

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Criminal Application (APPA) No.302 of 2017

**(Maharashtra State Electricity Distribution Company Ltd. through Deputy
Executive Engineer, Buldhana .vs. Smt. Rizwan Parveen Nasrulla and another
)**

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders or directions Court's or Judge's orders.
 and Registrar's orders

Shri S.V. Purohit, Advocate for Applicant.
 Shri A.J. Thakkar, Advocate for Respondents.

CORAM : Kum. Indira Jain, J.
DATED : November 15, 2017.

Heard Shri S.V. Purohit, learned counsel for applicant and Shri A.J. Thakkar, learned counsel for respondents.

By this application under Section 378 (4) of the Code of Criminal Procedure, applicant is seeking special leave to appeal against the judgment and order dated 07.01.2016 passed by the learned Special Judge, Link Court, Malkapur, in Special Electricity Case No.1/2012. By the said judgment and order, respondents have been acquitted of the offences punishable under Sections 135 and 138 of the Electricity Act, 2003.

With the assistance of the learned counsel for the parties, perused the depositions of PW1 Mukund Deshpande, then Executive Engineer and PW3 Ashok Lahude, Junior Engineer of applicant's company. Panch witness PW2 Dnyaneshwar

Dambelwar has not supported the case of complainant. The question is whether in the absence of evidence of panch witnesses entire testimony of the official witnesses can be discarded. The trial Court acquitted the accused basically on two grounds, (i) panch witness did not support the case of complainant and (ii) the meter was not sent for checking.

So far as the provisions of Electricity Act are concerned, nowhere it is stated that the meter is required to be sent for checking. It is pertinent to note that inspection was carried out on the secret information received by PW1 and at the time of inspection seal of the meter was not found intact, certain scratches were also noticed on the meter as stated in panchanama.

In view of the above and particularly evidence of the official witnesses, this Court is of the view that applicant has an arguable case on merits and, therefore, special leave needs to be granted. Accordingly the following order:-

Leave to appeal granted.

Criminal Application No.302 of 2017 is allowed.

Criminal Appeal No. _____/2017.

Heard.

As leave is granted, **Admit.**

Call record and proceedings.

Shri A.J. Thakkar, learned counsel waives service of notice for both the respondents.

Action under Section 390 of the Code of Criminal Procedure is dispensed with.

JUDGE

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