

**224 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 1082 of 2015(O&M)

Date of decision : 16.01.2017

Shashi Chander

..... Petitioner

versus

**Uttar Haryana Bijli Vitran Nigam and
others**

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Shrey Goyal, Advocate for the petitioner.

Mr.Pankaj Jain, Advocate for the respondents.

AMIT RAWAL, J. (Oral)

Petitioner is aggrieved of the demand raised by the electricity board on account of alleged theft. It is the conceded position on record that the aforementioned demand was got compounded by the petitioner yet the petitioner availed the remedy before the Consumer Court by filing a complaint under Section 12 of the Consumer Protection Act which was allowed. Appeal of the Electricity Board was dismissed. The matter reached before the National Commission whereby the petitioner has been relegated to avail the remedy i.e. under Section 127 of the Electricity Act. Instead of availing the remedy the petitioner has approached this Court.

Mr. Shrey Goyal, learned counsel appearing for the petitioner submits that the petitioner cannot be rendered remediless in this aspect of the matter and thus has knocked the doors of this Court.

Per contra, Mr.Pankaj Jain, learned counsel appearing on behalf

of the respondent submits that the language of Section 152 starts with a non-obstante clause and thus the aforementioned order could not have been challenged in any of the forum. In fact, initiation of the proceedings under Section 154 by invoking the powers of the Special Court to deal with determination of both civil and criminal liability, the applicability of the provisions of Section 125 which have already been debated/decided by Hon'ble Supreme Court in **Executive Engineer, Southern Electricity Supply Company of Orissa Limited(SOUTHCO) and another v. Sri Seetaram Rice Mill** reported as **2012(2) SCC 108**, to submit Section 126 and 135 are not overlapping. Had the petitioner not got the offence compounded, he could have availed the remedy under law.

I have heard learned counsel for the parties and perused the paper book.

In the absence of compounding the legislature in its wisdom has provided the remedy under chapter XV and Section 154 which reads as under;-

“154. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence punishable under sections 135 to 139 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 139 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 :

Provided that it shall be lawful for such Special Court to act on the evidence, if any, recorded by any court in the case of presence of the accused before the transfer of the case to any Special Court :

Provided further that if such Special Court is of opinion that further examination, cross-examination and re-examination of

any of the witnesses whose evidence has already been recorded, is required in the interest of justice, it may resummon any such witness and after such further examination, cross-examination or re-examination, if any, as it may permit, the witness shall be discharged.

(3) The Special Court may, notwithstanding anything contained in subsection (1) of section 260 or section 262 of the Code of Criminal Procedure, 1973, try the offence referred to in sections 135 to 139 in a summary way in accordance with the procedure prescribed in the said Code and the provisions of sections 263 to 265 of the said Code shall, so far as may be, apply to such trial :

Provided that where in the course of a summary trial under this subsection, it appears to the Special Court that the nature of the case is such that it is undesirable to try such case in summary way, the Special Court shall recall any witness who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the said Code for the trial of such offence:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding five years.

(4) A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to, any offence tender pardon to such person on condition of his making a full and true disclosure of the circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof, and any pardon so tendered shall , for the purposes of section 308 of the Code of Criminal Procedure, 1973, be deemed to have been tendered under section 307 thereof.

(5) The Special Court may determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined which ever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil court.

(6) In case the civil liability so determined finally by the Special Court is less than the amount deposited by the consumer or the person, the excess amount so deposited by the consumer or the person, to the Board or licensee or the concerned person, as the case may be, shall be refunded by the Board or licensee or the concerned person, as the case may be, within a fortnight from the date of communication of the order of the Special Court together with interest at the prevailing Reserve Bank of India prime lending rate for the period from the date of such deposit till the date of payment.

Explanation. - For the purposes of this section, “ civil liability” means loss or damage incurred by the Board or licensee or the concerned person, as the case may be, due to the commission of an offence referred to in sections 135 to 139.”

The aforesaid section deals with the powers of the special court to determine the civil and criminal liability and aforementioned order is appealable as per section 156 and even revision also lies. Since the matter had been compounded the petitioner, in my view being remediless, could not have taken the plea. It is the ill luck of the petitioner that despite being successful before the two authorities under the Consumer Protection Act and yet has been relegated to the aforesaid remedy but the aforementioned remedy of compounding though as not brought in their knowledge has not been pondered over.

No grounds for interference is made out.

Petition is dismissed.

(AMIT RAWAL)
JUDGE

January 16, 2016
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No