

(2016) 02 CAL CK 0148
In the Calcutta High Court
Case No : C.R.A. No. 107 of 2015

West Bengal State Electricity Distribution Company Ltd.	APPELLANT
Vs	
State of West Bengal	RESPONDENT

Date of Decision : 02-02-2016

Acts Referred:

Electricity Act, 2003 — Section 135(1)(e)

Citation : (2016) 3 CalHCN 656

Hon'ble Judges : Ishan Chandra Das, J.

Bench : Single Bench

Advocate : Tapan Dutta Gupta and Kazi Sajjad Alam, Advocates, for the Respondent No. 2; Sumit Panja and Aniket Mitra, Advocates, for the Appellant

Final Decision : Dismissed

Judgement

Ishan Chandra Das, J. - Heard the learned Counsel for both the parties.

2. The instant criminal appeal has been directed against the judgement and order of acquittal coupled with a direction upon the appellant/complainant to refund the collected money to the tune of Rs. 1,50,064/- (paid by the private respondent no. 2 during pendency of the Electricity Case No. 33 of 2011) passed by the learned Judge, Special Court at Arambagh, Hooghly under the Electricity Act, 2003.

3. The backdrop of the case, as it is manifested from the written complaint (Exhibit-2) was that the Station Manager, Gourhati Group Electric Supply, Hooghly, lodged a written complaint before the Inspector-in-Charge of Arambagh Police Station alleging that on 20th November, 2010 at about 1-30 p.m. the defacto-complainant and his companions entered the premises of the respondent on service of entry notice upon him and on inspection it was found that the accused-respondent no. 2 was using electricity from the meter installed by the W.B.S.E.D.C. Ltd. for domestic category connection having Consumer No. A-020401 in the name of Adhir Chandra Nandy (father of the respondent no. 2)

for running poultry firm which is for commercial purposes. Accordingly, the defacto-complainant, being an agent of the appellant lodged a written complaint before the Inspector-in-Charge of the concerned Police Station against the present respondent no.2 alleging commission of offence punishable under Section 135(1)(e) of the Act of 2003.

4. The respondent no. 2 being the accused before the learned Judge, Special Court under the Electricity Act was arraigned before him to answer the following charge ?

"that you on or about the 20th day of November, 2010 at Baruipara, Gourhati unauthorisedly used electricity from your domestic line to poultry business at your premises and thereby committed an offence punishable under Section 135(1)(e) of the Electricity Act, 2003 and within the cognizance of the court", where learned trial court examined four witnesses for the prosecution and on conclusion of trial found the appellant not guilty of offence punishable under Section 135(1)(e) of the said Act acquitted him and directed the appellant/ W.B.S.E.D.C.Ltd. to refund the amount of Rs. 1,50,064/- within three months from the date of the order (i.e. 31st January, 2014).

5. Being aggrieved and dissatisfied with such direction of learned court below, the present appeal has been preferred.

6. Now, the point left for decision in this appeal is whether the learned trial court was justified in passing the order of acquittal in favour of the respondent no. 2 and the direction of returning the amount deposited by him as per provisions of Section 126(1) of the Act.

7. Learned Counsel for the appellant, in course of his argument, submitted with reference to the provision of Section 153 of the Electricity Act, 2003 (Act 36 of 2003 hereinafter referred to as "the Act" for the sake of convenience) that the Special Courts were constituted under this Act for the purposes of providing speedy trial of offences referred to Sections 135 to 140 and Section 150 of the Act and no other purposes.

8. Criticising the findings and directions given by learned trial court in the impugned judgement, he urged that learned court below exceeded his jurisdiction in directing the authority concerned of the present appellant for refunding the amount deposited by the respondent no. 2 who deposited the same before the W.B.S.E.D.C.Ltd. in terms of direction given by the competent authority as per provision of Section 126 of the Act and the Special Court, formed under the provisions of Section 153 of the Act, does not have any jurisdiction to interfere with.

9. Relying on the decision of the Hon''ble Apex Court in Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO) And Anr. v. Sri Seetaram Rice Mill, reported in (2012) 2 SCC 108, he confidently urged that the Hon''ble Apex Court drew a line of demarcation between the powers of

Special Court constituted by Section 153 of the Act and the powers of the Assessing Authority in terms of Section 126 and the appellate authority in terms of Section 127. Further relying on an unreported decision of the Division Bench of this Court in *Basudeb Paine v. W.B.S.E.D.C.Ltd.* (in M.A.T. 263 of 2015) he pointed out that mere order of acquittal from the charge under Section 135 of the Act shall not exempt the assessee from paying the assessed amount for any consumption, violating the rule of consumption ? he added.

10. Mr. Tapan Dutta Gupta, learned Counsel for the respondent no. 2, in course of his argument supported the findings of learned court below and opined that learned trial court was justified in passing the order of acquittal as the allegations against the respondent no. 2 for violating the provision of Section 135(1)(e) had not been established. He also raised a question ? when the order of acquittal has been passed in favour of the respondent no. 2, why the amount deposited by him shall be forfeited?

11. Learned trial court in the impugned judgement found the respondent no. 2 not guilty of the offence punishable under Section 135(1)(e) of the Act and directed the present appellant to refund the amount of Rs. 1,50,064/- deposited by the respondent no. 2 by Receipt No. 023718 dated 22.11.2010 at Gourhati Group Electric Supply in connection with this case during its pendency.

In the case in hand the order and direction of learned court below can be divided into two parts ?

(i) order of acquittal of the respondent no. 2 from the charge under Section 135(1)(e), and

(ii) to refund the amount of Rs. 1,50,064/- deposited by the respondent no. 2 as referred to in the second part of the said order dated 31.01.2014

12. So far as the first direction of learned trial court is concerned, being an order of acquittal of the respondent no. 2 from the charge under Section 135(1)(e), the learned Counsel for the appellant submitted that he was not interested in pressing that part of the order. Learned trial court in his judgement dated 31.01.2014 categorically held that the prosecution failed to establish the charge with regard to theft of electricity. Learned trial court in the impugned judgement held on the basis of testimony of the defacto-complainant and the I.O. of the case that the prosecution could not connect the accused/respondent no.2 with the alleged offence of theft of electricity, punishable under Section 135(1)(e) of the Act.

13. Learned Counsel for the appellant with all fairness could not deny such fact and he rightly did not insist upon the correctness of the findings of the court below with regard to the acquittal of the respondent no. 2 from the charge levelled against him.

14. Another aspect of this appeal is to decide the propriety and/or legality of the direction of the learned court below to refund the deposited amount which is

questioned by the appellant herein. Learned Counsel for the appellant urged that learned Judge, Special Court concerned, appointed in terms of Section 153 of the Act has got no power to direct the assessing authority, who performed his duty with regard to assessment of the loss suffered from by the complainant W.B.S.E.D.C. Ltd. due to unauthorised consumption of electricity in terms of Section 126 of the Act and it is appellable before the appropriate authority in terms of Section 127. In this context a decision of the Hon'ble Apex Court in Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO) and Anr. (supra) should be taken as guiding principle, the relevant portions of which is quoted below :

"24. Upon their plain reading, the marked differences in the contents of Sections 126 and 135 of the 2003 Act are obvious. They are distinct and different provisions which operate in different fields and have no common premise in law. We have already noticed that Sections 126 and 127 of the 2003 Act read together constitute a complete code in themselves covering all relevant considerations for passing of an order of assessment in cases which do not fall under Section 135 of the 2003 Act.

25. *****

26. In contradistinction to these provisions, Section 126 of the 2003 Act would be applicable to the cases where there is no theft of electricity but the electricity is being consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression "unauthorised use of electricity". This assessment/proceedings would commence with the inspection of the premises by an assessing officer and recording of a finding that such consumer is indulging in an "unauthorised use of electricity". Then the assessing officer shall provisionally assess, to the best of his judgement, the electricity charges payable by such consumer, as well as pass a provisional assessment order in terms of Section 126(2) of the 2003 Act.

27. *****

28. Section 135 of the 2003 Act deals with an offence of theft of electricity and the penalty that can be imposed for such theft. This squarely falls within the dimensions of criminal jurisprudence and means rea is one of the relevant factors for finding a case of theft. On the contrary, Section 126 of the 2003 Act does not speak of any criminal intendment and is primarily an action and remedy available under the civil law. It does not have features or elements which are traceable to the criminal concept of mens rea.

29. Thus, it would be clear that the expression "unauthorised use of electricity" under Section 126 of the 2003 Act deals with cases of unauthorised use, even in the absence of intention. These cases would certainly be different from cases where there is dishonest abstraction of electricity by any of the methods enlisted under Section 135 of the 2003 Act. A clear example would be, where a consumer has used excessive load as against the installed load simpliciter and there is

violation of the terms and conditions of supply, then, the case would fall under Section 126 of the 2003 Act. On the other hand, where a consumer, by any of the means and methods as specified under Section 135(a) to 135 (e) of the 2003 Act, has abstracted energy with dishonest intention and without authorisation, like providing for a direct connection bypassing the installed meter, the case would fall under Section 135 of the Act.

30. Therefore, there is a clear distinction between the cases that would fall under Section 126 of the 2003 Act on the one hand and Section 135 of the 2003 Act on the other. There is no commonality between them in law. They operate in different and distinct fields. The assessing Officer has been vested with the powers to pass provisional and final order of assessment in cases of unauthorised use of electricity and cases of consumption of electricity beyond contracted load will squarely fall under such power. The legislative intention is to cover the cases of malpractices and unauthorised use of electricity and then theft which is governed by the provisions of Section 135 of the 2003 Act."

15. Hence, taking into consideration the facts and circumstances of the case at hand in the light of the decision of the Hon"ble Apex Court as quoted above, I firmly conclude that learned trial court exceeded his jurisdiction by directing the appellant-authority of the W.B.S.E.D.C. Ltd. to return the amount of Rs. 1,50,064/-to the respondent no. 2 etc. and the same is liable to be set aside.

16. Hence, the appeal is allowed in part. The direction given by the court below "to return the collected amount of Rs. 1,50,064/- to the respondent no. 2 within three months" stands set aside but the order of acquittal of the respondent no. 2 from the Electricity Case No. 33 of 2011 on cancellation of his bail bond etc. is hereby affirmed.

17. Let a copy of this judgement along with lower court records be sent back to the court below forthwith.

18. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis after compliance with all necessary formalities.