IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 4415 OF2017

Syed Yaqoob Syed Masood,
Age : 57 years, Occu. Service,
R/o. Plot No. 14, Cresent Housing Society,
Lane No. 4, N-12, CIDCO, Aurangabad. … Applicant

VERSUS

1. The State of Maharashtra
Through P.I., City Chowk
Police Station, Aurangabad.

2. Assistant Engineer,
Maharashtra State Electricity Distribution
Company Limited (MSEDCL) Office,
Harsul Branch, Aurangabad. … Respondents

....
Shri. Moinuddin Shaikh holding for Shri. S. S. Kazi, Advocate for the petitioner
Mr B. E. Yawalkar, APP for respondent No.1/State
Mr Avishkar A. Shelke, Advocate for respondent No. 2
....

CORAM : **S. S. SHINDE &**
A. M. DHAVALE, JJ.

DATE OF RESERVING THE JUDGMENT : 19.12.2017.
DATE OF PRONOUNCING THE JUDGMENT : 09.02.2018.

JUDGMENT (PER A. M.DHAVALE, J.):

1. The interesting question raised in this application u/s 482 Cr.P.C. is, whether the prosecution of the accused for offences under

IPC can be continued when the same acts had resulted into offence u/s 135 of Electricity Act and same has been compounded. The petitioner seeks quashing of FIR at C.R. No. 0273/2017, registered at City Chowk Police Station, Aurangabad, for offences under Sections 420, 468, 471 r/w 34 IPC and u/s 135 of Indian Electricity Act, 2003.

2. The basic facts essential to decide this application may be stated as follows :

On 21.07.2017 at 23:11 hrs., the impugned FIR was lodged by Sachin Santosh Lalsare against the present applicant Syed Yakub. The informant is Assistant Engineer in MSEDCL, Harsul Branch, Aurangabad. It was part of duty *inter alia* to keep watch on theft of electricity. On that day, he at 2:30 p.m. inspected electric meter from the house of the applicant and noticed that one aluminum wire was connected to the electric supply wire to by-pass the meter and receive the electric supply without recording meter readings of the same. He seized the meter, conducted seizure panchanama and alleged in the FIR that the applicant had committed economical cheating of the company. On the basis of the FIR, the crime was registered u/s 420, 468, 471 r/w 34 and 135 IPC (it should be 135 of Indian Electricity Act). According to the applicant, the offence under Electricity Act was compounded and he has paid Rs. 12,620/- towards the arrears of electricity charges and compounding fee of Rs.2,000/-. He had received theft assessment bill of Rs. 12,620/-.

3. The applicant objected to the registration of offences under IPC and claimed that offence u/s 135 of Indian Electricity Act was only made out, which has been compounded. The house in question was taken on rent and the applicant was not present in the house. The applicant is holding Class-I post of Taluka Agriculture Officer at Soygaon. In view of the above facts, the FIR be quashed.

4. Respondent no.2 (informant) has filed his affidavit justifying the registration of FIR under Electricity Act as well as for offences under IPC. He admitted that, the applicant has deposited Rs.12,620/- towards the theft assessment bill and compounding charges of Rs. 2,000/-. The applicant filed rejoinder-affidavit claiming that at the relevant time he was on duty at Soygaon. He claimed that, in view of the special enactment of Electricity Act, no offence under IPC could have been registered.

5. Heard Shri. Moinuddin Shaikh, learned counsel holding for Shri. S. S. Kazi, counsel for the applicant, Shri. B. E. Yawalkar,

learned APP for respondent No. 1 and A. S. Shelke, learned counsel for respondent No 2.

6. At the outset, it must be stated that, the offence u/s 135 of the Indian Electricity Act has been compounded and the applicant cannot be prosecuted for the same now.

7. As far as the plea of the applicant that at the relevant time he was at Soygaon and he has not committed theft of electricity etc. are concerned, those relate to the merits of the case. This Court will not enter into the merits of the case. If the applicant feels that there is no substance, he may apply for discharge.

8. As to crucial question whether the accused can be prosecuted for offences under IPC as well as Electricity Act is concerned, there are following rulings produced.

(i) In **Anand Dwivedi v State of M P LEX(MPH) 2013 3 300,** two buffaloes died due to electric shock due to stray wires of electric pole. There was illegal connection taken by the applicant from the pole. The FIR was lodged under Sections 135 of Electricity Act and 429 of IPC. After framing of charge, the Special Judge held that he had no jurisdiction to conduct offence u/s 429 IPC and, therefore, separate charge-sheet shall be filed against the applicant in respect of the same. It was held that, the Special Judge has all the powers of Sessions Judge and he could try the offence u/s 429 IPC as well, and once the charge was framed he had no authority to pass such order as he has no power of review.

(ii) In **Vivek Gupta v CBI 2003(8) SCC 628,** the appellant was charged for offence under Prevention of Corruption Act as well as u/s 420 of IPC and 120B r/w 420 IPC. Applying the provisions of Sections 3 and 4 of the Act and Section 220 and 223 Cr.P.C., it was held that the appellant and his co-accused could be tried by the Special Judge in the same trial. In this matter, there was specific provision u/s 4(3) of PC Act, empowering the Special Judge to try the accused facing prosecution under PC Act, for other offences under any other law disclosed.

(iii) In **Dev Kant Kamat v State (NCT of Delhi) & Anr. 2014 SCC OnLine Del 2447**, the applicant was prosecuted for theft of electricity. The entire amount was paid and nothing was due towards the assessment bill of theft. Relying on **Gian Singh v. State of Punjab (2012) 10 SCC 303**, the FIR u/s 135 of Indian Electricity Act was quashed.

(iv) In **Biswanath Patra v Divisional Engineer (E) S and LP and State (2007) AIR (Calcutta) 189**, the applicant was prosecuted for offence u/s 135 of

Electricity Act and 379 IPC. It was held that, when there was special law covering the question of theft of electricity, general law u/s 379 IPC would not be applicable.

(v) In **Institute of Chartered Accountants of India v Vimal Kumar (2011)1 SCC 534**, the respondent was prosecuted for offences u/s 24, 24A, 25, 26 and 28 of Chartered Accountants Act and also u/s 419, 420, 465, 467 and 473 IPC. The provisions of Sections 24, 24A, 25, 26 & 28 relate to false claim to be member of the institute using name or a common seal of the institute. Contradiction of rule of practice by a company and signing of documents by unqualified persons are held to be offences under CA Act. Section 28 provides for prohibition against prosecution of a person under CA Act except on complaint made by or under order of council or of the Central Government. The Apex Court held that, without prejudice to any other proceedings which may be taken against him appearing in Section 24(A)(2) and 26, if the act amounts to offence under IPC as well as CA Act, the accused can be prosecuted for both the offences, however, he cannot be punished for the same act under different acts. Reliance was placed on **Maqbul Hussain's case (AIR 1953 SC 325)**, however, the apex court declined to consider whether the allegations amounted to offences u/s 419, 420, 465, 467, 468, 472, 473 IPC or not.

(vi) In **Sangeetaben Patel v State of Gujarat 2012 AIR (SC) 2844**, the applicant was tried and dealt with u/s 138 N.I. Act and thereafter was prosecuted separately u/s 406, 420 r/w 114 of IPC. The second prosecution was challenged on the ground of double jeopardy.

9. After considering the several earlier supreme court's judgments and provisions of Section 25 of General Clauses Act and Section 300 of Cr.P.C. and article 20(2) of the Constitution, the Apex Court culled out following principles.

10. It was held that, there is distinction between offence u/s 138 NI Act and Sections 406, 420 r/w 114 IPC. In the former, fraudulent or dishonest intention is not required while in the later the *mens rea* is relevant. Under Negotiable Instruments Act, there is a presumption of issuance of cheque for discharge of legal liability. Such is not the requirement for the offence under Negotiable Instruments Act. There are overlapping facts in both the cases but the ingredients of the acts are entirely different. Therefore, subsequent case is not barred by any of the aforesaid statutory provision.

11. Some more relevant judgments may be stated as follows :

(i) **Avtar Singh v State of Punjab AIR 1965 SC 666**

A theft of electricity is an offence under the Electricity Act. Since electricity is not a movable property, the provisions of Sections 378 & 379 IPC are not attracted.

(ii) **J.K. Cotton Spinning & Weaving Mill v State of U.P. AIR 1961 SC 1170.**

When there is a conflict between the specific provisions and the general law, the specific provision prevails over the general provision. General provision applies to only such cases which are not covered by special provision. Rule applies to resolve conflict between different provisions in different statute as well. This ruling is in respect of Uttar Pradesh Industrial Disputes Act and authority of the Board to entertain application under clause 5(a).

(iii) **Vinaykumar Sing v State of Bihar**
2011 SCC Online Patna 15

FIR was lodged against the applicants for offences u/s 406, 420, 465, 467, 468, 120B IPC and 135 of Electricity Act. In this case, electric meters were inspected and those disclosed 13 instances of C.P. short between a period of 11 days. Data of the meter was downloaded. After referring to the provisions of Electricity Act, which empowers authorized officer for various acts with regard to misuse of electricity or electric meters, relying on **T.T. Antony v State of Kerala (2001) 6 SCC 181**, it was held that second FIR against the officials of Electricity Board was not maintainable as those accusations were part of the transaction which resulted into Case No. 67/2008. It was held that, the Board authorities were acting *bona fide* and were protected under Section 168 of Electricity Act. With regard to the first FIR No. 67/2008, it was held that, the last cause was misconceived. The accusations had become redundant, therefore, both the FIRs were quashed.

(iv) **Solidare India v Fair Growth Finance 2001(3) SCC 71**

With reference to special court, trying offences relating to transactions in Securities Act, 1992, it is held that those provisions would prevail over the earlier act of Sick Industrial Companies Act, 1985. In view of the conflict between the two acts, later one prevails.

(v) **Vishal Agrawal v Chhattisgarh State Electricity Board 2014(3) SCC 696**

The provisions of Rule 9 permitting taking of cognizance not only on the basis of the complaint but also on the basis of FIR lodged by authorized officer was held to be clarificatory and it would be applicable to the pending complaints.

12. After carefully considering the arguments advanced before us and the ratio laid down in above rulings, we proceed to apply them to the facts of the present case.

13. In the present case, offence u/s 135 of Electricity Act was registered on the ground that one electric wire was connected to the supply to bypass the electric meter. The said offence has been compounded by acceptance of compounding charges as well as assessment bill.

14. At the same time, offence u/s 420, 468, 471 of IPC was registered. Section 420 of IPC requires the ingredients of Section 415 IPC, which reads thus:

> 415. **Cheating.—**Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

15. It is nobody's case that, the accused made any representation directly or indirectly to the officers of the Board with fraudulent or dishonest intention to deceive them to delivery any property. It is obvious that, the ingredients of Section 420 are nowhere in the FIR and offence u/s 420 IPC was certainly not made out.

16. As far as offence u/s 468 and 471 IPC are concerned, it is based on argument that the electric meter is an electronic document. Sections 468 & 471 IPC read as follows :

> 468. **Forgery for purpose of cheating.—**Whoever commits forgery, intending that the [document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
>
> 471. **Using as genuine a forged [document or electronic record].—**Whoever fraudulently or dishonestly uses as genuine any [document or electronic record] which he knows or has reason to believe to be a forged [document or electronic record], shall be punished in the same manner as if he had forged such 1[document or electronic record].

17. We have doubts whether electric meter which records the consumption of electricity can be a document or not. We feel that it is a measuring device and the measuring device cannot be termed as a document but without going into the said issue, we find that there was no allegation about tampering of the meter. The allegations disclose that, electric meter was untouched. The electric supply to the house was passing through the meter for the purpose of recording

the consumption. One more electric wire was used to connect the supply wire and the receiving wire fitted in the electric meter. There was bypassing of the electric meter without tampering the electric meter. It is obvious that, it is commonly called as theft of electricity.

18. Sections 378 and 379 IPC deal with the theft of movable property. Electricity is energy and not property. There is no provision in the IPC to prosecute any person for committing theft of electricity. Therefore the provisions of Electricity Act are enacted to take various offences relating to electricity.

19. The act of the accused squarely falls u/s 135 of Electricity Act which has been compounded.

20. The facts can be looked at from a different angle. The accused has committed one and the same act (it is assumed that he might have committed it). If the electric meter is assumed to be a document with electric record and if it is assumed that the act of the accused amounts to offence u/s 471 IPC, we find that the same act also amounts to offence u/s 135 Electricity Act. The Electricity Act is a comprehensive law to deal with all aspects with regard to to generation, transmission, distribution, trading and use of electricity

and generally for taking measures conducive to development of electricity industry. This act *inter alia* provides as follows :

(i) Powers on officers of electric companies for assessment of the electricity consumed and the inspection of the premises for inspection of equipments, gadgets, machines, devices and record maintained by any person in connection with electricity consumption. (Section 126)

(ii) Declaring particular offences in connection with use or misuse of electrical energy or tampering of instruments used for supply of electricity causing damage or destruction of electric meter or receiving electricity unauthorizedly. (Section 135)

(iii) Cognizance of offences only on the complaint in writing by the Government or Commission or authorised officers or Chief Electrical Inspector (Section 151). Cognizance only by Special Court constituted u/s 153 (the proviso permits taking of cognizance on the charge-sheet provided the FIR was lodged by specified authorities). Compounding of offences (Section 152) and Constitution of Special Court (Section 153).

21. When the offences under Electricity Act are committed, these comprehensive legislation contemplates that those must be

dealt with by the authorized officers of the State Electricity Board and its companies and the cases should be tried by Special Court established under Electricity Act. The offences are made compoundable. If the acts which squarely fall in definition of act like tampering of meter and theft of electricity u/s 135 of the Electricity Act, is to be held also the offence under IPC, there can be prosecution on the basis of the complaint or FIR of any person. Those cases can be tried by ordinary courts like Judicial Magistrate. The said offences will not be compoundable. If such an interpretation is to be made, it will be disastrous as all the provisions of Electricity Act would become redundant. We hold that, if a particular act amounts to offence under Electricity Act and also an offence under IPC, there can be prosecution only under Electricity Act as per the procedure prescribed under the Act and before the special court established under the Act. There cannot be separate prosecution before the ordinary criminal courts at the instance of any person for offence under IPC. We make it clear that, the act should be such that it should amount to offence under Electricity Act as well as IPC and not in cases where there will be offence under IPC but not under the Electricity Act. In the result, we hold that, the prosecution of the applicant under Sections 420, 468 and 471 IPC is not be maintainable while prosecution u/s 135 Electricity Act is already compounded. Hence, this is a fit case for quashing of the FIR against the applicant. We accordingly answer the points and pass the following order.

ORDER

(i) The application is allowed.

(ii) The FIR at C.R. No. 273/2017, registered at City Chowk Police Station for offences under Sections 420, 468, 471 r/w 34 IPC and u/s 135 of Electricity Act is quashed and set aside.

22. Rule is made absolute in aforesaid terms. No costs.

[A. M. DHAVALE]
JUDGE

[S. S. SHINDE]
JUDGE

Punde