
(2012) 02 BOM CK 0026
In the Bombay High Court
Case No : Criminal Appeal No. 60 of 2012

Maharashtra State Electricity Distribution Co. Ltd.	APPELLANT
Vs	
Gulam Sultan Faruqi and Another	RESPONDENT

Date of Decision : 29-02-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 300
Electricity Act, 2003 — Section 126, 126(4), 135, 138, 152

Citation : (2012) BomCR(Cri) 138

Hon'ble Judges : Thipsay A.M., J

Bench : Single Bench

Advocate : Uday S. Malte, for the Appellant; P.M. Kulkarni, for respondent No. 1. and T.S. Lodhe, Assistant Public Prosecutor, for respondent-State, for the Respondent

Final Decision : Allowed

Judgement

Thipsay A.M., J.—This appeal is directed against the judgment and order delivered by the Sessions Judge, Beed in Special [MSEB] Case No. 82 of 2006 whereby he acquitted the respondent No. 1 (hereinafter referred to as the respondent), who was the sole accused in the said case, of offences punishable under sections 135 and 138 of the Electricity Act, 2003 (hereinafter referred to as "the Act"). As a short point is involved, by consent of the learned Counsel for the parties, the appeal is taken up for final hearing forthwith. By consent, calling for record and proceedings is dispensed with.

2. I have heard Mr. Uday Malte, the learned Advocate for the appellant and Mr. P.M. Kulkarni the learned Advocate for the respondent.

3. The prosecution case as was put-forth before the learned Sessions Judge, was as follows.

That on 5/7/2006, the Flying squad of the appellant visited the Flour Mill of the respondent and inspected the electricity meter fixed therein. It was noticed on

inspection that the seals of the meter were broken. The meter was checked by applying "Accucheck", which showed that the meter was running slow by about 72%. The seals of the meter were also found tampered. A panchanama was drawn. The meter was replaced with another meter and the tampered meter was attached.

The respondent was asked to attend the testing unit, situated at Malives, Beed on 6/7/2006. The respondent did attend accordingly and in his presence, the seal fixed to the tampered meter was opened and the same was tested. The testing result showed that the meter was running slow by more than 88%. The internal examination of the meter revealed that the internal mechanism was tampered. Photographs of these tastings were taken. It was revealed that the respondent had committed theft of electricity to the extent of 3989 units worth Rs. 22,921/-. The respondent, on demand did pay an amount of Rs. 22,921/ -. It is the case of the appellant that the respondent was also asked as to whether he would like to the compound offences as per the provisions of section 152 of the said Act, by paying the compounding charges of Rs. 2,00,000/-, but the respondent declined to pay the amount. It is thereafter, that a complaint was filed against him alleging commission of offences punishable under sections 135 and 138 of the said Act.

4. During the trial, the prosecution examined two witnesses. No defence evidence was adduced.

5. A perusal of the impugned judgment shows that the order of acquittal was passed by the Sessions Judge on the footing that the prosecution was not maintainable. In order to understand clearly the reasoning of the learned Sessions Judge which led to the acquittal, it would be convenient to reproduce here the points for determination as framed by the learned Sessions Judge and the findings arrived at by him with respect thereto, found in para 11 of the impugned judgment:-

POINTS

FINDINGS

1] Whether the complainant company proves that the prosecution is maintainable?

In the negative.

2] Does the complainant prove that, accused committed offences under sections 135 and 138 of the Electricity Act, 2003 as alleged in the complaint?

In the negative.

3] What order?

As per final order.

6. The learned Sessions Judge was of the view that section 152 of the Electricity

Act provides for compounding of offences and that the complainant had not made any demand of compounding charges from the respondent. He was of the view that since no demand of any compounding charges was made from the respondent, the respondent had no opportunity to compound the offence and that under those circumstances, the prosecution was not maintainable. It would be appropriate to reproduce the relevant part from the impugned judgment so as to show the reasoning of the learned Sessions Judge.

16. On plain reading of the said section 152, it is seen that, it opens with a non-obstante clause and thereafter provides that, Appropriate Government or any officer authorized by it may accept from any consumer or person who committed or is reasonably suspected of having committed an offence of theft of electricity the compounding charges and offence can be compounded.

17. It further provides that, on payment of such monies towards compounding charges, the accused is entitled to be acquitted as contemplated u/s 300 of Cri.P.C.

21. On the analysis of sections 152 and 126 of the said Act as above, in the instant case it is pertinent to note that, the assessment sheet that had been served upon the accused asking him to pay Rs. 22,971/ towards theft of electricity has been paid by him on 8th July, 2006. This is not disputed by either side and it is evident from the copy of the receipt [Ex. 33] produced by the complainant and the original receipt filed by the accused alongwith list Ex. 56.

22. This payment, as regards alleged theft detected on 5-7-2006 made on 8-7-2006 is clearly within section 126(4) and Proviso thereto under the said Act.

7. The learned Sessions Judge then proceeded to discuss, that there was no evidence that compounding charges were ever demanded from the appellant. He disbelieved that claim of the complainant. He then observed:-

The aforesaid absence of any alleged demand u/s 152 of the compounding charges itself becomes a lacuna in maintaining the complaint as is done in the instant case.

(Emphasis supplied.)

8. In para 25 of the impugned judgment, the learned judge observed that the very basis of prosecution namely; non payment of the compounding charges by the accused itself being missing is not maintainable.

9. In para 26 of the impugned judgment, the learned judge further observed that:-

In that view, when the complaint itself is held to be not maintainable in view of the lacuna as discussed hereinbefore, there is no need to comment upon the evidence that has been adduced by the complainant.

10. Thus, the learned judge was of the view that it is only on failure of the

respondent to pay the compounding charges that he could be prosecuted for the offences punishable under sections 135 and 138 of the said Act.

11. This reasoning does not appear to be proper. The position of law, as understood by the learned Sessions Judge, does not appear to be correct.

12. Section 135 deals with theft of electricity. Section 138 deals with interference with the meters or works of licence. The punishment that has been provided u/s 135 of the said Act, is for theft of electricity as described in the said section. Similarly, the punishment provided in section 138, is for interference with meters or works of licence. The punishment is not for failure to compound offence in question.

13. In my opinion, the learned judge has clearly committed an error in construing the provisions of section 152 which relate to compounding of offences, as a prerequisite for initiating prosecution with respect to the offences punishable under sections 135 and 138 of the said Act. A bare reading of section 152 of the said Act indicates that it is an enabling provision, permitting the Appropriate Government to compound the offences, on payment of certain charges as stipulated by the said section, by the offender. It does not, in the first place, make it obligatory that compounding must be done if the offender is ready to pay the amount, as per the table provided in the said section. In the second place, there is no basis for the assumption that there would be no prosecution, unless a demand for compounding charges has been made and an opportunity to compound an offence is granted to an accused.

14. According to the complainant, compounding charges were demanded, but the learned Sessions Judge has not believed the same. Even if this disbelief of the learned Judge about the said claim is accepted as correct for the sake of argument, he could not have held the prosecution not maintainable for that reason. Merely because there exists a provision for compounding of offences, it can not be said that the complainant was under an obligation to make a demand of compounding charges from the respondent. At any rate, it can not be said that it is only on failure to pay the compounding charges, the prosecution could be initiated. With the assistance of the learned Counsel for the respondent, I have carefully gone through the relevant provisions and I find no warrant for the proposition that prosecution, with respect to the offences punishable under sections 135 and/or 138 of the said Act, is not maintainable unless previously an opportunity of compounding the offence is given to an accused and the accused has failed to avail of such opportunity.

15. The impugned order having been passed on a misconception of the legal position, is bad and liable to be interfered with.

16. However, it is clear that the learned Sessions Judge did not consider the evidence adduced by the prosecution with the object of ascertaining whether the commission of the alleged offences by the respondent had been proved or not. This is clear from the observations made in para 26 of the judgment. In these

circumstances, instead of going through the evidence and undertaking the exercise of ascertaining whether the case had been proved or not, for the first time in this appeal, it would be proper to remand the matter back to the learned Sessions Judge, to appreciate the evidence and decide the case in accordance with law, keeping in mind, the observations made in this order.

17. The appeal is allowed.

18. The impugned judgment and order of acquittal is set aside. The matter is remanded back to the learned Sessions Judge, for deciding the matter on merits and in accordance with law, keeping in mind the observations made in this order.

19. The parties shall appear before the learned Sessions Judge on 20/3/2012.

20. Record and proceedings be sent back forthwith. The learned Sessions Judge shall endeavour to dispose of the case expeditiously and as far as possible, within a period of one month from 20th March, 2012.