

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APL) NO. 1185 OF 2021

Akash s/o Deepak Soitkar,
Aged about 25 years, Occupation : Student,
r/o Malipura, Ner, Tq. Ner, District
Yavatmal

APPLICANT

VERSUS

1 State of Maharashtra, through Police Station :
Officer, Police Station, Darwah, Tah.
Darwah, District Yavatmal

2 State of Maharashtra through Police Station
Officer, Police Station, Ner, Tah. Ner,
District Yavatmal

RESPONDENTS

3 Dinkar Atmaram Nagpurkar,
Aged about 54 years, Occupation :
Additional Executive Engineer, Flying
Squad, MSEDCL, Yavatmal, District
Yavatmal

Mr. J.B. Kasat, Advocate for Applicant

Mr. M.J. Khan, A.P.P. for Respondent Nos.1 and 2

Mr. S.V. Purohit, Advocate for Respondent No.3

CORAM : MANISH PITALE AND
G.A. SANAP, J.J.

DATE : 19th AUGUST, 2022

ORAL JUDGMENT (PER : Manish Pitale, J.)

Heard.

2. **ADMIT.** Heard finally by consent of the learned counsel
appearing for the parties.

3. By this application, the applicant is seeking quashing of First Information Report (FIR) bearing No.744/2021, dated 02/09/2021, registered at Police Station Darwaha, District Yavatmal, for offence under Section 135 of the Electricity Act, 2003, insofar as the applicant is concerned.

4. The aforesaid FIR stood registered against the applicants and another accused person for alleged theft of electricity. It is alleged that when the flying squad of the Maharashtra State Electricity Distribution Company Limited reached the residential house, wherein the applicant was residing, it was found on inspection that there had been theft of electricity of about 3360 units, amounting to Rs.90,700/-. On this basis, the said offence stood registered against the applicant and another accused person.

5. It is the case of the applicant that due to lockdown imposed in the backdrop of the Covid-19 pandemic, the applicant, who was otherwise resident of Pune had come to reside with his father at the said residential house in Ner, when the Flying Squad inspected the said house.

6. Mr. Kasat, learned counsel appearing for the applicant submits that without prejudice to the contention of the applicant that he cannot

be arrayed as an accused for the aforesaid offence in the facts and circumstances of the present case, the applicant had offered to compound the offence under Section 152 of the aforesaid Act. It is submitted that the said amount of Rs.90,700/-, pertaining to alleged theft of electricity was already paid and the applicant is ready to pay the compounding charges, which even according to the informant / complainant come to an amount of Rs.8000/-. Attention of this Court was invited to Section 152 of the aforesaid Act, to contend that since admittedly this is the first offence alleged against the applicant under the provisions of the said Act, there ought not to be any impediment for compounding the offence. On this basis, it is submitted that the present application may be allowed.

7. On the other hand, Mr. S.V. Purohit, learned counsel appearing for respondent No.3 vehemently submitted that if the contention raised on behalf of the applicant is accepted it may have a wide ranging impact and any person similarly situated like the applicant may seek relief, despite having indulged in theft of electricity. The learned counsel invited attention of this Court to the definition of the expressions “consumer” under Section 2(15) of the said Act and “person” under Section 2(49) of the said Act to emphasize that not only owner of the property in question but any person consuming electricity or found in

the premises can certainly be proceeded against under the provisions of the said Act.

8. Mr. M.J. Khan, learned Assistant Public Prosecutor has appeared on behalf of respondent Nos.1 and 2.

9. We have considered the submissions made on behalf of the rival parties. Instead of going into the aspect as to whether the applicant, who claims to have come to stay in the property in question due to lockdown, could be hauled up under the provisions of the said Act or not, we are referring to the aspect of compounding of offences, as provided under the aforesaid Act itself.

10. Section 152 of the said Act reads as follows ;

“Section 152. (Compounding of offences): --- (1) Notwithstanding anything contained in the Code of Criminal Procedure 1973, the Appropriate Government or any officer authorized by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table below:

TABLE

Nature of Service	Rate at which the sum of money for compounding to be collected per Kilowatt (KW) / Horse Power (HP) or part thereof for Low Tension (LT) supply and per Kilo Volt Ampere
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(KVA) of contracted
demand for High Tension
(HT)

(1)	(2)
1. Industrial Service	twenty thousand
2. Commercial Service	rupees;
3. Agricultural Service	ten thousand rupees;
4. Other Service	two thousand rupees;
	four thousand rupees:

Provided that the Appropriate Government may, by notification in the Official Gazette, amend the rates specified in the Table above.

(2) On payment of the sum of money in accordance with sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any Criminal Court.

(3) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer empowered in this behalf empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973.

(4) The Compounding of an offence under sub-section (1) shall be allowed only once for any person or consumer.”

11. Sub-section 4 of Section 152 provides for compounding of offence, only once for any person or consumer. This indicates that if the applicant in the present case is covered in either of the expressions i.e. “person” or “consumer”, compounding could be permitted at least once. In the present case, admittedly, the applicant has been proceeded against for offence under the provisions of the said Act for the first time.

He has also offered to pay the necessary amount for compounding of the said offences.

12. It is also significant that subsection (3) of Section 152 of the said Act specified that acceptance of sum of money for compounding of offences in accordance with the provisions of the said Act, shall amount to an acquittal within the meaning of Section 300 of the Code of Criminal Procedure. This is crucial in the present case, because we find that the applicant is a young man of about 25 years of age and we are told that he is an MBA graduate.

13. In view of the above, in the interest of justice, we are of the opinion that Section 152 of the said Act can be invoked for compounding of the offence. As a consequence, the FIR in the present case, can not only quashed, but, under Section 152(3) of the said Act, it would be deemed to be an acquittal under Section 300 of the Cr.P.C.

14. In view of the above, we allow the present application by directing that the applicant shall pay amount of Rs.8000/-, towards compounding charges. We have specified the said amount, in the light of the fact that in the oral report lodged by respondent No.3, who is an Additional Executive Engineer, Flying Squad, MSEDCL, it is stated that the compounding amount comes to Rs.8000/-.

15. The said amount shall be deposited by the applicant within two weeks from today in the office of the respondent No.3. Upon deposit of the said amount towards compounding of the offence, as specified under Section 152 of the said Act, subject FIR shall stand quashed as against the applicant in the present application.

16. The application is allowed in above terms.

17. It is clarified that this order is passed in the peculiar facts and circumstances of the present case.

(G.A. SANAP, J.)

(MANISH PITALE, J.)

MP Deshpande