

(2014) 11 BOM CK 0138

In the Bombay High Court

Case No : Criminal Writ Petition No. 536 of 2013

Makrand Balkrishna Patwardhan

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 24-11-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 89
Criminal Procedure Code, 1973 (CrPC) — Section 482
Electricity Act, 1910 — Section 39, 44, 50
Electricity Act, 2003 — Section 152

Citation : (2015) ALLMR(Cri) 1823 : (2015) 1 BomCR(Cri) 210

Hon'ble Judges : S.S. Shinde, J;N.W. Sambre, J

Bench : Division Bench

Advocate : Mukul S. Kulkarni, Advocates for the Appellant; S.G. Chincholkar, A.P.P, Advocates for the Respondent

Judgement

N.W. Sambre, J.—Rule. Rule made returnable forthwith. By consent, heard finally. The petitioner, pursuant to a complaint dated 20/10/2001 preferred for and on behalf of respondent No. 2 in the matter of theft of electrical energy, suffered prosecution under the provisions sections 39, 44 and 50 of the Indian Electricity Act, 1910 and amended in 1986 (for short "said Act"). Pursuant to the said complaint, charge was framed against the petitioner for an offence punishable under section 39 of the said Act on 4/9/2008 by Judicial Magistrate, First Class, Dhule in Regular Criminal Case No. 624 of 2001.

2. Having regard to the policy of the Maharashtra State Electricity Distribution Company Limited (for short, "Distribution Company") particularly as reflected in Commercial Circular No. 86 dated 25/7/2008, the petitioner approached the Superintending Engineer of the Distribution Company for compounding of offence.

3. The said request of compounding of offence was placed before the Court in the above referred complaint case and in view of the provision of section 89 of the Code of Civil Procedure, the matter was referred for mediation.

4. Pursuant to the order of mediation passed by learned Court of the Judicial Magistrate, First Class, the matter was settled in between the parties and the petitioner herein has paid entire electricity charges, penalty, compounding fees to the tune of Rs. 1,86,000/-. A joint pursis by the petitioner and the Distribution Company came to be filed on 6/3/2013 depicting the settlement.

5. The said settlement is accepted by the Distribution Company and accordingly, the Distribution Company assured the petitioner to co-operate in the matter of compounding the criminal case, as is reflected in the joint pursis dated 6/3/2013.

6. The criminal proceedings under section 482 of the Code of Criminal Procedure are taken out by the petitioner in view of the fact that, under the provisions of Indian Electricity Act of 1910, if an offence under section 39 is detected, no provision of compounding of offence is provided.

7. The petitioner, in the wake of Commercial Circular No. 86 dated 25/7/2008 issued by the Maharashtra State Electricity Distribution Company Limited and in view of compounding accepted by Distribution Company, has sought quashing of the proceedings initiated vide Regular Criminal Case No. 624 of 2001.

8. It is the case of the petitioner that even if offence is alleged to have been committed under the old Act i.e., Act of 1910, however, in view of the verdict of the High Court of Bihar in the matter of Binod Giri Vs. State of Bihar and others, the compounding is permissible. According to him, in the matter of compounding, provisions of the Electricity Act, 2003, there is a specific provision as regards compounding, in view of the section 152 of the said Act.

9. Based on the same, Distribution Company has adopted the provisions of section 152 of the Indian Electricity Act, 2003 as regards compounding i.e., the offence committed under the old Act of 1910.

10. From the record, it appears that the petitioner, has acceded the demand of the Distribution Company and has paid complete compounding charges as is acknowledged by the Counsel for the Distribution Company Mr. S.M. Godsay. It is also apparent from the record that the Distribution Company, in pursis dated 6/3/2013 in clear terms, has accepted that compounding fees are already paid by the petitioner and receipt to that effect is already passed.

11. In view of above, having regard to the terms of the Commercial Circular No. 86 dated 25/7/2008 and the provisions of section 152 of the Indian Electricity Act, 2003, the prayer of the present petitioner for quashing and setting aside the proceedings pending on the file of Judicial Magistrate, First Class, Dhule vide Regular Criminal Case No. 624 of 2001 is liable to be accepted. This Court has reached to the conclusion that, no fruitful purpose will be served even if the prosecution against the present petitioner initiated by the above referred complaint case is continued, as the complainant himself has compounded the claim by accepting the compounding fees.

12. As such, for the reasons narrated herein above, Criminal writ petition is

allowed in terms of prayer Clause (A). Rule made absolute in above terms.