

**(2009) 03 GUJ CK 0021**

**In the Gujarat High Court**

**Case No :** Misc. Criminal Application No. 13863 of 2007

Barot Vitthalbhai Damodardas

APPELLANT

Vs

Natwarbhai Umedbhai Patel and Another

RESPONDENT

**Date of Decision :** 26-03-2009

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482  
Electricity Act, 2003 — Section 135

**Citation :** (2009) 2 GLH 135 : (2009) 3 GLR 1974

**Hon'ble Judges :** Jayant M. Patel, J

**Bench :** Single Bench

**Advocate :** Divyesh A. Joshi, for the Appellant; S.N. Sinha and Public Prosecutor, for the Respondent

## Judgement

Jayant Patel, J.—The short facts of the case appears to be that the petitioner is the landlord of a shop No. 61 of Laxmi Shopping Centre, Modasa. The electricity connection vide No. 24501/05367/J was granted by the Electricity Company to the said landlord. The petitioner has rented the shop to one Patel Pankajkumar Bhikhabhai and he is in occupation of the shop since 18-1-2006 and is running the business in the name of Maa Ambe Wooden Works. It appears that as per the Electricity Company-original complainant, on 17-4-2006, the inspection was made of the electricity connection and it was found that there was some alleged irregularities in the service line wire and as per the Electricity Company, it could be termed as theft falling u/s 135 of the Electricity Act, 2003 (hereinafter referred to as the "Act" for short). Therefore, the complaint was filed vide C.R. No. II-845 of 2006 of G.E.B. Police Station, Sabarmati. In the said complaint, the name of the accused is shown as of the petitioner as well as the tenant Patel Pankajkumar Bhikhabhai and it is under these circumstances, the present petition before this Court.

2. Heard Mr. Joshi, learned Counsel for the petitioner, Mr. Sinha, learned Counsel for respondent No. 1-Officer of the complainant Electricity Company and Mr.

Raval, learned A.P.P. for the State.

3. It appears that it is an admitted position that at the time when the inspection took place the shop in question-premises was in the occupation of the tenant Patel Pankajkumar Bhikhabhai. The said aspect is also recorded in the complaint by the complainant and the petitioner was not at all in actual occupation or using the shop or the electricity supply. When there is any allegation for fastening of criminal liability, it would be qua the person, who has committed offence and it cannot be extended to the owner of the property, unless there is any specific accusation that the owner is aware about it and he has played role in alleged offence for use of the electricity by the tenant by doing alleged theft. The principles of fastening criminal liability is different than that of civil liability in case of an ownership of the property or the use of the electricity. The language of Section 135 of the Act even if considered as it is, it refers to "whoever" and the same would mean "a person, who is involved in the commission of offence". In a case, where the property is owned by "A" and is given on rental basis on any other agreement or contract known to law to "B" and when "B" is in occupation and using the electricity supply, any offence, if detected, such principles of criminal liability may be qua "B" and it cannot be extended against "A" in mere capacity as the owner of the property. If the criminal liability is extended to the owner of the property when admittedly the property is in occupation of the person other than the owner in whatsoever capacity it may be, it would be not only result into rewriting the principles of criminal liability in absence of any *mens rea* and other necessary ingredients for fastening criminal liability, but it would also result into miscarriage of justice on the face of it. The law never intends to punish the person, who is not guilty or the person, who cannot be said as guilty on the face of the accusation. If such is permitted, it would, on the face of it, also abuse the process of law.

4. The attempt was made by the learned Counsel for the original complainant-Electricity Company by Mr. Sinha to contend that though this Court has the power u/s 482 of Cr.P.C, to quash the complaint, it would be only in rarest of rare cases, this Court may do so. He submitted that the name of the owner is mentioned in the complaint as accused since he is the consumer, in whose name the connection has been granted. He also submitted that whether the owner has played any role or not is a matter yet to be investigated by the police, and therefore, when the investigation is yet to be made, this Court may not proceed on the basis that the owner is not liable and the complaint may not be quashed against the owner of the property-petitioner herein.

5. It is true that the essential purpose of enactment of the Act and more particularly Section 135 of the Act is to book the offenders, who are committing theft of electricity, but as observed earlier, there cannot be any intention of the legislature to punish the persons other than the offenders. If the property is in possession of a tenant and the theft of electricity is found, it may be reasonable for the Electricity Company to proceed on the basis that the person, who is

beneficiary of the alleged offence namely; the occupant could be said to have been involving in commission of offence, but it would be only wholly absurd on the part of the Electricity Company to proceed on the basis that the owner of the property since he is consumer can also be fastened with the criminal liability even if there is no material found during the course of investigation that the owner of the property, who is actually not in occupation of the premises has played any role in commission of the alleged offence of the theft u/s 135 of the Act. If such contention is entertained, it would result into abuse of process of law, and since in the present case, the complaint is filed by the Electricity Company against the landlord on the premise that he is the owner of the property, though in the very complaint it has been mentioned that the tenant one Mr. Patel Pankajkumar Bhikhabhai is in occupation of the property, the complaint can be said as abuse of process of law and if such complaint is not quashed, it would result into miscarriage of justice.

6. In view of the above, the complaint vide C.R. No. II-845 of 2006 of G.E.B. Police Station, Sabarmati is quashed qua petitioner No. 1, who is shown as accused No. 1 in the complaint. However, it is observed that the complaint qua tenant Patel Pankajkumar Bhikhabhai-accused No. 2 shown in the complaint is not quashed.

7. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. No order as to costs.