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(2016) 10 GUJ CK 0039

In the Gujarat High Court

Case No : Special Criminal Application No. 133 Of 2012

Deputy Engineer APPELLANT

Vs

Mustaqahmed Fatemohmed Pirzada RESPONDENT

Date of Decision : 21-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 227
Electricity Act, 2003 — Section 135, Section 152(4)

Citation : (2017) 1 GCD 481

Hon'ble Judges : Mr. B.N. Karia, J.

Bench : Single Bench

Advocate : Ms Lilu K Bhaya, Advocate, for the Applicant No. 1; Ms G R Vijayalakshmi, Advocate, for the Respondent No. 1; Mr Kl Pandya, APP, for the Respondents No. 2

Final Decision : Allowed

Judgement

B.N. Karia, J.—This petition is preferred by the Uttar Gujarat Vij Company Limited, through its Deputy Engineer [O&M], Sathamba under Articles 226 & 227 of the Constitution of India read with provisions of the Electricity Act, 2003 seeking quashment of the Order dated 20th June 2011 passed by the learned Addl. Sessions Judge, Kheda at Nadiad below Exh. 10 in Special Case No. 64 of 2010.

2. The petitioner is a wholly owned Company, registered under the provisions of the Companies Act, 1956 engaged in the business of distribution of electrical energy in the northern region of the State of Gujarat. It is the case of the petitioner that on 4th March 2010, when the connection of the respondent no.1 was checked, it was found that the respondent no. 1 was committing theft of electricity by cutting the service line coming to the meter and affixing the phase and neutral wire by 1/18 wire and thereby connecting the otherside with load in his house. Thus, despite there being consumption of electricity, it was not being recorded in the meter. This permanent arrangement was made to prevent the

meter from recording actual consumption of electrical energy by bypassing the meter. Noticing the theft, the consumer was booked under Section 135 of the Electricity Act, 2003 and a bill for Rs. 11,076=23p. was issued. That, prior to this incident, on 23rd September 2009, when the connection of the respondent no. 1 was checked by Installation Checking Squad, it was found that theft was committed of electricity by bypassing the meter by applying 1/18 black colour loose wire with the phase and neutral to the service line and connecting the other end thereof to the Switch Board in his residence. It was his first offence of theft of electricity, he was booked for committing an offence under the provisions of Section 135 of the Electricity Act, 2003 and a supplementary bill of Rs. 2,492=49 paise along with fine of Rs. 1,000/= towards compounding charges was conveyed to the respondent no. 1, which was honoured, and therefore, no FIR was lodged against him. This being the second offence of theft, compounding of offence is not permissible under the provisions of the Electricity Act, 2003, and therefore, FIR was lodged against the respondent no.1, as provided under the provisions of Section 135 of the Act. The respondent no. 1 moved Special Court by filing an Application Exh. 10 in Special Case No. 64 of 2010 along with application Exh. 3 praying that he is ready and willing to pay the compounding charges. The learned Addl. Sessions Judge, Kheda at Nadiad on 20th June 2011 passed an order directing the petitioner to accept the amount of compounding charges and thereby issue receipt of the same, despite the fact that the Court was informed by the petitioner herein that as per provisions of Section 152 (4) of the Act, there is no provision for compounding of the offence.

3. Being aggrieved and dissatisfied with the order dated 20th June 2011, the petitioner has preferred the present petition calling in question the impugned order on the grounds raised in the memo of the petition.

4. Heard learned advocate Mr. Lilu K.Bhaya for the petitioner, Ms. GR Vijayalakshmi, learned advocate for the respondent no. 1 and learned APP Mr. K.L Pandya for the respondent no.2-State.

5. It was urged by Ms. Liliy K Bhaya, learned advocate for the petitioner that on 4th March 2010, when the electricity connection of respondent no. 1 was checked by the checking squad of the petitioner-Company, it was found that theft of electric energy was committed by the respondent no. 1. That, he had made permanent arrangement to prevent the meter from recording actual consumption of electrical energy by passing the meter. That, he had signed the statement of consumer on 4th March 2010 without any protest, and thereupon, the consumer was booked under Section 135 of the Electricity Act, 2003 for theft of electricity and a supplementary bill of Rs. 11,076=23 paise was issued. That, prior to this incident, on 23rd September 2009, when the connection of the respondent no. 1 was checked by Installation Checking Squad, it was found that theft was committed of electricity by bypassing the meter by applying 1/18 black colour loose wire with the phase and neutral to the service line and connecting the other end thereof to the Switch Board in his residence. It was his first offence of

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theft of electricity, he was booked for committing an offence under the provisions of Section 135 of the Electricity Act, 2003 and a supplementary bill of Rs. 2,492=49 paise along with fine of Rs. 1,000/= towards compounding charges was conveyed to the respondent no. 1, which was honoured, and therefore, no FIR was lodged against him. This being the second offence of theft, compounding of offence is not permissible under the provisions of the Electricity Act, 2003, and therefore, FIR was lodged against the respondent no.1, as provided under the provisions of Section 135 of the Act. However, when the respondent moved the learned Special Court by filing Application Exh. 10 in Special Case No. 64 of 2010 saying that he was ready and willing to abide by the condition and charges, the learned Judge was though drawn attention towards the provisions under Section 152 [4] of the Act and the fact that if there is a second offence then the Act specifically provides that no compounding is permissible, and therefore, the Company cannot be compelled to accept the compounding charges, however, the learned Addl. Sessions Judge, Kheda at Nadiad vide Order dated 20th June 2010 passed an order directing the petitioner herein to accept the amount of compounding charges and thereby restore the electricity connection to the respondent no. 1 herein.

6. Learned advocate Ms. Bhaya serious emphasized that this being a second case of theft of electricity, the learned Addl. Sessions Judge, Kheda at Nadiad has failed to appreciate the provisions of law and thereby failed to appreciate that merely on account of payment of compounding charges in respect of the first theft, the case of first theft is proved. She drew attention of this Court to sub-section (4) of Section 152 of the Electricity Act, 2003 to contend that compounding of offence shall be allowed only once, whereas, in the instant case, it is clear that this being the case of second theft by the respondent no. 1, and therefore, the consumer is not eligible to compound the offence. She ultimately urged the Court to quash and set-aside the impugned Order dated 20th June 2011 passed by the learned Addl. Sessions Judge, Kheda at Nadiad made below Exh. 10 in Special Case No. 64 of 2010.

7. Per contra, learned advocate Mr. GR Vijayalakshmi appearing for the respondent no. 1 at the outset requested to treat the Application Exh. 10 submitted before the trial Court as an affidavit of the respondent no.1. She urged that it was never established by the petitioner that any first offence was committed by the respondent no.1. That the petitioner has tried to mis- interpret the provisions of the Electricity Act, 2003. That, no previous complaint was lodged against the respondent no. 1 nor any interrogation made, and not even charge sheet came to be filed against the respondent no.1. That, mere paying compounding charges by the respondent, no offence was proved before the Court of law. That under Section 152 [1] of the Electricity Act, 2003 it is provided that if compounding charges are paid by the offender, no proceedings would be initiated against him and electricity connection cannot be disconnected by the authority. Under these circumstances, no previous offence was committed by the respondent no. 1. That, this was the first incident, and therefore, the Court

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below right appreciated the facts available on the record and thereby rightly directed the petitioner to accept the compounding charges. The order impugned therefore does not call for any interference.

8. Learned APP Mr. Pandya adopted the submissions made for and on behalf of the petitioner-Company and urged the Court to quash and set-aside the impugned order, as the Court below has overlooked the provisions of the Act, since it was a second offence of theft of electricity committed by the respondent no.1.

9. Having heard learned advocates appearing for the respective sides, it transpires from the Checking Sheet dated 23rd September 2009 that initially on 23rd September 2009, when the electricity connection of the respondent no. 1 was checked by the Installation Checking Squad, it was found that the said respondent was committing theft of electricity by bypassing the meter by applying 1/18 black colour loose wire with phase and neutral to the service line and thereby connecting the other end to the switch board in his residence, thereby preventing recordance of the consumption. Thereupon, he was booked for committing theft of electricity under Section 135 of the Act and a bill of Rs. 2,429=49 paise. It was also conveyed to him that if he want, he can compound the offence by making payment of Rs. 1,000/=, being compounding charges. In response to the same, the respondent no. 1 made payment of the bill and Rs. 1,000/= towards compounding charges on 25th September 2009. Hence, FIR was not lodged against the petitioner.However, thereafter on 4th March 2010, when the connection of the respondent no. 1 was checked by the officials of the petitioner-Company, it was noticed that the respondent was indulged in committing theft of electricity by cutting the service line coming to the meter and affixing the phase and neutral wire by 1/18 wire by connecting it to the other side with load in his house. Thus, he made permanent arrangement to prevent the meter from recording actual consumption of electrical energy by bypassing the meter. Therefore, the respondent no. 1 on the basis of checking report and statement of the consumer dated 4th March 2010, which was signed without any protest, was booked under Section 135 of the Electricity Act,2003 for theft of electricity and a bill of Rs. 11,076=23 paise was issued along with forwarding letter and calculation of the bill. This being the second offence of theft of electric energy by the respondent no. 1, compounding of the offence is not permissible, and therefore, no option was given by the petitioner to the respondent no. 1 for compounding the offence, as provided under Section 152 of the Electricity Act, 2003. It appears that by filing an Application Exh. 10 in Special Case No. 64 of 2010 before the Special Court, the respondent no. 1 approached the Court requesting that he is ready and willing to pay the compounding charges and to accept the amount of compounding charges by the petitioner. As this being a second offence, under the provisions of sub-section [4] of Section 152 of the Electricity Act, 2003, compounding of the offence was not permissible, however, the learned Judge was pleased to pass an order accepting the prayer made by the respondent no. 1 herein by directing the petitioner to accept the amount of

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compounding charges and thereby issue receipt thereof. This order is erroneous on the face of the record as sub-section (4) of Section 152 of the Electricity Act, 2003 clearly stipulates that, "the compounding of an offence under sub-section (1) shall be allowed only once for any person or consumer." Thus, the provision itself is very clear, allowing any person or consumer for compounding of the offence only once. For second offence of theft of electricity, no permission can be granted to compound the offence. The learned Addl. Sessions Judge, Kheda at Nadiad has overlooked this provision and thereby granted permission to compound the offence which prima facie is beyond his jurisdiction. Therefore, the impugned order favouring the respondent no. 1 requires indulgence. Resultantly, the present Special Criminal Application is allowed. The impugned Order dated 20th June 2011 passed by the learned Addl. Sessions Judge, Kheda at Nadiad made below Exh. 10 in Special Case No. 64 of 2010 is hereby quashed and set-aside. Since the offence pertains to the year 2010, the Court concerned shall expeditiously initiate trial of the proceedings in accordance with law. Rule nisi made absolute with no separate order as to costs.

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