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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL REVISION APPLICATION NO.259 OF 2019.**

|                                     |                    |
|-------------------------------------|--------------------|
| Usama Najmudin Kazi                 | ] <u>Applicant</u> |
| age adult, Occupation : Business    | ] Original         |
| residing at 201, Humera Apartment   | ] accused No.2     |
| Bunder Road, Kalyan (W)             | ]                  |
| District: Thane                     | ]                  |
| V/s.                                |                    |
| State of Maharashtra                | ]                  |
| at the instance of Police Inspector | ] Respondent       |
| MSEDCL Police Station, Kalyan       | ]                  |

- Mr. Shirish Gupte, Senior Advocate i/by Mr.Mohd Umar Kazi a/w Mr. Ammar, Adv, for the Applicant.
- Mrs. M.H. Mhatre, APP for respondent

**CORAM : N. J. JAMADAR, J.**

**DATE : 4th December, 2019.**

**ORAL JUDGMENT :**

1] With the consent of learned counsels for the parties, heard finally at the stage of admission.

2] The legality, propriety and correctness of the order dated 02.02.2019, passed by the learned Special Judge, on an application for discharge, in Special MSEB Case No.30 of 2012; whereby the learned Special Judge was

persuaded to reject the application of the applicant/ accused No.2, is assailed in this Revision Application.

3] The background of facts leading to this revision application can be stated in brief as under :-

a] The applicant is the owner of the premises being Gala No.2, Shelter House,, bearing Survey No.21, situated at Kon, District: Thane. The applicant had allegedly let out the said premises to accused No.1 Vicky Kadam, by executing a leave and licence agreement on 1<sup>st</sup> March, 2011. The accused No.1 was running a factory in the said premises. On 5<sup>th</sup> July, 2011, pursuant to intimation, inspection was conducted by the Officers of MSEDCL including first informant Ravindra Nahide, Junior Engineer, Kon branch. It was found that the accused No.1 was committing theft of electricity by attaching three additional cables to the incoming supply cable. Hence the first informant lodged report against accused No.1 and the applicant.

b] After completion of the investigation, charge sheet came to be lodged against accused No.1 and the applicant for the offence punishable under Section 135 of Electricity Act, 2003.(for short, “the Act”),

c] The applicant filed application for discharge, inter alia, on the ground that the applicant had let out the premises wherein theft of

electricity was allegedly committed by accused No.1. The applicant had no concern with the alleged theft of electricity. Thus, the applicant cannot be prosecuted for the offence punishable under Section 135 of the Act.

D] The prosecution resisted the application on the ground that the leave and licence agreement was not registered. The electricity connection stood in the name of the applicant. Thus, the applicant, being the consumer, cannot escape liability for theft of electricity.

4] The learned Special Judge, after considering the material on record, including the report under Section 173 of the Code of Criminal Procedure, was persuaded to reject the application holding, inter alia, that the Special Court was also required to determine the civil liability against the consumer or the person who was found responsible for the theft of electricity, under Section 154 (5) of the Act.

5] Heard Mr. Gupte, the learned Senior Counsel for the applicant and Mrs. Mhatre, the learned APP for the State, at some length.

6] It was urged on behalf of the applicant that indisputably the prosecution proceeds on the premise that the accused No.1 was in possession of the premises and, in fact, was the user of the electricity being supplied through the consumer No.013260002443. When the prosecution itself proceeds on the premise that the applicant was the absentee landlord,

he cannot be roped in for the theft of electricity for being the registered consumer only. The learned Senior Counsel invited the attention of the Court to the provisions of Section 135 of the Act; which professes to punish the person who commits theft of electricity by various means. Thus, the learned Special Judge, according to learned Senior Counsel, committed a manifest error in relying on the provisions of Section 154(5) of the Act to arrive at the conclusion that there was sufficient material to frame charge against the applicant.

7] In opposition to this, the learned APP submitted that no fault can be found with the impugned order. It is indisputable that the applicant is the owner of the premises and the subject electric meter stands in his name. Thus, the application was justifiably rejected by the learned Special Judge, urged the learned APP

8] Section 135 of the Act provides for, and punishes, the offence of theft. Whoever dishonestly commits theft of electricity, by various means, is liable to be punished under Section 135. Any person who commits theft, whether he is a consumer or not, is liable for prosecution. Section 135 of the Act does not envisage that only, or at all times, the consumer should be punished for the offence of theft.

9] On the aforesaid touchstone, reverting to the facts of the case, it becomes evident that F.I.R. as well as the statements of witnesses,

including the members of the raiding party, recorded during the course of investigation, reveal that it is the positive case of the prosecution that the accused No.1 Vicky Kadam was in possession of the premises and did commit theft of electricity by employing device - three additional cables to incoming supply cable. The Spot Inspection report also names accused No.1 Vicky Kadam as the user of the electricity. The bill dated 6<sup>th</sup> July, 2011, which came to be raised subsequent to the detection of the theft of electricity, also names accused No.1 as the user. This leads to an inescapable inference that prosecution alleged that the theft of electricity was committed by accused No.1 Vicky Kadam. Conversely, there is no allegation that the premises was in the actual occupation of the applicant and the latter consumed the electricity. The question of non-registration of the leave and licence agreement pales insignificance in view of the positive case of the prosecution that accused No.1 was using the electric supply through the meter which stood in the name of the applicant.

101] The support sought to be drawn by the learned Special Judge, from the provisions of sub Section (5) of the Section 154 of the Act 2003, also appears to be misplaced. Section 154(5) of the Act 2003 reads as under :-

“154(5) The [Special Court shall] determine the civil liability 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 of energy or the exact period of theft if determined whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of Civil Court.”

12] From the text of aforesaid sub-section, it becomes evident that the legislature has taken care to provide that civil liability can be determined against a consumer or a person, in terms of money, for theft of energy. The inclusion of words “consumer or person”, addresses the situation where person other than the consumer is found to have committed theft of electricity. The possibility of determination of civil liability, thus, hinges upon the proof of the fact that theft of electricity was committed. In the facts of the instant case, the tenor of the prosecution was that the accused No.1 Vicky Kadam had committed theft of electricity.

13] In this view of the matter, the learned Special Judge, committed an error in recording a finding that there was sufficient material to frame charge against the applicant. In the totality of the circumstances, the charge against the applicant appears to be groundless.

Hence, the following order

#### Order

- i] The Revision application stands allowed.
- ii] The order passed by the learned Special Judge, Thane in

Special MSEB Case No.30 of 2012, stands set aside.

iii] The applicant/accused No.2 stands discharged from the prosecution for the offence punishable under Section 135 of the Electricity Act, 2003.

iv] The Revision application stands disposed of accordingly.

**[N. J. JAMADAR, J.]**