 OF 2016**

**IN**

**CRIMINAL APPEAL NO.455 OF 2014**

Suresh Ganpati Halvankar,  
Age 54 years, Occu. : Business,  
R/o. 20/341, Datta Krupa Niwas,  
Ichalkaranji, Taluka Hatkanangale,  
District : Kolhapur.

... **Applicant**

V/s.

- 1 The State of Maharashtra  
(Through Maharashtra State  
Electricity Distribution Company  
Police Station Rasta Peth,  
Pune – 411 002.  
(Vide C.R.No.434 of 2008)

- 2 Maharashtra State Electricity  
Distribution Company Ltd.  
Having its registered office at  
Prakash Gad, Plot No.69,  
Bandra (East), Mumbai 400 051.

... **Respondents**

**WITH**

**CRIMINAL APPLICATION NO.778 OF 2016**

**IN**

**CRIMINAL APPEAL NO.506 OF 2014**

Mahadev Ganpati Halvankar  
Age 47 years, Occu. : Business,  
R/o. 11/113, Datta Krupa Niwas,  
Ichalkaranji, Taluka Hatkanangale,  
District : Kolhapur.

... **Applicant**

V/s.

- 1 The State of Maharashtra  
(Through Maharashtra State  
Electricity Distribution Company  
Police Station Rasta Peth,  
Pune – 411 002.  
(Vide C.R.No.434 of 2008)
- 2 Maharashtra State Electricity  
Distribution Company Ltd.  
Having its registered office at  
Prakash Gad, Plot No.69,  
Bandra (East), Mumbai 400 051. ... **Respondents**

.....

Mr.Niteen Pradhan with Ms.S.D.Khot, Advocate for the Applicant  
in APPA/768/2016.

Mr.A.P.Mundargi, Senior Advocate with Hrishikesh Mundargi, in  
APPA/778/2016.

Ms.A.A.Takalkar, APP for the Respondent/State.

Mr.Rakesh Singh with Mr.Pushkal Mishra & Kazi Khalid I/b.  
M.V.Kini & Co., Advocate for the Respondent No.2. (MSEDCL)

....

**CORAM : A.M.BADAR J.**

**DATED : 30<sup>th</sup> MARCH 2017.**

**ORAL JUDGMENT :**

1 Leave to produce affidavits on record by both the  
applicants/accused is granted.

2 These are applications by applicants/original accused  
Nos.1 and 2 namely Mahadev Halvankar and Suresh Halvankar for

compounding of offences punishable under Section 135(1)(b)(c) and (d) as well as under Section 138(d) of the Electricity Act, 2003.

3 Facts in brief are thus :

(a) Applicants/accused came to be convicted of offences punishable under Section 135(1)(b)(c) and (d) as well as under Section 138(d) of the Electricity Act, 2003 by the learned Special Judge, Ichalkaranji vide Judgment and Order dated 3<sup>rd</sup> May 2014 in Special Case No.1 of 2008. On each count, they are sentenced to suffer rigorous imprisonment for three years. Apart from this, for the offence punishable under Section 138(d) of the Electricity Act, 2003, both applicants/original accused are also directed to pay fine of Rs.10,000/- each.

(b) As seen from the Judgment and Order of the learned trial Court, the crime in question came to be registered at the instance of an officer from Maharashtra State Electricity Distribution Company Limited ("MSEDCL" for the sake of brevity). A team of officers from the MSEDCL raided Ganesh Udyog Samuh a power-loom factory situated in House property No.2720, Koroichi, Taluka Hatkanangale. At that time, applicant/accused No.1 Mahadev was stated to be present on the spot. Applicant/accused No.2 Suresh is stated to be owner of the factory and consumer of MSEDCL. According to the prosecution case, seal of the box of the meter was found tampered so the box came to be

opened. Inside the box C.T. operated electronic meter of L & T Company having capacity of 3 x 100/5 bearing No.02993275 was found installed for recording the consumption of the electricity in the factory. Two lead seals of the body of the meter - one of the L & T Company and another of MSEDCL were also found to have been tampered and the meter terminal cover was found to be lying in the box. It is case of the prosecution that the meter came to be tested on Zera machine and it was found to be moving slow by 45%. Therefore, electric meter came to be removed from place of the installation for the purpose of testing it by undertaking necessary formalities. In the course of testing that meter, it was again found to be moving slow to the extent of 45%. After opening it, it was found that two resistance wires were joined by soldering into parallel to 'Y' and 'B' phase of current transformer (C.T.) which were not in the original meter. Due to those resistance wires the electric meter was found to be running slow causing theft of the electric energy. Then on 10/09/2008, the written FIR came to be lodged with the police station Rasta Peth, Pune and after completion of investigation the charge-sheet came to be filed against both applicants. During the course of trial, five witnesses came to be examined by the prosecution in order to bring home the guilt to both applicants. Ultimately, by the Judgment and Order dated 3<sup>rd</sup> May 2014 in Special Case No.1 of 2008 both applicants came to be convicted and sentenced as indicated in opening paragraph of this order.

(c) For the sake of convenience, it is necessary to reproduce points for determination framed by the learned trial Court in paragraph 19 of the Judgment, which read thus :

| <b>Sr. No.</b> | <b>Points</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | <b>Findings</b>      |
|----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| 1              | Whether the prosecution has proved that during the period of last 24 months before 06-09-2008 in Ganesh Udyog Samuh power-loom factory on house property No. 1720, Korochi, Taluka Hatkanangale, the accused Nos. 1 and 2, dishonestly tampered the electric meter No. 02993275 of consumer No. 25037002433 which interfered with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted or damaged or destroyed an electric meter, apparatus, equipment or wire or caused or allowed any of them to be damaged or destroyed as to interfere with the proper or accurate metering or electricity or used electricity through a tampered meter and thereby committed the offence punishable U/s. 135(1)(b)(c) and (d) of the Electricity Act, 2003 ? | : In the affirmative |
| 2              | Whether the prosecution has further proved that on the above said, date time and place the accused Nos. 1 and 2 maliciously injured the meter, indicator or apparatus belonging to a licensee or willfully or fraudulently altered the index or any such meter, indicator or apparatus or prevented any such meter, indicator or apparatus from duly registering and thereby committed the offence punishable U/s. 138(d) of the Electricity Act, 2003?                                                                                                                                                                                                                                                                                                                                                                                            | : In the affirmative |

|   |              |                                                               |
|---|--------------|---------------------------------------------------------------|
| 3 | What order ? | : The accused are convicted and sentenced as per final order. |
|---|--------------|---------------------------------------------------------------|

(d) The operative portion of the order passed in Special Case No.1 of 2008 reads thus :

1. Accused No. 1 Mahadeo Ganpati Halvankar and accused No. 2 Suresh Ganpati Halvankar are hereby convicted for the offences punishable under Section 135 (1)(b)(c) and (d) of the Electricity Act, 2003 and each of them is sentenced to suffer rigorous imprisonment for three years.

2 Accused No. 1 Mahadeo Ganpati Halvankar and accused No. 2 Suresh Ganpati Halvankar are further convicted for the offence punishable U/S. 138 (d) of the Electricity Act, 2003 and each of them is sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs. 10,000/- ( Rs. Ten thousand only) each i. e. total Rs. 20,000/- ( Rs. Twenty thousand only) and in default of payment of fine to suffer rigorous imprisonment for the period of six months.

3. Both the substantive sentences of imprisonment shall run concurrently as per Section 427 of the Cr.P.C.

4. The accused persons have to surrender their bail bonds.

5. Seized muddemal meter of VMR No.03/2008 be returned to the Maharashtra State Electricity Distribution Company Ltd. Kolhapur after appeal period is over and if appeal is preferred then after final disposal of the appeal as per Rules.

6. Copy of the judgment shall be provided to the accused Nos. 1 and 2 each free of costs as per Section 363 of the Cr.P.C.

7. Understanding is given to the accused persons that they have right to prefer the appeal against this judgment to the Hon'ble High Court within a period of limitation of sixty days.

8. Pronounced in the open Court.

It is, therefore, clear from operative order that both applicants came to be convicted of offences punishable under Section 135(1)(b)(c) and (d) as well as Section 138(d) of the Electricity Act, 2003.

4 I have heard Shri.Pradhan as well as Shri.Mundargi, learned Senior Counsel appearing for both applicants/accused. By taking me through the Judgment and Order, it is argued that the prosecution has adduced evidence in respect of offence punishable under Section 135 of the Electricity Act, 2003. Clause (b) to (d) of Section 135 of the Electricity Act, 2003 includes tampering of

meters by various modes. It is further argued that Section 138(d) of the Electricity Act, 2003 covers mischief of maliciously injuring the meter, indicator etc. and no evidence came to be adduced by the prosecution in support of the charge under Section 138(d) of the Electricity Act, 2003. It is further argued that both applicants have already paid an amount of Rs.21,97,006/- as assessed by the Assessing Officer under Section 126 of the Electricity Act, 2003 towards civil liability of the consumer. My attention is drawn to Clause (4)(xiii) of the Statement of Objects and Reasons to the Electricity Act, 2003 and it is argued by the learned Senior counsel that the object in respect of provisions relating to theft of electricity have a revenue focus. Therefore, on deposit of the amount assessed, so also composition charges, offences punishable under Section 135 as well as Section 138 of the Electricity Act, 2003 can be compounded with the approval of the appropriate authority. My attention was drawn to the affidavit filed on behalf of State, wherein it is contended that offences punishable under Sections 135 and 138 of the Electricity Act, 2003 are compoundable. Similarly, it is argued that the MSEDCL has also accepted the fact that offences alleged against both applicants are compoundable and by filing additional affidavits both applicants have removed their protest clause in respect of payment of the civil liability. According to the learned Senior Counsel appears for applicants, they are willing to pay compounding charges assessed at about Rs.5,00,000/- and demand draft in respect of this amount

is ready with the applicants for delivering the same to the learned Advocate appearing for respondent No.2 MSEDCL.

5            Learned senior counsel placed reliance on the following orders passed by various High Courts to demonstrate that the offence punishable under Section 138 of the Electricity Act, 2003 is compoundable :-

- (i) Order dated 10/23-06-2011 in Criminal M.P.No.1618 of 2010 passed by the Honourable High Court of Jharkhand, Ranchi in the matter of ***Ban Bihari Mahto & Anr. v. The State of Jharkhand & Anr.,***
- (ii) Order dated 19/11/2013 passed in Criminal R.P.No.757 of 2013 by the Honourable Karnataka High Court in the matter of ***Sri Sidharth Bhandari v. State of Karnataka,***
- (iii) Order dated 22/09/2014 passed by Honourable Karnataka High Court in Criminal Appeal No.733 of 2009 between ***Papegowda and State of Karnataka CESC (Vigilance). Mandya.***

The reliance is also placed on Judgment in the matter of ***Narinder Singh & Ors. v. State of Punjab & Anr.*** reported in **(2014) 6 Supreme Court Cases 466**, wherein it is held that in exercise of the inherent powers, even FIRs and proceedings in

non-compoundable offences can also be quashed in appropriate cases. With the aid of these Orders and Judgments, it is contended that offences punishable under Section 135, so also under Section 138 of the Electricity Act, 2003 are compoundable and as the first informant/MSEDCL has no objection and as the State Government has also approved composition of offences, both applications deserve to be allowed and applicants therein deserve to be acquitted of offences punishable under Sections 135 and 138 of the Electricity Act, 2003.

6           It is further argued that Section 152 of the Indian Electricity Act, 2003 is covering all offences including those punishable under Sections 135 and 138 of the said Act. Wordings of Section 152 are wide enough and those do not show that the offence punishable under Section 138 of the said Act is excluded from the scope and purview of compounding.

7           I have also heard the learned Advocate appearing for MSEDCL. He argued that the MSEDCL has no objection for composition of offences punishable under Sections 135 and 138 of the Electricity Act, 2003 particularly in the light of additional affidavit placed on record, by both applicants today thereby unconditionally withdrawing the protest clause in respect of payment under the civil liability discharged by applicants on earlier occasion. He further argued that applicants be directed to

deposit compounding fees with the Ichalkaranji Office of the MSEDCL.

8 I have also heard the learned Additional Public Prosecutor, who reiterated the submissions in the affidavit filed on record on behalf of the State to the effect that offences punishable under Sections 135 and 138 of the Electricity Act, 2003 appears to be compoundable.

9 The learned Advocate appearing for intervenor Balmukund argued that though the offence punishable under Section 135 of the Electricity Act, 2003 might be compoundable, by no stretch of imagination, it can be said that the offence punishable under Section 138 of the Electricity Act, 2003 which deals with the tampering of the meter is compoundable. For this purpose, he placed reliance on order of the Honourable Rajasthan High Court in the matter of *Kamlesh Kalla v. State of Rajasthan* **2015 SCC OnLine Raj 4901**. The learned Advocate further argued that when wordings of Section 152 of the Electricity Act, 2003 are clear, no external aid can be taken by reading aims and objects of the enactment for interpreting that Section and for this purpose, he placed reliance on *State Bank's Staff Union (Madras Circle) v. Union of India & Ors.* reported in **(2005) 7 Supreme Court Cases 584**. To demonstrate that offences against the society are not compoundable and the Court cannot compound the

offence which is stated to be non-compoundable, the learned Advocate placed reliance on *State of Rajasthan v. Shambhu Kewat & Anr.* reported in (2014) 4 Supreme Court Cases 149.

10 I have carefully considered the rival submissions and also perused the impugned Judgment and Order, so also case laws relied by both the parties.

11 It is crystal clear that both applicants are convicted of offences punishable under Section 135 (1) (b)(c) and (d) and Section 138 (d) of the Electricity Act, 2003. Whether there is sufficient material to record conviction under both these counts or not is a question which cannot be gone into at this stage, when the Court is only considering whether applications for composition of these offences needs to be granted or not. At this stage, one will have to accept and to go by the fact that both applicants are convicted for commission of offences punishable under Section 135(1)(b)(c) and (d), as well as, under Section 138(d) of the Electricity Act, 2003.

12 For better appreciation of the matter, it is apposite to quote relevant provisions of Sections 135 and 138, as well as, Section 152 of the Electricity Act, 2003. Those read thus :

**“Section 135. (Theft of Electricity):-**

(1) Whoever, dishonestly, --

(a) .....

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity ;

(d) uses electricity through a tampered meter; or

(e) .....

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:"

**"Section 138. (Interference with meters or works of licensee):**

(1) Whoever, -

(a) .....

(b) .....

(c) .....

(d) maliciously injures any meter, indicator, or apparatus belonging to a licensee or willfully or fraudulently alters the index of any such meter, indicator or apparatus or prevents any such meter, indicator or apparatus from duly registering,

shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend

to ten thousand rupees, or with both, and , in the case of a continuing offence, with a daily fine which may extend to five hundred rupees; and if it is proved that any means exist for making such connection as is referred to in clause (a) or such re-connection as is referred to in clause (b), or such communication as is referred to in clause (c), for causing such alteration or prevention as is referred to in clause (d), and that the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, it shall be presumed, until the contrary is proved, that such connection, reconnection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and willfully caused by such consumer.”

**“Section 152. (Compounding of offences):**

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 ( 2 of 1974), the Appropriate Government or any officer authorized by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table below:

TABLE

| Nature of Service       | Rate at which the sum of money for Compounding to be collected per Kilowatt(KW)/Horse Power(HP) or part thereof for Low Tension (LT) supply and per Kilo Volt Ampere(KVA) of contracted demand for High Tension (HT) |
|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1)                     | (2)                                                                                                                                                                                                                  |
| 1. Industrial Service   | twenty thousand rupees;                                                                                                                                                                                              |
| 2. Commercial Service   | ten thousand rupees;                                                                                                                                                                                                 |
| 3. Agricultural Service | two thousand rupees;                                                                                                                                                                                                 |
| 4. Other Services       | four thousand rupees:                                                                                                                                                                                                |

Provided that the Appropriate Government may, by notification in the Official Gazette, amend the rates specified in the Table above.

(2) On payment of the sum of money in accordance with sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal court.

(3) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973 (2 of 1974).

(4) The Compounding of an offence under sub-section (1) shall be allowed only once for any person or consumer. “

13            In the case in hand, undisputedly, amount towards the civil liability is already paid by the applicants. Similarly, they are ready and willing to deposit compounding fees, as calculated in accordance with the provisions of Section 152 of the Electricity Act, 2003. The MSEDCL is ready and willing to accept the amount calculated and assessed and agreed to be paid by both applicants for composition of offences punishable under Sections 135 and 138 of the Electricity Act, 2003 held to be proved against them by the learned trial Court. The affidavit filed by the State is to the effect that offences punishable under Sections 135 and 138 of the Electricity Act, 2003 are compoundable and along with the affidavit, the State has annexed an order dated 06/04/2004 by which it has delegated power for composition of offences to officers designated under Section 126 of the Electricity Act, 2003.

That is how the MSEDCL is agreeing to accept the composition charges sought to be paid by both applicants for compounding offences punishable under Sections 135 and 138 of the Electricity Act, 2003.

14           The question which is required to be addressed is whether offences with which applicants are convicted are compoundable and, therefore, by accepting the compromise arrived at between the parties, applicants/accused can be acquitted of offences punishable under Sections 135 and 138 of the Electricity Act, 2003, as per provisions of Section 152(2) and (3) of the said Act.

15           Perusal of Section 152 of the Electricity Act, 2003 shows that the offence of theft of electricity punishable under the said Act is compoundable by payment of sum of money assessed as per the provision of the said Section. Section 152 of the Electricity Act, 2003 is worded in general terms without specifying the offence defined in a particular Section of the Electricity Act, 2003. However, Section 152 of the Electricity Act, 2003 makes it clear that what is made compoundable is the offence of theft of electricity punishable under the said Act. The offence of theft of electricity is defined by Section 135 of the said Act, which is already reproduced in forgoing paragraph. As such, it is clear that the offence punishable under Section 135 of the Electricity Act,

2003 which relates to the theft of electricity is compoundable in terms of Section 152 of the Electricity Act, 2003. Therefore, compounding of this offence is permissible and applications to that effect need to be granted.

16           Now let us examine whether Section 138 of the Electricity Act, 2003 is compoundable or not. Section 138 is in respect of interference with meters or works of licensee. Both applicants are convicted for committing offence punishable under Section 138(d) of the Electricity Act, 2003. This offence covers malicious injury to meter, indicator, or apparatus belonging to the licensee i.e. MSEDCL. Similarly, willful or fraudulent alteration of index of such meter, indicator, or apparatus is also covered by this Section. Thus, for making out this offence malicious, willful, deliberate or fraudulent act of a person is required. Injury to the apparatus as such needs to be intentionally harmful, mischievous in motivation or purpose and intended to deceive.

17           In the matter of **Ban Bihari Mahto & Anr.** (supra) compounding of offence was already done and, therefore, Honourable Jharkhand High Court held that applicants are entitled for acquittal under Section 320(8) of the Code of Criminal Procedure. In the matter of **Sri Sidharth Bhandari** (supra), it was the case of the prosecution that prior to 06/08/2012, the petitioner therein had tampered a meter. Thereafter he had filed

an application under Section 227 of the Code of Criminal Procedure praying for discharge. On this factual backdrop, Honourable Karnataka High Court has held that the learned trial Judge has grossly erred in not noticing the observations made by the said High Court in Criminal Writ Petition No.5250 of 2012, so also the material placed before it which indicate that there is no theft of energy or tampering of the meter. With these observations, petitioner came to be discharged as no sufficient ground for proceeding against him were found. In the matter of **Papegowda** (supra), the appellant/accused No.2 came to be convicted of offence punishable under Sections 135 (1)(b) and 138(d) of the Electricity Act, 2003. When the appeal came up for final hearing before the Honourable Karnataka High Court, the appellant had deposited composition charges and the appeal came to be disposed by holding that the matter stands compounded in terms of Section 152 of the Electricity Act, 2003. The question whether offence punishable under Section 138 of the Electricity Act is compounded or not was not addressed while deciding this matter. As against this, in the matter of **Kamlesh Kalla** (supra) relied by the learned Advocate appearing for the intervenor, the question whether the offence punishable under Section 138 of the Electricity Act, 2003 is compoundable or not came to be considered and it is held thus in paragraph 5 :

“5. Since, the offence under Section 135 of Electricity Act is compoundable subject to payment of amount of

civil liability and the petitioner accused has deposited the same in the tune of Rs.29,482/-, therefore, the learned trial court acquitted the petitioner-accused from the offence under Section 135 of Electricity Act but the offence under Section 138 of Electricity Act is not compoundable and there is sufficient material available on record to frame charge under Section 138 of Electricity Act and prima facie tempering with meter is evident from the Lab Test report, therefore, no interference is called for. S.B.Criminal Revision Petition No.1189/2014 *Kamlesh Kalla v. State of Raj.*”

18           Section 152 of the Electricity Act, 2003 categorically prescribes that the offence of theft of electricity is compoundable. If one peruse the provisions of Section 138 of the Electricity Act, 2003, then it is clear that the offence defined therein is a totally distinct offence than the one defined by Section 135 thereof. Ingredients of Section 135 of the Electricity Act, 2003 which deals with the theft of electricity and those of Section 138 of the Electricity Act, 2003 dealing with interference with meters and work of licensee are totally different. Section 138 does not deal with theft of electricity. On the contrary, it deals with interference with meters and works of licensee. These two different Sections operate in two different fields and Section 138 of the Electricity Act, 2003 is not concerning with the theft of the electricity. The applicants/accused are convicted of the offence punishable under Section 138(d) of the Electricity Act, 2003 of which malicious

fraudulent and willful acts are main ingredients. Therefore, though object of the Electricity Act, 2003 regarding theft of electricity is having focus on collection of revenue, Section 138 which operates in totally different field cannot be included as an offence compoundable in terms of Section 152 of the Electricity Act, 2003. Intention of the legislation not to make this Section compoundable is clear and writ large from the wordings of Section 152 of the Electricity Act, 2003. The learned counsel appearing for the intervenor has rightly relied on Judgment in the matter of ***State Bank's Staff Union v. Union of India*** (supra), wherein the Honourable Apex Court has held that when provisions of statute are clear and unambiguous, external aid cannot be taken for interpreting those clear terms of the statute by resorting to objects and reasons of the statute.

19           It is exclusive privilege of the Legislature to determine which offences should be made compoundable and which should not. The court cannot go beyond the choice of the Legislature in respect of its determination regarding the class of offences that are compoundable by substituting its own choice. If a person is charged or convicted of a particular offence then unless there is some provision for compounding such offence in law, the case is required to be taken to its logical end. The court cannot permit composition of non-compoundable offence even if the wrong done was of a very trivial nature. [See *Biswabahan Das vs. Gopen*

Chandra Hazarika and Others AIR 1967 SC 895]. At this juncture, it is relevant to quote observations in paragraph 15 made by Hon'ble Apex Court in the matter of **State of Rajasthan vs. Shambhu Kewat and Another**<sup>1</sup>. (supra) relied by the learned Advocate appearing for the intervenor. In that matter, the learned trial court had convicted accused persons of the offence punishable under Section 307 read with 34 of the IPC. In appeal before the High Court, complainant Abdul Rashid appeared before the High Court and stated that he and appellant / accused had entered into a compromise and further informed the High Court that he received compensation amount from the accused persons for injuries caused to him. The High Court permitted compounding with observations that the offence was committed against an individual and parties had buried the differences. The appeal came to be allowed by compounding the offence punishable under Section 307 read with 34 of the IPC. The judgment of the High Court came to be challenged by the State of Rajasthan and in paragraph 15 of its judgment, the Hon'ble Apex Court has held thus :

“15 We are not prepared to say that the crime alleged to have been committed by the accused persons was a crime against an individual, on the other hand it was a crime against the society at large. Criminal law is designed as a mechanism for

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1(2014) 3 Supreme Court Cases 149

achieving social control and its purpose is the regulation of conduct and activities within the society. Why Section 307 IPC is held to be non-compoundable, because the Code has identified which conduct should be brought within the ambit of non-compoundable offences. Such provisions are not meant, just to protect the individual, but the society as a whole. High Court was not right in thinking that it was only an injury to the person and since the accused persons had received the monetary compensation and settled the matter, the crime as against them was wiped off. Criminal justice system has a larger objective to achieve, that is safety and protection of the people at large and it would be a lesson not only to the offender, but to the individuals at large so that such crimes would not be committed by any one and money would not be a substitute for the crime committed against the society. Taking a lenient view on a serious offence like the present, will leave a wrong impression about the criminal justice system and will encourage further criminal acts, which will endanger the peaceful co-existence and welfare of the society at large.”

With these observations, the judgment of the High Court came to be set aside and the appeal was remanded back for deciding it afresh. Thus, it is clear that if the offence is declared to be non-compoundable, then the court cannot permit its composition and the High Court or the subordinate court have no power to grant permission to compound a non-compoundable offence.

20 In the case in hand Section 152 of the Electricity Act, 2003, permits compounding of offence of theft of electricity punishable under the Act. Except the offence of theft of electricity punishable under the Electricity Act, 2003, no other offence is declared to be a compoundable offence by the Electricity Act, 2003. Section 152 of the Electricity Act, 2003, which deals with compounding of offence does not include in its purview the offence punishable under Section 138 of the said Act which is concerning interference with meters and works of licensee. This is totally an independent offence not concerned with the offence of theft of electricity. Applicants herein were convicted of the offence punishable under Section 138(d) of the Electricity Act which prescribes punishment for evil intended injury to meter, indicator or apparatus belonging to a licensee i.e. respondent no.2 MSEDCL or altering the index of the electric meter etc. by practicing deception with preplanned calculated or pre-mediated way and manner. Ultimately, the trial court has convicted both

applicants of this offence which is non-compoundable, being not falling in purview of Section 152 which deals with compounding of offence under the Electricity Act, 2003.

21 Both applicants and MSEDCL are unanimous in contending that the offence punishable under Section 138(d) of the Electricity Act, 2003, can be compounded and the MSEDCL has agreed for accepting the necessary compounding charges as prescribed by Section 152 for compounding this offence. Thus, the first informant i.e. MSEDCL and both applicants / original accused are agreeable for compounding the offence punishable under Section 138(d) of the Electricity Act, 2003, held to be proved against both applicants. Even if the first informant i.e. respondent MSEDCL agrees to compound this non-compoundable offence punishable under Section 138(d) of the Electricity Act, 2003, such a course of action is not permissible because when the offence is non-compoundable, then permitting compounding thereof is against the public policy and agreement to that effect is wholly void in law. Permitting such a course of action would amount to stifling of prosecution. Such a course of action is not permitted as it is a consequence of doctrine of stifling of prosecution. In the matter of V. Narsimha Raju vs. V. Gurumurthy Raju<sup>1</sup> the Hon'ble Apex Court has held that where a person sets the machinery of criminal law into action on the allegation that the opponent has committed a non-compoundable

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<sup>1</sup>AIR 1962 SC 107

offence and by the use of this coercive criminal process he compels the opponent to enter into an agreement, that agreement would be treated as invalid for the reason that it is consideration opposed to public policy. The doctrine of stifling of prosecution is explained by the Hon'ble Apex Court in the matter of **Union Carbide Corporation vs. Union of India**<sup>1</sup> and relevant portion from paragraph 59 of the said judgment deserves reproduction and it reads thus :

“59 ..... The essence of the doctrine of stifling of prosecution is that no private person should be allowed to take the administration of criminal justice out of the hands of the Judges and place it in his own hands. In Rameshwar v. Upendranath, AIR 1926 Calcutta 451,456 the High Court said:

“Now in order to show that the object of the Agreement was to stifle criminal prosecution, it is necessary to prove that there was an agreement between the parties express or implied, the consideration for which was to take the administration of law out of the hands of the Judges and put it into the hands of a private individual to determine what is to be done in particular case and that the contracting parties should enter into a bargain to that effect”.

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<sup>1</sup>AIR 1992 SC 248

[Emphasis added]

In other words, even if the prosecuting agency, the first informant – MSEDCL and applicants / accused persons are willing to compound the offence punishable under Section 138(d) of the Electricity Act, 2003, for which applicants / accused are convicted by the learned trial Court, this court cannot permit compounding of this non-compoundable offence.

22 As Section 138 of the Electricity Act, 2003 does not deal with the theft of electricity, the same cannot be compounded and both applications to that effect will have to be rejected.

In the result, the following order :

- (i) Applications for compounding of offences moved by applicants/accused Mahadev Halvankar and Suresh Halvankar are partly allowed.
- (ii) Applications of applicants Mahadev Halvankar and Suresh Halvankar, so far as permission to compound the offence punishable under Section 135(1)(b)(c) and (d) of the Electricity Act, 2003 are allowed, subject to depositing the amount of compounding charges by them in the office of MSEDCL, Ichalkaranji within a period of one week from today.

- (iii) On depositing the amount of compounding charges, both applicants/accused stand acquitted of the offence punishable under Section 135(1)(b)(c) and (d) of the Electricity Act, 2003 and to that extent impugned Judgment and Order dated 3<sup>rd</sup> May 2014 passed by the learned Special Judge in Special Case No.1 of 2008 is quashed and set aside.
- (iv) Prayer of applicants for compounding of the offence punishable under Section 138(d) of the Electricity Act, 2003 is rejected.
- (v) Both applications are accordingly disposed of.

**(A.M.BADAR J.)**