(2008) 09 MP CK 0022

In the Madhya Pradesh High Court

Case No : M. Cr. C. No. 430 of 2006

Sangita Gupta and Another — APPELLANT

Vs

State of M.P. — RESPONDENT

Date of Decision : 11-09-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Electricity Act, 1910 — Section 39
Electricity Act, 2003 — Section 126, 135, 138, 138(l)(b), 140

Citation : (2009) 1 MPLJ 366

Hon'ble Judges : P.K Jaiswal, J

Bench : Single Bench

Advocate : R.K. Sharma, for the Appellant; Vivek Jain for Respondent No. 1 and B.D. Mahore, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Jaiswal, J.

Petitioners by Shri R. K. Sharma, Advocate. Respondent No. 1 by Shri Vivek Jain, Advocate. Respondent No. 2 by Shri B. D. Mahore, P.P. Heard.

In this petition u/s 482 of Criminal Procedure Code the petitioners are praying for quashing the complaint filed by the respondent No. 1 u/s 138/140 of Electricity Act, 2003 and order dated 26-10-2005 by which Special Judge had taken a cognizance and issued warrant of arrest to them.

Brief facts of the case are that petitioner No. 1 entered into an agreement for supply of electrical energy with the respondent No. 1 vide service connection No. 76024. A sum of Rs. 36037/- was outstanding against the petitioner No. 1. The respondent No. 1 issued 15 days clear notice to the petitioner No. 1 vide notice dated 30-9-2005 for payment of electricity dues, but in spite of notice no arrears was paid. The respondent No. 1 came on spot and temporarily disconnected the supply and in presence of petitioner No. 2 and two witnesses namely Mahendra

Singh and Ramjilal prepared a panchnama dated 14-10-2005.

The petitioner No. 1 immediately after disconnection deposited all the arrears of dues towards the electrical energy and requested the Asstt. Engineer to restore the supply of her Industrial Unit. On 15-10-2005 Shri K. K. Yadav, Asstt. Engineer M.P. Madhya Kshetra Vidyut Vitaran Company Ltd. Datia along with Mahendra Singh and Ramjilal came to the premises of the petitioner No. 1 for restoration of supply. When they were going to restore the supply, they found that the petitioner No. 1 unauthorisedly broken the lock and reconnected the supply with the electrical line by removing the M seal of the transformer. At that relevant point petitioner No. 2 Satish Gupta was also present. Panchanama to this effect was prepared on 15-10-2005, in presence of Satish Gupta, Hemant Shrivastava and three attesting witnesses Ramlochan Singh and Mahendra Singh respectively, who signed the panchnama. Petitioner No. 2 was also present on the spot but refused to sign the Panchnama. A map was also prepared by Ramjilal. The petitioners unauthorisedly reconnected the supply line directly from the transformer and therefore, complaint u/s 138 of Electricity Act, 2003 was filed by the respondent No. 1 on 26-10-2006. Paras 7 and 8 of the complaint is relevant which reads as under :

Learned counsel for the petitioner submitted that the Government of M.P. framed M.P. Urja Adhiniyam, 2001 which came into force on 7-4-2001 and as per section 5 of the said Adhiniyam procedure has been prescribed for assessment of electricity dues and once the assessment was made and the petitioner No. 1 paid the amount then it cannot be held that they were guilty of offence of theft of electrical energy and no criminal liability can be fastened on them. It is also submitted by the learned counsel for the petitioner that after 2003 the Parliament has framed Indian Electricity Act, 2003 and as per proviso to subsection (4) of section 126 of Electricity Act, 2003, in case the person deposit the assessment amount, he shall not be subjected to any further liability or any action by any authority whatsoever. In the present case petitioners deposited all the arrears of dues and therefore, by reasons of the provisions of section 126 of the Act no criminal case can be registered against him. He lastly drew my attention to the decision of the other Bench of this Court in M. Cr. C. No. 3196/2004, M. Cr. C. No. 3156/2004 and M. Cr. C. No. 3799/04 and submitted that this Court in the identical circumstances quashed the criminal proceedings. The order dated 19-2-2008 passed in M. Cr. C. No. 3196/2004 reads as under:

As a common question is involved in these three petitions, hence, they have been heard together and are being disposed of by this common order. There is no dispute between the parties on the following facts :-

(1) that, criminal cases (Criminal Case No. 977/04 in M. Cr. C. No. 3196/04, Criminal Case No. 520/02 in M. Cr. C. No. 3516/04 and Criminal Case No. 145/04 in M. Cr. C. No. 3799/04) are pending against the petitioners in the Court of JMFC, Gwalior based on the complaints u/s 39 of the Indian Electricity Act, 1910 filed by an officer of the respondent No. 2 on the allegation that during

inspection, the petitioners were found using electricity by unauthorized means and thus they were committing theft.

(2) that, after the incident, bills were issued to the petitioners and the required amount was deposited by them within a period of seven days.

(3) that, Madhya Pradesh Urja Adhiniyam, 2001 (hereafter referred to as the Adhiniyam) came into force on 21st August, 2001.

In view of the aforementioned admitted facts at column Nos. 2 and 3, it is submitted by Shri Sharma, the learned counsel appearing on behalf of the petitioners, that the alleged incident has happened after 21st August, 2001 and under the provisions of the Adhiniyam, assessment bill was issued for payment to the petitioners and the same was paid within a period of seven days. As provided by sub-section (3) of section 5 of the Adhiniyam, in such cases, the petitioners are not liable for the aforementioned prosecution. In support, he has drawn attention on two orders passed by this Court in M. Cr. C. No. 4309/03, S.K. Mehta v. State of M.P. decided on 28th October, 2004 and in M. Cr. C. No. 200/03, Smt. Sandhya Singh v. State of M.P. decided on 15th January, 2003.

Shri Irshad for the State has also been heard.

Per contra, Shri Gupta has submitted that the bill was not issued under any of the provisions of the Adhiniyam but the same was issued under notification No. 05-01/GG/315/Vol-XI-B/20 dated 3rd December, 1999 issued under the orders of the Secretary M.P. State Electricity

Board, Jabalpur and as such, the benefit of section 5 of the Adhiniyam cannot be given to the petitioners.

Sub-section (3) of section 5 of the Adhiniyam goes as under :

(3) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the Electricity Utility within 7 days of service of such provisional assessment order upon him. In case the person deposits the assessed amount he shall not be subject to any further liability or any action by any authority whatsoever.

(Emphasis supplied)

The aforementioned notification also as follows :- "Notification M.P. Electricity Board is pleased to amend the Clause 31(g) of "General Conditions for Supply of Electrical Energy and Scale of Miscellaneous and General Charges" The existing Clause 31(g) shall get substituted by the following Clause :-

31(g) "Where an HT or LT consumer has dishonestly abstracted, used consumed or maliciously caused energy to be wasted or diverted the quantum of electrical energy thus abstracted, used, consumed, wasted or diverted shall be assessed as per procedure prescribed by the Board. The quantum of electricity so assessed in excess of that of the recorded shall be liable to be billed at 2.5 times the normal tariff applicable to that consumer. Also the consumer shall be disconnected and remain disconnected for 15 days subject to review by the review committee (at the head office of the Board in case of H.T. consumers and at the office of concern S.E. of the area in case of LT consumers) or until 20% of assessed demand and/or energy charges for first offence 50% of the assessed demand and/or energy charges for second offence and 100% of assessed demand and/or energy charges for subsequent offence is paid by the consumer, whichever is later".

The contention of Shri Sharma appears forceful, that when the notification was issued there was no act in force for issuance of provisional or final bills etc. In order to provide for prohibition of unauthorized use of electrical energy and assessment of cases of unauthorized use of electrical energy in the State of Madhya Pradesh and for the matters connected therewith or incidental thereto, the Adhiniyam was enacted and came into force on 21st August, 2001. When this Adhiniyam came into force which is having the sanction of legislature, the aforementioned notification issued by the Secretary of the Board has no force. He has further submitted that the bills issued to the petitioners do not indicate as to whether they have been issued under this notification or u/s 5 of the Adhiniyam. In such vague situation, the provisions which appear beneficial to the petitioners are required to be made applicable. He has further submitted that in other cases of the same nature, the Board has issued notice u/s 5 of the Adhiniyam claiming the amount of assessment with a direction to deposit the same within seven days providing therein that in case the amount is paid, no further action shall be taken against the person concerned. In present cases, such notice has not been issued but the bills have been issued. Such actions cannot be left at the hands of the officers of the Board that in some of the cases bills are being issued and in some of the cases notices are being issued. There should be an uniform policy. It appears that instead of issuance of notice in these three cases, the aforementioned bills for payment have been issued and the amount has been deposited by the petitioners. In such a situation as per the observation of this Court in S. K. Mehta and Smt. Sandhya Singh (supra) and as provided by the aforementioned provision of section 5 of the Adhiniyam, the petitioners ought not to be held responsible for any criminal prosecution.

On perusal of the aforementioned notification, it appears applicable to the cases where consumer has dishonestly abstracted, used, consumed or maliciously caused energy to be wasted or diverted the quantum of electrical energy thus abstracted, used, consumed, wasted or diverted. As per the definition of unauthorized use of the energy given in clause (d) of section 2 of the Adhiniyam, any abstraction, consumption or use of energy not permitted under any law relating to electricity for the time being in force and includes any abstraction, consumption or use of energy not permitted by any Electricity Utility in any manner whatsoever. There appears no much difference in both.

It is admitted by Shri Gupta that the bills issued to the petitioners are the penal bills which are based on 2.5 times of the normal tariff. Once such bills have been issued for payment while penalizing the petitioners for their alleged acts, thereafter the criminal prosecution for the same act cannot be allowed, under the principles of double jeopardy, under Article 21 of the Constitution.

In view, of the above, the criminal prosecution of the petitioners appears an abuse of the process of the Court. Hence, the petitions are allowed. The criminal prosecution of the petitioners in aforementioned criminal cases stands quashed.

On the other hand, learned counsel for the respondent No. 1 drew my attention to the provisions of sections 126, 135 and 138 of Electricity Act, 2003 and submitted that in the present case the provisions of section 126 of the Act will not be applicable because Panchnama dated 15-10-2005 clearly shows that the petitioners broken the lock and unauthorizedly reconnected the supply from the transformer of the respondents and interfered with the property of the respondent No. 1 and the said act of the petitioners comes within the purview of section 138(l)(b) of the Electricity Act, 2003. He further submitted that the question whether allegation of theft is true or not has to be examined and decided in the criminal proceedings pending against them and at this stage when there is a direct evidence against the petitioners regarding interference with the metering equipments it cannot be said that no case u/s 138 of Electricity Act, 2003 is made out against them.

Sections 135 and 138 of the Electricity Act, 2003 reads as under :

Theft of electricity. - (1) Whoever, dishonestly-

(a) taps, makes or causes to be made any connection with overhead, underground or under water 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, is being), used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which (has been, 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.

Interference with meters or works of licensee. -

(1) Whoever,

(a) uriauthorisedly 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 mans exist for making such connection as is referred to in clause (a) or such re-connection 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.

Insofar as the provisions of section 135 of the said Act are concerned, it is submitted that the same falls in Part XIV of the enactment and deals with "Offences and Penalties" while section''126 is in Part'' XII deals with ''Investigation and Enforcement'' and section 126 is in respect of assessment. It is, thus, submitted that section 126 of the said Act applies in all cases including theft of electricity and in support of this contention, reference has been given to Explanation to the said section where in Explanation (b) unauthorized use of electricity has been defined to include usage of electricity by artificial means, tampering of meter, means not authorized by concerned person, etc. It is, thus, submitted that in that behalf it is a part of the larger whole and operates in different fields since in matters of unauthorized abstraction of energy, the only ramification is as contained in section 126, but in case of theft of electricity, penal consequences would also arise as envisaged u/s 135 of the Act. Section 135 of the said Act, has, thus, been pleaded as sub-set of the larger section 126.

The Explanation to section 126 of the said Act defines the expression ''unauthorized use of electricity'' and the definition includes four categories as specified in the sub-para (b) to the Explanation. It has been defined to mean the usage of electricity (i) by any artificial means, (ii) by means not authorized by the concerned person or authority of licensee, (iii) through a tampered meter, and (iv) for the purpose other than for which the usage of electricity was authorized. Thus, section 126 can apply only in these cases since the same is confined to ''unauthorized use of electricity''. The expression ''theft'' has not been used u/s 126 of the said Act of 2003.

The expression ''theft'' has been used in section 135 of the said Act. Thus, in the same enactment, these two expressions - ''unauthorised use of electricity'' and ''theft'' have been used separately and, thus, must have their own connotations. They cannot be said to be substitute for one or the other.

If the contention of learned counsel for the petitioners was to be accepted, then theft has to be included as part of ''unauthorised use of electricity''. However, sub-para (b) of the Explanation to section 126 defines the expression ''unauthorised use of electricity'' to mean only four categories of acts as defined therein.

There is no doubt that some of the expressions used in section 126 of the said Act also appear in section 135 thereof. An illustration of this was given in respect of tampering of a meter. However, section 126 uses the expression to include the usage of electricity through a tampered meter, while the expression used in section 135 is ''tampers a meter''. If the definitions given of theft of electricity u/s 135 are considered, they are specific in nature. There is dual requirement. Firstly, the act should be done dishonestly. Secondly, it should form part of one of the acts specified in sub-paras (a) to (c) of sub-section (1) of section 135 of the said Act. Thus, specific acts have been given like tapping through overhead, underground or under water lines or cables, tampering of meter, damage or destruction of electric meters and apparatus, to interfere with the proper or accurate metering of electricity. An act to constitute theft of electricity must, thus, satisfy the aforesaid requirements.

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 u/s 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 u/s 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 subsection. Thus, where cognizance is taken of the act u/s 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.

Unreported judgment dated 19-2-2008 cited by the learned counsel for the petitioners have no relevance in the present facts and circumstances of the case. If the contentions of the learned counsel for the petitioners was to be accepted then theft has to be included as part of ''unauthorized use of electricity''.

However, sub-para (b) of the Explanation of section 126 defines the expression ''unauthorised use of electricity'' to mean only four categories of acts as defined therein. There is distinction between theft of electricity and interference with theft or works of licensee. Section 126 deals with assessment.

Learned counsel for the respondents rightly submitted that sections 126 and 138 of the Act are operating in different fields and the introduction of section 126 of the said Act is to deal with the cases of unauthorized use of electricity and not unauthorizedly interference with meter or work of licensee.

Here in the present case, the petitioner unauthorizedly reconnected the supply line from the boards equipments and therefore, section 138 of the Act will apply in the present facts and circumstances of the case. In the present case the supply of the petitioners premises was disconnected and AV Switch was locked by the respondents. As per panchnama petitioners have broken the lock and reconnected the supply line from the Transformer, unauthorizedly to utilize the electricity. The said act of the petitioner is covered under clause (b) of subsection (1) of section 138 of the Act. As per section 154 of the Act offence u/s 138 of the Act is triable by the Special Court. Section 126 refers to an assessment, but that assessment is only with respect to unauthorized use of electricity. Unauthorizedly interference with the meter or work of licensee cannot be said to form part of section 126 of the Act. If petitioners unauthorizedly interfered with the meter or other equipments the said act comes u/s 138 of the Act and offence under the said Act as well as u/s 135 of the Act are triable by the Special Judge and there is no provision for assessment of penalty in such type of cases under the Act.

For the above mentioned reasons I am of the considered view that the respondent No. 1 has not committed any legal error in filing complaint against the petitioners u/s 138 of the Act. No case for quashing the criminal proceedings or cognizance taken by the Special Judge against the petitioner is made out.

The petition filed by the petitioners has no merit and is accordingly dismissed, but without any order as to costs.