



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 481 OF 2005

Vinod S/o. Mannalal Jain,
Age : 45 years, Occu. : Business,
R/o. Bazar Peth, Songir,
Dhule, Taluka and District Dhule.

... Appellant

Versus

The State of Maharashtra

... Respondent

....
Shri Anand P. Bhandari, Advocate for Appellant
Smt. Chaitali Chaudhari – Kutti, APP for Respondent - State
....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 11 NOVEMBER 2024

PRONOUNCED ON : 13 NOVEMBER 2024

JUDGMENT :-

1. In this appeal, there is challenge to the judgment and order passed by 1st Ad-hoc Additional Sessions Judge and Special Judge, Dhule dated 20.06.2005 passed in Special Case No. 137 of 2004 recording guilt of appellant for offence punishable under section 138 of the Electricity Act.

BRIEF FACTS OF THE CASE

2. PW1 Narendra, Assistant Engineer in Maharashtra State Electricity Board (M.S.E.B.) on 14.01.2004 visited house of appellant

for detection of theft of electricity. While checking the electric meter affixed at the residence, he noticed meter being tampered, cut out the electric supply was continued, but joint was given to the incoming service wire attached to switch board. Resultantly, supply was not passing through electric meter and as such meter was not recording the reading of consumption of electricity, and therefore, he lodged complaint Exh.10.

On the strength of above complaint, crime was registered for offence punishable under sections 135 and 138 of the Electricity Act and investigation was carried out by PW5 P.H.C. Ramesh, who after gathering evidence, charge-sheeted accused.

Learned 1st Ad-hoc Additional Sessions Judge / Special Judge, Dhule framed charge, explained it to the accused and conducted trial vide Special Case No. 137 of 2004. On appreciating the evidence, case of prosecution has accepted as proving the charge under section 138 of Electricity Act and guilt was accordingly recorded.

Feeling aggrieved by the above judgment and order, instant appeal has been preferred.

SUBMISSIONS

On behalf of Appellant :-

3. The learned counsel, who pleaded innocence and alleged false implication and criticizing the judgment for erroneous appreciation, submitted that, at the outset, no offence has been made out either for section 135 or section 138 of Electricity Act. He pointed out that, learned trial Judge acquitted accused from the charge under section 135 of Electricity Act i.e. commission of theft of electricity, but erred in convicting appellant for the charge of section 138 of Electricity Act in absence of cogent and reliable evidence to that extent.

4. He pointed out that, at the threshold meters were standing in the name of appellant. Secondly, there is no cogent and reliable evidence that meter was tampered with sole intention of committing theft of electricity. Learned counsel took this court through the evidence of complainant and also through the cross faced by him. He further pointed out that, independent witnesses like panchas have not supported prosecution. That, there is no corroboration to the evidence of complainant. According to him, for establishing offence of such nature, there has to be expert's evidence, but the same is missing here. He also took this court through the

evidence of PW3 Nana as well as answers given by him in cross and would submit that necessary ingredients for attracting the charges are patently missing.

5. Learned counsel further submitted that, even otherwise respondent has accepted compounding charges on 17.01.2004. That, the statute itself provides for compounding. He took this court through the provisions laid down in section 152 of Electricity Act and further took this court through the judgment of the Hon'ble Apex Court in the case of ***Suresh Ganpati Halvankar v. State of Maharashtra and Ors.*** in I.A. No.117535 of 2017 in Criminal Appeal No.156 of 2018 arising out of SLP(Cri.) No.3670/2017 as well as the judgment of this Court (Nagpur Bench) in the case of ***Akash S/o. Deepak Soitkar v. State of Maharashtra through Police Station and Ors.*** in Criminal Application (APL) No.1185 of 2021 and points out that, learned trial Court erred in holding that only section 135 of Electricity Act is compoundable and not section 138 of Electricity Act and resultantly, on the strength to the same, prays to allow the appeal.

On behalf of Respondent – State :-

6. Learned APP objected by pointing out that, though meter

in question stood in the name of father of appellant, said father is already expired and electricity authorities are issuing bill in the name of appellant. That, during visit and inspection, PW1 Narendra noticed tampering with the electricity meter and its panchanama was drawn at the spot. That, evidence of complainant has remained intact. Therefore, learned trial court committed no error in holding charge to be proved. However, she fairly conceded that, statute itself provides compounding and in this case appellant had paid necessary charges and authorities have accepted the same.

EVIDENCE ON RECORD

7. After considering the submissions of both sides and on going through the papers, it seems that, prosecution was launched against present appellant on receipt of **PW1** complainant Narendra, an Assistant Engineer with M.S.E.B. department. He has set law into motion, alleging that, during visit to the shop and residence of appellant, he noticed two electric connections i.e. one to the shop and another to the house. The connection to the shop was found to be intact, but to the electric meter affixed at residence joint was given to the incoming service wire attached to the switch board and electric meter was not reading of unites, and therefore, after drawing panchanama, he lodged report Exh.10.

While under cross, he admitted that accused has deposited the bill served to him as well as compounding charges calculated by M.S.E.B. office. He also admitted that, after depositing the charges by accused, he himself submitted report to reach Superior Officer as well as to police. Rest is all denial.

8. Admittedly, as pointed out **PW2** pancha has not supported the prosecution.

9. **PW3** Nana, Clerk in the M.S.E.B. office and who was said to be accompanying complainant, stated that, electricity supply was diverted by tampering the electric meter by taking direct supply and electric meter seal was found to be broken.

While under cross there is omission about seal to be broken. He admitted that, there was no seizure of cut out and switch board. He admitted that, supply wire was having no concerned with electric meter. He admitted that at periodic intervals billing clerk visited house of accused and there was no complaint by any such clerk for taking direct supply. He admitted that, electric meter itself was not seized and according to him meter was 'OK'.

10 **PW4** Vijay the pancha, who did not support the prosecution.

11. **PW5** Ramesh is the Investigating Officer.

ANALYSIS

12. Admittedly, on complaint of PW1 Narendra charge was framed for sections 135 and 138 of Electricity Act, which provides for theft of electricity as well as for causing injury or tampering with the electric meter. Learned trial Judge has already acquitted accused from the charge under section 135 of Electricity Act, but conviction is recorded for section 138 of Electricity Act.

13. The fundamental ground for allowing the appeal which is pressed into service is that, not only section 135 of Electricity Act, but even section 138 of Electricity Act is permitted to be compounded by invoking section 152 of Electricity Act. Learned counsel pointed out that, trial court has also admitted about section 135 of Electricity Act to be compoundable, but learned trial court has refused to compound section 138 of Electricity Act in spite of electricity authorities accepting compounding charges. In support of his submissions that even section 138 of Electricity Act to be compoundable, he has placed on record ruling of Hon'ble Apex Court in the case of ***Suresh Ganpati Halvankar (Supra)*** and the relevant observations of the Hon'ble Apex Court are as under :-

“..... 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.”

14. Therefore, when M.S.E.B. authorities have accepted the bill and compounding charges, in view of provision laid down in section 152 of Electricity Act, there is no reason to refuse relief as prayed. Hence, I proceed to pass the following order :-

ORDER

- I) Criminal Appeal stands allowed.
- II) The conviction awarded to Vinod S/o. Mannalal Jain in Special Case No.137 of 2004 by the 1st Ad-hoc Additional Sessions Judge/Special Judge, Dhule on 20.06.2005 for the offence punishable under Section 138 of the Electricity Act stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under Section 138 of the Electricity Act.
- IV) The bail bonds of the appellant stand cancelled.

- V) The fine amount deposited, if any, be refunded to the appellant after the statutory period.
- VI) It is clarified that there is no change as regards the order in respect of disposal of *muddemal*.

[ABHAY S. WAGHWASE, J.]