

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.455 OF 2014
WITH
CRIMINAL APPLICATION NO.898 OF 2014
IN
CRIMINAL APPEAL NO.455 OF 2014**

SURESH GANPATI HALVANKAR)...APPELLANT

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.Niteen Pradhan a/w. Ms.Shubhada Khot i/b. Mr.Ganesh Sovani, Advocate for the Appellant/Applicant.

Mr.Subir Sarkar i/b. Mr.Hrishikesh Mundargi, Advocate for the Appellant in Criminal Appeal No.506 of 2014.

Mr.S.S.Patwardhan, Advocate for the Intervenor.

Mr.S.V.Gavand, APP for the Respondent – State.

Mr.Rakesh Singh a/w. Pushkal Mishra, Arsh Mishra i/b. M.V.Kini, Advocate for Respondent No.2.

CORAM : A. M. BADAR, J.

DATE : 13th FEBRUARY 2018

P.C. :

1 Shri Niteen Pradhan, the learned counsel appearing for appellant Suresh Halvankar, has placed on record certified copy of the order dated 4th January 2018 passed by the Honourable Apex Court in Criminal Appeal Nos.2 of 2018 to 4 of 2018. The same is taken on record and marked as Exhibit “Y” for the purpose of identification.

2 Criminal Application No.768 of 2016 in this appeal was an application for compounding of offences punishable under Section 135 (1)(b)(c)(d) as well as 138 (d) of the Electricity Act, 2003. This court had partly allowed the said application by the order dated 30th March 2017. That order was carried in appeal bearing no.156 of 2018 by appellant Suresh Halvankar before the Honourable Apex Court, and yesterday, Shri Niteen Pradhan, the learned counsel for the appellant, had produced on record the certified copy of the order dated 22nd January 2018 passed by the Honourable Apex Court in I.A.No.117535 of 2017 in the said

Criminal Appeal No.156 of 2018, whereby the impugned order dated 30th March 2017, passed by this court in Criminal Application No.768 of 2016, so far as it relates to rejection of prayer of the party for compounding the offence punishable under Section 138(d) of the Electricity Act, 2003, came to be set aside.

3 Criminal Application bearing No.898 of 2014 in this appeal was filed by appellant Suresh Halvankar for seeking stay to his conviction recorded by the learned trial court for the offence punishable under Section 135(1)(b)(c)(d) of the Electricity Act, 2003, as well as under Section 138(d) of the said Act. This court vide order dated 21st July 2014 (Coram : Mrs.Mridula Bhatkar, J.) was pleased to allow the said application by staying the conviction of the appellant recorded by the learned trial court vide judgment and order dated 3rd May 2014 passed in Special Case No.1 of 2008 between the parties. The said order staying conviction came to be challenged before the Honourable Apex Court in Special Leave Petition No.6656 of 2014 (Criminal Appeal No.3 of 2018) by intervenor Balmukund Vhanugare. The Honourable Apex Court

vide common order dated 4th January 2018 passed in Criminal Appeal Nos.2 of 2018 to 4 of 2018 has been pleased to set aside the order directing stay to the conviction of appellant Suresh Halvankar and further requested this court to reconsider the matter afresh for granting stay to the conviction in the light of decisions in Lily Thomas vs. Union of India and Ors. and Ravikant S. Patil vs. Sarvabhouma Sl. Bagali in accordance with the law.

4 Heard Shri Niteen Pradhan, the learned counsel appearing for the appellant Suresh Halvankar as well as Mr.Patwardhan, the learned counsel appearing for the intervenor Balmukund Vhanugare. Similarly, I have also heard the learned advocate appearing for the Maharashtra State Electricity Distribution Company Limited, as well as Shri Gavand, the learned APP appearing for the State. They all are unanimous in stating that by order dated 22nd January 2018 passed in I.A.No.117535 of 2017 in Criminal Appeal No.156 of 2018 (Suresh Ganpati Halvankar vs. The State of Maharashtra and Ors.) copy of which is

at Exhibit “X” on record of this court, the Honourable Apex Court has set aside the order dated 30th March 2017 passed by this court rejecting the prayer for compounding of the offence punishable under Section 138(d) of the Electricity Act, 2003, and as such, both offence under the said penal provision of the Electricity Act, 2003, stands compounded, and therefore, now nothing survives in this appeal bearing no.455 of 2014. Therefore, the instant appeal be disposed of in view of the order dated 22nd January 2018 of the Honourable Apex Court in Criminal Appeal No.3 of 2018.

5 Relevant paragraph of the order dated 22nd January 2018 passed in I.A.No.117535 of 2017 in Criminal Appeal No.156 of 2018 filed by the appellant/original accused, reads thus :

“It will be seen that both Sections 135 and 138, which impose a maximum sentence of three years, both deal with theft of electricity. The High Court has taken a very narrow view of Section 152 by stating that an offence of theft is related *stricto sensu* to Section 135 since that section alone deals with the offence of theft, but would not specifically refer to Section 138 which only indirectly relates to the

offence of theft. Both the respondent as well as the petitioner before us have moved the High Court stating that Section 138 would also be so subsumed and have continued to argue the same position before us. We are of the view that this is correct in law inasmuch as the language of Section 152 specifically states“an offence of theft” which according to Stroud's Judicial Dictionary, as well as Ramanatha Iyer's Law Lexicon, states that one meaning of 'an' is 'any'. If the word 'any' is substituted for the word 'an' in Section 152, it becomes clear that any offence relating to the theft of electricity is also within the ken of Section 152. Section 138 also relates to theft of electricity, be it through maliciously injuring meters, and is therefore also within Section 152, and can therefore be compounded.

In this view of the matter, we set aside the impugned judgment passed by the High Court. We have been informed by learned counsel for the intervenor that the appellant before us has been prosecuted for perjury and that the proceeding in that behalf is pending. We say nothing about the aforesaid proceedings. In that view of the matter, the appeal stands allowed.

I.A.No.117535 of 2017 is disposed of accordingly.”

6 It is, thus, clear that, by order of this court dated 30th March 2017 in Criminal Application No.768 of 2016, the offence punishable under Section 135(1)(b)(c)(d) of the Electricity Act, 2003, came to be compounded, and subsequently, vide order dated 22nd January 2018, passed by the Honourable Apex Court in I.A.No.117535 of 2017 in Criminal Appeal No.156 of 2018 filed by the appellant Suresh Halvankar, the remaining offence punishable under Section 138(d) of the Electricity Act, 2003, also stands compounded, as the impugned order dated 30th March 2017 rejecting the said prayer to compound the said offence, is set aside by the Honourable Apex Court.

7 This is an appeal challenging conviction and sentence of appellant Suresh Halvankar recorded by the learned trial court in Special Case No.1 of 2008 for offence punishable under Section 135(1)(b)(c)(d) as well as under Section 138(d) of the Electricity Act, 2003, between the parties. Both these offences stand compounded – one by the order of this court dated 30th March 2017 and another by the order of the Honourable Apex Court dated 22nd January 2018.

8 In this view of the matter, Criminal Appeal bearing No.455 of 2014 stands disposed of in terms of order dated 30th March 2017 passed by this court in Criminal Application No.768 of 2016 as well as in terms of order passed by the Honourable Apex Court on 22nd January 2018 in I.A.No.117535 of 2017 in Criminal Appeal No.156 of 2018 filed by the appellant Suresh Halvankar.

9 In view of disposal of the criminal appeal, Criminal Application bearing No.898 of 2014 for stay to conviction does not survive. The same also stands disposed of.

(A. M. BADAR, J.)