(2020) 05 MP CK 0101

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 1471 Of 2016

Parenteral Drugs (India) Ltd — APPELLANT

Vs

Madhya Pradesh Pashchim Kshet — RESPONDENT

Date of Decision : 20-05-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 173, 227, 397, 397(2), 397(3), 401, 482
Electricity Act, 2003 — Section 126, 127, 135, 135(1A), 136, 138, 149, 150, 151

Citation : (2020) 05 MP CK 0101

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

Bench : Single Bench

Advocate : Shekhar Bhargav, Vijayesh Atre, Prasanna Prasad

Final Decision : Disposed Of

Judgement

(1). The applicants are aggrieved by the order dated 25.10.2016 passed in complaint case No.6510/2012 by Special Judge (Electricity Act), Indore. Vide said order the learned Special Judge has rejected the application filed by the present applicants under Section 227 of the Code of Criminal Procedure, 1973 (for short 'CrPC').

(2). The facts necessary for adjudication of the instant application are that the respondent No.1 prepared a Panchnama dated 22.06.2012 bearing No.435/5 and 436/6 in furtherance to the detection of usage of electricity for the purpose other than for which usage of electricity was authorized. Apart from it the electricity line was moved to supply the electricity to other company carrying out business. Consequently, a memorandum was prepared and assessment in furtherance to the said memorandum was communicated on 23.07.2012 and on the same day the electricity was disconnected. It would also be relevant to mention that as per respondent No.1 the electricity connection was given to Ms. Parental Drug India Limited (for short 'Company A') whereas it was given unauthorizedly to company namely Neptune Packaging (for short 'Company B'). During course of inquiry it was discovered that Company B was carrying its business since the year 1996 and it had no DG set (Generator) in its premises leading to irrefutable inference the electricity line provided by Company A to Company B was without intimation to the respondent No.1, therefore, after serving the assessment order to the Company A and its Director and also to Company B and its Director, the respondent No.1 also proceeded to file a complaint in terms of Section 151 of the Electricity Act, 2003 (for short 'Act of 2003') alleging commission of offence under Section 135, 136, 138 and 149 read with Section 150 of the Act of 2003.

(3). While for the purpose of adjudication of the instant case reference to the litigation carried out with respect to the assessment order may not be relevant but since the grounds has been canvassed on the strength of the order passed by this Court in the said proceedings, a reference to such other cases would be appropriate.

(4). It is borne out from the record of W.P.No.7338/2012 which was filed for challenging the assessment order dated 23.07.2012 which was disposed of with an observation that re-assessment shall be carried out by the respondents taking into account all relevant factors. In compliance of the directions issued by this Court in W.P.No.7338/2012, a fresh assessment order was prepared and the same was communicated to the present applicants including respondents No.2 and 3. Even after service of said re-assessment, the applicants herein felt dissatisfied and preferred a second Writ Petition before this Court bearing W.P.No.7656/2012. While considering the case of the applicants herein on admission and on interim relief, this Court vide order dated 12.08.2012 granted interim relief to the applicants subject to deposit of Rs.50 Lacs. Since then the petition is pending before this Court and is yet to be decided.

(5). Be that as it may. Since the instant case has been preferred under Section 397 read with Section 401 of CrPC, the scope of consideration is limited and this Court is only required to consider the contents of the complaint filed by the respondent No.1 and observe as to whether the offence alleged to have been committed by the present applicants is made out.

(6). The impugned order dated 25.10.2016 has been challenged on multiple grounds which are enlisted below:

(A) Cognizance taken by the Special Judge for commission of offence punishable under the Act of 2003 is bad in law due to non-compliance of proviso to Sub-Section (1-A) of Section 135 of the Act of 2003 which mandates that a complaint in writing is necessary to be lodged in the police station having jurisdiction within 24 hours from the time of such disconnection of electricity.

(B). The guidelines framed by the Government of Madhya Pradesh relating to the manner in which cases of occupier are to be dealt provides that no criminal action under Section 135 of the Act of 2003 shall be initiated against the owner of the premises if the occupier of found to be involved in such commission of offence, therefore, it is submitted that respondent No.1 has acted in contravention to the said guidelines and has proceeded to file complaint even against the owner of the premises.

(C). There is no criminal antecedents of the present applicant relating to the cases of this nature and therefore, no presumption of dishonesty could be drawn which is an essential ingredient for initiating proceedings under Part XIV of the Act of 2003.

(D). Reliance has also been placed on the statement of the Advocate for the respondent No.1 in Writ Petition No.7656/2012 to submit that even the counsel for the Electricity Company conceded that the case of the applicants fall under Section 126 of the Act of 2003, therefore, it has been submitted that the cognizance by the Special Judge against the present Applicants be quashed for the reason that the case of the present applicants shall fall under Section 126 of the Act of 2003 and not under Part XIV of the Act of 2003.

(7). Per contra, learned counsel for the respondent No.1 addresses this Court firstly on the scope of consideration under Section 397 read with Section 401 of CrPC and simultaneously drawn attention of this Court to the contents of the complaint filed before the Special Court to indicate that once the contents prima facie fulfills the ingredients of offence alleged against the accused, no indulgence can be given by the Court under revisional jurisdiction. He further submitted that non-compliance of proviso to sub-Section (1-A) of Section 135 of the Act of 2003 is not fatal to the prosecution and shall not vitiate the proceedings drawn against the accused before the Special Court. In order to substantiate his contention, learned counsel for the respondent has placed reliance on a series of judgments Adit Engineering Pvt. Ltd. V/s State & Others, 2018 SCC Online Del 9615, Rameshwar @ Kanwar Singh Vs. Bses Rajdhani Power 2017 SCC Online Del 7579, Lokesh Chandra Vs. State of NCT of Delhi, 2012 SCC Online Del 44,Ramesh Pravesh Agrawal Vs. State of Jharkhand, 2011 SCC Online Jhar 514, Sanghi Brothers (Indore) Pvt. Ltd. Vs.Sanjay Choudhary (2008) 10 SCC 681, Suresh @ Pappu Bhudharmal Kalani Vs. State of Maharashtra (2001) 3 SCC 703, West Bengal State Electricity Distribution Co. Ltd Vs. Orion Metal Pvt. Ltd. 2019 SCC Online SC 1077, M.P. M. Kshetra Vidyut Vitran Co. Ltd Vs. Kalyan Singh Chuhan 2015 (1) MPLJ 589, G.D. Oil and Flour Mill Vs M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. 2014 SCC Online MP 7439, A.M.C.S. Swamy Vs. Mehdi Agah Karbalai, 2019 SCC Online SC 899.

(8). I have given my anxious consideration to the rival contentions made by learned counsel for the parties and have carefully gone through the documents.

(9). The first submission made by learned counsel for the applicants refers to non-compliance of proviso to sub-Section (1-A) of Section 135 of the Act of 2003. In order to substantiate this submission, learned counsel for the applicants made reference to various judgments of Apex Court viz. Executive Engineer Southern Electricity Supply Company of Orissa Limited (Southco) and anothers Vs. Shri Seetaram Rice Mill (2012) 2 SCC 108, West Bengal State Electricity

Distribution Company Ltd. and another Vs. Orion Metal Pvt. Ltd and another 2019 SCC online SC 1077, dealing with the legal proposition that "An Act should be done in the manner provided under the statute or not at all."

(10). Having perused the same this Court is compelled to observe that non-compliance of proviso to sub-Section (1-A) of Section 135 of the Act of 2003 shall not attract the judgments relied upon by the learned counsel for the applicants.

(11). In order to elaborate the above it would be appropriate to refer to Section 151 of the Act of 2003 which is reproduced below:

"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."

(12). The proviso which has been inserted vide Act No.26 of 2007 and has been given effect from 15.06.2007 provides that it shall be lawful for the Special Court to take cognizance of the offence punishable under Section 2003 upon a report filed under Section 173 of CrPC, meaning thereby that in the event of police report by the Electricity Distribution Company in terms of proviso to sub-Section (1-A) of Section 135 of the Act of 2003, the police can carry out investigation and file charge-sheet based on which cognizance can be taken by the Special Court in terms of Section 151 of the Act of 2003, however, by no stretch of imagination it can be validated that the proviso shall control the main provision and a private complaint by the electricity distribution company shall get defeated by the non-compliance of said proviso.

(13). To put it differently, now after the amendment carried out in the year 2007 in the Act of 2003, the Special Court has power to take cognizance on the basis of private complaint by the Electricity Distribution Company but also on the basis of police report. This, the effect of non-compliance of proviso to sub-Section (1-A) of Section 135 of the Act of 2003 shall only be relevant if the cognizance is being taken on the report of police filed under Section 173 of CrPC. However, such non-compliance will not diminish the power of the Electricity Distribution Company to file private complaint.

(14). In this regard it would be appropriate to make reference to the decision of the Apex Court in the case of State of Bihar v. Suchit Halwai, 2017 SCC OnLine SC 899 wherein somewhat similar contention was raised by the accused before the Apex Court which was repelled. Similarly, a co-ordinate Bench of this Court in the case of State of M.P. and others Vs. Sanjay Kumar Koshti 2015 (1) MPLJ 589 had expressed a similar view and consequently set-aside the order of the Special Court whereby the Special Court had refused to take cognizance on the private complaint made by the Distribution Company citing non-compliance of proviso to sub-Section (1-A) of Section 135 of the Act of 2003, therefore, the contention based on non-compliance of said proviso is hereby rejected.

(15). The next contention of learned counsel for the applicants is based on non-adherence of the guidelines issued by the government of Madhya Pradesh to the effect that no criminal action under Section 135 of the Act of 2003 shall be initiated against the owner of the premises if the occupier is found to be involved in electricity theft is concerned. In order to substantiate these submission, the learned counsel for the applicants have placed reliance on various judgments relating to " Vicarious Liability" R. Kalyani Vs. Janak C. Mehta and others (2009) 1 SCC 516, G.N. Verma Vs. State of Jharkhand and another (2014) 4 SCC 282, National Small Industries Corporation Limited Vs. Harmeet Singh Paintal and another (2010) 2 SCC 330, Sunil Bharti Mittal Vs. Central Bureau of Investigation (2015) 4 SCC 609, Sharad Kumar Sanghi Vs. Sangita Rane (2015) 12 SCC 781. While there can be doubt on the proposition of law enunciated in these judgments but this Court cannot lose sight of the fact that, the Respondent no.1 found the workshops of Company-A and Company-B functional and therefore, at this juncture this court cannot arrive at the finding as whether the Applicants were occupiers or not and are entitle to avail the guidelines framed by the State Government, such submission is at best a defence to be put forth by the applicants which cannot be examined by this Court under the limited revisional jurisdiction. In this regard judgment of the Apex Court in the case of Amit Kapoor v. Ramesh Chander (2012) 9 SCC 460 is relevant, in which following observations have been made:

12. The jurisdiction of the Court under Section 397 can be exercised so as to examine the correctness, legality or proprietary of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under Section 397 is a very limited one. The legality, proprietary or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. On the other hand, Section 482 is based upon the maxim quando lex liquid alicuiconcedit, conceder videtur id quo res ipsa esse non protest, i.e., when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The Section confers very wide power on the Court to do justice and to ensure that the process of the Court is not permitted to be abused.

13. It may be somewhat necessary to have a comparative examination of the powers exercisable by the Court under these two provisions. There may be some overlapping between these two powers because both are aimed at securing the ends of justice and both have an element of discretion. But, at the same time, inherent power under Section 482 of the Code being an extraordinary and

residuary power, it is inapplicable in regard to matters which are specifically provided for under other provisions of the Code. To put it simply, normally the court may not invoke its power under Section 482 of the Code where a party could have availed of the remedy available under Section 397 of the Code itself. The inherent powers under Section 482 of the Code are of a wide magnitude and are not as limited as the power under Section 397. Section 482 can be invoked where the order in question is neither an interlocutory order within the meaning of Section 397(2) nor a final order in the strict sense. Reference in this regard can be made to Raj Kapoor & Ors. v. State of Punjab & Ors. [AIR 1980 SC 258 : (1980) 1 SCC 43]}. In this very case, this Court has observed that inherent power under Section 482 may not be exercised if the bar under Sections 397(2) and 397(3) applies, except in extraordinary situations, to prevent abuse of the process of the Court. This itself shows the fine distinction between the powers exercisable by the Court under these two provisions. In this very case, the Court also considered as to whether the inherent powers of the High Court under Section 482 stand repelled when the revisional power under Section 397 overlaps. Rejecting the argument, the Court said that the opening words of Section 482 contradict this contention because nothing in the Code, not even Section 397, can affect the amplitude of the inherent powers preserved in so many terms by the language of Section 482. There is no total ban on the exercise of inherent powers where abuse of the process of the Court or any other extraordinary situation invites the court's jurisdiction. The limitation is self-restraint, nothing more. The distinction between a final and interlocutory order is well known in law. The orders which will be free from the bar of Section 397(2) would be the orders which are not purely interlocutory but, at the same time, are less than a final disposal. They should be the orders which do determine some right and still are not finally rendering the Court functus officio of the lis. The provisions of Section 482 are pervasive. It should not subvert legal interdicts written into the same Code but, however, inherent powers of the Court unquestionably have to be read and construed as free of restriction.

13. Having examined the inter-relationship of these two very significant provisions of the Code, let us now examine the scope of interference under any of these provisions in relation to quashing the charge. We have already indicated above that framing of charge is the first major step in a criminal trial where the Court is expected to apply its mind to the entire record and documents placed therewith before the Court. Taking cognizance of an offence has been stated to necessitate an application of mind by the Court but framing of charge is a major event where the Court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. There are different categories of cases where the Court may not proceed with the trial and may discharge the accused or pass such other orders as may be necessary keeping in view the facts of a given case. In a case where, upon considering the record of the case and documents submitted before it, the Court finds that no offence is made out or there is a legal bar to such prosecution under the

provisions of the Code or any other law for the time being in force and there is a bar and there exists no ground to proceed against the accused, the Court may discharge the accused. There can be cases where such record reveals the matter to be so predominantly of a civil nature that it neither leaves any scope for an element of criminality nor does it satisfy the ingredients of a criminal offence with which the accused is charged. In such cases, the Court may discharge him or quash the proceedings in exercise of its powers under these two provisions.

(16). Learned counsel for the applicants have also sought indulgence of this Court on the ground that there is no criminal past attributed to the applicants relating to the offence of this nature and therefore, it would be to deduce that there was no dishonest intention which is a pre-condition to constitute an offence under Part XIV of the Act of 2003. To support this submission, the learned counsel for the Applicants have placed reliance on several judgments, the first Judgment i.e. (2012) 2 SCC 108 shall not render much assistance to the applicants as in the said Judgment the Hon'ble Supreme Court did not consider the proceedings relating to Part XIV of the Act of 2003 rather the principal prayer in the said judgment was for reassessment in proceedings drawn under Section 126 & 127 of Act of 2003. Thus, the facts of the said case is entirely different. so far as the next judgment of this Court in 2014 (3) MPLJ 552 is concerned, the same endorses the view taken by this Court in the later part of this judgment that, the submission about electricity theft and dishonesty involves question of facts which can only be gone into at the stage of trial after recording of evidence. The relevant observation is as follows:

25. In nutshell, the stand of the parties shows that there are highly disputed questions of fact involved, which cannot be adjudicated in a writ petition. Section 126 has no application in the present case. Section 135 squarely covers the matter. There are Special Courts established for deciding the cases relating to dishonesty and electricity theft. The petitioner will get full opportunity of defence in those proceedings. The said Special Court will determine the question of "civil liability". Thus, no case is made out for interference by this Court under Article 226 of the Constitution. It is made clear that this Court has not given any finding on the merits of the case.

(17). In the judgment of West Bengal State Electricity case also the adjudication was left to the wisdom of the Special Court constituted under the Act of 2003 as at this stage no adjudication on the issue of Mens rea can be done by this Court.

(18). Lastly, it has been contended by learned counsel for the applicants that the learned Senior counsel appearing on behalf of the respondent No.1 in Writ petition No.7656/2012 had conceded about the applicability of Section 126 of the Act of 2003, therefore, it would not be open for the respondent No.1 to prosecute the present applicants for offence provided under Part XIV of the Act of 2003.

(19). I have perused the order sheet dated 12.09.2012 and I am of the considered view that there was no such concession recorded by the learned senior counsel. So far as such concession is concerned it has been categorically observed by the Apex Court in the case of State of Rajsthan vs Surendra Mohnot (2014) 14 SCC 77 that there could be no estopple against law and the concession, if any, conceded by the counsel will not be binding on the parties.

(20). After having dealt with the contention raised by learned counsel for the applicants it would be appropriate to make reference to the portion of the complaint filed by the respondent No.1 which prima facie fulfill the ingredients of Section 135, 136 and 138 of the Act of 2003 and since the applicants are the companies, there is a presumption that Directors were involved in the financing of the companies are guilty of having committed offence under Section 149 of the Act of 2003 which makes them liable to be prosecuted. Further Section 150 also provides for abetment which prescribes penal consequences and therefore, the statement of learned counsel for the applicants that the allegations against the present applicants at best qualify an unauthorised use of electricity for which the proceedings could only be drawn under Section 126 of the Act of 2003 is misplaced as Section 135 (1)(e) of the Act of 2003 is squarely applicable in the facts of the present case. Apart from it, it is worthy to refer to the decision of this Court in the case of Sangita Wd/O Suresh Chandra Gupta And Another v. State Of M. P. 2009 (1) MPLJ 336, wherein, in paragraph 13 it is observed:

"13. I am unable to persuade myself to agree with the submission of learned counsel for the petitioners that section 126 of the said Act is all encompassing and includes theft of electricity which is only defined under section 135. There is no doubt that section 135 falls in Part XIV with' the heading of "Offences and Penalties". However, a reading of sub-section (5) of section 154 would show that there is a specific provision made in respect of the procedure and power of the Special Court constituted under section 153 of the said Act. The aforesaid authorizes the Special Court to determine even the civil liability against the consumer or a person in terms of money for theft of energy as per the said sub-section. Thus, where cognizance is taken of the act under section 135 of the said Act, even a Special Court is empowered to determine civil liability. Insofar as the provisions of section 126 of the said Act are concerned, they fall under the Chapter dealing with 'Investigation and Enforcement'. Section 126 no doubt refers to an assessment but that assessment is only in respect of unauthorized use of electricity. The result of the aforesaid is that theft of electricity cannot be said to form a part of section 126 of the said Act and it will have to be seen as to what is the effect of there being no provision for assessment in case of theft of electricity in the said Act of 2003."

(21). Further, the Judgment relied upon by the Learned Counsel for the Applicants about interpretation of statutes (W.H. King Vs. Republic of India, AIR 1952 SC 156, R. Kalyani Vs. Janak C. Mehta and Others, (2009) 1 SCC 516, Ram Chandra Bhagat Vs. State of Jharkhand, (2010) 13 SCC, 780, G.N. Verma Vs. State of Jharkhand (2014) 4 SCC will have no applicability to the facts of this case as these principles are to be resorted in the contingencies where there is ambiguity in the language of the provision under consideration, whereas, in this case the language of section 135 and other related provisions is clear and unambiguous. In this regard the observation of the Apex Court in the case AIR 1992 SC 1981 is relevant:

8. The language of Sub-rule (4) of Rule 10 is absolutely clear and does not permit any artificial rule of interpretation to be applied. It is well established that if the words of a statute are clear and free from any vagueness and are, therefore, reasonably susceptible to only one meaning, it must be construed by giving effect to that meaning, irrespective of consequences. The language of the sub-rule here is precise and unambiguous and, therefore, has to be understood in the natural and ordinary sense. As was observed in innumerable cases in India and in England, the expression used in the statute alone declares the intent of the legislature. In the words used by this Court in State of Uttar Pradesh v. Dr. Vijay Anand Maharaj , when the language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the act speaks for itself. Reference was also made in the reported judgment to Maxwell stating:

To construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words.

(22). In the light of above and under the limited revisional jurisdiction, no indulgence can be shown by this Court and the trial instituted against the present applicants must continue, however, it is mentioned that the observations made in the instant order shall not prejudice the defence by the present applicants during the course of the trial and the trial Court shall carry out the proceedings strictly in accordance with the evidence produced before it.

Disposed of accordingly.

