

(2018) 08 GAU CK 0018
In the Gauhati High Court
Case No : Criminal Petition No. 974 of 2017

Lakhimpur Krishi Udyog (P) Ltd.

APPELLANT

Vs

Assam Power Distribution Company Ltd.

RESPONDENT

Date of Decision : 09-08-2018

Acts Referred:

Code of Criminal Procedure, 1973 — Section 154, 173, 482
Electricity Act, 2003 — Section 126, 126(2), 126(4), 127, 135, 135(a), 135(e),
135(1), 135(1)(a), 135(1)(b), 135(1)(c), 135(1)(d), 138, 151

Citation : (2018) 08 GAU CK 0018

Hon'ble Judges : HITESH KUMAR SARMA, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. This is an application under Section 482 of the Code of Criminal Procedure filed by Lakhimpur Krishi Udyog (P) Ltd, a private limited company

represented by its Director, Sri Kamal Kumar Changkakoti, for quashing the GR Case No. 1862/14 under Section 135/138 of the Indian Electricity

Act, 2003, (hereinafter referred to as the Act) pending in the Court of Addl Chief Judicial Magistrate, Lakhimpur, North Lakhimpur.

2. The facts of the case may be briefly summarised as follows;

3. The petitioner Lakhimpur Krishi Udyog (P) Ltd, is a private limited company, under the operation Udyog scheme of Govt. of Assam. The petitioner

states that the flour mill was commissioned in the year 1991 and since then the industry is running without violating any provisions of law. The loans,

provided by the AIDC and SBI, have been liquidated in the year 2007. The petitioner also states that it is a consumer of electricity under the

respondent, Assam Power Distribution Company Ltd (APDCL) under the category

HT-II industry with the connected load of 229 KW and it has been given Consumer Number 230000000036. The petitioner further states that on 22.8.2014 the Sub-Divisional Engineer of North Electrical Sub-

Division inspected the metering system of the petitioner's roller flour mill and found the following;

a) The paper seals on the meter body cover bearing serial No. (a) 0000478 (b) UAZ05437 (C) MTI60013 (D) 0000479 found in cut condition by sharp

edged instrument.

b) Cracked points are observed on the left side of the meter along the seam joining the two body covers

c) The CMRI is downloading as per formed pol analysis

d) Accuracy is compared with LT accucheck and found within limit

e) Paper seal is newly done in the meter body cover

4. Thereafter, the meter bearing serial no. AS897455, was seized from the premises of the petitioner's flour mill on 2.9.2014 and a new meter,

bearing SI No. APD20559, was installed in the premises of the petitioner's flour mills. The seized meter was subjected to physical verification at

the MTI Laboratory, Ulubari, Guwahati. After verification of the meter data, it was observed that the meter cover was opened on 09.08.2012 at

01.17.55 and the meter was also tested in the automatic meter branch and the errors found were within the limit. In the said verification report it was

also stated that ultrasonic welding between the meter cover and base frame was found to be broken and an RF remote circuit with changeover

contacts relay which was connected in the meter circuit was found inside the meter with the help of which, meter energy registration can be

controlled from outside and accordingly, it was observed that the meter was tampered. Thereafter, the petitioner was asked to appear in the Office of

Chief Executive Officer, Lakhimpur Electrical Circle, on 12.9.14 and a copy of the Provisional Assessment Bill for Rs 15,43,671 was served upon the

petitioner. The petitioner, instead of challenging the order for payment of provisional assessment amount, deposited the amount in two instalments.

Later, as stated by the petitioner, he received a summons in connection with GR Case No. 1862/14 under Section 135/138 of Electricity Act, 2003.

5. The petitioner submits that since he has already deposited the provisional assessment amount, the initiation of criminal proceedings against him is not

legal in the eye of law as there is a clear distinction between Section 126 of the Act which contain the provisions for provisional assessment and

Section 135 of the Act which deals with the offence of theft. According to the petitioner, the provisions of Section 126 of the Act and the provisions of

Section 135 of the Act are entirely distinct and different and hence the continuation of proceedings against the petitioner in GR 1862/14 is bad in law and liable to be quashed.

6. I have heard Mr. B.D. Das, learned Senior Advocate for the petitioner. I have also heard learned Additional Public Prosecutor, Mr. N.K. Kalita,

for the State respondent and Mr. N.J. Dutta, learned standing Counsel for respondent APDCL.

7. Learned Senior Counsel for petitioner submitted that since the petitioner has already paid the provisional bill of Rs 15,43,671/-, nothing survives for

any further prosecution of the petitioner before a criminal Court. He argues that Section 126 of the Act, under which the provisional assessment bill

was raised, is independent of the provisions of Section 135 of the Act. Section 126 of the Act deals with unauthorised use of electricity and on the

other hand, section 135 of the Act deals with criminal offence and there is no commonality between them in law and both the offences are different

and distinct. He further argues that there are no ingredients of theft of electricity as well as interference with the meter as such the initiation of the

prosecution of the petitioner is bad in law.

8. Learned Counsel for the petitioner further argues that even before the provisional assessment the petitioner has been paying electricity bills and the

energy bills prior to the provisional bill would show that there is no substantial difference in the quantum of bill and, hence, there is no dishonesty on the

part of the petitioner.

9. The further argument of learned Counsel for the petitioner is that under Section 135(1A) of the Act, FIR should be lodged within 24 hours of the

disconnection of electricity. In the present case, the electricity to the petitioner was disconnected on 22.8.2014 but the FIR was lodged on 16.9.2014

and hence, the FIR is bad in law and liable to be quashed. Again, the chargesheet laid against the petitioner does not disclose dishonesty, state of mind,

mens rea, as regards malpractice in question therefore, there are no ingredients

for offence under Section 135/138 of the Act.

10. Learned Counsel for the petitioner relied on the following decisions to buttress his arguments:

i. Executive Engineer vs Seetaram Rice Mill (2012) 2 SCC 108

ii. Sulabha Marketing (P) Ltd vs Kerala State electricity Board WP(C).No. 31025 of 2008

iii. Sri Tirumala Modern Rice Mill vs Transmission Corporation Of A.P, AIR 2007 AP 265

iv. Bhajan Lal vs State of Haryana 1992 SUPPL (1) 335

11. Mr. Dutta, learned Standing Counsel for respondent APDCL argued that prosecution of the appellant for the offence under Section 135 of the Act

is maintainable as because the acts attributed to the appellant in tampering the meter also amounts to theft of electricity apart from the assessment

made under Section 126 of the Act. Reliance in this regard has been placed in the cases of Vishal Agrawal v. Chhattisgarh SEB, (2014) 3 SCC 696

and Narayan Chandra Kundu vs State of West Bengal Air 2007 Cal 298. It appears to this Court that none of these two cases have any impact on the

issues agitated in this case by the appellant.

12. In the case of Vishal Agrawal (supra), the question raised was whether the amendment in Section 151 of the Electricity Act, 2003 which

empowers the court to take cognizance of an offence upon a report made by the police under Section 173 of the Code of Criminal Procedure would

be applicable to the pending complaints filed before the aforesaid amendment.

13. It was held in Vishal Agrawal (supra) that the principle which emerges is that if the offence under the Code is cognizable, provisions of Chapter

XII containing Section 154 CrPC and onward would become applicable and it would be the duty of the police to register the FIR and investigate into

the same. Sections 135 and 138 only prescribe that certain acts relating to theft of electricity, etc. would also be offences. It also enables certain

persons/parties, as mentioned in Section 151, to become complainant in such cases and file complaint before a court in writing. When such a complaint

is filed, the court would be competent to take cognizance straightway.

14. In the case of Narayan Chandra Kundu (supra), it was contented that the proceedings for assessment has been vitiated for the reason that the

prosecutor under Section 135 of the Act was the Assessing Officer under Section 126. The Honâ??ble Calcutta High Court negated this submission

by holding that the allegations of personal bias cannot have any application since it is the intention of the legislature that the Assessing Officer must be

an Officer of the inspection team, which detected the unauthorised use of electricity, and as such, on that ground the assessment order cannot be vitiated.

15. It will be thus seen that the precedents relied upon by the learned Counsel for the respondent APDCL do not seek to address the issues raised by the appellant in the instant case.

16. Now coming to the precedents relied upon by the appellant, in the case of Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill, (2012) 2 SCC 108 the facts were as follows;

17. The respondent therein, a small-scale industrial unit engaged in the production of rice, obtained electric supply under the agreement with the appellant. Keeping in view the contracted load, the respondent was classified as â??medium industry categoryâ?. This category deals with the

contract demand of 99 kVA and above but below 110 kVA. According to the respondent, since the day of connection of power supply, the meter and

all other associated equipments had been inspected by the appellants. The respondent alleged that no intimation was given to it as to the finding of

defects, if any, in meter dump. On 25-7-2009, provisional assessment order was issued by the appellants to the respondent regarding unauthorised use

of electricity falling squarely within the ambit of the provisions of Section 126 of the 2003 Act. The appellant, thereafter, passed the order of

provisional assessment by taking the contracted demand as that applicable to large industry. The demand was raised, assessing the consumer for the

period from June 2008 to August 2009 for a sum of Rs 7,77,300. This was computed for 15 months at the rate of Rs 200 per kVA (i.e. tariff for large

industry) multiplied by two times, aggregating to the claimed amount.

18. On a challenge being made to the High Court by the respondent it was held that the words â??unauthorised use of electricityâ? and â??meansâ?

as provided in the Explanation to Section 126 of the 2003 Act were exhaustive and that overdrawal of energy would not fall under the scope of

â??unauthorised use of electricityâ? as defined under the 2003 Act, and the

appellants had no jurisdiction to issue the intimation in question and pass the assessment order in terms of Section 126 of the 2003 Act.

19. The Honâ??ble Supreme Court formulated certain questions for deciding the appeal by the Electricity Board the relevant one being as follows:

1(b) Distinction between Sections 126 and 135 of the 2003 Act

20. It was held in Sri Seetaram Rice Mill (supra), that upon their plain reading, the marked differences in the contents of Sections 126 and 135 of the

Act are obvious. They are distinct and different provisions which operate in different fields and have no common premise in law. It was held that

Sections 126 and 127 of the Act read together constitute a complete code in themselves covering all relevant considerations for passing of an order of

assessment in cases which do not fall under Section 135 of the Act.

21. It was also held in Sri Seetaram Rice Mill (supra), that Section 135 of the Act falls under Part XIV relating to â??offences and penaltiesâ? and

title of the section is â??theft of electricityâ?. The section opens with the words â??whoever, dishonestlyâ? does any or all of the acts specified

under clauses (a) to (e) of sub-section (1) of Section 135 of the Act so as to abstract or consume or use electricity shall be punishable for

imprisonment for a term which may extend to three years or with fine or with both. Besides imposition of punishment as specified under these

provisions or the proviso thereto, sub-section (1-A) of Section 135 of the Act provides that without prejudice to the provisions of the Act, the licensee

or supplier, as the case may be, through officer of the rank authorised in this behalf by the appropriate commission, may immediately disconnect the

supply of electricity and even take other measures enumerated under sub-sections (2) to (4) of the said section. The fine which may be imposed under

Section 135 of the Act is directly proportional to the number of convictions and is also dependent on the extent of load abstracted.

22. In contradistinction to these provisions, Section 126 of the Act would be applicable to the cases where there is no theft of electricity but the

electricity is being consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression

â??unauthorised use of electricityâ?. This assessment/proceedings would commence with the inspection of the premises by an assessing officer and

recording of a finding that such consumer is indulging in an â??unauthorised use

of electricityâ?. Then the assessing officer shall provisionally assess, to the best of his judgment, the electricity charges payable by such consumer, as well as pass a provisional assessment order in terms of Section 126(2) of the Act.

23. Analysing further, the Honâ??ble Supreme Court in the case of Sri Seetaram Rice Mill (supra), held that Section 135 of the Act deals with an offence of theft of electricity and the penalty that can be imposed for such theft. This squarely falls within the dimensions of criminal jurisprudence and mens rea is one of the relevant factors for finding a case of theft. On the contrary, Section 126 of the Act does not speak of any criminal intent and is primarily an action and remedy available under the civil law. It does not have features or elements which are traceable to the criminal concept of mens rea.

24. Thus, as held in Sri Seetaram Rice Mill (supra), it would be clear that the expression â??unauthorised use of electricityâ? under Section 126 of the Act deals with cases of unauthorised use, even in the absence of intention. These cases would certainly be different from cases where there is dishonest abstraction of electricity by any of the methods enlisted under Section 135 of the Act. A clear example would be, where a consumer has used excessive load as against the installed load simpliciter and there is violation of the terms and conditions of supply, then, the case would fall under Section 126 of the Act. On the other hand, where a consumer, by any of the means and methods as specified under Sections 135(a) to 135(e) of the Act, has abstracted energy with dishonest intention and without authorisation, like providing for a direct connection bypassing the installed meter, the case would fall under Section 135 of the Act.

25. Therefore, as held in Sri Seetaram Rice Mill (supra), there is a clear distinction between the cases that would fall under Section 126 of the Act on the one hand and Section 135 of the Act on the other. There is no commonality between them in law. They operate in different and distinct fields. The assessing officer has been vested with the powers to pass provisional and final order of assessment in cases of unauthorised use of electricity and cases of consumption of electricity beyond contracted load will squarely fall under such power. The legislative intention is to cover the cases of malpractices and unauthorised use of electricity and then theft which is governed

by the provisions of Section 135 of the Act.

26. The ratio of Sri Seetaram Rice Mill, (surpra), has to be understood in the context of the attending facts. The lodging of an FIR was not an issue in

that case. The case therein pertained to excess drawal of energy load and this excess load was held to be unauthorised use by the Honâ??ble

Supreme Court within the meaning of Section 126 of the 2003 Act. The Electricity Board, in the case of Sri Seetaram Rice Mill, (surpra), had not

alleged any dishonest motive on the part of the respondent and neither any FIR for theft of electricity, within the meaning of Section 135 of the 2003

Act, was lodged as has been done in the instant case.

27. In the case of Sulabha Marketing (P) Ltd vs Kerala State electricity Board WP(C).No. 31025 of 2008, the Honâ??ble Kerala High Court, relying

on the judgment of Sri Seetaram Rice Mill, (surpra), held that the expression 'unauthorised use of electricity' under Section 126 of the Act deals with

cases of unauthorised use even in the absence of intention. Hence, the intention of the consumer is not the foundation for invoking powers of the

competent authority and passing of an order of assessment under Section 126 of the Act. Whenever a consumer commits the breach of the terms of

the agreement, Regulations and the provisions of the Act by consuming electricity in excess of the sanctioned/connected load, such consumer would

be in blame and under liability to pay at the rate equal to twice the tariff applicable for the relevant category of services in terms of Section 126 of the

Act.

28. It will be seen that the Honâ??ble Kerala High Court, in the case of Sulabha Marketing (P) Ltd (supra), had confined its finding only to the

unauthorised use of meter and procedure to be followed with respect of provisions of Section 126. The aspects relating to tampering of meter and

culpability under Section 135 of the 2003 Act were not the issues therein.

29. In Sri Tirumala Modern Rice Mill vs Transmission Corporation Of A.P, AIR 2007 AP 265, it was held that 'Unauthorised use of electricity' means

usage of electricity (i) by any artificial means; or (ii) by a means not authorized by the concerned person or authority or licensee; or (iii) through a

tampered meter; or (iv) for the purpose other than for which the usage of electricity was authorized. Theft of electricity is defined in Section 135. A

reading of the same would show that theft, inter alia, is dishonest tapping of

electricity from overhead or underground cables or facilities of Distribution or transformation licensee, tampering the meters and damaging and destroying electrical meters. A careful reading of Section 135 and Explanation to Section 126 would show that some of the unauthorized uses of electricity also amount to theft, and in a given case, theft itself amounts to unauthorized use of electricity. When once a provisional assessment is made, an inference can be drawn that it is falling within the scope of 'unauthorised use of electricity and not a theft'. If the Assessing Officer resorts to serving a provisional assessment order, the same would be referable to Section 126(2) of the 2003 Act. Parts XIV and XV of the Electricity Act do not contemplate the provisional assessment of the energy pilfered in the case of theft. From this, what would emerge is that when a provisional assessment order is made and the consumer accepts and deposits the amount without demur, consumer cannot be subjected to any further liability and no further action can be taken against him. In case of theft, however, in the event of provisional assessment order not being served as required under Section 126(2), only remedy available for the Inspecting/Assessing Officer would be to refer the cases to Special Court for the purpose of determining civil and criminal liability. In such a case, it may be reiterated that the question of serving a provisional assessment order does not arise and there would not be any opportunity for the consumer to pay the provisionally assessed amount.

30. The case of Sri Tirumala Modern Rice Mill (supra), does not lay down a proposition that every tampering of meter would not be a theft. In any view of the matter the facts of Sri Tirumala Modern Rice Mill (supra) pertained to a situation prior to 2007 Amendment to the Electricity Act which is being discussed a little later.

31. In the case of Tamil Nadu Electricity Board vs T.Vellaichamy Nadar W.A. (MD).Nos.891 of 2017 and 892 of 2017 the Honâ??ble Madras High

Court held that an Assessment for Theft of Electricity is always under Section 135 of the Electricity Act, 2003 and not under Section 126 of the Act.

To put it succinctly, the ingredients of Sections 126 and 135 of the Electricity Act, 2003 operate in different fields. It is to be remembered that Section

126 of the Electricity Act, 2003 is for an unauthorised use of electricity which is different from 'Theft of Electricity'.

32. Referring to the decisions, relied upon by the learned Senior Counsel for the petitioner, it is sought to be established that merely because there is an unauthorised use of electricity it would not amount to theft within the meaning of Section 135 of the Act.

33. It may be pointed out that in the present case, the facts are entirely different. The Annexure 2 to the petition is the Inspection report. The report, among others, discloses the following:

(1) Paper seals no. 0000478, 0000479, UAZ00580 of the meter cover of meter no. AS897455 are found broken.

(2) Cracks are found between the meter cover and base frame on all sides of the meter and also just above the terminal box which is shown to the consumer representative.

(3) Meter data is downloaded for analysis

(4) In the meter data it is seen that meter cover was opened on 08.08.2012 at 01.17.55

(5) The meter is tested on the automatic meter test branch. The errors found are within the limits.

(6) On opening the meter, it is found that the meter cover is broken just above the terminal box

(7) Ultrasonic welding between the meter cover and bases frame is found to be broken

(8) Also RF remote circuit with changeover contacts relay which is connected in the meter circuit is found inside the meter. With the help of this circuit, meter energy registration can be controlled from outside.

(9) It is evident that the meter is tampered.

34. It is apparent that tampering of the meter was done and the wear and tear does not appear to be in natural course rather; the report, prima facie, discloses human intervention for unauthorised use of electricity as alien objects were found inside the meter for controlling the meter from outside. It

was argued that errors were found within normal limits which removes all possibility of any malpractice. However, the finding that RF remote circuit

with changeover contacts relay which is connected in the meter circuit is found inside the meter and that with the help of this circuit, meter energy

registration can be controlled from outside, is highly incriminating in nature suggesting that by some human intervention the meter readings were

sought to be manipulated. Such an act of tampering of meter is termed as theft within the meaning of Section 135 of the Act.

35. It now appears necessary to mention at this point the change in law which was introduced with an amendment to the Act in the year 2007.

36. Prior to the amendment in 2007, Section 126 of the Act read as follows:

Section 126: (Assessment): -

(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after

inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of

electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such

manner as may be prescribed.

(3) The person, on whom an order has been served under sub- section (2) shall be entitled to file objections, if any, against the provisional assessment

before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within

thirty days from the date of service of such order of provisional assessment of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee

within seven days of service of such provisional assessment order upon him: Provided that in case the person deposits the assessed amount he shall

not be subjected to any further liability or any action by any authority whatsoever.

37. After the 2007 Amendment to Act, the proviso attached to 126(4) of the Act was omitted. The result of the omission is that prior to the

amendment if the assessee had paid the provisional amount within 7 days of the service of notice, no further liability or any action would have been

maintainable against him so far as unauthorised use of electricity is concerned. However, after the amendment in 2007, the proviso being deleted, it is

now open to the Assessing Authority to take all such further action as is

permissible under the law.

38. The facts pertaining to the case of the petitioner, admittedly, took place after the amendment in 2007. Therefore, he cannot seek any reprieve by

paying the provisional amount as was permissible by the proviso to Section 126(4) of the Act prior to 2007.

39. The cases of Sulabha Marketing (P) Ltd (supra), Sri Tirumala Modern Rice Mill (supra), and T.Vellaichamy Nadar (supra) do not discuss the

effect of amendment introduced in 2007. The amendments introduced in the year 2007 has changed the scope of Section 126 of the Act with respect

to further action even after payment of provisional bill amount.

40. Even though the judgment in Sri Seetaram Rice Mill, (supra), relates to facts prior to 2007 amendments yet the law laid down therein is very clear

and needs no further elaboration apart from a reproduction of the following paragraph;

29. Thus, it would be clear that the expression "unauthorised use of electricity" under Section 126 of the Act deals with cases of unauthorised

use, even in the absence of intention. These cases would certainly be different from cases where there is dishonest abstraction of electricity by any of

the methods enlisted under Section 135 of the Act. A clear example would be, where a consumer has used excessive load as against the installed load

simpliciter and there is violation of the terms and conditions of supply, then, the case would fall under Section 126 of the Act. On the other hand,

where a consumer, by any of the means and methods as specified under Sections 135(a) to 135(e) of the Act, has abstracted energy with dishonest

intention and without authorisation, like providing for a direct connection bypassing the installed meter, the case would fall under Section 135 of the

Act.

41. It is, therefore, seen that precedents relied upon by the petitioner do not substantiate the plea that unauthorised use of meter would never come

within the meaning of theft of electricity. The provisions of Section 135 of the Act, reproduced hereinbelow, would show that tampering of meter

comes well within the definition of theft of electricity.

135. Theft of electricity. (1) Whoever, dishonestly,

(a) taps, makes or causes to be made any connection with overhead, underground or underwater lines or cables, or service wires, or service facilities

of a licensee or supplier, as the case may be; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes

with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted;

or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to

interfere with the proper or accurate metering of electricity; or

(d) uses electricity through a tampered meter; or

42. It will be seen that clauses (b), (c) & (d) to Section 135(1) of the Act deal specifically with tampering of meter. Usage of electricity by tampering

of meter has been made a punishable offence under Section 135 of the Act. The case of the respondent is that petitioner indulged in tampering of

meter and in the process committed theft of electricity. The allegations are based on scientific investigation of the meter installed in the premises of

the petitioner. The petitioner now, after the 2007 amendments to Section 126 of the Act, cannot be heard that he cannot be prosecuted for

unauthorized use of electricity. So far as dishonest intention is concerned these are questions of fact and can be ascertained only in the trial.

43. Now, coming to the plea about delayed lodging of the FIR, the second proviso to Section 135(1A) of the Act provides as follows;

“Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of

such offence in police station having jurisdiction within twenty four hours from the time of such disconnection.”

44. The petitioner alleges that even though the electricity to the petitioner was disconnected on 22.8.2014 the FIR was lodged on 16.9.2014 and as

such much beyond the stipulated period of 24 hours. Therefore, the FIR is illegal and bad in law.

45. Nothing much can be read into this argument. The time limit of 24 hours mentioned in the second proviso to Section 135 (1A) of Act only pertains

to promptitude of action by the Authorities. A delay, beyond 24 hours, in lodging FIR cannot attach any fatality unless a prejudice is shown to have

been caused to the accused. The learned senior Counsel for the petitioner, in the

present case, has not argued as to what prejudice has been caused to him. There is yet another reason as to why this argument cannot be accepted. A Public Authority presumably acts in public interest. A criminal prosecution is a severe step in the prevention of offence of theft of electricity. Before lodging an FIR the Authorities must be doubly sure that an offence under Section 135 of the Act has been made out necessitating lodging of prompt criminal action. Thus, when there is a brazen theft of electricity with overhead service wires as contemplated under Section 135(1)(a) of the Act the theft is apparent and a prompt FIR can be lodged.

However, the scenario is different in the case of Section 135(1) (b), (c) & (d), as it appears in the present case. In this case the Authorities may be prima facie satisfied on a visit that there has been a tampering of meter necessitating a disconnection of electricity but so far as lodging of FIR is concerned, there must be a clear and unequivocal material about tampering.

46. In the present case, it was on 8.9.2014 that the meter inspection was done at MTI Ulubari, Guwahati, which revealed presence of alien items inside the meter giving an inference of meter tampering. The FIR was lodged on 16.9.2014 after satisfaction of the fact that offence of theft of electricity has been committed.

47. In any view of the matter, if the delay in lodging of FIR has resulted in any prejudice to the petitioner it shall be open to question in the course of trial of the case.

48. Learned Senior Counsel for the petitioner also argued on some factual aspects of the case such as that even before the provisional assessment the petitioner has been paying electricity bills and the energy bills prior to the provisional bill would show that there is no substantial difference in the quantum of bill hence there is no dishonesty on the part of the petitioner.

49. It may be pointed out that these are factual aspects of the case and it would not be proper to adjudicate the probability of truth in the contentions raised as because such a finding is likely to prejudice the parties.

50. In respect of the nature of jurisdiction vested in the High Court while exercising powers under Section 482 CrPC, the Honâ??ble Supreme Court, in the case *Rajiv Thapar v. Madan Lal Kapoor*, (2013) 3 SCC 330, held that the High Court, in exercise of its jurisdiction under Section 482 CrPC,

must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed by establishing his defences by producing evidence in accordance with law.

51. The Honâ??ble Supreme Court, in the case of Rajiv Thapar (supra), further observed that the exercise of power of quashing vested in the High Court under Section 482 CrPC, at the trial stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecutionâ??s/complainantâ??s case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court

would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

52. In the present case, the petitioner has not been able to show that the prosecution lodged against him is actuated by misconception of law or without there being any materials. The materials, prima facie, appear to be incriminating and this does not appear to be a fit case for exercise of jurisdiction under Section 482 CrPC.

53. In the result, the petition stands dismissed.

54. The interim order granted in this case, vide order dated 06-12-2017, staying all further proceeding of the GR Case No. 1862/2014, shall accordingly stand vacated.

55. It is made clear that the findings and observations, recorded hereinbefore, are only for the purpose of adjudication of the present petition. The trial Court shall not be influenced by any factual findings in this case and shall decide the case on its own merits.