



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

CRIMINAL WRIT PETITION NO. 300 OF 2020

Babasaheb Tukaram Bhagwat And Others

.. Petitioners

Versus

Maharashtra State Electricity Distribution
Company Ltd. (MSEDCL) Through Its
Deputy Executive Engineer

.. Respondent

Mr. H. D. Deshmukh, Advocate for the Petitioners.

Mr. S. V. Mundhe, Advocate for Respondent.

CORAM : KISHORE C. SANT, J.

DATE : 02nd JULY, 2025.

PER COURT :-

. Heard learned advocate for the petitioners and learned advocate for respondent. Taken up for final disposal at the stage of admission by consent of the parties.

2. Present petitioners have approached this Court seeking quashment of private complaint filed by the respondent in the Court of learned District and Additional Sessions Judge, Newasa bearing Special Case No. 295/2019. The respondent/complainant - a company, established under Companies Act lodged a complaint through Deputy Executive Engineer, Newasa against these petitioners

under Section 135 of the Electricity Act, 2003 (for short “the Act”) alleging that the petitioners have committed theft of electricity by taking unauthorized connection from low tension wire thus have committed offence under Electricity Act. The complaint is for theft and for recovery of civil liability towards loss caused to the complainant.

3. The learned advocate Mr. Deshmukh for the petitioners mainly raises questions that the complaint was not filed within limitation in view of proviso to Section 135 of the Act, secondly the person who lodged the complaint was not a person competent and authorized by the company to lodge the complaint and thirdly the complaint is not filed with the Police Station as required under the law. The learned advocate argued that, in fact, there was already a complaint filed in the year 2012 where the electricity supply was disconnected by taking recourse to powers under Section 56 of the Act alleging that the petitioners have committed default in payment. When the electricity was disconnected in the year 2012 itself, there was no question of any connection or civil liability in the year 2019. However, the complaint came to be lodged on 23.11.2019 showing the cause of action as 14.09.2018. He submits that, even it is after

more than a year of the cause of action.

4. In support of his contentions Mr. Deshmukh, learned advocate invited attention of this Court to proviso to Section 135 of the Act wherein, it is provided that, a person authorized by the company has to file a complaint within 24 hours before the Police. On the point of proviso he submits that the Court could not have taken cognizance of the complaint since it was not filed with the Police Station . Even if it is not filed in Police Station, it should have been filed within 24 hours. He further submits that, the proviso also requires that complaint be filed only by a competent person. He relies upon the judgment in the case of Vijay Bhagwan Shetty Vs. State of Maharashtra anr. reported in 2008 BCI 82. He further relies upon the judgment in the case of Ranbir Singh s/o. Gurucharan Singh Chandok Vs. Police Station Officer, Maharashtra State Electricity Distribution Company Limited reported in 2022 DGLS (Bom.) 4562. He thus submits that, a case is made out to quash the proceedings of the complaint.

5. Learned advocate Mr. Mundhe for respondent vehemently opposes the petition. He submits that the action in the year 2012 was taken by taking recourse of the provisions of Section 56 of the

Act. Section 56 of the Act is not a penal provision and therefore, there is no question of any cause of action being arisen to take criminal action by filing a complaint. He further submits that, by way of Maharashtra Amendment section 151 is replaced which provides that cognizance of offence can be taken upon a complaint in writing made by appropriate Government or appropriate commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or a licensee or the generating company as the case may be. He submits that, Clause B provides that, the cognizance can be taken upon a police report of facts which constitutes an offence. He thus submits that, it is not a requirement of law that complaint be filed with the Police Station in view of this amendment. There is no bar to file a complaint directly in the Court. He submits that, clauses A and B are in the nature of either or. So the cognizance can be taken by the Court even on a private complaint or upon Police report. He submits that the complaint is filed by the authorized person. For the purpose of showing that the complaint was filed by authorized person he relies upon Commercial Circular No. 46 of the respondent dated 16.10.2006 wherein, the powers are given to the authorities mentioned in the schedule of the notification which includes Deputy

Engineer. He thus submits that, the cognizance is rightly taken by the Court.

6. So far as limitation is concerned, he submits that, the limitation is only for filing complaint in the Police Station and not for filing a complaint before the Court. He relies upon the judgment in the case of **Rohit Vs. BSES Rajdhani Power Ltd.** in Criminal M.C. No. 3635/2009 (Delhi High Court). He further relies upon the judgment of this Court in the case of **Tukaram s/o Pandurang Lalpotu Vs. The State of Maharashtra** reported in **2016 All MR (Cri.) 4624** in support of his submissions.

7. On hearing the parties the question before this Court is as to whether in the present case the complaint is filed within limitation. Secondly, as to whether the person who filed a complaint is competent or is a person authorized by the complainant and thirdly, as to whether the Court has rightly taken cognizance of a private complaint when no complaint was filed in the Police Station.

8. Section 151 as amended by Maharashtra Amendment Act reads as under :

Section 151. (Cognizance of offences):

No court shall take cognizance of an offence

punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officers authorized by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose.

¹[Provided that the court may also take cognizance of an offence punishable under this Act upon a report of a police officer filed under section 173 of the Code of Criminal Procedure, 1973:

Provided further that a special court constituted under section 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial.]

9. The learned advocate for respondent also relied upon the commercial circular No. 46. The present petition needs to be considered in view of amended Section 151 of the Act and Commercial Circular No. 46 circulating notification dated 26.09.2006 issued by the Deputy Secretary to the Government of Maharashtra in exercise of powers conferred by sub-section (2) of section 135 of the Act. A list of the officers who are authorized to file complaint under Section 135 of the Act is given. At serial No. 1 the authorized officers mentioned are Executive Engineer and Deputy Executive Engineer of Flying Squad (Vigilance and

Security)/Executive Engineer/Superintendent Engineer/Chief Engineer from operation and maintenance of concerned area of MSEDCL and Deputy Executive Engineer and Junior Engineer Commercial Intelligence Units of MSEDCL in respect of high tension consumers. At serial No. 2 the authorities are Deputy Executive Engineer/Executive Engineer of Sub Division Office, Assistant Engineer, Assistant Engineer (Vigilance Squad), Deputy Executive Engineer (Testing) of MPECSL in respect of low tension consumers).

10. In the case of **Rohit** (supra), High Court of Delhi has considered the scope of power under Section 482 of the Code of Criminal Procedure and the categories of the cases where High Court may exercise power under it. The Court held that, when a complaint is still pending and the complainant is yet to lead evidence after the appearance of accused persons, it is still open for the complainant to produce on record documents and satisfy the Court as regards the authority of the person.

11. In the case of **Tukaram s/o Pandurang Lalpotu** (supra), this Court specifically considered Sections 135 and 138 of the Act. The case was in respect of illegally extracting electricity. A cognizance was taken by the Magistrate. The said order was challenged with

this Court as it is only the Sessions Judge and the Additional Sessions Judge appointed can take cognizance. In that view the Magistrate was directed to transfer the complaint to Special Court. The question was only about as to which Court can take cognizance. The Court held that, it is the Special Court who has to take cognizance. In the present case, it is the Sessions Court which has already taken cognizance.

12. In the case of Zuber Baig s/o Kalim Baig Vs. The State of Maharashtra Through Public Prosecutor, High Court, Aurangabad in Criminal Application No. 2568/2005, this Court considered Section 151 of the Act as amended by Maharashtra Amendment Act.

13. In the case of Ranbir Singh s/o Gurucharan Singh Chandok (supra), a complaint was lodged in the Police Station. On that basis FIR was lodged. There the case was of tampering of meter. There was no material averment to show that it is the petitioner therein who tampered the electric meter and in that view the complaint was quashed and set aside by the Division Bench.

14. In the case of Vijay Bhagwan Shetty (supra), this Court considered the question of limitation in view of Section 151 of the

Act. It is held that the complaint must be filed by the person authorized by a company. The Court considered the definition of word complaint as given in Section 2-D of the Code of Criminal Procedure. The Court held that, though the definition of complaint and the Court is not given in the Act, however, it needs to be seen that, the complaint should not be inconsistent with the definition given in Code of Criminal Procedure.

15. So far as first question of limitation is concerned, by looking at Section 151 as replaced by Maharashtra Amendment it is seen that, the limitation of 24 hours to lodge the complaint is provided when complaint is to be lodged with the Police. In the present case, case of theft is not lodged with the Police. The complaint in the present case is filed directly in the Court. The limitation of 24 hours is thus not applicable when the complaint is to be filed in the Court. The submission of the petitioners so far as limitation is concerned, is thus without any merit and needs to be discarded.

16. So far as second question is concerned, the complaint is filed by the Deputy Executive Engineer, Division Newasa of MSEDCL. In the complaint itself it is stated that, when he was working as Deputy Executive Engineer at Newasa, vigilance department, he was

directed to take action in respect of theft of electricity. Thus, the second question as to whether the complaint was authorized by the complainant. This Court holds that the complainant was competent/authorized by the complainant.

17. Third question about taking of the cognizance by the Court depends upon earlier two questions. This Court has already come to a conclusion that the complaint is filed within limitation by a person duly authorized by the complainant. So far as taking of cognizance of private complaint is concerned, this Court needs to see as to whether the order of issuance of process shows application of mind and whether the Court has rightly passed the order of issuance of process. In the complaint there are sufficient averments making out the offence.

18. On considering above, this Court records that the learned Sessions Judge has rightly passed the order. The order shows that the learned Sessions Court was satisfied that *prima facie*, a case is made out under Section 135 of the Act and upon that issued process against the accused. Thus, on merits also this Court does not find any illegality on the part of the Court issuing process.

19. Considering all above, this Court finds that, in the present case, all the three questions are answered in favour of the respondent. This Court holds that, a complaint was rightly lodged within limitation by a person authorized by the complainant. The cognizance is also rightly taken by the learned Sessions Judge. No case is made out calling for interference at the hands of this Court. The writ petition, therefore, deserves to be dismissed and the same is hereby dismissed.

(KISHORE C. SANT, J.)

PS.B.