

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

228

CRA-S-4279-SB-2014(O&M)
Date of decision:26.07.2022

ASHWANI KUMAR

....Appellant

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Angat Parmar, Advocate for
Mr. Munish Puri, Advocate
for the appellant.

Ms. Amarjit Kaur Khurana, DAG, Punjab.

Mr. Parminder Singh, Advocate
for PSPCL.

VINOD S. BHARDWAJ. J. (ORAL)

The present appeal has been preferred against the judgment dated 17.09.2014 passed by the Additional Sessions Judge-cum-Judge Special Court, Gurdaspur in case bearing FIR No.15 of 09.02.2010 registered under Section 135 of Electricity Act, 2003 at Police Station Anti Power Theft Verka Amritsar, wherein the appellant was convicted for commission of the offence punishable under Section 135 of the Electricity Act, 2003 and was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.2,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of 01 month.

The matter was taken up on 21.11.2019, wherein the learned counsel for the appellant was made a statement to the effect that during the

pendency of the first appeal, the appellant has deposited the entire outstanding amount along with the compounding fee as per the treasury challan dated 07.09.2017 and thus the offence in question was liable to be compounded. Notice was issued to the Punjab State Power Corporation Limited (hereinafter referred to as 'PSPCL') to verify the said fact. Pursuant to the said notice, the PSPCL have been represented in the present case.

Mr. Parminder Singh, Advocate appears on behalf of respondent-PSPCL and has made a specific statement in the Court that the requisite charges along with the compounding fee have actually been deposited by the appellant on 05.04.2016 and the compounding fee was deposited on 07.09.2017 by way of a treasury challan. He further contends that the PSPCL has no objection to the compounding of the offence in view of the provision contained in Section 152 of the Electricity Act 2003.

I have heard learned counsel representing the respective parties. The relevant statutory provision viz. Section 152 of the Electricity Act reads as under:-

*“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

<i>Nature of Service</i>	<i>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 (KVA) of contracted demand for High Tension (HT)</i>
(1)	(2)
<i>1. Industrial Service</i>	<i>twenty thousand rupees;</i>
<i>2.Commercial Service</i>	<i>ten thousand rupees;</i>
<i>3.Agricultural Service</i>	<i>two thousand rupees;</i>
<i>4. Other Services</i>	<i>four thousand rupees:</i>

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 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.”

A perusal of the same shows that the aforesaid provision empowers the compounding of offence notwithstanding anything contained in the Code of Criminal Procedure. Even though the language of Section 152 of the Electricity Act deals with the power of the appropriate Government to compound the offence, however, the same by itself would not oust the jurisdiction of the Court to permit the compounding of the offence once the requisite terms of compounding as per statute have been satisfied.

The object of the legislature in permitting compounding has always been to resolve the issues rather than sentencing people to custody. The legislature aimed to penalize a violator and not to punish or detain him. The door to a voluntary resolution of the dispute by a party cannot be shut merely because the resolution happened at an appellate stage. It could never have been a legislative intent to prohibit compounding after trial. The language deployed in Section 152 of the Electricity Act, 2003 supersedes anything contained in Cr.P.C and does not qualify the stage upto which compounding may be permitted. An authority would be deemed to be vested with the power to permit compounding unless the statute prohibits the same.

The Hon'ble Supreme Court, in the matter of Suresh Ganpati Halvankar Vs. State of Maharashtra & Ors in Criminal Appeal No.156 of 2018 decided on 22.01.2018, had held that there is no prohibition of the matter being compounded during the pendency of the appeal. The relevant extract of the same reads as under:-

4. *“It will be seen that both Sections 135 and 138, which impose a maximum sentence of three years, both deal with theft of electricity. The High Court has taken a very narrow view of Section 152 by stating that an offence of theft is*

related stricto sensu to Section 135 since that Section alone deals with the offence of theft, but would not specifically refer to Section 138 which only indirectly relates to the offence of theft. Both the respondent as well as the petitioner before us have moved the High Court stating that Section 138 would also be so subsumed and have continued to argue the same position before us. We are of the view that this is correct in law inasmuch as the language of Section 152 specifically states "an offence of theft" which according to Stroud's Judicial Dictionary, as well as Ramanatha Iyer's Law Lexicon, states that one meaning of 'an' is 'any'. If the word 'any' is substituted for the word 'an' in Section 152, it becomes clear that any offence relating to the theft of electricity is also within the ken of Section 152. Section 138 also relates to theft of electricity, be it through maliciously injuring meters, and is therefore also within Section 152, and can therefore be compounded.

5. *In this view of the matter, we set aside the impugned judgment passed by the High Court. We have been informed by learned counsel for the intervenor that the appellant before us has been prosecuted for perjury and that the proceeding in that behalf is pending. We say nothing about the aforesaid proceedings. In that view of the matter, the appeal stands allowed."*

The Hon'ble Supreme Court as well as this Hon'ble Court has held in plethora of judgments that the finest hour of justice is an end to a litigation and that where the parties have allowed good sense to prevail upon themselves and have resolved the same. The process of law is expected to step in aid of ensuring complete resolution of the dispute amongst the parties.

Furthermore, in the case of **Ramgopal And Another Vs State of Madhya Pradesh 2021 SCC Online SC 834** , the Hon'ble Supreme Court

has taken into consideration the settlement that had been arrived at between the parties, even when the matter was pending before the Appellate Court and has allowed compounding.

Taking into consideration the resolution of the dispute as the compounding fee in terms of Section 152 of Electricity Act, 2003 has already been paid along with the requisite charges and penalty leviable by the PSPCL under the Electricity Act and the Rules framed thereunder, no purpose would be served by keeping the present proceedings pending. Hence, the parties are permitted to compound the offence under Section 152 of the Electricity Act, 2003.

The judgment of conviction and sentence dated 17.09.2014 passed by the Additional Sessions Judge-cum-Judge Special Court, Gurdaspur in case bearing FIR No.15 dated 09.02.2010 registered at Police Station Anti Power Theft Verka Amritsar, is set aside and the appellant stands acquitted.

The present appeal is allowed.

(VINOD S. BHARDWAJ)
JUDGE

26.07.2022

Amandeep

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>