

In the High Court of Punjab and Haryana at Chandigarh.

**CWP-8523 of 2013
Decided on 04.8.2017**

Punjab State Power Corporation Limited and another

--Petitioners

Vs.

State of Punjab and others

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.S.S.Siao, Advocate,for the petitioners

Mr.Sourabh Khurana, DAG, Punjab

Rakesh Kumar Jain, J: (Oral)

This petition is filed by the Punjab State Power Corporation Limited (for short, 'the Corporation') challenging the order dated 20.7.2012 passed by the Sub Divisional Magistrate, Ferozepur, in appeal filed under Section 127 of the Electricity Act.2003 (for short,'the Act') against the Memo No. 664 dated 07.5.2012 issued by respondent No.2 under Section 135 of the Act.

In short, the premises of respondent No.3 was raided by respondent No.2. on 03.5.2012. Checking report was prepared on 05.5.2012 in which it was found that respondent No.3 had indulged in the theft of electricity. Accordingly, order of assessment was passed under Section 135

of the Act, asking him to deposit ₹85,770/- towards penalty. It was alleged in the assessment order that in case, he is not satisfied with the assessment order, then he may file an appeal to the Special Court of Additional District Judge. However, respondent No.3 filed an appeal under Section 127 of the Act before the Sub Divisional Magistrate, Ferozepur, which has been allowed by him vide his order dated 20.7.2012.

Learned counsel for the petitioners has submitted that the order passed by the Sub Divisional Magistrate, Ferozepur, is without jurisdiction as no appeal under Section 127 of the Act, is maintainable against the proceedings initiated under Section 135 of the Act. He has submitted that vide Notification of November, 2008 issued by the Government of Punjab, Department of Home Affairs and Justice, all the Courts of Additional District Judges in the State of Punjab, were designated as Special Courts for the purpose of providing speedy trial of the offences referred to in Sections 135 to 140 and Section 150 of the said Act.

I have heard learned counsel for the parties and perused the available record with their able assistance.

The issue involved in this case is *as to whether the appeal filed under Section 127 of the Act, is maintainable against the assessment order under Section 135 of the Act ?*

In case of unauthorised use of electricity, the electricity Department first determines the provisional assessment and after affording an opportunity of hearing to the consumer to file objection, the final assessment order is passed which is amenable to appeal under Section 127 of the Act.

Section 135 of the Act deals with the theft of electricity but no

provisional assessment is made under this Section. Section 153 deals with the Special Courts and Section 154 provides procedure and power of Special Court. It deals with the offences under Sections 135 to 140 and Section 150 of the Act. There is no appeal under Section 127 of the Act against the proceedings carried out under Section 135, rather the consumer has to approach the Special Court constituted under Section 153 of the Act to file requisite appeal/ petition under Section 154 of the Act which is tried by the Court both on civil and criminal side. Thus, the question is answered in favour of the petitioners, holding that proceedings under Section 127 of the Act cannot be initiated by the consumer in the case of theft.

Thus, the order passed by the Sub Divisional Magistrate, Ferozepur, to set aside the proceedings under Section 135 while entertaining the appeal under Section 127 of the Act is held to be without jurisdiction.

Consequently, the present petition is hereby allowed and the impugned order is set aside.

04.8.2017
rr

(Rakesh Kumar Jain)
Judge

Whether Speaking/Reasoned: **Yes/No.**

Whether Reportable: **Yes/No**