

(2018) 08 MP CK 0148

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No.22656 Of 2016

Vimla Thapak

APPELLANT

Vs

Madhya Pradesh Madhya Kshetra Vidyut Vitran Company Ltd.
Bhopal and others

RESPONDENT

Date of Decision : 20-08-2018

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Electricity Act, 2003 — Section 126, 126(3), 127, 135, 135(1), 138

Citation : (2018) 08 MP CK 0148

Hon'ble Judges : Anjuli Palo, J

Bench : Single Bench

Advocate : Devashish Sakalkar, Shobhitaditya

Final Decision : Dismissed

Judgement

This petition has been filed under Section 482 of Cr.P.C. by the petitioner/accused facing trial under Section 135 of the Electricity Act, being

aggrieved by the order dated 19.12.2016 passed by the Special Judge Electricity Hoshangabad in E.T.C. Case No.81/2011.

2. This is the second application under Section 482 of Cr.P.C. Earlier application (M.Cr.C.No. 14747/2011) was disposed of by this Court on

30.04.2015 with liberty to raise all the objections before the trial Court.

3. This petition has been filed on the grounds that petitioner has an electric connection bearing no.90-06-5343 with sanctioned electricity load of 10 HP

to run M/s Rajeshwari Paper and Pulp Industry situated at Sarswati Nagar Rasuliya, Hoshangabad. On 21.07.2007 the petitioner purchased some

machinery, which was installed in her industrial unit on 19.02.2008. The vigilance team of electricity company carried out an inspection of the industrial

unit of the petitioner and found that instead of 10 HP, the total load of 47 HP being utilized by the petitioner. Hence, Panchnama was prepared. It was

found that the meter was burnt and meter reading was clutched on 00112. Consequently, the petitioner was served demand notice dated 20.02.2008 of

Rs.6,93,621/- as provided under Section 126 of the Electricity Act. To avoid any in auspicious circumstances, the petitioner deposited Rs.50,000/- on

the same day and Rs. 1,00,000/- on 07.04.2004 further also he deposited Rs. 1,96,850/-. Total sum of Rs. 3,46,850/- was deposited by the petitioner.

4. The petitioner further alleged that he received a notice from the respondent under Section 126 of the Electricity Act, therefore, under sub-section

(3) of the Section 126 of the Electricity Act, she preferred objection which has not yet been decided till now. Inadvertently, the petitioner had

preferred an appeal under Section 127 of the Electricity Act, but the said appeal was dismissed as premature on the count that since no final order has

been passed under Section 126, no appeal lies. Hence, she prayed to discharge from the offence punishable under Section 135 of the Electricity Act.

5. Earlier Writ Petition No.8967/2011 had been filed by the petitioner. This Court vide order dated 20.06.2011 disposed of the writ petition holding that

the impugned order is just and proper, since no final order of assessment has been passed under Section 126 of the Electricity Act by the concerned

authority. It is further observed by this Court that the petitioner had already deposited 50% of the demand and no final order was passed regarding the

remaining amount. Therefore, the respondents were directed to pass final order as provided under Section 126 of the Electricity Act within a time

bound manner.

6. The petitioner claimed that even then the respondent has filed a complaint case under Section 135 of the Electricity Act. Thereafter, petitioner filed

M.Cr.C. No.14747/2011 under Section 482 of Cr.P.C. This Court vide order dated 30.04.2015 disposed the petition holding that the petitioner can

raise objection before the Special Court. The petitioner has filed another application before this Court in same M.Cr.C. On 03.07.2015, he again filed

an application for discharging her from the charges of Section 135 of the Electricity Act as her case did not fall under the purview of Section 135 of

the Electricity Act. In fact, proceedings were initially initiated under Section 126 of the Electricity Act. Learned Special Judge on 02.08.2016 rejected

the application on the ground that in excess to the permissible load was found on the electric connection of the petitioner, which is in breach of the

permission so granted to the petitioner. Hence, this petition has been filed for quashment and discharging the petitioner from the charge under Section

135 of the Electricity Act pending in ECT No.81/2011 at the Court of the Special Judge Electricity, Hoshangabad.

7. Learned counsel for the respondent strongly opposed the contentions of the learned counsel for the petitioner. He submits that the case of the

petitioner clearly comes under the purview of Section 135 of the Electricity Act. Only due to some technical error in writing the provision of Section

126 of the Electricity Act in the notice, the petitioner wants to take advantage of this mistake and avoid to her prosecution under Section 135 of the

Electricity Act, 2003.

8. Heard learned counsel for the parties.Â Perused the record.

9. Before discussing the issue involve in the case it is pertinent to observe the provisions Section 126 and 135 of the Electricity Act, 2003 which reads

as as under :-

Section 126: (Assessment): --- (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found

connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging

in unauthorized use

of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited

by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such

manner as may be prescribed.

(3) The person, on whom an order has been served under sub-section (2) shall be entitled to file objections, if any, against the provisional assessment

before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within

thirty days from the date of service of such order of provisional assessment of the electricity charges payable by such person.

(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee

within seven days of service of such provisional assessment order upon him.

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire

period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorised use of electricity

has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

(6) The assessment under this section shall be made at a rate equal to [twice] the tariff rates applicable for the relevant category of services specified

in sub-section (5).

Section 135. (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 supplier as the case may be; 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,

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorised, 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 in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted

abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity

for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that

period from any other source or generating station:

Provided also that if it is proved that any artificial means or means not authorized by the Board or licensee or supplier, as the case may be, 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.

(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity,

immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorized for the purpose by the Appropriate Commission or any other officer of the

licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such

offence in police station having jurisdiction within twenty four hours from the time of such disconnection:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance

with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause,

restore the supply line of electricity within forty-eight hours of such deposit or payment.]

(2) [Any officer of the licensee or supplier as the case may be,] authorized 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 or is being,] used

unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been, or is being, used for unauthorized

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, relating to search and seizure shall apply, as far as may be, to searches and seizure under

this Act.

10. Learned counsel for the petitioner contended that once the respondent held action of the petitioner falls under the provision of Section 126 of the

Electricity Act. They are restrained to proceed under the provision of Section 135 of the Electricity Act, 2003. Despite the orders of this Court passed

in Writ Petition No.8976/11, the respondent has not decided the objection in terms of Section 126 of the Electricity Act. Therefore, no proceedings can

be initiated overlooking the statutory provisions by the respondent in the case.

11. Learned counsel has placed reliance on the case of Executive Engineer, Southern Electricity Supply Company of Orissa Limited (Southco) & Anr.

vs. Sri Seetaram Rice Mill (2012) 2 SCC 108 :

31. Section 135 of the 2003 Act significantly uses the words 'whoever, dishonestly' does any of the listed actions so as to abstract or consume

electricity would be punished in accordance with the provisions of the 2003 Act. 'Dishonesty' - is a state of mind which has to be shown to exist

before a person can be punished under the provisions of that Section.

32. The word 'dishonest' in normal parlance means 'wanting in honesty'. A person can be said to have 'dishonest intention' if in taking the property it is

his intention to cause gain, by unlawful means, of the property to which the person so gaining is not legally entitled or to cause loss, by wrongful

means, of property to which the person so losing is legally entitled.

24. 'Dishonestly' is an expression which has been explained by the Courts in terms of Section 24 of the Indian Penal Code, 1860 as 'whoever does

anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing dishonestly'.

33. This Court in the case of Dr. S. Dutt v. State of U.P. [AIR 1966 SC 523] stated that a person who does anything with the intention to cause

wrongful gain to one person or wrongful loss to another is said to do that dishonestly.

12. It is not in dispute that the petitioner has an electricity connection bearing No. 90-06-5343 with sanctioned electricity load of 10 H.P. to run paper

and pulp industry. It is also not in dispute that the said electric meter was burnt on 25.07.2007 even then the petitioner without applying for further

load, installed and utilizing the said machinery. At the time of inspection by vigilance team, it was found that the petitioner was using 47 H.P. Load

instead of 10 HP. Although, a welding machine was found there.

13. Firstly, demand note was issued by the respondent to the petitioner on 19.02.2008 for extra-load of Rs. 6,93,621/- in the said demand notice as

annexure A/7. Respondent clearly mentioned that the case of the petitioner was for electric theft punishable under Section 135(1) and 138 of Act. The

wordings of the demand notice also indicates that the vigilance team found the case of the petitioner as electricity theft. The petitioner was utilizing

electricity with extra load. Even her meter was burnt. No information was given by the petitioner to the respondent. At annexure A/8 the respondent

also informed the petitioner about electric theft at the place A to A.

14. All the earlier orders and the submissions of the petitioners clearly indicates that she herself prolonged the proceedings so to delay the payment. In the present case, on the spot panchanama number No. 5343, it is clearly mentioned that today on 19.02.2008 at about 2:15 pm Assistant Engineer had made surprise cheque at the factory of the petitioner and found that she was using 47 hp for commercial purpose, even then on her connection electric meter was found burnt. It was also found that the petitioner was using electric supply dishonestly direct from the Low-Tension line while she had no valid connection for the same. It is also clearly mentioned in the spot panchnama that such type of electricity use with dishonest intention falls under the category of electricity theft punishable under Section 135 of the Electricity Act. Therefore, the petitioner is not entitled to get the double benefit of the judgment in case of Executive Engineer, Southern Electricity Supply Company of Orissa Limited (Southco) & Anr. vs. Sri Seetaram Rice Mill (supra) and the order passed by this Court in case of M.P.Poorv Kshetra Vidyut Vitaran Co. Ltd. vs. Manohar Lal Sahni in Writ Appeal No. 673/2010.

15. Hence, the learned trial Court rightly held that the petitioner cannot take the benefit of any typographical mistake. In some place, Section 126 was wrongly mentioned in place of Section 135 of the Electricity Act.

16. Thus, this Court is of the opinion that the findings of the trial Court are no to be interfered under Section 482 of the Cr.P.C. There is no abuse of process of law to under Section 135 of the Electricity Act against the petitioner.

17. Accordingly, the petition stands dismissed.