

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.151 OF 2022

M/s.Diamond Ice Factory,
Partnership Firm through its partners,
Badrudin Nanji Alechiya, Age 53 years,
Survey No.85/6, Village Majoli Parol,
Bhwandi Road, Virar (E),
Tal.Vasai, District Palghar.

Applicant

versus

1. Maharashtra State Electricity Distribution
Company Limited, Palghar.

2. Rajeshsingh Madhosingh Chavan,
Superintending Engineer, M.S.E.D.C.L
Vasai Division, Deepashri, Bldg.No.19,
Vasai Road (E), Tal.Vasai, Dist.Palghar.

3. The State of Maharashtra.

Respondents

Mr.N.V.Sawant, Advocate for Applicant.
Ms.Udita Saxena i/by DSK Legal for Respondent nos.1 and 2.
Mr.A.d.Khamkhedkar, APP, for Respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 19th July 2022

PC :

1. Applicant is aggrieved by order dated 7th January 2022 passed by learned Additional Sessions Judge, at Vasai on Exhibit-4 in Other Miscellaneous Criminal Application No.3 of 2021 directing applicant to deposit 50% of the theft amount with respondents for getting re-connection of electricity to their premises.

2. On 4th November 2021 the respondent no.2 lodged FIR No.1054 of 2021 against applicant and its partners u/s.135, 138, 150

of Electricity Act. It was alleged that secret information was received that theft of electricity was going on in the premises of applicant. On receipt of information, the officials of respondent no.1 visited Ice Factory of applicant on 30th October 2021 for the purpose of checking electric meter. The meter was found in working condition. It was noticed that two C.T metering seals were found doubtful and therefore C.T were removed for checking under panchanama. It was revealed that a kiosk through which secondary wiring are connected to the C.T are of non Epaxi company. The circuits were not the part of the secondary wiring but it was inserted by applicant and said circuits were controlled by remote control. Due to installation of circuit although load was 223 KW, the meter was showing consumption of less electricity by about 80 to 90 KVA. Hence it was confirmed that applicants were committing theft of electricity.

3. Applicant filed application u/s.154(5) of Electricity Act before Special Court, Vasai for determination of civil liability. Applicant filed interim application vide Exhibit-4 seeking interim relief of re-connection of electricity. Respondent no.1 filed reply to the application. Learned Judge passed impugned order dated 7th January 2022.

4. Learned advocate for applicant submitted that theft bill issued by respondents is excessive and exorbitant and not calculated as per provisions of law. Civil liability cannot be more than Rs.10,82,683=68 Ps. if the period of theft is considered as 5 months and Rs.25,48,195/- if the period of theft is considered as 12 months. Learned Judge has committed error by directing the applicant to deposit 50% amount which shall be Rs.2,46,99,230/-. Even if theft

bill is forwarded considering the period of theft as 59 months, then also the electricity theft bill shall come at Rs.1,26,89,545/-. The Court failed to appreciate that as per Section 154(5) of Electricity Act, the maximum period of theft which can be taken for calculation is 12 months. If for calculation the period considered is for 12 months, the theft bill could of Rs.25,48,195/-. While issuing bill it is stated that it has been issued as per Section 135 of Electricity Act. Section 135 has no application in the instant case. Assessment carried out by Assessing Officer u/s.135 of Electricity Act is always subject to correction by Special Court while determining civil liability as per provisions of Section 154(5) of Electricity act. The civil liability is nothing but the revised assessment carried out by the Court in the light of evidence brought by either party and the said calculated civil liability cannot be in addition to the assessment carried by officer of Board. The civil liability cannot be more than Rs.10,82,683=68, if the period of theft is considered to be of five months and it cannot be more than Rs.25,48,195/- if the period of theft is considered to be 12 months.

5. Learned advocate for applicant has relied upon decision of High Court of Punjab & Haryana in the case of **Ramesh Chand and others Vs. Uttar Haryana Bijli Vitran Nigam Limited and others** (Civil Writ Petition No.13209 of 2013, dated 19th January 2016).

6. Respondent nos.1 and 2 have filed reply opposing reliefs sought in this application. Learned advocate for respondents submitted that there is no illegality in the order dated 7th January 2022. Respondent no.1 had issued detailed guidelines for assessment of theft of electricity bill by Commercial Circular dated

15th February 2015. Regulation 10.1 of Maharashtra Electricity Regulatory Commission would govern theft of electricity. It is provided that pending adjudication by appropriate Court, the distribution licensee or supplier shall restore the supply line of electricity within forty eight hours of payment of assessed amount without prejudice to the obligation to lodge the complaint. The assessment shall be made at a rate equal to twice the tariff applicable to the category of services and for the actual period of theft. The application filed by applicants was only concerned with re-connection of electricity. The contention of applicant that respondent no.1 can claim compensation for six or 12 months is erroneous. Learned advocate for respondent nos.1 and 2 have relied upon decision of this Court in the case of **Samadhan Arun Doifode Vs. Maharashtra State Electricity Distribution Co. Ltd and another** (Criminal Application No.750 of 2018, dated 7-8-2018).

7. The issue involved in this application is based on the calculation with regards to the amount to be deposited for restoring electricity supply. Applicant has been directed to deposit 50% of the amount against provisional bill for Rs.4,93,98,460/- as a condition precedent for restoration of electricity supply at the ice factory. The main application is filed u/s.154(5) of Electricity Act for determining the civil liability in respect of applicant against the alleged provisional bill of Rs.4,93,98,460/- issued by respondent no.1 along with prayer for restoration of electricity supply until prayer for civil liability is determined. Learned Sessions Judge has decided application Exhibit-4 which was a separate application for restoration of supply of electricity. In the impugned order it is observed that words 'restoration of supply line of electricity' are appearing only in

the last proviso to the sub-section (1-A) of Section 135 and it is *de hors* the provision under Section 154. There is no other provision or reference to the restoration of the supply line of electricity anywhere in the Act except u/s.135. Therefore equating the provision of civil liability with the amount that is stipulated for restoration of the supply line of electricity is completely fallacious. The amount for restoration of the supply line of electricity is stipulated in the last proviso to the sub-section (1-A) of Section 135 and the said proviso is quite unambiguous. Application for restoration should have been filed under proviso to sub-section (1-A) of Section 135 and not as an interim application u/s.154. The last proviso of sub-section 1-A mentions that provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment. Learned Judge has observed that said proviso does not refer to any civil liability.

8. According to the applicant, the amount of theft bill would come to Rs.10,82,683=68 if connected load is taken as 134 KW, load factor as 0.4, number of hours per day as 21 and number of days per month as 25 and period of theft 12 months, then theft units would have come at 3,37,680 units. The billed units for 12 months are 1,54,620. Thus deducting the billed units of 1,54,620 from the total theft units of 3,37,680, the net theft units shall be 1,83,060 units. On multiplying the said net theft units of 1,83,060 by twice the tariff rate, the net theft bill shall be Rs.25,48,195/-. Thus, the bill issued by respondents to the tune of Rs.4,93,98,460/-

is very high and excessive. If the period of theft is considered as five months, the civil liability cannot be more than Rs.10,82,683=68 and if the period of theft is considered as 12 months, the bill could be Rs.25,48,195/-.

9. The main application regarding civil liability is pending. The Court had disposed off the application relating to restoration of electric supply. Without entering into major controversy and considering the submissions of both sides, the applicant could be directed to deposit amount of Rs.25,48,195/- and if said amount is deposited, the electricity supply can be restored.

ORDER

(i) Criminal Application No. 151 of 2022 is allowed.

(ii) The order dated 7th January 2022 passed by District and Additional Sessions Judge at Vasai in Criminal Other Miscellaneous Application No. 3 of 2021 to the extent of directing the applicant to deposit 50% of the amount against provisional bill amount of Rs. 4,93,98,460/- as a condition precedent for restoration of electric supply at the ice factory of the applicant is set aside and the applicant is permitted to deposit sum of Rs. 25,48,195/-.

(iii) On depositing the amount of Rs. 25,48,195/- the electric supply to the ice factory of applicant at Survey No. 85/6, Village Majoli, Parol, Bhiwandi Road, Virar (E), Taluka Vasai, District Palghar having electric connection bearing consumer No. 004979044050 be restored.

(iv) The aforesaid order shall be subject to the final decision in application preferred by applicant under Section 154(5) of Electricity Act, 2003.

(v) Criminal Application stands disposed of.

(PRAKASH D. NAIK, J.)

MST