

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1113 OF 2019
WITH
CRIMINAL APPLICATION NO. 1114 OF 2019

Abutalib Shamshuddin Khan ... Appellant

V/s.

The State of Maharashtra and Anr ... Respondents

Mr. Pranav Bhadega a/w. Mr. Shubham Agrahari I/by Anoma Law Group LLP for the Appellant.

Mr. Rahul Sinha I./by DSL Legal for Respondents.

Mr. S.R. Agarkar- APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J

DATED : 8TH AUGUST, 2019.

P.C. :

1. Heard.
2. This is an application filed under Section 389 of Cr.P.C. The applicant herein is seeking suspension of substantive sentence imposed upon the applicant and the fine amount by the District Judge-6 and Additional Sessions Judge, Thane in Special Case MSEB No. 343 of 2006, vide judgment and order dated 3rd July 2019, thereby convicting the applicant for the offences punishable under Section 135 of Electricity Act and Rigorous Imprisonment for two years and fine of Rs. 1,26,50,000/- (Rs. One Crore Twenty Six Lakhs Fifty Thousand Only), in default, Simple Imprisonment for one year. The Applicant is in

custody since 3rd of July 2019.

3. With the assistance of the respective counsel this Court has gone through the notes of evidence as well as the specific provision under the Maharashtra Rules framed by the Maharashtra State Electricity Board (Conditions and Miscellaneous Charges) for Supply of Electrical Energy. It appears from the record that on 14th January 2004 the Flying Squad had been to the premises of the applicant. That, he was allotted high power meter of 10(40) Megawatts for manufacturing of Plastic Sheet. It was further noticed that although there was electricity supply, there was no meter reading of the said meter since it was tampered. As per the Rule No. 31-E of the said rules the Flying Squad has disconnected the electricity, given a procedure of assessment to the applicant which was to the tune of Rs.52,65,430/- including the surcharge @ 25%. The officer of the Flying Squad had lodged the F.I.R. under section 154 of Cr.P.C. and set the law into motion thereby the copy of the same was given to the applicant according to the prosecution. It appears from the F.I.R. that the Flying Squad has submitted the Joint Inspection Report, Assessment Sheet, Spot Inspection and two electricity meters along with a cable wire of about 5 feet. According to the prosecution, the 2nd meter was installed hardly 2 to 4 months prior to 14th January 2004 and on the date of the raid the supply of electricity had not commenced in the newly installed meter i.e. the 2nd meter.

4. At the time of trial PW-3 has deposed before the Court the meters and wires which were produced in the police station at the time

of lodging the F.I.R. were not produced in the Court. At the same time, the Executive Engineer was examined by the prosecution as PW-2 Pandurang Hundekari. He has deposed before the Court that the electricity bill of accused was revised in February 2007 the arrears were Rs. 23,17,782/- and it was corrected as Rs.16,99,963/-. He has further deposed that since 2004 i.e. the date of raid the supply to the said meter was permanently disconnected. As per CPL registered at Exh.41 the arrears amount is Rs.15,05,619.78/- as a principle and an amount of Rs.50,913.50/- is in arrears of interest.

5. The learned counsel for the Respondent No. 2 i.e. Maharashtra State Electricity Distribution Company Limited (MSEDCL) submits that in fact this amount is in addition to the amount that was assessed on 14th January, 2004. However, in deposition PW-2 has not stated a single word about addition of Rs.2 Crores along with interest.

6. The learned APP has submitted that it is true that in the complaint the Deputy Executive Engineer, Flying Squad, Pen has submitted that the Executive Engineer, Kalwa Division has submitted in the complaint that the Executive Engineer, Kalwa Division shall determine the final amount of theft of electricity by doing proper audit. This by itself would show that according to the Executive Engineer PW-2 the total amount as assessed in the year 2007 would at the most be Rs.15.55 lakhs and some odd amount.

7. The learned counsel at this stage vehemently submits that this calculation is as per the Consumer Personal Ledger (CPL).

However, it is seen that the said amount was revised in February 2007 and the assessment was for 3 years prior to it, there is no clarity as to that was the actual amount of assessment. Moreover, the tampered meters were not placed before the Court to enable the Court to ascertain as to how the tampering was done and what was the correct procedure. In fact, upon determining the tampering of the meter Flying Squad could have issued a notice under Section 126 of the Indian Electricity Act. Besides filing a report under Section 154 of Cr.P.C. to enable the applicant to get the electricity supply started upon depositing 20% the act also provided for giving the final assessment within 30 days to enable the consumer to file an appeal within 30 days.

8. Be that as it may, the learned counsel for the Respondent No. 2 fairly submits that all these ambiguities have occurred because the rules were framed and made effective from 01.01.1976 and were amended upto 07.02.2001. However, there was an amendment in the year 2003. The learned counsel has submitted that the act was amended in the year 2003 except Section 121 and provisions were brought into effect from 10 of June 2003. It was in these circumstances that the Flying Squad and officer was in dilemma to take action under sections 126 or 135 but as per the amended act he was bound to act under Section 135 of the Electricity Act. In the present case according to the Flying Squad the theft of electricity was proved because the meter was not recording the supply of electricity.

9. In view of the discussion, made hereinabove in the present case the amount of fine imposed by the Sessions Court deserves to be suspended. **The same may not be taken as a precedent as it is in the facts of the present case. Hence, the following order:-**

ORDER

- i) The Criminal Applications are allowed.
- ii) The substantive sentence as well as sentence of fine imposed upon the applicant vide judgment and order dated 03/07/2019 by the learned District Judge-6 and Additional Sessions Judge, Thane are hereby suspended.
- iii) The applicant be enlarged on bail on furnishing PR. bond in the sum of Rs.2,00,000/- (Rupees Two Lakhs only) and one or more sureties in the like amount.
- iv) The applicant be enlarged on bail on provisional cash bail in the sum of Rs.2,00,000/- (Rs. Two Lakhs Only) and he shall furnish bail bond and security/securities within six weeks.
- v) The applicant shall cause his presence before the learned Sessions Court, Thane once in six months on the date assigned by the learned District Judge-6 and Additional Sessions Judge, Thane.

vi) Upon failure to attend any two consecutive dates, the the District Judge-6 and Additional Sessions Judge, Thane shall make report to the High Court and the prosecution would be at liberty to seek cancellation of bail.

vii) The applications stand disposed of.

2. Parties to act an authenticated copy of this order.

(SMT. SADHANA S. JADHAV, J)