IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 750 OF 2018

Samadhan Arun Doifode
Age: 32 years, Occ.: Agriculture/Business
Residing at Bavi, Taluka Barshi,
Dist. Solapur. .. Applicant

Versus

1. Maharashtra State Electricity Distribution Company Ltd. Having office at Plot No.G-9, Prakashgad, Prof. Anant Kanekar Marg, Bandra, East Mumbai – 400 051.

2. The State of Maharashtra .. Respondents

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Mr. D.S. Mhaispurkar a/w Mr. Ashish Sawant, Advocate for the Applicant.

Mr. Kiran Gandhi I/b M/s. Little & Co., Advocate for Respondent No. 1.

Mr. A.R. Patil, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 7th August, 2018.

JUDGMENT :-

1. Rule. Rule made returnable forthwith. Heard both sides for final disposal. The applicant is challenging order passed by learned Additional Sessions Judge-1, Barshi dated 13th June, 2018 in Civil Miscellaneous Application No. 76 of 2017. The learned Special Judge dismissed the said application preferred by the applicant to decide the

civil liability in accordance with Section 154 (5) of the Electricity Act, 2003.

2. The relevant facts which gives rise to the present application can be summarized as under :-

a) The applicant had applied for industrial 3 phase connection from under DDF scheme for starting business in the name and style of Arun Stone Crusher. The applicant was sanctioned the electricity connection by competent authority of 3 phase LT connection in the month of May, 2017. The applicant started using the electricity connection and he was given consumer No. 33280001617.

b) On 28.09.2017, Additional Executive Engineer flying squad, Pen Raigad, visited the applicant's unit. He recorded Panchanama alleging that the applicant had committed theft of electricity. Hence, an offence was registered on 29^{th} September, 2017 vide C.R. No. 6344 of 2017 under Section 154 of the Electricity Act, 2003. It is alleged that, applicant had committed theft of 329812 units of electricity Rs. 39,03,719.62/- and thereby liable to pay compounding charges of Rs. 8,70,000/-. In pursuant to that the electricity connection provided to the applicant was disconnected.

c) Raid was also carried out in respect to the unit run by his brother Dhairyashil. Both the units that is of the applicant as well as his brother had commissioned however, there could not have been such a huge consumption of electricity as alleged by the complainant.

d) The applicant preferred an application for anticipatory bail in the Court of Additional Session's Judge, Barshi and the Session's Court vide order dated 22nd November, 2017 allowed the said application granting anticipatory bail to the applicant on a condition that he shall deposit 50% of theft amount to the MSEDCL.

e) The applicant challenged the conditional order by preferring Criminal Application No. 1202 of 2017 before this Court. The interim relief was granted by this Court in the said application.

f) The applicant filed Civil Miscellaneous Application No. 76 of 2017 in the Court of Additional Session's Judge, Barshi (designated Special Court) under the said Act for deciding civil liability as provided under Section 154 (5) of the Electricity Act. The applicant also preferred interim application praying for direction to reconnect electricity supply which was disconnected on 28.09.2017. The respondent filed a reply to the main application as well as to the interim application on 15th December, 2017.

g) The applicant also preferred another application below Exhibit-17 praying that the witness summons be issued to the electrical inspector to give correct assessment charges. The said application was preferred on 20th December, 2017. The respondent filed reply to the application filed below Exhibit-17 on 9th January, 2018. The learned Special Judge by order dated 3rd February, 2018 directed Electrical Inspector, Solapur to prepare the assessment of electrical charges of the applicant by visiting both the industries mentioned in FIR 6343 of 2017 and 6344 of 2017 of Latur Electricity Police Station and submit the report as per the procedure of law and accordingly witness summons be issued.

h) The Electrical Inspector submitted report dated 20th April, 2018 vide Exhibit-20 whereby it was pointed out that maximum consumption assess would be 65772 KWH and the alleged theft unit were determined about 38605 units. The respondents also filed reply to the said report vide Exhibit-20 on 05.05.2018.

I) The learned Special Judge vide order dated 13.06.2018 dismissed the application on the ground of tenability and jurisdiction to decide the said application to deal with civil liability as contemplated under Section 154 (5) of the said Act. The learned Judge also dismissed the interim applications preferred by the applicant.

3. Learned Advocate for the applicant submitted that the Special Judge has committed an error in rejecting the application for determining the civil liability in accordance with Section 154 (5) of the Electricity Act. The Special Judge has erred in not appreciating the fact that on perusal of various provisions of the act it is clear that the act is made to correct the wrong and therefore, their provisions of compounding the offences and trying the offences summarily. There is also provision for deciding civil liability. The learned Special Judge has committed an error in coming to the conclusion that the civil liability can be decided only during the trial. By virtue of impugned order the learned Judge refused to decide the civil liability on the ground that he has no jurisdiction since the trial has not yet started. The Special Judge failed to appreciate that for illegal connection of the electricity as per the scheme provided under Section 126 and 127 of the said Act, mechanism is provided for settlement in terms of assessment made by competent authority, similarly, for the offences of theft as provided under Section 135 of the said Act, the mechanism for deciding civil liability is contemplated under Section 154 (5) of the

said Act. It is submitted that, the Maharashtra State Electricity Distribution Company has issued guidelines dated 12th May, 2017 to the Superintendent Engineer MSEDCL in respect of theft of electricity under Section 135 and unauthorized use of electricity under Section 126 of the said Act. The guidelines provide detailed explanation as to how liabilities, assessments etc. are to be computed. Even the method of assessment including low tension consumer had been elaborately explained in the said guide book. It is further submitted that even otherwise the assessment amount in respect of the theft is inaccurate for the simple reason that there has been revision in the electricity tariff vide commercial circular No. 243 dated 3rd July, 2005 issued by MSEDCL. The assessing officer will have no jurisdiction to assess the amount of loss on account of theft or the penalty at his level. The assessing officer cannot make assessment of the amount of theft involved and that would tantamount to giving authority to such officer the power of the special Court constituted for the said purpose. It is submitted that the special Court is empowered to fix the civil liability in respect of such assessed amount under Section 154 (5) of the said Act. The first informant therefore could not have unilaterally assessed the amount related to the theft without following the procedure provided under the Indian Electricity Act. Learned Counsel drew my attention to the provisions of Section 126 of the Electricity Act which relates to unauthorized use of electricity. He also pointed out Section 152 of the Act which provides for compounding of offences and Section 154 of the said Act which relates to the powers of the special Court to determine the civil liability. It is submitted that it is not necessary for the special Court to wait till the final decision in the trial to determine the civil liability. Learned Counsel relied upon the decision of the Allahabad High Court in the case of ***Vinod Sharma and Ors. Vs. U.P. Power Corporation Ltd.***[1]

4. Per contra the learned Advocate appearing for respondent No. 1 supported the order passed by the special Judge. It is submitted that the civil liability can be determined only at the conclusion of the trial. The Court is required to assess the evidence on record and only thereafter the trial Court will be in a position to determine the liability of the applicants. Learned Counsel submitted that there is no need to interfere in the order passed by the special Judge. The learned Judge has assigned the reasons for rejecting the application preferred by the applicant. It is submitted that the application was opposed by respondent No. 1 by filing reply before the special Judge. Considering all the factual aspects of the matter the learned Judge has passed the impugned order and no reason is called

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for to disturb the findings of the said Court. It is submitted that in accordance with the provisions of the Electricity Act, the civil liability has to be determined only during trial of offence. Provisions in Section 135 to 150 are penal in nature. Special Court has been constituted for trying the offences and determination of civil liability and recovery of money from consumer is appears to be integral part of the trial. Therefore, independent civil proceedings may not lie before the special Court. Learned Counsel for the respondent relied upon the decision of this Court delivered in Cri. W.P. No. 394 of 2018.

5. Having heard both the sides, I have also perused the documents on record including the impugned orders, the application filed by the applicant, the reply opposing the said application etc. It can be seen that the First Information Report was registered against the applicant on 29th September, 2017. The applicant thereafter preferred an application for anticipatory bail which was allowed on a condition to deposit 50% of amount to the MSEDCL. Apparently the investigation is in progress and till today charge sheet has not been filed before the competent Court. The applicant preferred an application under Section 154 (5) of the Electricity Act. The applicant also preferred an interim application as the electricity connection is disconnected. The relief sought by the applicant were opposed by the

respondent No. 1 by filing reply it is relevant to note that in pursuant to the application for issuance of summons and the aforesaid application the learned Special Judge passed an order on 3rd February, 2018 wherein, it was observed that the applicant had filed the application as per the provisions of Section 154 (5) of the Electricity Act and therefore, to decide civil liability it is necessary to examine the expert for the assessment of electricity bill. Therefore, Electrical Inspector, solapur was directed to prepare the assessment of electrical charges of the applicant by visiting the industries mentioned in FIR of Latur electricity Police Station and submit the report as per the procedure of law and accordingly the witness was directed to be issued. Thus, from the said order it is apparent that the special Judge had proceeded to adjudicate on the Civil Miscellaneous Application No. 76 of 2017 preferred by the applicant. It is also relevant to note that in pursuant to the directions of the Court the electrical inspector had submitted report dated 19th April, 2018 in compliance with order dated 3rd February, 2018 in respect to assessment of electricity bill in theft case with FIR No. 6343 of 2007 registered with Latur Electricity Police Station. It was stated in the report that the assessment has been done considering MSEDCL commercial circulars No. 184, 133, 175 and 288. Thus, the electrical inspector has also relied upon the said circulars. The respondent No. 1 however filed reply raising objection to the said report and contended that until the final decision is arrived at by the special Court the assessment report submitted by the electrical inspector cannot be taken into consideration. In the aforesaid circumstances, having issued the summons to the witness and calling upon the electrical inspector to submit report which was indeed submitted by the electrical inspector only on the basis of the objections raised by the respondent No. 1, the special Judge ought not to have passed the impugned order holding that the civil liability can be decided only at the conclusion of trial. The Court ought to have proceeded further in considering the report and also proceeding with further procedure as the witness was summoned by the Court. It has to be noted that the respondents have not filed charge sheet and it is not clear when the charge sheet would be filed and the proceedings will commence before the special Court. The applicant had sought the interim relief for reconnection of electricity connection which was disconnected in pursuant to the registration of First Information Report.

6. Where the assessing officer/authorized officer is of a view that theft is involved, even then he would simply have no jurisdiction to assess the amount of loss on account of theft or the penalty at his own level. It is therefore clear that any assessing officer cannot make

assessment of the amount of theft involved as that would tantamount to giving authority to such officer over the Special Court constituted for the said purpose by the said act. Special Court is empowered to fix the civil liability in respect of such assessed amount u/s. 154(5) of the said Act.

7. According to the applicant the First Informant has over reached himself by assessing the amount relating to the theft without following the procedure prescribed under the Act. It is also contended that as per the provisions of the Electricity Act the meter installed in the applicants premises is required to be checked by the Junior Engineer since the consumption of electricity is above 10 KB. The applicant's meter was billed every month and therefore it cannot be said that the meter was tempered or the electricity connection was procured in an unauthorized manner. The complainant while calculating the alleged consumption of unauthorized electricity has estimated the consumption of 21 hours a day whereas the feeder of the electricity board discloses that there was electricity supply only for 8 hours. According to the applicant this clearly discloses that the entire calculations made by the complainant were malafide. It is further contended that as per the guidelines issued by the authorities under the Act, in the event if the illegal connection of the electricity is

found then the consumption has to be taken 60% of the actual load, whereas the complainant has taken it 100% of the load.

8. Under the said Electricity Act, 2003 part XII provides for investigation and enforcement. Section 126 of the said Act provides for the assessment. By virtue of those provisions of sub-section (1) of section 126 it is provided that if on inspection of any place or premises or after inspecting equipments, gadgets, machines, etc. If the assessing officer comes to the conclusion that such a person is indulging in unauthorized use of electricity he shall provisionally assess to the best of his judgment, the electricity charges payable by such person. In accordance with provisions of sub-section 3 of section 126 a person on whom notice have been served has right to file objections against the provisional assessments. Sub -section 5 of section 126 provide the assessing officer if come to the conclusion that if the unauthorized use of electricity has taken place, it shall be presumed that such unauthorized use of electricity was continuing for a period of 3 months immediately preceding the date of inspection in case of domestic and agricultural services for a period of 6 months unless the onus is rebutted by that person. Sub-section 6 of that section provides that the assessment under that section shall be made at a rate equal to half times the tariff applicable for the relevant

category as provided under sub-section 5. Section 127 of the said Act provides for appellate authority against the order passed under section 126.

9. Section 152 of the Act provides for the compounding of the offences, wherein it is provided that the offences can be compounded on payment of the sums as per the table mentioned therein. Part XV of the said act provides for special Court and Section 154 specifically defines the procedure and powers of the Special Court. Sub-section 2, 3 and 4 of section 154 deals with the procedure before the Special Court in conducting the Trial for the offence under the said Act. Sub-Section 5 and 6 of the Section 154 deals with the power of the Special Court to determine the Civil liability which reads thus:-

> *"5) The special Court may determine the civil liabilities 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 or energy or the exact period of theft is determined whichever is less and the amount of civil liabilities so determined shall be recovered as if it were a decree of Civil Court.*
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> *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 of the person, to the Board of licensee or the concerned person, as the case may be shall be refunded by the Board of 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 of the period from the date of such deposit till the date of payment."

As per the state amendment as is applicable in the State of Maharashtra to sub-section 1 of section 154 it read thus :-

"1) notwithstanding anything contained in the Code of Criminal Procedure, 1973 (II of 1974)

(a) every Special Court may take cognizance of an offence without the accused being committed to it for trial; and
(b) every offence punishable under section 135 to 139 shall be triable only by the Special Court within whose jurisdiction such offence has been committed."

On reading the provisions of Section 126 and 135 it apparent that there is a clear distinction between the cases that would fall under section 126 and 136 of the said Act. They operate in different and distinct field and there is no commonality between them. The assessing officer has been vested with the powers to pass provisional and final assessment in case of unauthorized use of electricity and cases of consumption of electricity beyond contracted load. Whereas section 135 operates when the electricity is used dishonestly i.e. theft of electricity.

10. The First Information Report has been registered with the concerned Police Station alleging theft of electricity. In the event, the charge sheet is filed the proceedings will be tried before the special

Court having jurisdiction to try the said offence. Section 154(5) clearly stipulates that, the special Court to determine the civil liabilities against the consumer or persons in terms of money of theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of 12 months preceding the date of detection of theft of energy or the exact period of theft is determined whichever is less and the amount of civil liabilities so determined shall be recovered as if it were a decree of civil Court. Thus, it is clear that the liability is required to be determined by the special Court and not by any other authority. In a given case, if the charge sheet is not filed by prosecuting agency at all the consumer will be remedy. In the circumstances, it is clear that the civil liability which is stipulated under the said provision is independent and that can be determined without the prosecution of the accused for the offence. The fact that the liability so determined shall be recovered as if it were a decree of civil Court itself indicate that these are independent proceedings and it will be open for the Court to determine the civil liability before the trial is concluded. In the case before the Allahabad High Court the decision of which relied upon by the advocate for the petitioner the Court has dealt with a situation in relation to the Section 154(5) of the Electricity Act. In paragraph 17 it has been observed by the Court that the special Court in case of offences falling under Section 135, 140 and

150 of the Act shall determine the civil liability against the consumer or person in terms of money for theft of energy which shall not be less than an amount calculated in terms of the provisions contained in sub-section (5) of Section 154. In the explanation appended to sub-section (6) of Section 154 of the Act, the civil liability has been defined. The civil liability accrues due to commission of offence referred to in the aforesaid provisions. It is not provided that civil liability will be occurred only after conviction of the accused under Section 135. It would be relevant to quote paragraphs 18 to 24 of the said decision :-

> *"18. Section 152 of the Act provides that offence under Section 135 is compoundable and may be compounded on payment of certain amount as provided under Section 152 of the Act. In case the accused deposits the compounding amount the consequence will be that accused deemed to have been acquitted from the charges of electricity theft within the meaning of Section 300 of the Code of Criminal Procedure.*
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> *19. The scope of the provisions of Act does not prohibit assessment of the civil liability under Section 154 of the Act before final verdict is given by the Special Court on complaint filed under Section 135 of the Act. In view of 3rd proviso of Section 135 (1A) it is clear that on payment of assessed amount of electricity charges in accordance with the provisions of this Act, without prejudice to the obligation to lodge the complaint under Section 135 of the*

Act, connection may be restored, this provision also makes it clear that even after restoration of electricity connection by making payment of the assessed amount complaint may be filed and later on civil liability determined under Section 154 by the Special Court would be final amount subject to adjustment of the amount already deposited.

20. The question now arises how the amount of electricity charges would be assessed. This statutory provisions provides that assessment of the same should be in accordance with Act.

21. Section 126 of the Act is not applicable between the parties in view of judgment of this Court delivered in writ petition No. 2813 of 2005 on 29.05.2006 and also in view of the order of ERC dated 9.3.2005. So, the assessment could only be done in the light of Section 154(5) of the Act. The scheme of the Act makes it crystal clear and draw a line in between the trial of offence under Section 135 and for fixation of civil liability, which ought to be considered on different footings.

22. After detection of theft of electricity it was incumbent upon the supplier or the license to disconnect the supply of electricity by the authorized officer. Immediately. This civil consequence will follow only after detection of theft of electricity and not after determination of the guild of such person by Court.

23. Similarly, for restoration of electricity connection the assessed amount to be deposited by the consumer or person suspect of theft of electricity. This also fasten civil liability upon the consumer in case, he wants to get his *connection restored.*

24. As stated earlier the determination of the civil liability under Section 154 of the Act would be after detection of theft of energy and not after determination of the guilt. The order dated 29.05.2006 passed in writ petition No. 2813(M/S) of 2006 has not been challenged by either of the parties and allowed to be final in between the parties. The order makes it clear that power corporation after institution of complaint under Section 135 of the Act assessed the liability and the same shall be realized from the petitioners. Now, the petitioners in view of this also estopped to challenge the recovery proceeding in pursuance of order impugned."

I am in the agreement with the view taken by the Allahabad High Court. In these circumstances, it was permissible for the Special Court to determine the civil liability and it was not necessary for the Court to wait till the conclusion of the trial. As stated hereinabove, the respondents have not filed the charge sheet before the special Court although the FIR was registered on 29th September, 2017. The applicant cannot be left with no remedy as the liability has to be determined in accordance with Section 154 (5) of the said Act. The decision referred to by the Counsel for the respondent is in a different context and the same is not applicable in the present case. For all the reasons stated hereinabove, the application is required to be allowed. Hence, I pass the following order.

ORDER

i) Criminal Application No. 750 of 2018 is allowed.

ii) The impugned order dated 13th June, 2018, passed by the special Judge, Barshi below Exhibit-21 in Civil Misc. Application No. 76 of 2017, is set aside and the special Court is directed to adjudicate the application preferred by the applicant in accordance with law.

iii) The interim application by the applicant be decided within a period of four weeks from today.

iv) Criminal Application No. 750 of 2018, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)