
(2005) 09 BOM CK 0146

In the Bombay High Court

Case No : Criminal Application No. 2027 of 2004

Shakambari Industries and Another

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 19-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 482
Electricity Act, 2003 — Section 135, 151

Citation : (2006) 2 MhLj 170 : (2007) 5 RCR(Civil) 53 : (2007) 1 RCR(Criminal) 600

Hon'ble Judges : K.J. Rohee, J

Bench : Single Bench

Advocate : G.B. Lohiya with R.S. Agrawal, for the Appellant; A.S. Fulzele, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

K.J. Rohee, J.—By this application u/s 482 of the Code of Criminal Procedure read with Articles 226 and 227 of the Constitution of India the applicants seek to quash FIR in Crime No. 3108/2003 registered at Police Station Old City, Akola.

2. Applicant No. 1 is a partnership firm which is running an industry at Ridhora road, Akola, Applicant No. 2 is the partner of the said firm. It is alleged that on 2-8-2003 Shri Istape, Assistant Engineer, M.S.E.B. visited the industry. He found that the seals of the electric meter were broken and the meter was tampered with. Shri Istape prepared panchanama of the condition of the meter and seal in presence of two panchas. Thereafter on the same day he lodged report at Police Station Old City Akola, on the basis of which Crime No. 3108/2003 u/s 135 of the Electricity Act, 2003 was registered against the applicants. It appears that charge-sheet is yet to be filed.

3. I have heard Shri G. B. Lohiya, Advocate for the applicants and Shri A. S. Fulzele, APP for respondent No. 1. None appears for respondent No. 2 though

served.

4. Shri G. B. Lohiya submitted that u/s 151 of the Electricity Act, 2003 no Court can take cognizance of an offence punishable under this Act except upon a complaint in writing made by the Officer authorised. Shri Lohiya further submitted that when there is prohibition for taking cognizance except upon a complaint in writing the police could not have taken cognizance of the offence. The reasoning is that even after completion of investigation if the police presents charge-sheet the Court would not be in a position to take cognizance thereof as the same is barred u/s 151 of the Electricity Act, 2003.

5. I find that though the police took cognizance of the offence punishable u/s 135 of the Electricity Act, 2003 no charge-sheet can be filed and even if filed no cognizance thereof can be taken by the Court concerned. Thus this is a fit case in which inherent powers of this Court are required to be invoked for preventing the abuse of the process of the Court. Hence the order:

(i) The criminal application is allowed.

(ii) FIR No. 3108/2003 u/s 135 of the Electricity Act, 2003 at Police Station Old City, Akola is hereby quashed.

(iii) It is made clear that the appropriate authority is at liberty to file complaint against the applicants as per law.