
(2018) 05 RAJ CK 0071

In the Rajasthan High Court

Case No : Criminal Misc(Pet.) No. 637 of 2018

Kesha Ram @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 04-05-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Electricity Act, 2003 — Section 135, 138, 152, 152(2)

Citation : (2018) 05 RAJ CK 0071

Hon'ble Judges : VIJAY BISHNOI, J

Bench : Single Bench

Advocate : Moola Ram Choudhary, K.K. Rawal, Javed Hussain

Final Decision : Disposed Off

Judgement

This criminal misc. petition under Section 482 Cr.P.C. has been filed by the petitioner with a prayer for quashing the FIR No.248/2017 dated

13.11.2017 of Police Station Anti Power Theft (APT), District Jaisalmer for commission of offences punishable under Sections 135 and 138 of

Electricity Act, 2003 (hereinafter to be referred as 'the Act of 2003'??)

The impugned FIR is registered at the instance of respondent No.2-Devendra Kumar Meena, Junior Engineer (O&M), Jodhpur Vidyut Vitaran Nigam

Limited Fatehgarh, District Jaisalmer, wherein it is alleged that upon inspection of agriculture filed of the petitioner on 10.11.2017, the respondent No.2

found that the petitioner has obtained illegal electricity connection through transformer. It is stated in the impugned FIR that the whole incident is

recorded in the VCR No.8445/2009 dated 10.11.2017. It is further alleged that as the petitioner is indulged in theft of electricity, he has committed the

offences punishable under Sections 135 and 138 of the Act of 2003.

Before registration of impugned FIR, a notice was issued to the petitioner on 12.11.2017, in which the Jodhpur Vidyut Vitaran Nigam Limited

(hereinafter to be referred as "the Jd.V.V.N.L.") has carried out the provisional assessment, and demanded Rs.1,98,250/- from the petitioner.

The case of the petitioner is this that though, the petitioner was ready to deposit the aforesaid amount but the Jd.V.V.N.L. without giving any

opportunity to him has straightaway registered the impugned FIR against him.

Learned counsel for the petitioner has argued that as per the provision of Sub-section (2) of Section 152 of the Act of 2003, if a defaulter or a person

guilty of electricity theft deposits or makes the payment of assessed amount then no proceeding shall be instituted against such person in any criminal court.

Learned counsel for the petitioner has argued that the Jd.V.V.N.L. made provisional assessment on 12.11.2017 and without providing any opportunity

to the petitioner to deposit the assessed amount, has straightaway filed impugned FIR against him for the offences punishable under Sections 135 and

138 of the Act of 2003 in contravention of provisions of Section 152(2) of the Act of 2003.

Learned counsel for the petitioner has, therefore, prayed that the impugned FIR filed on behalf of the respondent No.2 is per se illegal and the same is

liable to be quashed.

It is also informed by learned counsel for the petitioner that pursuant to the direction given by this Court on 26.02.2018, the petitioner has deposited the

amount of Rs.1,98,250/- with the Jd.V.V.N.L. on the very day, the receipt of the same is produced along with the documents.

Per contra, learned counsel appearing for the respondent No.2 has opposed the prayer made on behalf of the petitioner in this criminal misc. petition

and submitted that the impugned FIR against the petitioner has been lodged for commission of offences punishable under Sections 135 and 138 of the

Act of 2003 and even if the petitioner was ready to deposit the amount of provisional assessment, the impugned FIR cannot be quashed. It is argued

that since the petitioner is guilty of commission of offence punishable under Section 138, which does not relate directly to the offence of theft, along

with Section 135 of the Act of 2003, there is no illegality in registration of the impugned FIR against the petitioner.

Heard learned counsel for the parties and perused the material placed on record.

The Honâ??ble Supreme Court in the decision dated 22.01.2018 rendered in Suresh Ganpati Halvankar Vs. The State of Maharashtra & Ors.

(Criminal Appeal No.156 of 2018) while taking into consideration the provisions of Sections 135, 138 and 152 of the Act of 2003 has held as under :-

â??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 statesâ??an offence of

theftâ?? 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.â??

As per the above, the Honâ??ble Apex Court has specifically held that Section 138 of the Act of 2003 also relates to the theft of electricity and,

therefore, the same is also, within the Section 152 of the Act of 2003, can be compounded.

In view of the law laid down by the Honâ??ble Apex Court in Suresh Ganpati Halvankar Vs. The State of Maharashtra & Ors. (*supra*), the stand of

the *Jd.V.V.N.L.* to the effect that though the petitioner was ready to deposit the provisional assessment amount, an FIR can be registered for

commission of offence punishable under Section 138 of the Act of 2003 is bereft of any merit because the Section 138 of the Act of 2003 also relates

to the theft of electricity and can also be compounded as per Section 152 of the Act of 2003.

It is not in dispute that the impugned FIR is the first FIR against the petitioner in relation to the theft of electricity.

In view of the above discussion, this criminal misc. petition is allowed and the impugned FIR No.248/2017 dated 13.11.2017 of Police Station Anti

Power Theft (APT), District Jaisalmer lodged against the petitioner is hereby quashed.

Stay petition is disposed of.Â