

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 681 OF 2018

Sou. Vimal w/o. Murlidharrao Suradkar
Age 75 years, Occ. Household,
R/o. Plot No.40, Ulkanagri, Aurangabad.
Dist. Aurangabad.

... Applicant

Versus

- 1] Police Inspector, Maharashtra State
Electric Distribution Company Ltd.,
Police Station Mastad Jalna.
- 2] Assistant Engineer, Unit of Maharashtra
State Distribution Company Ltd., N-9,
Aurangabad.
- 3] Executive Engineer, Maharashtra State
Electric Distribution Company Ltd.,
Urban Circle, Aurangabad.
- 4] Additional Executive Engineer
Sub Division CIDCO Maharashtra State
Distribution Company Ltd., Aurangabad.

... Respondents

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Mr. Vilas D. Sonwane, for the applicant.
Mr. S.J. Salgare, APP for respondent No.1.
Mr. S.V. Munde, Advocate for respondent Nos. 2 and 3.

**CORAM : T. V. NALAWADE &
K.K. SONAWANE, JJ**
DATE : 12th JULY, 2019.

ORAL JUDGMENT : [PER K.K. SONAWANE,J]

1. Heard. Rule. Rule is made returnable forthwith. Matter is taken up for finality with the consent of learned counsel for parties.

2. The applicant moved the present application, taking recourse to remedy under Article 226 of the Constitution of India and Section 482 of the Cr.PC. for seeking the following substantive reliefs :-

[c] By issuing an appropriate Writ, order or directions, the FIR of Crime No. 1158 of 2017 dated 18.6.2017 registered under Section 135 of Electricity Act 2003 in the MSEDCL Police Station Mastgad, Jalna may please be quashed.

[d] By issuing an appropriate writ, order or directions, the electricity connection of Consumer No. 490010971516 and electric connection taken in the house Plot No.2, Ganesh Housing Society, N-8, CIDCO, Aurangabad may please be restored by directing to respondent Nos. 2 to 4.

3. According to prosecution, on 18th June, 2017, the first informant – complainant Shri Bhimrao Namdeo Kadel, Assistant Engineer, MSEDCL, Aurangabad, filed report to the MSEDCL Police Station, Jalna and alleged that on 17.4.2017, he himself, accompanied with the other employees of the MSEDCL comprising Baburao Gaurkar, Chief Technician, Shri Shivsom Baburao More, Chief Technician, Shri Avinash Babasaheb Khade, Technician, Shri

Deepak Ramesh Dandge and Shri Sanjay Shilwant, Assistant Electrician had been to the house of consumer Smt. Vimal Madhavrao Suradkar for inspection of electric meter. The members of the raiding party carried out the inspection of the electric connection installed in the house. They came across with the circumstances that the service wire of the electric meter was by-passed and electricity was procured directly without its display in the electric meter. There was tapping to the service wire of the MSEDCL. The members of the raiding party drawn panchanama of mischief played with the electric meter. The MSEDCL personnel impounded the tapping wire used for procuring electric energy directly from the service wire. Accordingly, the inspection report was prepared. It was revealed that the consumer – Smt. Vimal Suradkar (present petitioner) tampered with the electric meter and committed theft of electric energy. It was transpired that since last 24 months, the consumer – Smt. Vimal Suradkar committed theft of 8675 units of electric energy worth Rs. 1,34,480/-. The opportunity was given to the consumer for compounding of the offence by making payment of cost of stolen electric energy with compounding charges. But, there was no response from the consumer. Eventually, the complainant – Bhimrao Kadel filed the report to the police for penal action against the consumer under Section 135 of the Electricity Act, 2003.

4. Pursuant to the report, police of MSEDCL Police Station, Jalna, registered the crime No. 1158 of 2017 under Section 135 of the Electricity Act, 2003 and set the penal law in motion. Pending investigation, the applicant

rushed to this court and preferred the present application to redress her grievances.

5. The learned counsel for applicant vehemently submits that the applicant is 75 years old senior citizen, suffering from physical ailments. She was not the occupant and user of the electricity for the alleged premises, where the MSEDCL personnel came across with the tampering of electricity meter for theft of electric energy. According to learned counsel, the premises was given on rent to the tenant Shri D.S. Tupe and since last 3 years, he has occupied the premises as tenant and used the electric energy for residential purpose. The petitioner is not liable for any criminal action as alleged by the MSEDCL. She has not committed any crime nor utilized the electric energy by playing mischief. The learned counsel further explained that as the meter was faulty and there was excessive meter reading, the tenant Shri D.S. Tupe filed repeated complaints to the MSEDCL for replacement of electric meter. However, after lapse of more than 3 months, the electric meter came to be replaced on 24.4.2017 and original meter was kept for laboratory testing. The tenant – Shri D.S. Tupe was asked to remain present at the time of testing of the residential meter, but there was no such inspection carried out in presence of tenant Shri Tupe. Meanwhile, the MSEDCL personnel cast allegations about tapping of service cable of the electric meter for theft of energy. The learned counsel put in question the veracity of the documents of inspection report, panchanama, assessment of cost of energy stolen by committing mischief in the electric meter

etc. The learned counsel submits that the impugned FIR against the applicant is an abuse of process of law. The learned counsel explained the circumstances in detail and submits that the penal proceeding initiated against the applicant be set aside and quashed and the supply of electric energy be restored once again at the residential premises of the applicant.

6. The learned APP and learned counsel appearing for the MSEDCL raised the objection and submits that the applicant committed the theft of electricity by tampering with the electric meter. The applicant was using the electric energy directly by tapping to the service wire of MSEDCL. The documents of inspection report, panchanama, assessment sheet etc. discloses commission of crime under Section 135 of the Electricity Act by the applicant.

7. We have given anxious consideration to the arguments advanced on behalf of both sides. We have also perused the relevant documents produced on record. It is not in dispute that the applicant was the owner and in possession of the impugned premises where the MSEDCL personnel came across with the mischief of theft of electric energy by tampering with the electric meter. It has been alleged that the electric energy was being stolen for residential purposes directly by tapping to the service cable without showing its consumption in the electric meter. The detail inspection report was drawn by the MSEDCL personnel. According to MSEDCL authority, the applicant committed theft of 8675 units of electric energy worth Rs. 1,34,480/-. The

learned counsel for the applicant, much more gave emphasis on the circumstances that the applicant was not user of the electric energy. The alleged premises was given on rent to one Shri Tupe and he had occupied the said premises since last 3 years. According to the applicant, the tenant – Shri Tupe had lodged a complaint about the faulty electric meter showing excessive reading for consumption of electricity. The complaint was under consideration of the authority. Meanwhile, the impugned FIR came to be filed against the applicant.

8. It is to be noted that while exercise of extraordinary jurisdiction under Article 226 of the Constitution of India or the inherent powers under Section 482 of Cr.P.C., it is essential that the said powers should be exercised either to prevent an abuse of process of court of law or otherwise to secure the ends of justice. The interference must be on sound principle and should not be exercised to stifle the legitimate prosecution. The powers being extraordinary one, it has to be exercised sparingly. In the matter in hand, if the allegations made in the FIR against the applicant, are taken on their face value and accepted in entirety, we find that prima facie, the allegations nurtured against applicant are sufficient to constitute an offence under Section 135 of the Electricity Act. The contentions propounded on behalf of applicant that the tenant Shri D.S. Tupe utilized the electric energy for residential purpose, being a tenant etc. all are the factual aspects and required to be tested on the anvil of merit, during the detail trial before the learned trial court. But, at this

juncture, the factual aspects put forth on behalf of the applicant cannot be taken into consideration in favour of applicant. In sequel, we do not find any merit in the contentions advanced on behalf of the learned counsel for the applicant, to exercise the powers under Article 226 of the Constitution of India and Section 482 of Cr.PC. to quash and set aside the penal proceeding initiated against applicant. It cannot be said that the present penal proceeding would be an abuse of process of law and it would cause injustice and prejudice to the applicant. Hence, the application being devoid of merit, deserves to be dismissed. Accordingly, the application stands dismissed. No orders as to costs.

[K.K. SONAWANE]
JUDGE.

[T. V. NALAWADE]
JUDGE

grt/