
(2019) 02 RAJ CK 0223
In the Rajasthan High Court
Case No : Criminal Revision No. 1252 Of 2018

Gautam Nath

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 25-02-2019

Acts Referred:

Indian Electricity Act, 2003 — Section 135, 138, 152

Citation : (2019) 02 RAJ CK 0223

Hon'ble Judges : Manoj Kumar Garg, J

Bench : Single Bench

Advocate : Manish Tak, O.P. Rathi, Pradeep Sharma

Final Decision : Disposed Off

Judgement

The instant revision petition has been filed by the petitioner against the order dated 13.08.2018 passed by the learned Special Judge, Electricity Act Cases-cum-Additional Sessions Judge No.1, Jodhpur in Sessions Case No.8/2018, by which the learned trial court framed the charges against the petitioner for offence under Section 135 and 138 of the Indian Electricity Act, 2003.

Learned counsel for the petitioner submits that respondent No.2 Executive Engineer (Vigilance) in the Electricity Department made a search of house of petitioner and found that theft of electricity was being committed therein. An FIR No.453/2016 was registered at Police Station APT, Jodhpur. Thereafter, challan was presented by the police and now, charges of the case have been framed. Meanwhile, the concerned Electricity Department issued a notice to the petitioner to compound the offence. Upon receiving the notice, the petitioner deposited a sum of Rs.1,00,936/- towards civil liability and penalty for compounding the said offence on 08.07.2016, which was duly compounded being first offence.

Learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in the case of Suresh GanpatiHalvankar Vs. The State of Maharashtra being I.A. No. 117535 of 2017 in Cr. Appeal No. 156 of 2018 arising

out of SLP (Crl.) No.3670/2017 decided on 22.1.2018 wherein Hon'ble Supreme Court has categorically held that the offences under Sections 135 and 138 of the Electricity Act are both compoundable by virtue of Section 152 of the Act. He thus urged that as the petitioner has deposited composition charges with the respondents, the authorities be directed to compound the offences and the F.I.R. should be quashed on the strength of such composition.

Mr. Pradeep Sharma, learned counsel appearing for the respondent is not in a position to dispute the said position of law.

Hon'ble Supreme Court in the case of Suresh Ganpati Vs. State of Maharashtra (supra) has held as under:-

"(4) The Compounding of an offence under sub-section (1) shall be allowed only once for any person or consumer." It will be seen that both Sections 135 and 138, which impose a maximum sentence of three years, both deal with theft of electricity. The High Court has taken a very narrow view of Section 152 by stating that an offence of theft is related *stricto sensu* to Section 135 since that section alone deals with the offence of theft, but would not specifically refer to Section 138 which only indirectly relates to the offence of theft. Both the respondent as well as the petitioner before us have moved the High Court stating that Section 138 would also be so subsumed and have continued to argue the same position before us. 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. In this view of the matter, we set aside the impugned judgment passed by the High Court. We have been informed by learned counsel for the intervenor that the appellant before us has been prosecuted for perjury and that the proceeding in that behalf is pending. We say nothing about the aforesaid proceedings. In that view of the matter, the appeal stands allowed."

Having considered the facts and circumstances of the case, this Court is of the opinion that since the Hon'ble Apex Court has held that both the offences i.e. offences under Section 135 as well as 138 of the Act are compoundable in nature, the petitioner's offer to compound these offences as set out in the impugned F.I.R. is liable to be accepted by the respondents.

Accordingly, the revision petition is hereby allowed. The charges framed by the learned trial court vide order dated 13.08.2018 is set aside. In case, any amount remain due towards composition charges, the petitioner shall be notified and the same shall be deposited by the petitioner forthwith.

Stay petition stands disposed of accordingly.