

(2012) 03 BOM CK 0274
In the Bombay High Court
Case No : Criminal Appeal No. 434 of 2007

Shri. Dinkar Bante

APPELLANT

Vs

Maharashtra State Electricity Distribution Company Limited
(M.S.E.D.C.L.), (Erstwhile Maharashtra State Electricity Board
(M.S.E.B.)

RESPONDENT

Date of Decision : 21-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 235(2), 465
Electricity Act, 2003 — Section 135, 138

Citation : (2012) BomCR(Cri) 217

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : Rajnish Vyas, for the Appellant; V.M. Deshpande, APP for the respondent-State, for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties. Mr. Rajnish Vyas, learned Advocate for the appellant submitted that the appellant-accused had moved the Deputy Executive Engineer, Maharashtra State Electricity Distribution Company Limited (MSEDCL), at Bhandara, with a request to compound the offence punishable u/s 135 and 138 of the Electricity Act, 2003 registered against him. It is grievance of the learned Advocate for the appellant that the appellant-accused namely Dinkar Bante, who was found guilty of the offence punishable u/s 135 read with Section 138 of the Electricity Act, 2003, was sentenced to suffer rigorous imprisonment for three years with fine in the sum of Rs. 61,434/- in default of which to undergo further rigorous imprisonment for nine months. While imposing the sentence, it was obligatory to hear the appellant-accused on the point of sentence. In view of Section 235(2) of the Code of Criminal Procedure, the learned Advocate for the applicant placed reliance on the ruling in the case of Santa Singh Vs. The State of Punjab, , in which Apex Court in paragraph "7" observed as follows:

Non-compliance with the requirement of Section 235(2) cannot be described as mere irregularity in the course of the trial curable u/s 465. It is much more serious. It amounts to by-passing an important stage of the trial and omitting it altogether, so that the trial cannot be said to be that contemplated in the Code. It is a different kind of trial conducted in a manner different from that prescribed by the Code. This deviation constitutes disobedience to an express provision of the Code as to the mode of trial, and as pointed out by the Judicial Committee of the Privy Council in *Subramania Iyer v. King Emperor*, (1901) 28 Ind App 257 (PC) such a deviation cannot be regarded as a mere irregularity. It goes to the root of the matter and the resulting illegality is of such a character that it vitiates the sentence. In view of these observations, it is submitted that the sentence imposed on the appellant was without compliance of provisions of Section 235(2) of the Code of Criminal Procedure, which was contrary to law and, therefore, the sentence is not punishable.

2. According to learned Advocate for the appellant, since the accused had already moved with a request to the Deputy Executive Engineer, MSEDCL, Bhandara, I think, learned trial Judge can hear the parties, more particularly the accused, on the point of sentence to be imposed upon him and may decide as to whether the offence can be permitted to be compounded as proposed by the learned Advocate for the appellant pursuant to the correspondence between the parties. In view of the above observations, impugned sentence imposed on the appellant-accused, is set aside and parties are directed to appear before the learned trial Court concerned on 17th April, 2012 at 11.00 A.M. Learned trial Judge to hear the accused on the point of sentence and may also invoke possibility as to whether the offence can be permitted to be compounded as proposed by the learned Advocate for the appellant pursuant to the correspondence between the parties. The appeal is allowed accordingly with no order as to costs.