

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.106 OF 2021

MEHBOOB KHAN S/O. USMAN KHAN
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Petitioner : Mr. T. Y. Sayyed
APP for Respondents: Mr. S. P. Sonpawale

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CORAM : R.M. JOSHI, J

DATE : SEPTEMBER 08, 2023

PER COURT :

1. This Petition takes exception takes exception to the charge framed by the learned Special Court in Special (Electricity) Case No. 85/2020 for the offences punishable under Sections 135(B), 135(B) and Section 138(B) of Electricity Act (for short '**the Act**').

2. Learned Counsel for the Petitioner submits that there is absolutely no material on record to frame charge against the Petitioner on all three counts. It is his submission that from the charge-sheet it does not appear that there is no allegation of commission of theft of electricity against accused persons. Thus, according to him, for this reason offence punishable under Section 135(b) has no application. With regard to

the charge framed under Section 135(b), it is submitted that in absence of any material to show that possession of the meter was without consent of the owner, the charge is not tenable. Third charge framed against him is under Section 138(b). In this regard, it is submitted that for attracting the said offence, unauthorized re-connection of meter is essential. Thus, it is his submission that charge framed against the Petitioner does not sustain.

3. Learned APP opposed the said contention by referring to the first information report and statements recorded during the investigation. It is his submission that the meter concerning the electricity company is found in the possession of Petitioner, which *prima facie* sufficient to indicate the commission of offence. He further states that the offence is also attracted under the provisions of Section 138(d) of the Act.

4. At the outset, it needs to be recorded that no charge has been framed against the Petitioner under Section 138(d) of the Act, hence, submission made by learned APP in this regard need not be considered.

5. As regards the charge under Section 135(b) is concerned, the pre-requisite for framing of said charge is theft of electricity. Perusal of Section 135(1)(b) of the Act indicates that whoever tampers the meter whereby the electricity is stolen or wasted is said to have committed offence. With regard to said, in absence of any theft of electricity is done by the Petitioner, the said offence does not get attracted against Petitioner. In so far as offence under Section 138(b) is concerned, in absence of allegation that he unauthorizedly reconnected any meter, the same charge also could not have been framed.

6. As regards the offence punishable under Section 136(b) of the Act is concerned, perusal of Section 136(b), which reads thus:

Section 136 : Theft of electric lines and materials.

(a) xxx

(b) stores, possesses or otherwise keeps in his premises, custody or control, any electric line, material or meter without the consent of the owner, whether or not the act is committed for profit or gain

Above provision clearly demonstrates that whoever dishonestly possess, stores or even keeps in

his premises any meter or material not with consent of owner, whether or not act is committed for profit or gain, is said to have committed offence. In the instant case, there is material on record to indicate that the electric meter belonging to the Electricity Company was possessed by the present Petitioner. As far as the contention of the learned Counsel for the Petitioner that in absence of any material to indicate that without consent of the owner the said possession is found, the offence is not made out, it needs to be recorded that Petitioner does not claim ownership of electricity meter which are found with him along with other material including parts thereof. There is no dispute about the fact that the articles seized from Petitioner are not meters or material un-connected with distribution of electricity.

7. The law on the point of framing of charge against accused is fairly settled. Hon'ble Apex Court in case of Union of India Vs. Prafulla Kumar Samal (1979) 3 SCC 4 has held that at the stage of framing of charge i.e., at initial stage there is strong suspicion which leads the Court to think that there is ground for

presuming that the accused has committed an offence. Thus, it is not open for the Court to say that there is no sufficient ground to proceed against accused. In case of State Of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors, 1992 Supp(1) SCC 335 it is observed by Apex Court that if strong suspicion exist in the mind of the Court at the stage concerned, then same is sufficient to frame charge against accused. Having regard to the law settled, this Court finds no infirmity in finding of charge under Section 136(b) of the Act against Petitioner.

8. In view of above discussion, Petition deserves to be partly allowed. Resultantly, charge framed against Petitioner under Section 136(b) of the Act is maintained. Rest of part of the impugned order dated 16.12.2020 is set aside. It is clarified that these observations are made *prima facie* for the decision of this Petition and learned trial Court not to get influenced by the same during trial.

(R.M. JOSHI, J.)