



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPEAL NO.264/2010

The State of Maharashtra,
through P.S.O. Walgaon,
Dist. Amravati.

...APPELLANT

VERSUS

Gulab Ali Sayyad Bannu,
aged about 54 yrs.,
R/o. Bajarpura Walgaon,
Dist. Amravati.

...RESPONDENT

Mrs. S.V. Kolhe, APP for appellant/State.
Mr. A.P. Chaware, Advocate for respondent-sole.

CORAM : **M. M. NERLIKAR, J.**
JUDGMENT RESERVED ON : 06.10.2025
JUDGMENT PRONOUNCED ON : 15.10.2025

JUDGMENT :

Heard.

2. The appeal is directed against the judgment and order dated 27.11.2009 passed by the learned 2nd Additional Sessions Judge, Amravati passed in Special Case (Elect) No.22/2008, wherein the accused i.e. present respondent is acquitted for the

offence punishable under Sections 135 and 138 of the Electricity Act, 2003.

3. Brief facts:-

The Flying Squad visited Ice Factory of the accused on 15.06.2006, which included the informant and other members. The accused/respondent is running the said Ice Factory. The Electricity Meter was inspected by the Flying Squad in presence of the accused. It was found that the meter was tampered with. On conducting the pulse test, it was found that the meter was running slow by 73.68% as compared to regular running of meter. Inspection report was prepared in presence of witness and the respondent, meter was opened and it was found that there were three resistances in PVC cover. Accordingly, a detailed Panchanama was drawn, inspection report was prepared and meter was seized. Thereafter, it was found that there was theft of electricity of 8768 units during the period of last 24 months thereby, causing financial loss to the tune of Rs.46,032/- to the Electricity Company. Accordingly, on 19.06.2006, the FIR was registered vide Crime No.3034/2006

for the offence punishable under Sections 135 and 138 of the Electricity Act. After completing the investigation by the Investigating Officer, charge-sheet came to be filed against the respondent. Cognizance was taken by the learned Judicial Magistrate First Class, Court No.11, Amravati, however the case was transferred by an order dated 20.12.2007 to the Special Court. Accordingly, the charge was framed at Exh.7. The same was read over and explained to the accused in the vernacular language. Accused pleaded not guilty and claimed to be tried.

4. In order to substantiate the case, the prosecution examined as many as three witnesses namely PW-1 Mr. Shrikant Deshmukh (informant), PW-2 Mr. Suresh Dhawale (Vigilance Officer of the Company) and PW-3 Rahul Kujare, (panch witness) After leading the evidence, the Trial Court acquitted the respondent. It is against this judgment, the present appeal is preferred by the appellant/State.

5. I have heard both the parties. The learned APP submitted that the prosecution has proved the guilt of the accused beyond reasonable doubt, however on a technical

ground, the accused was acquitted. The electricity was stolen by the respondent and when the Flying Squad went to the Ice Factory of respondent and it was found that the meter was tampered with. Further, the pulse rate in pulse test conducted using external resistive load was found to be low with reference to the load and it was running slow by 73.68%. After following the entire procedure like preparation of Panchanama and inspection of the Electricity Meter, the FIR was registered. She further submitted that the prosecution has proved through evidence of PW-1 that there was theft of 8768 units which is to the tune of Rs. 46,032/- and though PW-3 was declared hostile, however the case was proved by PW-1 and PW-2. She contended that the lodging of FIR by the PW-1 assuming he is not authorized to lodge the report then also upon such report, if the cognizance is taken by the competent Court then it would amount to an irregularity and not illegality. Accordingly, she prayed to allow the appeal and convict the accused.

6. On the other hand, learned counsel for the respondent submitted that the very foundation of the FIR by an unauthorised person is not tenable, as PW-1 is not authorized to lodge the report as per Section 151 of the Electricity Act and Courts' below ought not to have taken cognizance under such circumstances. He further submitted that the prosecution has utterly failed to prove the case beyond reasonable doubt. He invited my attention to the cross-examination of PW-1 which mentions the date of inspection of the Electric Meter as 15.06.2006, whereas FIR was registered on 19.06.2006 i.e. 4 days later. Further, it has been admitted in the cross-examination by PW-1, that the meter was with him for 4 days. The learned counsel for respondent argued that from the date of disconnection of the electricity, the FIR is to be lodged within 24 hours in view of Section 135(1A) of the Electricity Act and the delay in lodging of the FIR creates suspicion about the story of prosecution. Lastly, he submitted that there is no merit in the appeal and the same be dismissed.

7. Upon hearing the rival contentions, an important question is raised, whether PW-1 was a proper authority to lodge the FIR as contemplated under Section 151 of the Electricity Act? In order to answer this question, it would be necessary to consider the evidence of PW-1. Admittedly, FIR was registered by the PW-1 being a member of the Flying Squad. In cross-examination, he has admitted the fact that he had not placed any document to show that he was empowered to inspect the Electric Meter and he did not produce any document before the Police while lodging the report showing his authorisation to lodge the report on behalf of the Company. He deposed in the cross-examination that he is in-charge Deputy Executive Engineer. Under such circumstances, it would be necessary to mention at this stage that Section 151 of the Electricity Act was amended and State Amendment for Maharashtra State came into effect on 23.06.2005. The offence was registered on 19.06.2006. It would be useful to reproduce Section 151 of the Electricity Act as under:-

*“151. Cognizance of offences- No Court shall take cognizance of an offence punishable under this Act except,-
(a) upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorised by them or a Chief Electrical Inspector or an Electrical Inspector or a licensee or the generating company, as the case may be, for this purpose, or
(b) upon a police report of facts which constitute an offence:*

Provided that, such police report is based on the First Information Report filed by a person who is authorised to file a complaint (a)”

8. It could be gathered from reading of Section 151 that the FIR can be lodged in writing by an Appropriate Authority or Appropriate Commission or any of their officer authorized by them or a Chief Electricity Inspector or an Electrical Inspector or Licensee or the Generating Company, as may be the case. If the categories which are mentioned in Clause(a) of Section 151 are complied with then the Court shall take cognizance, however, except these authorities, if any other officer registers the FIR then authorization contemplated under Clause(a) would be mandatory. If there is no authorization to such officer or authority then the Court cannot take cognizance of an

offence punishable under the Electricity Act. With this background, if designation of PW-1 is seen which is in-charge Deputy Executive Engineer and therefore, he is not an appropriate Commission or was not authorized by the Chief Electrical Inspector or Electrical Inspector or Licensee or the Generating Company, hence he was not competent to lodge the FIR.

9. Taking cognizance goes to the root of the matter, when the officer himself is not competent to lodge the FIR. Under such circumstances, it can be said that there is a violation of Section 151 of the Electricity Act.

10. As argued by the learned APP that this is mere irregularity and not illegality cannot be accepted and under such circumstances, the Court below could not have taken the cognizance of the offences punishable under Sections 135 and 138 of the Electricity Act. The aforementioned illegality being a fundamental flaw in taking cognizance is directly in violation of provisions and therefore, cannot amount to an irregularity. Therefore upon consideration of the above discussion, in my

humble opinion, the entire trial is vitiated. As taking cognizance is not an empty formality especially when there is an express bar and the provision expressly provides for the competent officer to lodge the FIR. The aforesaid provision cannot be bypassed in view of rider under Section 151 of the Electricity Act.

11. Considering the above facts and circumstances of the case, this Court holds that PW-1 was not competent to lodge the FIR and consequently taking cognizance by the Court, vitiated the trial. The Trial Court without considering the very aspect of taking cognizance, has only touched on the merits of the case by holding that the prosecution has utterly failed to prove the case. In this view of the matter, following order is passed:-

(I) Appeal is dismissed.

(M. M. NERLIKAR , J.)