

(2014) 05 DEL CK 0255
In the Delhi High Court
Case No : Crl. A. 1356/2010

Om Prakash

APPELLANT

Vs

Bses Rajdhani Power Limited

RESPONDENT

Date of Decision : 09-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 320, 482
Electricity Act, 2003 — Section 135, 152

Citation : (2014) 05 DEL CK 0255

Hon'ble Judges : V.K. Jain, J

Bench : Single Bench

Advocate : Deepak Pathak, Advocate for the Respondent

Judgement

V.K. Jain, J.—The appellant before this Court was convicted u/s 135 of Electricity Act and was sentenced to pay fine of Rs. 7 lakh or to undergo SI for six months in default. The amount of civil liability was determined at Rs. 6 lakh. Being aggrieved from the aforesaid order, the appellant is before this Court by way of this appeal.

2. During pendency of the appeal, the appellant as well as the complainant/respondent-BSES Rajdhani Power Limited arrived at a settlement agreement before Delhi High Court Mediation and Conciliation Centre on 20.01.2014. Vide aforesaid settlement, the parties, inter alia, agreed as under:-

a) Whereas Crl. A. No. 1356/2010 was filed by the First Party against the Second Party for quashing of judgment dated 27.09.2010 and sentence/fine dated 01.10.2010 passed by Shri Deepak Jagotra, Addl. Sessions Judge (Special Electricity Court), Dwarka Courts, Delhi in Complaint No. 143/110/08 titled as "BSES Rajdhani Limited Vs. Suresh & Ors." Whereby by the Ld. ASJ fixed the civil liability of Rs. 6,00,000/- against both the accused namely Shri Suresh and Shri Om Prakash. Rs. 3,00,000/- was to be paid by Shri Om Prakash and Rs. 2,00,000/- was ordered to be paid by another accused Shri Suresh as he has

already paid Rs. 1,00,000/-. Further, the Ld. ASJ had ordered the convicts to pay fine of Rs. 7,00,000/- jointly and severally.

b) It is agreed between the parties, with the intervention of the Ld. Mediator, keeping in view the special circumstances of the case, as such the First Party namely Shri Om Prakash agrees to pay a sum of Rs. 2,70,000/- as full and final settlement towards the civil liability and the Second Party agrees accept the same as full and final settlement. The Second Party shall not insist for payment of fine amount determined by the Ld. ASJ.

c) Whereas it is stated by the First Party that he has already deposited a sum of Rs. 1,00,000/- with the BSES Rajdhani Limited, (subject to verification). If this amount is not found to be paid by Shri Om Prakash, he shall be liable to make payment of this amount.

d) Whereas the First Party has agreed to pay BSES Rajdhani Power Ltd. The balance sum of Rs. 1,70,000/- to the Second Party within a week from the date of signing of the present Settlement Agreement.

e) Whereas the Second Party has no objection, if the present Crl. A. No. 1356/2010 is disposed off and judgment dated 27.09.2010 and sentence/fine dated 01.10.2010 passed by Shri Deepak Jagotra, Addl. Sessions Judge (Special Electricity Court), Dwarka Courts, Delhi in Complaint No. 143/10/08 titled as "BSES Rajdhani Limited Vs. Suresh & Ors." is set aside/compounded/waived after the full and final payment towards civil liability qua First Party (Shri Om Prakash).

7. This settlement has been reached between the First Party and the Second Party in Crl. A. No. 1356/2010 and this settlement will have no bearing or effect on the Crl. A. No. 1303/2010 titled as "Suresh Vs. BSES Rajdhani Power Ltd.", filed by co-accused Shri Suresh pending before this Hon'ble Court.

3. When this appeal came up for hearing on 15.04.2014, the learned counsel for the appellant, in view of the above-referred settlement, sought setting aside of the impugned judgment and acquittal of the appellant, contending that the offence alleged to have been committed by the appellant has been compounded by the respondent-BSES Rajdhani Power Limited. The learned counsel for the respondent admitted the settlement agreement and also conveyed his no objection to the acquittal of the appellant, but conceded that except as provided in Section 152 of the Electricity Act, there is no provision either in the Code of Criminal Procedure or in the Electricity Act for compounding the offence punishable u/s 135 of Electricity Act. On that date, the matter was adjourned to 22.04.2014 on the request of the learned counsel for the appellant. No one appeared for the appellant on that date and, therefore, I heard the learned counsel for the respondent.

4. Section 152 of the Electricity Act provides as under:-

152. Compounding of offences: (1) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), the Appropriate Government or

any officer authorized by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table below:

TABLE

5. It would thus be seen that the power to accept the sum determined at the rates prescribed in the table by way of compounding of the offence has been conferred by the statute upon the Appropriate Government or any officer authorized by it in this behalf, and not upon the Court before which a person guilty of offence punishable u/s 135 of the Electricity Act is prosecuted or the Court hearing appeal arising out of the order of the Trial Court. Once such a sum is accepted by the Appropriate Government or the Authorized Officer, the person making the payment is deemed to have been acquitted by way of operation of law and no order for his acquittal is required to be passed by any Court.

It would also be noticed that the compounding fee, calculated in terms of Section 152 of the Act, is to be paid to the Appropriate Government or the Authorized Officer and not to the complainant before the Court. In other words, the aforesaid amount goes to the public exchequer and not to a private complainant such as BSES Rajdhani Power Limited. Also, the amount payable as compounding fee is determined by the statute itself, depending upon the quantum of the electricity stolen. In the case before this Court, the compounding fee has neither been determined nor accepted by the Appropriate Government or the Authorized Officer. The amount agreed between the parties before Delhi High Court Mediation and Conciliation Centre is to go to the respondent which is a private company and not to the public exchequer, though the provisions of Section 152 of the Act, envisage payment to the public exchequer and not to the private supplier of electricity. My attention has also been drawn to a letter dated 26.10.2005, written by the Government of India, Ministry of Power, to the Principal Secretary (Energy), All States, clarifying that the money deposited as compounding fee under the provisions of Section 152 of Electricity Act will go to the credit of the State Government. In these circumstances, neither the appeal can be dismissed nor can this Court record acquittal of the appellant in view of the settlement agreement dated 20.01.2014.

6. As regards the provisions for compounding, contained in Section 320 of the Code of Criminal Procedure, the aforesaid Section, as would be evident from its bare perusal, applies only to the offences punishable under various sections of the Indian Penal Code, as specified in the table below the Section. The aforesaid Section has no applicability to the compounding of an offence punishable under the provisions of Electricity Act. In fact, even with respect to the compounding of offences in terms of Section 320 of the Code of Criminal Procedure, the Hon'ble Supreme Court observed in *Gian Singh Vs. State of Punjab and Another*, that the power of a Criminal Court is circumscribed by the provisions contained in Section 320 and the Court is guided solely and squarely thereby. Though in a

petition seeking quashing of a criminal offence or criminal proceeding or criminal complaint, the formation of the opinion by the High Court is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment. It is by now an undisputed legal proposition that the power of the Court for quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a Criminal Court for compounding the offences u/s 320 of the Code. In the course of judgment, the Apex Court also observed that the offences punishable under the special Statutes are not covered by Section 320 of the Code of Criminal Procedure.

Since this Court is dealing with an appeal and not with a petition u/s 482 of the Code of Criminal Procedure or Article 226/227 of the Constitution, I need not express any view on the question as to whether pursuant to a settlement agreement between a private complainant and a person accused of having committed an offence punishable under the provisions of Electricity Act, the prosecution/conviction of the alleged offender can be quashed by the High Court or not.

7. The learned counsel for the appellant has drawn my attention to the orders dated 16.01.2013 titled Mohinder Bhati vs. BSES Rajdhani Power Ltd., (Crl. A. No. 1111/2010), dated 14.08.2013 titled Amar Awana vs. State NCT of Delhi and Anr. (Crl. A. No. 624/2013) and dated 18.12.2013 titled Amrawati vs. State and Ors. (Crl. A. No. 1396/2013), all passed by this Court. However, in none of the aforesaid orders, the attention of the Court was drawn to the provisions of Section 152 of the Electricity Act nor has the Court otherwise examined the legal question as to whether pursuant to a settlement before Mediation and Conciliation Centre, a person convicted u/s 135 of Electricity Act can be acquitted or not. The aforesaid orders, therefore, would be per incuriam and do not constitute a binding precedent.

For the reasons stated hereinabove, list this appeal for final hearing on 24.07.2014.

It is made clear that this order would not come in the way of the petitioner filing a petition under Article 226/227 of the Constitution or Section 482 of the Code of Criminal Procedure, if he is so advised. If any such petition is filed, it would be considered by the Court on its own merit.

It is also made clear that this order does not come in the way of the appellant approaching the Appropriate Government or the Authorized Officer in terms of the Section 152 of the Electricity Act.