

WRIT PETITION NO.356 OF 2007

V/s.

Maharashtra State Electricity Board and anr. ... Respondents

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Mr. Amit Palkar, APP for the Respondent/State.

CORAM : A.S.GADKARI, J.
DATE : 04th October, 2018

P.C.:

1. By the present petition under Article 227 of the Constitution of India the petitioner has challenged the Order dated 3.8.2006 of issuance of process under Section 135 and 138 of the Electricity Act, 2003 passed by the learned Judicial Magistrate First Class, Pimpri in Regular Criminal Case No.495 of 2006.
2. Heard the learned counsel for the petitioner and the learned APP for the respondent No.2 State. The Respondent No.1 is absent though duly served.
3. The petitioner is an accused in Regular Criminal Case No.495/2006

pending on the file of Judicial Magistrate First Class Pimpri, Pune lodged by respondent No.1 under Sections 135 and 138 of the Electricity Act, 2003. It is the case of respondent No.1. that, their officers conducted raid at the premises of the petitioner on 7.7.2004 and found that the electricity meter of the petitioner was tampered with and the petitioner had committed theft of electricity of Rs.3,20,078/-. Accordingly the present complaint was lodged by respondent No.1 on 9.7.2004. The learned Magistrate by the impugned Order dated 3.8.2006 was pleased to issue process against the petitioner.

4) The record indicates that, after conducting the raid by respondent No.1 issued a provisional bill dated 7.7.2004 to the tune of Rs.3,20,078/-. The petitioner immediately paid the said amount on 9.7.2004 itself by way of demand draft bearing No.178362 drawn on Ratnakar Bank Ltd. Pune and the Deputy Executive Engineer of respondent No.1 has acknowledged the same. Despite the said fact the present complaint is filed on 9.7.2-004 by the Deputy Executive Engineer's Flying Squad of respondent No.1.

4. Section 126 of the Electricity Act, 2003 which was in force at the relevant time i.e. on 9.7.2004 reads as under:-

“Section 126: (Assessment): (1) If on an inspection of any place or

premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such 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 or by any other person benefited by such use.

(2)

(3)

(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him .

. Provided that in case the person deposits the assessed amount he shall not be subjected to any further liability or any action by any authority whatsoever. "

5. The proviso has been omitted from the statute book by an Amending Act bearing No.26/2007 with effect from 15th June, 2007.

Thus, on the date of lodgment of the present compliant i. e. on 9.7.2004 the said proviso was in the statute book and in view of the fact

that, the petitioner had already paid the amount (of Rs.3,20,078/-) claimed by the provisional bill on 9.7.2004 itself, the respondent No.1 ought not have subjected the petitioner to any further liability or any action i.e. lodgment of the present complaint before the learned Judicial Magistrate First Class, Pimpri, Pune.

6. It thus appears that, respondent No.1 has not followed the proper process of law by filing the present complaint. It appears from the record that, respondent No.1 has suppressed the said fact of receipt of payment of Rs.3,20,078/- on 9.7.2004 in the complaint.

In view of the above stated facts of the present case the impugned Order dated 3.8.2006 deserves to be quashed and set aside.

7. Rule granted by an Order dated 25.4.2008 is made absolute.

8. Petition is allowed in terms of prayer clause (b).

(A.S.GADKARI, J.)

Ashok
Sadashiv
Nalawade

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