
(2015) 01 MP CK 0055

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case. No. 1603/2009

Madhya Pradesh Madhya Kshetra Vidyut Vitran Company Ltd.

APPELLANT

Vs

Ramswaroop Kushwah

RESPONDENT

Date of Decision : 08-01-2015

Acts Referred:

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

Citation : (2015) 2 Crimes 446 : (2015) 2 JLJ 38 : (2015) 2 MPJR 236

Hon'ble Judges : S.K. Gupta, J.

Bench : Single Bench

Advocate : Ajay Sharma, for the Appellant

Judgement

Sushil Kumar Gupta, J.—This petition has been preferred under Section 482 of the Code of Criminal Procedure 1973 (in short "the Code 1973") against the impugned order dated 16.10.2008 passed by Special Court (Electricity), Gwalior whereby the private complaint filed under Section 135 of MP Electricity Act, 2003 (in short "the Act 2003") was returned on 16.10.2008 on the ground that complaint has been filed by the complainant without adopting the prescribed procedure under Section 135(1)(1-A) of the Act 2003.

2. The brief facts of the case are that on 09.03.2008 when premises of the respondent was checked by the officers of the petitioner then they found unauthorised use of electricity and committing theft. On making private complaint under Section 135 of the Act 2003 the Court refused to take cognizance for non-compliance of the mandatory provision prescribed in second proviso of Section 135(1)(1-A) of the Act 2003. The Court was also refused to take cognizance on the ground that as per amended proviso given under Section 151 of the Act 2003 which authorises the Court to take cognizance only upon a report of police officer. It was also mentioned in the impugned order that the power to investigate the matter was given to the police under Section 151-A and offences under Section 135 to 140 of Electricity Act in the light of Section 151-B of the Act are cognizable and non-bailable.

3. Learned counsel for the petitioner submits, during the course of argument, that the impugned order passed by the Court below is manifestly illegal, erroneous and contrary to law because amended proviso given under Section 151 of the Act 2003 does not preclude the Court to take cognizance on a private complaint. It is further submitted that the Court below committed error in refusing to take cognizance on the basis of the private complaint preferred by the petitioner. It is further submitted that the learned Court below has gravely erred in passing the impugned order on the basis of second proviso of Section 135(1) (1-A) of the Act 2003. The second proviso qualified Section 135(1-A). it is further submitted that all the provisos of particular provision have to be read together, and not in isolation. The first proviso prescribes the appropriate authority for disconnecting the connection in the case of detection of theft. However the second proviso lays down the further action to be taken after disconnection. It is further submitted that while passing the impugned order the learned Court below has not gone into the mandatory provision of Section 151 of the Act 2003 which clearly provides that cognizance of an offence shall be taken upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorised or Chief Electrical Inspector or licensee or the generating company, as the case may be. By insertion of proviso, parallel powers have been given to the police authorities also to lodge a report of offence under Section 173 of the Code 1973. It is further submitted that no stretch of imagination or interpretation of any legal provision, the Court could have refused to take cognizance upon the complaint made by the complainant. Learned counsel for the petitioner further submitted that on these grounds, 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. Before consideration of the argument advanced by learned counsel for the petitioner, it would be proper to reproduce the relevant provision of the Act 2003.

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 that only such officer of the licensee or supplier, as authorised for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line 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 hour from the time of such disconnection:

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.

Amendment of section 151. - In section 151 of the principal Act, the following provisos shall be inserted, namely:- "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 (2 of 1974);

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."

Insertion of new sections 151A and 151B. - After section 151 of the principal Act, the following sections shall be inserted, namely:-

151A. Power of police to investigate. - For the purposes of investigation of an offence punishable under this Act, the police officer shall have all the powers as provided in Chapter XII of the Code of Criminal Procedure, 1973 (2 of 1974).

151B. Certain offences to be cognizable and non-bailable. - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under sections 135 to 140 or section 150 shall be cognizable and nonbailable.'"

175. Provisions of this Act to be in addition to and not in derogation of other laws.- The provisions of this Act are in addition to and not in derogation of any other law for the time being in force.

6. In this backdrop, the Notification dated 08.06.2005 issued by the Central Government in exercise of powers under Section 176 of the Electricity Act 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 officer authorized by them in this regard or a Chief Electrical Inspector or an Electrical Inspector or an authorized 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 subclauses (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 officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or an authorized 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.

6. From the bare perusal of Section 135(1)(1-A) of the Act 2003, it is clear that requirement to lodge police report of an offence of theft of electricity only when disconnection of supply of electricity is made only after detection of theft but petitioner/complainant does not debar to file a private complaint in the Court.

7. At this stage, it is pertinent to mention here that the Court below did not consider the mandatory provision of Section 151 of the Act 2003 which clearly provides that cognizance of an offence punishable under this Act 2003 shall be taken upon a complaint in writing made by Appropriate Government or the Appropriate Commission or any of their officer authorised by them in this regard or Chief Electrical Inspector or Electrical Inspector or a authorised officer of licensee or the generating company, as the case may be.

8. By virtue of first proviso of amended Section 151, parallel powers has also been given to the police authorities to lodge a report of offence under Section 173 of Cr.P.C. By the amended provision, such power has been given to the police because the offence under Section 135 to 140 and 150 of the Act 2003 have been made cognizable and nonbailable, as per the amended provision under Section 151-B of the Act 2003. And also the power to investigate the offence punishable under this Act has been given to the police by amended proviso of Section 151-A.

9. It is also clear from the bare perusal of Rule 12 sub-clause (4) of the Act that even if any matter has already been investigated by the police even then powers to file the private complaint is not curtail and complainant has a right to file a private complaint as provided under Section 151 of the Act 2003 which otherwise were not affected by declaring the offences under Section 135 to 140 of the Act 2003 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.

10. Thus, the clear principle which emerges from the aforesaid discussion is that even when a Magistrate is to take cognizance on the police report that would not mean that no other option is available and the private complaint can not be lodged. 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. However, that would not mean that other avenues for investigation into the offence which are available would be excluded. It is more so when no such special procedure for trying the offences under the Electricity Act is formulated and the cases under this Act which are also to be governed by the Code of Criminal Procedure.

11. Therefore, in view of the aforesaid, discussion and observations on factual and legal aspects, I am in the considered opinion that the impugned order passed by the Court below is not correct in the eye of law and contrary to the provisions of the Act 2003 and therefore, same is hereby set aside. Petitioner is free to resubmit the private complaint before the Court and if such kind of complaint is re-submitted by the petitioner which was returned by the Court against an endorsement by passing the impugned order, same shall be entertained and dealt with by the Court below in accordance with law.

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