

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

CRIMINAL REVISION APPLICATION NO.358 OF 2005

**MAHARASHTRA STATE DISTRIBUTION CO LTD
VERSUS
STATE OF MAHARASHTRA AND ANR**

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Mr. A. S. Bajaj, Advocate for the Applicant.
Mr. S. P. Deshmukh, APP for Respondents-State.
Mr. A. G. Talhar, Advocate for Respondent No.2.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : 03rd OCTOBER, 2023.

PER COURT:-

1. The original complainant, Maharashtra State Distribution Company Limited impugns the judgment and order of acquittal dated 09.08.2004 in Special Case No.7/2004 passed by the VI Ad-hoc A.S.J. Jalgaon.

2. Heard the learned Advocate appearing for the applicant, learned APP for the respondent-State and the learned Advocate for respondent no.2.

3. Perused the order passed by the learned Assistant Sessions Judge in Special Case No.7/2004. The learned Assistant Sessions Judge observed that Section 135 of the Electricity Act, 2003 (amended) (for short 'the Act, 2003') provides for offences and powers of the officers for conducting an enquiry and investigation in case of dishonest abstraction of electricity. Section 151 of the Act, 2003 provides for filing of the complaint by the authorized officer. It is further observed that the offences under Sections 135 and 138 of the Act, 2003 are non-cognizable and

members of the Flying Squad can file complaint as required under Section 151 of the Act, 2003. In that view of the matter, the learned Magistrate is not competent to take cognizance when accused was charge-sheeted by the police officer. In fact, the police authorities ought to have followed the provisions under Section 255 (2) of the Criminal Procedure Code instead of filing charge-sheet based on their own investigation contrary to the provisions of special case. Accordingly, acquitted the accused persons vide Section 235 (2) of the Criminal Procedure Code for the offences punishable under Sections 135 and 138 of the Act, 2003.

4. The learned Advocate appearing for the applicant fairly states that the offences as alleged could not have been investigated by the police or the learned Magistrate could not have taken cognizance of such offence based on police report.

5. Considering the legal position appearing from the provisions of the Act, 2003, there is no scope to entertain the Criminal Revisions Application against the acquittal recorded by the learned Assistant Sessions Judge. In that view of the matter, Criminal Revision Application sans merit and is accordingly dismissed.

(S. G. CHAPALGAONKAR)
JUDGE