

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

932 CRIMINAL WRIT PETITION NO.2022 OF 2019

**LAXMIKANT S/O. RANGNATH SWAMI
VERSUS
THE STATE OF MAHARASHTRA AND ANR**

Mr.S.P. Katneshwarkar, Advocate for the petitioner.

Mrs.D.S. Jape, APP for the respondent/State.

Mr. A.S. Shelke, Advocate for respondent No.2.

**CORAM : KISHORE C. SANT, J.
DATED : 05.01.2023**

PC :-

01. This petition takes an exception to the order passed by the learned Additional Sessions Judge, Basmatnagar, rejecting 'C' final summary report filed by the Investigating Officer and allowing protest petition filed by the informant-complainant. The informant who happens to be an Assistant Engineer in MSEDCL, Basmathnagar has filed complaint with the Police Inspector, Basmathnagar (City) Police Station against the petitioner for theft of electricity, under section 135 of the Electricity Act, 2003. It is stated that at the time of raid on the water plant belonging to the petitioner, it was found that he had taken connection illegally directly from low tension wire. It was further stated that this was the second time when the petitioner is found to have committed such type of offence. The complaint was lodged on

22.04.2019. The Investigating Officer again called respondent No.2 for recording supplementary statement on 14.06.2019. In the supplementary statement, it is recorded that the offence is registered by misunderstanding as the petitioner did not pay electricity bill of Rs.39,420/-. However, subsequently it was learnt that the said amount is paid. On the basis of this supplementary statement, the Inspector filed 'C' summary report. Notice was issued. On receiving notice, the informant filed protest petition in the Sessions Court, saying that the alleged supplementary statement dated 14.06.2019 taken by the Investigating Officer was not voluntary but it was taken under pressure by the Investigating Officer. He, therefore, filed protest application dated 03.08.2019. He clearly stated that under section 152(4) of the Electricity Act, 2003, offence can be compounded only once and in this case since already there is one offence pending bearing No. 303 of 2018 dated 08.10.2018, there is no question of not prosecuting the petitioner for the theft of the electricity. The learned Sessions Court by considering the legal position and after hearing necessary parties was pleased to pass an order directing to proceed against the petitioner by registering Special Case against the petitioner under section 135 of the Electricity Act.

02. It is submission of the petitioner that in view of the supplementary statement dated 14.06.2019 the Investigating Officer had rightly submitted 'C' summary report. There was no protest petition as such filed by the informant. He simply sent a communication addressed to the Sessions Judge. It was neither supported by the affidavit, nor it was properly filed in the Court. He had only communicated that there is one more offence that was already pending and therefore there is no compounding permissible for the second offence. He had also annexed commercial circular No.132 dated 13.01.2011 along with the communication. The circular is based upon section 152(4) clarifying that compounding of offence of theft of electricity shall be permitted only once for any person or consumer. The learned Sessions Judge, after considering all the relevant provisions including the provision of section 152(4) of the Electricity Act, concluded that the present offence being second time offence, cannot be compounded and passed the impugned order. In the submission of learned Advocate for the petitioner, this was not permissible. It would be choice of the accused as to which offence is to be compounded. In his submission, he was ready to accept the liability and to pay amount in the second offence.

03. Learned Advocate for respondent No.2 vehemently opposed the petition. He supports the order passed by the learned Additional Sessions Judge. He submitted that in view of section 152(4) of the Electricity Act, it will have to be considered that it permits the compounding of the offence i.e. only committed for the first time. The benefit of this cannot be given to the accused, if he is found committing the same act for the second time, when the earlier offence is pending trial. He submits that it is only first offence that can be compounded. The wording of section will not permit accused to choose as to which of the offence he wants to compound.

04. Learned APP submitted that necessary orders be passed, considering the legal position.

05. For deciding this petition, this Court needs to consider section 152(4) of the Electricity Act, which reads as below :-

“Section 152. Compounding of offence -

(1) xxx

(2) xxx

(3) xxx

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

06. From the wording of sub-section (4) it is clear that compounding of offence under sub-section (1) shall be allowed only once for any person or consumer. In this case, it is not in dispute that both the offences i.e. 303 of 2018 and present offence are in respect of same person or the consumer. The compounding though is permissible, is permissible only for once. The intention of the legislature appears to give benefit of compounding only once to any person or consumer. The benefit can be extended only once presumably to avoid harsh action for the first time. However, if the same person is found committing same act again and again, certainly harsh action needs to be taken as it would show that the person is habituated to commit offence of theft of electricity. Therefore, he will have to be dealt with stringent action.

07. The only question falls for consideration is as to whether the compounding can be permitted as per choice of the accused, if he is found to have committed theft of electricity for more than once. Naturally, the word 'once' will have to be taken as first time offence. Otherwise it would lead to interpretation that the person can commit same offence for number of time

and later on may say that one of those would be compounded as per his sweet will. Section 135 of the Act specifically makes theft of electricity as offence, where the penal consequences are provided. Therefore, it will have to be taken that provision needs to be interpreted strictly. The learned Trial Court has rightly considered this aspect. The circular is only clarificatory in nature and is issued for the purpose of convenience of the officers of the MSEDCL and it is only for the purpose of understanding the modality as to how to handle the cases under section 135 of the Electricity Act. It does not take away any power and give any other interpretation to the provision.

08. Considering all above facts, this Court comes to the conclusion that the learned Additional Sessions Judge, Basmathnagar has not committed any illegality. There is no perversity found in the order. As such, no case is made out to cause interference with the order under Article 227 of the Constitution of India. The petition, thus, fails and is therefore dismissed.

[KISHORE C. SANT, J.]