
(2014) 12 MP CK 0059

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri. Case No. 1602/09

Madhya Pradesh Madhya Kshetra Vidyut Vitran Company Ltd.

APPELLANT

Vs

Kalyan Singh Chauhan

RESPONDENT

Date of Decision : 03-12-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 151, 173, 2, 2(c), 482

Citation : (2015) 1 JLJ 118 : (2015) 1 MPHT 165 : (2015) 1 MPJR 237 : (2015) 1 MPLJ 589 : (2015) 3 RCR(Criminal) 446

Hon'ble Judges : B.D. Rathi, J

Bench : Single Bench

Advocate : Vivek Jain, Advocate for the Appellant

Judgement

B.D. Rathi, J.—The instant petition under Section 482 of the Code of Criminal Procedure (for short "the Code") has been filed by the petitioner on being aggrieved by the order impugned dated 16/10/2008 passed by the Special Court (Electricity), Gwalior whereby private complaint filed under Section 135 of the M.P. Electricity Act, 2003 for short "the Act 2003" was returned on 16/10/2008 on the ground that as per the procedure prescribed in second proviso of section 135(1)(A) of the Act itself, written complaint for the commission of the alleged offence was not lodged to the police station having jurisdiction.

2. The brief facts that would emerge from the material placed on record are that one private complaint was filed by petitioner against the respondents under section 135 of the Act by alleging that on 9/3/2008 when premises of the respondents was checked by the Board officials they found un-authorised use of electricity by using direct line but on making complaint, the court refused to take cognizance for non-compliance of the mandatory procedure prescribed in second proviso of section 135(1)(A) of the Act 2003. The cognizance was also refused on the ground that amended proviso given under section 155 of the Act authorises the court to take cognizance only upon a report of police officer under section 173 of Cr.P.C. It was also mentioned in the impugned order that the power to

investigate the matter was given to police under section 151(A) and offences under sections 135 to 140 of the Electricity Act, in the light of section 151-B of the Act are cognizable and non-bailable.

3. It is submitted by the learned counsel Shri Jain appearing for the petitioner that the impugned order passed by the court below is patently illegal erroneous and against the settled principles of law because amended proviso given under section 151 of the Act does not preclude the court to take cognizance on a private complaint. It is thus submitted that the court-below committed mistake in refusing to take cognizance on the private complaint preferred by the petitioner and prayed that the petition may be allowed and the relief claimed for may be granted in favour of the petitioner. In support of the arguments reliance is placed on the decision of Hon. Apex Court in the case of Vishal Agrawal and Another Vs. Chhattisgarh State Electricity Board and Another, .

4. Having regard to the arguments advanced by the learned counsel for petitioner, the entire case has been examined.

5. At this stage, it may be mentioned here that the Act, 2003 is a complete code in itself. For facility of reference, relevant provisions of the Act which are applicable to the case in hand are quoted below:

"135. Theft of electricity.-

(1) XXX XXX XXX XXX

(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

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."

6. Though in the aforesaid provisions correspondingly there is a mandate commanding the complainant to lodge a report in writing relating to the commission of offence in concerning police station having jurisdiction within 24 hrs. from the time of disconnection of the electric supply yet it does not infringe or waive the right of the petitioner to file a private complaint in the court. At this juncture, Section 151 of the Act comes into play which provides the procedure for taking cognizance of the offences relating to theft. It reads as under:

"151. Cognizance of offences.- No court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorised by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose:

Provided that the court may also take cognizance of an offence punishable under

this Act upon a report of a police officer filed under section 173 of the Code of Criminal Procedure, 1973:

Provided further that a special court constituted under section 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial."

7. In view of first proviso of aforesaid section, it is very much clear that the court can also take cognizance of an offence on the basis of the police report filed under section 173 of Cr.P.C. It postulates that if any written complaint was lodged to the police officer then certainly the court can take cognizance on the final report of the police in view of the proviso given under section 151 of the Act. These provisions have been added because of the offence under sections 135 to 140 and section 150 of the Act have been made cognizable and non-bailable by the dint of section 151-B of the Act. Section 151-B of the Act reads as under:-

"151B. Certain offences cognizable and non-bailable.-

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under sections 135 to 140 or section 150 shall be cognizable and non-bailable."

8. These two provisos under section 135((1)(A) and section 151 of the Act were added which had been made enforceable w.e.f. 15/6/2007. On the same day, section 151-B of the Act was also incorporated to declare the offences as cognizable and non-bailable.

9. The definition of cognizable offence was given under section 2(c) of Cr.P.C. which is as under:-

"Definitions Section 2 of the Code of Criminal Procedure, 1973. In this Code, unless the context otherwise requires,-

(a) XXX XXX XXX XXX

(b) XXX XXX XXX XXX

"cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant;

10. Under section 151(A) of the Act is in relation to power of police to investigate alike chapter XII of the Code of Criminal Procedure, 1973. It runs as below:-

"151A. Power of police to investigate.- For the purposes of investigation of an offence punishable of this Act, the police officer shall have all the powers as provided in Chapter XII of the Code of Criminal Procedure, 1973.

11. Similarly in this case one more relevant aspect is that a Notification was issued on 8/6/2005 by the Central Govt. in exercise of powers under section 176

of the Electricity Act. This also requires a mention. Vide this Notification the Electricity Rules 2005 have been framed and Rule 12 which is relevant reads as under:-

"12. Cognizance of the offence.- (1) The police shall take cognizance of the offence punishable under the Act on a complaint in writing made to the police by the appropriate Government or the appropriate Commission or any of their officers authorised by them in this regard or a Chief Electrical Inspector or an Electrical Inspector or an authorised officer of licensee or a generating company, as the case may be.

(2) The police shall investigate the complaint in accordance with the general law applicable to the investigation of any complaint. For the purposes of investigation of the complaint the police shall have all the powers as available under the Code of Criminal Procedure, 1973.

(3) The police shall, after investigation, forward the report along with the complaint filed under sub-clause (1) to the court for trial under the Act.

(4) Notwithstanding anything contained in sub-clauses (1)(2) and (3) above the complaint for taking cognizance of an offence punishable under the Act may also be filed by the appropriate Government or the appropriate Commission or any of their officers authorised by them or a Chief Electrical Inspector or an Electrical Inspector or an authorised officer of licensee or a generating company, as the case may be directly in the appropriate court.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every Special Court may take cognizance of an offence referred to in Sections 135 to 139 of the Act without the accused being committed to it for trial."

12. On perusal of the Rule 12 sub-clause (4) again it is clear like a noon that even after lodging the written complaint before the police and matter has already been investigated by the police even then complainant has a right to file a complaint as provided in section 151 of the Act and if such kind of private complaint is filed then the court is competent to take cognizance of the offence by virtue of the vested right given under section 151 of the Act which otherwise were not affected by declaring the offences under sections 135 to 140 of the Electricity Act as cognizable and non-bailable under section 151-B of the Act to lay down that private complaint cannot be entertained or cognizance cannot be taken by the court.

13. To understand the matter easily it is pertinent to mention here that as per mandatory provisions given in proviso of section 135(1)(A) of the Act, a written complaint in regard to commission of offence shall be lodged before the concerned police station within 24 hrs. Thereafter because of offences are cognizable and non-bailable, the police shall investigate the matter in view of the powers under section 151-A of the Act and thereafter may file final report before the appropriate court. It is strange to note that nowhere it is mentioned in the

Act that private complaint cannot be filed under Section 151 of the Act. For an example suppose if written complaint is not filed before the police station concerned even then there is no bar to file a private complainant under section 151 of Cr.P.C. Similarly, if written complainant is filed before the police station concerned in that event a private complaint can also be filed and the court competent can take cognizable as provided under section 151 of the Act.

14. Hence in view of the detailed observations on factual and legal spears, this court is of the considered opinion that the order passed by the trial court is in utter disregard to the provisions contemplated above and therefore same is hereby set aside. The petitioner is free to file a private complaint before the court and if such kind of complaint is re-presented by the petitioner which was returned by the court against an endorsement made in the impugned order itself, same shall be entertained and dealt with by the court-below in accordance with law.

15. Copy of this order be sent to the concerning Court for compliance.