
(2006) 10 P&H CK 0041
In the Punjab And Haryana At Chandigarh

Mahalakshmi Spinners Ltd. and Others	APPELLANT
Vs	
State of Haryana and Another	RESPONDENT

Date of Decision : 17-10-2006

Acts Referred:

Electricity Act, 2003 — Section 135, 138

Citation : (2007) 4 CivCC 356 : (2007) CriLJ 429 : (2007) 1 RCR(Civil) 381 : (2007) 1 RCR(Criminal) 387

Hon'ble Judges : T.P.S. Mann, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T.P.S. Mann, J.—By filing the present petition the petitioners are seeking quashing of FIR No. 76 dated 30-1-2006 registered at Police Station City Panipat under Sections 135 and 138 of the Electricity Act, 2003.

2. As per the case of the prosecution, petitioner M/s. Mahalakshmi Spinners Limited, Panipat was having large supply electricity connection bearing A/c. No. LS-67 with sanctioned contract demand of 898 KVA with Uttar Haryana Bijli Vitran Nigarn Limited (for short "UHBVN"). On 24-1-2006 a raiding party of UHBVN checked the premises of the petitioner. During the said inspection, dishonest use of electricity, theft of electrical lines and material, interference with metering work of license and negligent wasting of electricity were detected by the authorized officer. Seals bearing serial Nos. P-48031 and P-48033 with sealing impression U046 affixed on the back side of CT/PT Chamber door when compared with the original sample seals were found different in shape, size and placement of words. Hence seals affixed on the back side of CT/PT chamber were fake. With these fake seals the measuring CTs and PTs were approachable which ultimately effected the actual energy being recorded by the meter. Hence, it was found to be a case of theft of energy. Accordingly, a request was submitted by Sub-Divisional Officer, Operations, City Sub-Division UHBVN, Panipat to the police requesting for registration of the FIR. On its basis, FIR No. 76 was registered on

30-1-2006 under Sections 135 and 138 of Electricity Act, 2003.

3. Learned Counsel for the petitioners while seeking quashing of the FIR submitted that the Electricity Act, 2003 (hereinafter referred to as "the Act") is a complete code in itself. Section 151 of the Act provides the procedure for taking cognizance of the offences relating to theft. For facility of reference, Section 151 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 authorized 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.

4. In view of the aforementioned provision it was submitted that the cognizance of the offence could be taken by Court of law only when a complaint is made in writing by an authorized officer. There was no provision in the Act for registration of the FIR. It was further submitted that even if the police files a report u/s 173, Cr.P.C, its cognizance could not be taken by the Court of law as only remedy available under the Act was to entertain a complaint by the authorized officer. Thus, the registration of the FIR in question against the petitioners was not permitted by the law and the same deserves to be quashed.

5. Learned Counsel appearing for the respondents submitted that after the registration of the FIR under Sections 135 and 138 of the Act, the police conducted investigation and offence u/s 379, I.P.C. was also added to the same and for that reason alone, the registration of FIR and conducting of investigation thereafter was perfectly in accordance with law as no complaint was required to be filled for the offence u/s 379, I.P.C.

6. Section 135 of the Act provides for punishment for theft of electricity, whereas Section 138 deals with punishment for interference with meters or works of licensee. For facility of reference, provisions of Sections 135 and 138 are reproduced herein below:

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

(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,

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use-

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity.

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity.

Provided further that if it is proved that any artificial means or means not authorised by the Board or licensee exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer,

(2) Any officer authorised in this behalf by the State Government may-

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been or is being, used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitators or article which has been or is being used for unauthorised use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under Sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and. seizure of any domestic places or

domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

138. Interference with meters or works of licensee-

(1) Whoever-

(a) unauthorisedly connects any meter, indicator or apparatus with any electric line through which electricity is supplied by a licensee or disconnects the same from any such electric line; or

(b) unauthorisedly reconnects any meter, indicator or apparatus with any electric line or other works being the property of a licensee when the said electric line or other works has or have been cut or disconnected; or

(c) lays or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee, or

(d) maliciously injures any meter, indicator, or apparatus belonging to a licensee or wilfully or fraudulently alters the index of any such meter, indicator or apparatus or prevents any such meter, indicator or apparatus from duly registering;

shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both, and in the case of a continuing offence, with a daily fine which may extend to five hundred rupees; and if it is proved that any means exist for making such connection as is referred to in Clause (a) or such reconnection as is referred to in Clause (b), or such communication as is referred to in Clause (c), for causing such alteration or prevention as is referred to in Clause (d), and that the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, it shall be presumed, until the contrary is proved, that such connection, reconnection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and wilfully caused by such consumer.

7. On the other hand, Section 379, I.P.C. deals with punishment for a simple case of theft. When there is a specific/special law covering the question of theft of electricity i.e. Section 135 of the Act, the general law contained in Section 379, I.P.C. will not be applicable. Any attempt by the police to add offence u/s 379, I.P.C. will be a crude device by the prosecution to overcome the likely objection from the accused about the filing of the complaint instead of registration of FIR. Law is well settled that special law will prevail over the general law. Once there is a specific provision in the Act in respect of providing of punishment for theft of electricity, no offence u/s 379, I.P.C. could be alleged by

the prosecution or later on added during the investigation so as to pre-empt the taking of plea by the accused that no prosecution for the offence u/s 135 of the Act could be launched except upon a complaint by the authorized officer.

8. In view of the above, the respondents cannot take the shield by adding the offence u/s 379, I.P.C. to the criminal proceedings registered against the petitioners by way of FIR.

9. Regarding taking cognizance of the offences under Sections 135 and 138 of the Act, Section 151 clearly lays down that no Court should take cognizance of those offences except upon a complaint in writing made by the Appropriate Government or Appropriate Commission or Chief Electrical Inspector or Electrical Inspector or Licensee. Thus, the registration of FIR was clearly not permitted by the said provision.

10. In *Avtar Singh Vs. State of Punjab*, the Hon'ble Supreme Court was seized of a similar situation. At that time Indian Electricity Act, 1910 was in vogue. Section 29 of the said Act was paramateria to Section 135 of the 2003 Act and so was Section 50 of the earlier Act to Section 151 of the new Act. Holding that the object of Section 50 was to prevent prosecution for offences under the 1910 Act being instituted by anyone who chose to do so because the offences could be proved by men possessing special qualifications, it was concluded that the prosecution in respect of that offence would be incompetent unless it was instituted at the Instance of a person named in Section 50 of the 1910 Act. Relevant portion of the judgment is reproduced herein-below (para 9):

We may now refer to certain general considerations also leading to the view which we have taken. First, we find that the heading which governs Sections 39 to 50 of the Act is "Criminal Offences and Procedure". Obviously, therefore, the Legislature thought that Section 39 created an offence. We have also said that Sections 465 and 49 indicate that in the Legislature's contemplation Section 39 provided for a punishment. That section must, therefore, also have been Intended to create an offence to which the punishment was to attach. The word "offence" is not defined In the Act. Since for the reasons, earlier mentioned, in the Legislature's view Section 39 created an offence, it has to be held that that was one of the offence to which Section 50 was intended to apply. Lastly, it seems to us that the object of Section 50 is to prevent prosecution for offences against the Act being instituted by anyone who chooses to do so because the offences can be proved by men possessing special qualifications. That is why it is left only to the authorities concerned with the offence and the persons aggrieved by it to initiate the prosecution. There is no dispute that Section 50 would apply to the offences mentioned in Sections 40 to 47. Now it seems to us that if we are right in our view about the object of Section 50, in principle it. would be impossible to make any distinction between Section 39 and any of the Sections from Section 40 to Section 47. Thus, Section 40 makes it an offence to maliciously cause energy to be wasted. If in respect of waste of energy Section 50 is to have application, there is no reason why it should not have been

intended to apply to dishonest abstraction of energy made a theft by Section 39. For all these reasons we think that the present is a case of an offence against the Act and the prosecution in respect of that offence would be incompetent unless it was instituted at the Instance of a person named in Section 50.

11. In *Shakambari Industries and Anr. v. State of Maharashtra and Anr.* (2006) 2 MLJ 170 : AIR 2006 Bom 922 it was clearly held that cognizance of offence u/s 135 of the Act could be taken only upon a written complaint made by officer authorized.

12. Similar view was taken by this Court in *Jai Jagdembhey Steel Pvt. Ltd. and Anr. v. State of Haryana and Ors.* Cri Misc. No. 10762-M of 2005 decided on 24-5-2006 and in *Veer Singh v. State of Haryana and Anr.* Cri. Revision No. 978 of 2006 decided on 14-9-2006. From the latter judgment, relevant observations are reproduced hereinbelow:

In this case, FIR was registered by the police. In this case the Court could not take cognizance except on a complaint. No complaint had been filed as required u/s 151 of the Act. As such, the taking of cognizance by the Court was bad in law.

13. In view of the above, registration of FIR is held to be only an abuse of the process of law. Accordingly, the present petition is accepted and FIR No. 76 dated 30-1-2006 registered under Sections 135 and 138 of the Electricity Act, 2003 Police Station City, Panipat, is quashed.

14. However, Uttar Haryana Bijli Vitran Nigam Limited will be at liberty to file a criminal complaint, if so advised.