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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.07.2017

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD) No.7796 of 2017
and Crl.M.P.(MD) No.5325 of 2017

D.D.Dhorrairaj

.. Petitioner

vs.

1.State rep. by
Sub Inspector of Police
Saminathapuram Police Station
Dindigul District.

2.The Assistant Executive Engineer
Tamil Nadu Electricity Board
Palani.

.. Respondents

(R2 impleaded as per order of this Court in Crl.O.P.(MD) SR.No.7370 of 2017 dated 20.06.2017)

Criminal Original Petition filed under Section 482 Cr.P.C. r/w Section 407, to transfer C.C.No.373 of 2003 on the file of Judicial Magistrate Court, Palani to Principal District and Sessions Court, Dindigul (Special Court constituted under Section 153 of the Electricity Act 2003).

For petitioner	: Mr.C.S.Krishnamoorthy
For respondents	: Mr.K.Anbarasan
	Government Advocate (crl.side) for
	R1
	Mrs.Srimathy, Standing Counsel for
	E.B., for R2

RESERVED ON	PRONOUNCED ON
27.06.2017	20.07.2017

O R D E R

This petition has been filed to transfer C.C.No.373 of 2003 on the file of the Judicial Magistrate Court, Palani to the Principal District and Sessions Court, Dindigul (Special Court constituted under Section 153 of the Electricity Act 2003).

2. For deciding the legal issues raised in this case, it may be permitted to narrate the facts of the case at hand.

[a] Dhorrairaj, the petitioner herein, is the Managing

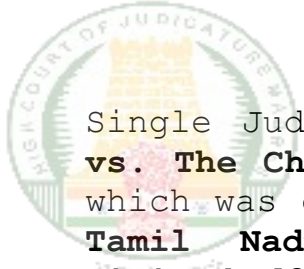


Director of Sri Skandha Spinners Limited [hereinafter referred to as "the Unit"] at Thalayuthu in Palani Taluk. The Unit has been enjoying power supply since 24.09.1993 from the Tamil Nadu Electricity Board. On 13.09.2002, the Assistant Engineer of the Tamil Nadu Electricity Board and his team of officials inspected the Unit and found that the Unit was illegally tapping electricity directly from the main line. The officials prepared a spot panchanama in the presence of witnesses and on the report submitted by them, the Inspector of Police, Saminathapuram Police Station, registered a case in Cr.No.259 of 2002 on 14.09.2002 under Sections 39(1) and 44(1)(c) of the Indian Electricity Act, 1910, as amended by Tamil Nadu Act 39 of 1980 against the Unit and its officials, including its Managing Director Mr.Dhorrairaj.

[b] After completing the investigation, the police filed a Final Report in C.C.No.373 of 2003, before the Judicial Magistrate, Palani for offences under Sections 39(1) and 44(1)(c) of the Indian Electricity Act, 1910 and Section 201 read with 34 IPC against the Unit and its Managing Director Dhorrairaj. The learned Magistrate took cognizance of the offence and issued process to the accused. The accused managed to protract the trial from 2003 to 2017, about which, it may not be necessary to delve further. Suffice it to say that the accused is now before this Court praying for transfer of the case in C.C.No.373 of 2003 from the file of the Judicial Magistrate Court, Palani to the file of the Principal District and Sessions Court, Dindigul (Special Court constituted under Section 153 of the Electricity Act, 2003].

3. Heard Mr.C.S.Krishnamoorthy, learned counsel for the petitioner, Mr.K.Anbarasan, learned Government Advocate (Crl. Side) for the State and Mrs.Srimathy, learned Standing Counsel for the Tamil Nadu Electricity Board.

4. The learned counsel for the petitioner submitted that the Indian Electricity Act, 1910 (Central Act No.IX of 1910), the Electricity (Supply) Act, 1948 (Act 54 of 1948) and the Electricity Regulatory Commissions Act, 1998 (Central Act No. XIV of 1998) have been repealed by the Electricity Act, 2003 with effect from 02.06.2003 [hereinafter referred to as " the 2003 Act"]. He further submitted that the offences under the 2003 Act have to be tried only by a Special Court constituted under Section 153(1), especially in the light of Section 154(2) of the 2003 Act. He further submitted that under the 2003 Act, the Special Court has been empowered not only to try the offences, but also to determine the civil liability against the consumer in respect of theft of energy. It is his contention that since the 2003 Act provides a single forum for criminal and civil liability, the trial before the Magistrate should have to be, perforce, transferred to the Special Court. He contended that the Court of the Magistrate is debarred of its jurisdiction with the constitution of the Special Court under the 2003 Act. In support of his submission, he placed strong reliance on the judgment of a learned



Single Judge of this Court in **A.R.Metallurgicals Private Limited vs. The Chairman, Tamil Nadu Electricity Board [2016 W.L.R. 850]**, which was confirmed on appeal by a Division Bench in the **Chairman, Tamil Nadu Electricity Board vs. A.R.Metallurgicals Private Limited [2016 W.L.R. 851]**, and contended that the Court of the Magistrate was not deprived of its jurisdiction to try the offence in C.C.No.373 of 2003.

5. Refuting the contentions, Mrs.Srimathy, learned counsel appearing for the Electricity Board placed strong reliance upon the judgment of a Single Judge of this Court in **Hi-Tech Mineral Industries Covai (P) Limited, Salem vs. Tamil Nadu Electricity Regulatory Commission and others [(2010) 3 MLJ 697]** and a Division Bench judgment of this Court in the **Executive Engineer (Distribution), Tamil Nadu Electricity Board, Thiruchendur vs. S.J.Gayas and others [(2008) 2 MLJ 812]**.

6. This Court gave its anxious consideration to the rival submissions.

7. For appreciating the rival submissions, it may be necessary to extract the relevant legal provisions:

PROVISIONS OF THE INDIAN ELECTRICITY ACT, 1910:

"39. Theft of energy.- Whoever dishonestly abstracts, consumes or uses any energy shall be punishable with imprisonment for a term, which may extend to three years, or with fine, which shall not be less than one thousand rupees, or with both: and if it is proved that any artificial means not authorised by the licensee exist for the abstraction, consumption or use of energy by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of energy has been dishonestly caused by such consumer.

44. Penalty for interference with meters or licensee's works and for improper use of energy.-Whoever-

(a)

(b)

(c) Maliciously injures any meter referred to in Section 26, sub section (1), or any meter, indicator or apparatus referred to in Section 26, sub-section (7), or wilfully 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 five thousand rupees, or with both, and, in the case of a continuing offence, with a daily fine which may extend to fifty rupees; and if it is proved that any artificial means exist for making such connection as is referred to in clause (a) or such reconnection as is referred to in clause (aa), or such communication as is referred to in clause (b), or for causing such alteration or prevention as is referred to in clause (c), or for facilitating such improper use 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 wilfully caused by such consumer."

THE ELECTRICITY (SUPPLY) ACT, 1948:

"49. Provision for the sale of electricity by the Board to persons other than licensees -

(1) Subject to the provisions of this Act and of regulations, if any made in this behalf, the Board may supply electricity to any persons not being a licensee upon such terms and conditions as the Board thinks fit and may for the purposes of such supply frame uniform tariffs.

(2) In fixing the uniform tariffs, the Board shall have regard to all or any of the following factors, namely:-

(a) the nature of the supply and the purposes for which it is required;

(b) the co-ordinated development of the supply and distribution of electricity within the State in the most efficient and economical manner, with particular reference to such development in areas not for the time being served or adequately served by the licensee;

(c) the simplification and standardisation of methods and rates of charges for such supplies;

(d) the extension and cheapening of supplies of electricity to sparsely developed areas.

(3) Nothing in the foregoing provisions of this section shall derogate from the power of the Board, if it considers it necessary or expedient



to fix different tariffs for the supply of electricity to any person not being a licensee, having regard to the geographical position of any area, the nature of the supply and purpose for which supply is required and any other relevant factors.

(4) In fixing the tariff and terms and conditions for the supply of electricity, the Board shall not show undue preference to any person."

TERMS AND CONDITIONS OF SUPPLY OF ELECTRICITY OF TAMIL NADU ELECTRICITY BOARD FRAMED BY THE TAMIL NADU ELECTRICITY BOARD IN EXERCISE OF THE POWERS CONFERRED BY SECTION 49 OF THE ELECTRICITY (SUPPLY) ACT, 1948:

"10.00. AUTHORISED OFFICERS:

10.01 The officers authorised to inspect service connection issue show cause notice, make assessment and function as Appellate Authority in cases of violation or theft of energy are as follows:

Sl. No.	Type of service connection	OFFICERS AUTHORISED			
		To inspect	To issue show-cause notice	To make assessment	As Appellate Authority
(1)	(2)	(3)	(4)	(5)	(6)
1.	Low Tension service connection including temporary service connection	Any officer not below the rank of Junior Engineer Grade II	Assistant Executive Engineer	Executive Engineer	Super-intending Engineer
2.	High Tension service connection including temporary service connection	Any officer not below the rank of Junior Engineer Grade II	Executive Engineer	Super-intending Engineer	Chief Engineer



11.01 The consumer shall, if he desires to prefer an appeal mentioned in Clauses 6.03 and 8.04 of this schedule, file the memorandum of appeal in four copies duly signed by him (appellant) with such other documents and material as he deems relevant in the matter. The appeal should be made to the appellate authority within the period specified in Clauses 6.03 and 8.04 of this Schedule.

12.00 DISPOSAL OF APPEAL:

12.01 The Appellate Authority will dispose of the appeal (confirm, modify or set aside the assessment) after considering the memorandum of appeal and the material placed before him by the appellant and other materials pertaining to the enquiry. The Appellate Authority will furnish the reasons leading to the conclusion arrived at by him. It shall not be obligatory for the Appellate Authority to give a personal hearing; but if a request is made for such hearing by the appellant, the Appellate Authority will grant personal hearing to the appellant. The appellant may be represented by an Advocate or any other person at such hearing, provided that the appellant files proper vakalath or power of attorney as the case may be.

12.01 After receipt of Assessment Notice the consumer can also request the Appellate Authority in writing to stay disconnection of the service. Before considering the appeal, the Appellate Authority can order the consumer to pay not less than a minimum number of instalments as below:

(a) Two instalments out of five instalments for amount upto Rs.1,00,000/.

(b) Four instalments out of ten instalments for amount above Rs.1,00,000/- and upto Rs.10,00,000/-.

(c) Six instalments out of fifteen instalments for amount exceeding Rs.10,00,000/-.

The Appellate Authority can simultaneously order stay of collection of compensation charges and disconnection, i.e., stay of Assessment Order on payment of the minimum installments."

THE ELECTRICITY ACT, 2003:

"135. Theft of electricity.- (1) Whoever, dishonestly:

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(a) taps, makes or causes to be made any



connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier, as the case may be; or

(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; or

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorised,

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:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use:

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 Kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second or subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted



use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

Provided also that if it is proved that any artificial means or means not authorised by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

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 wilfully 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 wilfully caused by such consumer.

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 authorised 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:

¹[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.]

¹ Inserted by Act 26 of 2007 (w.e.f. 15.6.2007)

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).

154. Procedure and power of Special Court.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), 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."

185. (Repeal and saving): --- (1) Save as otherwise provided in this Act, the Indian Electricity Act, 1910 (9 of 1910), the Electricity (Supply) Act, 1948 (54 of 1948) and the Electricity Regulatory Commissions Act, 1998 (14 of 1998) are hereby repealed.

(2) Notwithstanding such repeal, -

(a) anything done or any action taken or purported to have been done or taken including any rule, notification, inspection, order or notice made or issued or any appointment, confirmation or declaration made or any licence, permission, authorisation or exemption granted or any document or instrument executed or any direction given under the repealed laws shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(b) the provisions contained in sections 12 to 18 of the Indian Electricity Act, 1910 and rules made thereunder shall have effect until the rules under section 67 to 69 of this Act are made;.

(c) the Indian Electricity Rules, 1956 made under section 37 of the Indian Electricity Act, 1910 as it stood before such repeal shall continue to be in force till the regulations under section 53 of this Act are made.

(d) all rules made under sub-section (1) of section 69 of the Electricity (Supply) Act, 1948 shall continue to have effect until such rules are rescinded or modified, as the case may be;

(e) all directives issued, before the commencement of this Act, by a State Government under the enactments specified in the Schedule shall



continue to apply for the period for which such directions were issued by the State Government.

(3) The provisions of the enactments specified in the Schedule, not inconsistent with the provisions of this Act, shall apply to the States in which such enactments are applicable.

(4) The Central Government may, as and when considered necessary, by notification, amend the Schedule.

(5) Save as otherwise provided in subsection (2), the mention of particular matters in that section, shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897, with regard to the effect of repeals."

THE GENERAL CLAUSES ACT, 1897:

"6. Effect of repeal.- Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed."

8. Before adverting to the various decisions cited by either side, this Court would first examine the issue on the touchstone of the first principles of criminal jurisprudence. In this case, the offence was detected on 13.09.2002, on which date, the Indian Electricity Act, 1910 [hereinafter referred to as "the 1910 Act"] was in force. By virtue of Article 20(1) of the Constitution of India, the accused can be prosecuted only for the offences under Sections 39(1) and 44(1)(c) of the 1910 Act and



they cannot be prosecuted for the offences under the 2003 Act. By virtue of Section 50-A, as amended by Tamil Nadu Act 39 of 1980, offences under Sections 39 and 44 of the 1910 Act are cognizable within the meaning of the Code of Criminal Procedure. By virtue of this amendment, the police are empowered to register an FIR, investigate and file a Final Report for the offences under Sections 39 and 44 of the 1910 Act. By virtue of Classification No.II - Offences against other laws to Schedule-I of the Code of Criminal Procedure, the offences under Section 39 (1) and 44 are triable by Magistrates. The Electricity (Supply) Act, 1948 and the terms and conditions framed by virtue of Section 49 of the Act creates a machinery for determining the loss in terms of money and realising the same from the consumer. Clauses 10, 11 and 12 of the terms and conditions, which have been extracted above, stipulate the officers who are empowered to make the assessment and also entertain appeal by the consumer against such assessment. In the opinion of this Court, the appellate remedy is a creature of statute, though it is a subordinate legislation.

9. Assuming for a moment that in the year 2003, The Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 are repealed by the Parliament simpliciter, then, by virtue of Section 6(e) of the General Clauses Act, the prosecution against the petitioner herein before the criminal Court and the determination of civil liability before the authorities will not stand extinguished, because, those actions are statutorily protected by Section 6 of the General Clauses Act and they have to be necessarily taken to their logical conclusions.

10. The question now is, whether the 2003 Act has denuded the aforesaid two jurisdictions, viz., the jurisdiction of the Magistrate to proceed with the trial and the jurisdiction of the authorities to determine the civil liability?

11. Section 185(5) of the 2003 Act which has been extracted above clearly saves Section 6 of the General Clauses Act and there is no evidence to infer that the 2003 Act has extinguished either the jurisdiction of the Magistrates for trial of the offence; or the jurisdiction of the authorities for determining the civil liability for the acts that have taken place prior to coming into force of the 2003 Act.

12. To sum up, from a bare reading of the aforesaid provisions of the old and the new Act, prosecutions under the old Act are statutorily protected and there is no ambiguity at all to come to a different conclusion as canvassed by the learned counsel for the petitioner. On the contrary, if his submission is accepted, Section 185(5) of the 2003 Act would become otiose.



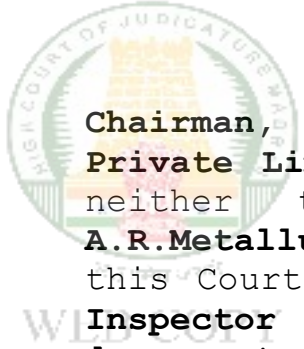
13. Now coming to the various rulings, it is true that a learned Single Judge in **A.R. Metallurgicals** (supra) had taken a view that the civil liability under the old Act should be referred to the Special Court created under the new Act.

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14. Indubitably, the new Act has repealed the 1910 Act and the 1948 Act and has vested the Special Court with the power to try the offences as well as determine the civil liability arising out of the offence committed by the consumer. When the 2003 Act came into force on 02.06.2003, Section 151 did not have any proviso. However, Sections 153 and 154 as they stand now, were available then too. The first and second provisos to Section 151 were introduced only with effect from 15.06.2007. Bearing this in mind, if the opening sentence of Section 153, viz., "*the State Government may, for the purposes of providing speedy trial of offences referred to*" is viewed, it is apparent that constitution of Special Courts is not mandatory. It was left to the discretion of the State Governments to constitute a Special Court taking into consideration the backlog of electricity theft cases in the State and the need for providing speedy trial of offences. The constitution of Special Courts have been left to the State Governments and therefore, the Parliament was aware that the moment the 2003 Act comes into force, the State Governments cannot be expected to constitute Special Courts overnight, because the constitution of a Court is not by a magic wand. It requires a discussion by the State Government with the High Court for making available Judicial Officers and the necessary infrastructure to man the Court. For instance, in the State of Tamil Nadu, the Special Courts under the 2003 Act were constituted with the concurrence of the High Court only in 2006 by G.O.Ms.No.102, Energy (B1) Department dated 05.10.2006. That is why Section 151 of 2003 Act used the expression "*no Court shall take cognizance of*". It does not say "*the Special Court shall take cognizance of*". This means that even in the absence of Special Courts, the Court empowered under Classification II of Schedule I of the Code of Criminal Procedure can take cognizance of the offence under the 2003 Act. But, one may, after reading Section 154, impulsively jump to a conclusion that the offence under the Act can be tried only by a Special Court, notwithstanding the provisions of the Code of Criminal Procedure. A harmonious reading of Sections 151, 153 and 154 would lead to the conclusion that it is only when the State Government constitutes the Special Court, with the concurrence of the High Court, that all other Courts are denuded of the jurisdiction to try the offence. It is only then that the Special Court will have exclusive jurisdiction to try the offences under the 2003 Act.

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15. It is also a fact that the order passed by the learned Single Judge has been confirmed by the Division Bench in the



Chairman, Tamil Nadu Electricity Board vs. A.R. Metallurgicals Private Limited [2016 W.L.R. 851]. With due deference, however, neither the Single Judge nor the Division Bench, in **A.R. Metallurgicals** (supra), had noticed the earlier judgments of this Court rendered by two Single Judges in **State (TNEB) rep. by Inspector of Police, Sethupavasathiram Police Station, Thanjavur [unreported order in Crl.R.C.(MD) No.108 of 2008 dated 09.06.201]** and **Hi-Tech Mineral Industries** (supra). They have also missed the Division Bench judgment in the **Executive Engineer (Distribution), Tamil Nadu Electricity Board, Thiruchendur vs. S.J. Gayas** (supra).

16. Be that as it may, the issue has been settled beyond cavil by the judgment of the Supreme Court in **Himachal Pradesh State Electricity Regulatory Commission and another vs. Himachal Pradesh State Electricity Board [(2014) 5 SCC 219]**. The issue before the Supreme Court was whether the action taken by the Himachal Pradesh State Electricity Regulatory Commission under the repealed Electricity Regulation Commission Act, 1988 should be transposed into the 2003 Enactment. In other words, under the 1988 Enactment, an appellate remedy was provided with the High Court, whereas, in the 2003 Enactment, the appellate remedy lay before the Appellate Tribunal created under Section 110. While dealing with this issue, the Supreme Court considered Section 185 of the 2003 Act and has held as follows:

"25. At this stage, we may state with profit that it is a well-settled proposition of law that enactments dealing with substantive rights are primarily prospective unless they are expressly or by necessary intention or implication given retrospectivity. The aforesaid principle has full play when vested rights are affected. In the absence of any unequivocal expose, the piece of legislation must exposit adequate intendment of legislature to make the provision retrospective. As has been stated in various authorities referred to hereinabove, a right of appeal as well as forum is a vested right unless the said right is taken away by the legislature by an express provision in the statute by necessary intention.

28. We have referred to the aforesaid paragraphs as Mr Gupta has contended that when there is repeal of an enactment and substitution of new law, ordinarily the vested right of a forum has to perish. On reading of Section 185 of the 2003 Act in entirety, it is difficult to accept the submission that even if Section 6 of the General Clauses Act would apply, then also the same does not save the forum of appeal. We do not perceive any contrary intention that Section 6 of the General Clauses Act



would not be applicable. It is also to be kept in mind that the distinction between what is and what is not a right by the provisions of Section 6 of the General Clauses Act is often one of great fitness. What is unaffected by the repeal of a statute is a right acquired or accrued under it and not a mere hope, or expectation of, or liberty to apply for, acquiring right (see *M.S. Shivananda v. Karnataka SRTC* [(1980) 1 SCC 149 : 1980 SCC (L&S) 131])."

(emphasis supplied)

17. The following statement of law in the judgment of the Division Bench in **A.R. Metallurgicals** (supra) is clearly contrary to the above extracted observation of the Supreme Court in *Himachal Pradesh State Electricity Board*.

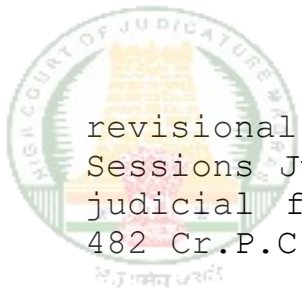
"2. In coming to the conclusion, the learned Single Judge has relied on the provision of Section 185 of the new Act stipulating that any order passed under the old Act would be construed to be an order made under the corresponding provision of the present Act. In fact, the matter in issue is really of procedural nature as to where the appeal would lie."

(emphasis supplied)

In other words, when the Supreme Court says that the right of appeal as well as the forum of appeal is a vested right, the observation of the Division Bench that the "issue is really of procedural nature as to where the appeal would lie" cannot be reconciled. This Court is bound by the aforesaid judgment of the Supreme Court in **Himachal Pradesh State Electricity Regulatory Commission** (supra).

18. A comparison of Section 39(1) of 1910 Act with Section 135 (1) of the 2003 Act would show that those two provisions are not *in pari materia*. Of course, Section 41(1)(c) of the 1910 Act is *in pari materia* with 138(1)(d) of the 2003 Act. Nevertheless, that cannot mean that for the offence committed by a person prior to coming into force of the 2003 Act, he should be prosecuted via the procedure laid down for prosecution of the offence under the 2003 Act. The forum cannot be automatically shifted in the absence of an intention to the contrary in the new Act. This can be viewed from another angle also. After a magisterial trial under the old Act, the accused will be entitled to an appeal before the Sessions Court and a further revision before the High Court. However, after a trial by a Special Court under the new Act, the accused will have a right of appeal only before the High Court under Section 156 of the 2003 Act. Thus, by shifting the

service from the Magistrate Court to the Special Court, the accused will be denied an opportunity to approach the High Court under its

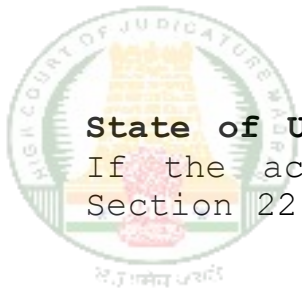


revisional jurisdiction, challenging the appellate order of the Sessions Judge, which opportunity cannot be ordinarily denied by a judicial fiat either in exercise of powers under Section 407 or 482 Cr.P.C.

19. The reliance placed upon by the learned counsel for the petitioner on Section 154(2) of the 2003 Act requires expatiation. As explained earlier the moment the Parliament passed the 2003 Act, one cannot expect the State Government to constitute a Special Court immediately. As pointed above, though the 2003 Act came into force on 02.06.2003, the Special Courts in Tamil Nadu were constituted only on 05.10.2006. Section 154(2) is so designed that it is intended to adjudicate cases instituted in ordinary Courts in respect of offences committed after the coming into force of the 2003 Act, but before the constitution of Special Court by the State Government. To further elaborate, if an offence under the 2003 Act has been committed after coming into force of Act on 02.06.2003 and before the constitution of Special Court, the prosecution can be launched only before the jurisdictional Magistrate at the first instance. If the trial prolongs after the constitution of the Special Court, the trial Court is empowered under Section 154(2) to transfer the case to the Special Court. This provision is not intended to transfer all pending trials in respect of offences committed prior to coming into force of the 2003 Act, as that would militate against the provisions of Section 185(5) of the 2003 Act and Section 6(e) of the General Clauses Act and lead to ridiculous and ludicrous consequences. This power has to be exercised only by the trial Court and the superior Courts cannot order such transfer. The superior Court can only judicially review the order of the trial Court ordering or refusing to transfer the case to the Special Court.

20. In fine, the petition is devoid of merits and the same is dismissed. The petitioner should have to face trial before the Judicial Magistrate, Palani in respect of the offences committed prior to the commencement of the 2003 Act and also face the civil proceedings before the authorities constituted under the 1948 Act. Consequently, connected miscellaneous petition is closed.

21. Since the trial of energy theft has been prolonged from 2003 till date, this Court directs the petitioner to surrender before the Judicial Magistrate, Palani within two weeks from the date of this order being made ready by the Registry and execute a bond under Section 88 Cr.P.C. for Rs.5,000/- without sureties. The trial Court is directed to complete the trial in C.C.No.373 of 2003 within six months from the date of receipt of a copy of this order. The accused shall cross examine the witnesses on the day they are examined-in-chief as directed by the Supreme Court in **Vinoth Kumar vs. State of Punjab [2015(1) MLJ (crl) 288]**. If the accused adopts dilatory tactics, the trial Court can remand them to custody in terms of the law laid down by the Supreme Court in



State of Uttar Pradesh v. Shambunath Singh [JT 2001 (4) SC 319].
If the accused absconds, a fresh FIR can be registered under
Section 229-A of the IPC.

Sd/-

Assistant Registrar(P&A)

WEB COPY

/True copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Palani.

2.-Do thro- The Chief Judicial Magistrate, Dindigul.

3.The Sub Inspector of Police
Saminathapuram Police Station
Dindigul District.

4.The Assistant Executive Engineer
Tamil Nadu Electricity Board
Palani.

5.The Additional Public Prosecutor
Madurai Bench of Madras High Court.

+1cc to M/s.S.M.S.Johnny Basha, Advocate,SR.66457

Pre-delivery order in
Crl.O.P.(MD)No.7796 of 2017
20.07.2017

GMS

KK/JC/SAR 2/01.08.2017/ 17P- 7C/