

HIGH COURT OF MADRAS

Bench: HONOURABLE MR. JUSTICE R.SAKTHIVEL

Date of Decision: 18/01/2024

CrI.O.P.(MD) No.22491 of 2018 and CrI.M.P.(MD) Nos.10559 and 10560 of 2018 in CrI.O.P.(MD) No.22491 of 2018

Jeyaprakash ... Petitioner

Vs.

State rep by Inspector of Police, Kulasekarapattinam Police Station, Tuticorin District. (Cr.No.102 of 2011)

V.Muthukrishnan Asst. Executive Engineer (Distribution) TANGEDCO Tiruchendur, Tuticorin District. ... Respondents

Legislation:

Section 135 of the Electricity Act, 2003

Sections 151 and 154 of the Electricity Act, 2003

Section 482 of the Code of Criminal Procedure, 1973

Section 126 of the Electricity Act, 2003

Section 323 of the Code of Criminal Procedure, 1973

Subject: The petition challenges the proceedings in Spl.C.C.No.3 of 2018 on the ground of jurisdictional error and seeks quashing of the same, concerning an alleged theft of electricity by the petitioner.

Headnotes:

Jurisdictional Challenge and Prayer for Quashing – Petitioner challenges the jurisdiction of the District Munsif cum Judicial Magistrate and the subsequent cognizance taken by the Special Court under the Electricity Act in the alleged electricity theft case – Seeks quashing of proceedings in Spl.C.C.No.3 of 2018 under Section 482 Cr.P.C. [Paras 5, 15-17]

Allegation of Electricity Theft – Petitioner accused of stealing electricity from a free agricultural service connection for his ice factory – Investigation and

charges under Section 135(1)(a) of the Electricity Act, 2003 – Estimated theft of 3,30,180 units causing a loss of Rs.33,84,345/- to TANGEDCO. [Paras 3-4]

Defense Arguments – Petitioner contends the impossibility of using an agricultural connection for industrial purposes, cites jurisdictional errors in investigation and proceedings, and challenges the application of Section 135 instead of Section 126 of the Electricity Act, 2003. [Para 5]

Prosecution's and Respondent's Submission – Emphasis on multiple previous offenses by the petitioner, the due process followed in investigation, and the applicability of Section 135(1)(e) of the Electricity Act, 2003 for theft of electricity. [Para 6-7]

Court's Analysis and Decision – Court finds prima facie evidence supporting the applicability of Section 135 of the Electricity Act, 2003 – Dismisses the petition for lack of merit and irregularities in the procedure, and directs the Special Court to dispose of the case by 26th April 2024. [Paras 8-18]

Referred Cases: None specified.

Representing Advocates:

For Petitioner: Mr. R. Anand

For Respondent-1: Mr. R. Meenakshi Sundaram, Additional Public Prosecutor

For Respondent-2: Mr. B. Ramanathan, Standing Counsel for TANGEDCO

ORDER

This Criminal Original Petition has been filed on 18.12.2018 praying to quash Spl.C.C.No.3 of 2018 pending on the file of the learned Principal District and Sessions Judge, Tuticorin.

2.Heard Mr.R.Anand, the learned counsel for the petitioner, Mr.R.Meenakshi Sundaram, the learned Additional Public Prosecutor for the first respondent State and Mr.B.Ramanathan, learned Standing Counsel for the second respondent/defacto complainant.

3.The petitioner herein is the sole accused in the aforesaid case. The first respondent filed a charge sheet against the petitioner under Section 135(1)(a) of Electricity Act, 2003 based on the complaint lodged by the second respondent on 07.04.2011.

4.The case of the prosecution runs thus:

The petitioner herein is running an Ice Factory at Kallamozhi, Tiruchendur in the name and style of "M/S Joyce Ice Company" and he is a consumer of two service connections viz., 81 and 163 (Tariff III B). In the very same place, a free agricultural service connection No.82 (Tariff VI) is standing in the name of the petitioner's father-Gayes. On 07.04.2011 at about 04.00hours in the early morning, the second respondent along with other officials inspected the ice factory which was running at that time. On inspection, they found that the meter of the said Ice Factory did not show any reading and remained at '00.00 KW'. On further examination, they detected that electricity was stolen from the free agricultural service connection No.82 (Tariff VI) by extending the same to the Ice Factory and found that the petitioner has committed theft of electricity for about 365 days. It was estimated that 3,30,180 units of electricity was stolen causing a loss to the tune of Rs.33,84,345/- to the second respondent.

5.The learned counsel for the petitioner has submitted that the petitioner is using industrial service connection which requires 75 Horse Power, whereas agricultural service connection requires only 05 Horse Power supply. Therefore, it is highly impossible for the petitioner to use electricity provided for agricultural activities to run factory. He further submitted that the date of alleged occurrence is 07.04.2011 and FIR was registered on the same day under section 135 (1) (a) of the Electricity Act; that assuming the averments made in the complaint to be true, even then, Section 126 of the Electricity Act alone would apply; that the first respondent wrongly filed a charge sheet under Section 135(1)(a) of Electricity Act; and that the act of the respondents is malafide. He further submitted that the petitioner herein filed CrI.O.P.(MD) No.12720 of 2011 before this Court and this Court has directed the first respondent-Police to look into the provisions of law and find out as to whether any offence has been made out; and that the first respondent, without considering the said order, filed final report dated 23.08.2011 to the learned District Munsif cum Judicial Magistrate, Tiruchendur on 20.09.2011. The learned counsel further submitted that as per the Electricity Act, 2003, the

Special Court alone has power to take cognizance of the offences; and that the learned Judicial Magistrate has no power to take cognizance and hence the cognizance taken by the Judicial Magistrate is illegal. Accordingly, he prayed to allow the Criminal Original petition. As an alternate plea, he prayed to direct the first respondent-Police to re-investigate the matter and proceed as per law.

6. Per contra, the learned Standing Counsel for the second respondent has submitted that the act of the petitioner amounts to theft of energy as per Section 135 of the Electricity Act, 2003. Further, the Investigating Officer investigated the matter thoroughly and took photographs and videographs from the scene of occurrence; and that the petitioner has been involved in theft of electricity in multiple occasions before and has got five previous cases similar to that of the present case. The learned Standing Court further submitted that more than a sum of Rs.5 Crores is due from the petitioner to the second respondent TANGEDCO; that the charge-sheet was filed in the year 2011 itself and the learned Magistrate took cognizance of the offence under section 135(1)(a) of the Electricity Act and later, upon observing that it does not have jurisdiction, it committed the case under Section 323 of Code of Criminal Procedure, 1973, to the Special Court; and that hence, the petitioner filed this petition with a view to drag on the matter and the petition does not have merits. He further submitted that the act of the petitioner which amounts to theft of electricity under Section 135(1)(e) of Electricity Act, 2003. Accordingly, he prayed to dismiss the Criminal Original Petition.

7. The learned Additional Public Prosecutor for the first respondent submitted that the act of the petitioner attracts Section 135(1) (a) of the Electricity Act, 2003 and the first respondent investigated the matter and filed final report. Further he submitted, the final report discloses a cognizable offence and ample amount of materials and evidence are available on record to prove that the petitioner committed theft of energy; and that the petitioner has involved in five previous cases which are similar to the present case. Accordingly, he prayed to dismiss the present petition.

8. This Court has considered the submissions made on either side and perused the case records.

9. Upon receiving complaint from the second respondent, the first respondent conducted investigation and examined and recorded statements of about 10 witnesses including the 'photographer and videographer'. Pursuantly, the first

respondent filed a charge sheet dated 23.08.2011 before the District Munsif cum Judicial Magistrate, Tiruchendur on 20.09.2011. Later, upon observing that the learned District Munsif cum Judicial Magistrate does not have jurisdiction, he/she committed the case under section 323 of Cr.P.C. vide order dated 14.02.2018 to the Special Court namely, Principal Sessions Court, Thoothukudi. The learned Principal District and Sessions Judge, took cognizance and assigned Spl.C.C.No.3 of 2018.

10. According to the prosecution, the petitioner has stolen the electricity from the free agricultural service connection by extending the same to his factory and thereby, committed theft of energy. According to the petitioner, assuming the averments in the complaint to be true, even then, the act of the petitioner would attract only Section 126 of the Electricity Act, 2003 and not attract Section 135 of the Electricity Act, 2003.

11. The petitioner had earlier filed CrI.O.P.(MD) No.12720 of 2011 before this Court and this Court, vide order dated 23.09.2011, observed as follows:

“...This Court is of the view that it is the matter which could be decided by the respondent No.1. While filing the final report, the respondent No.1 will have to look to the provisions of law and find out as to whether any offence has been made out. The petitioner is at liberty to raise all contentions either after filing of the final report which is against him in the manner known to law.”

12. However, before passing the above order, the first

respondent-Police completed the investigation and filed charge sheet under Section 135 of the Electricity Act, 2003. Section 135 of the Electricity Act, 2003 reads as follows:

“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.

(1-A) 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 authorised 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 disconnect:

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 (2 of 1974), relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.”

(Emphasis supplied)

13. A bare reading of the above provision would show that the act of the petitioner prima facie attracts the offence under Section 135 of the Electricity Act, 2003. Further, the Investigating Officer examined 11 persons and recovered the properties; took photographs and videographs from the scene of occurrence; and collected sufficient materials and evidence against the petitioner which would prima facie attract Section 135 of the Electricity Act, 2003.

14. This Court deems fit to extract Section 151 of the Electricity Act, 2003 hereunder:

“Section 151. Cognizance of offences

No court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorised by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose:

Provided that the court may also take cognizance of an offence punishable under this Act upon a report of a police officer filed under section 173 of the Code of Criminal Procedure, 1973:

Provided further that a special court constituted under section 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial.”

15.As per Section 151 of the Electricity Act, 2003, the Special Court has to take cognizance directly. Per Contra, in this case, the Investigating Officer filed final report before the learned District Munsif cum Judicial Magistrate in the year 2011 who first took cognizance of the offence and later committed the case to the Special Court under section 323 of Cr.P.C. in the year 2018. This is a mere irregularity which in no way affects the case of the prosecution. Further, the petitioner has no prejudice in the aforementioned irregular procedure. In these circumstances, this Court does not find any irregularity by the Special Court in taking cognizance in the aforementioned manner.

16.The alleged theft of electricity took place in the year 2011. Procedure and power of Special Court has been stated in Section 154 of the Electricity Act, 2003. Hence, as per the above procedure, trial of the Spl.C.C.No.3 of 2018 can easily be concluded within a period of three months.

17.Keeping in mind the dispositive reasoning alluded to supra and the facts and circumstances of the case, this Court is of the considered view that there is no illegality in the investigation as well as the Special Court taking cognizance in the aforementioned manner and hence, there is no need to conduct re-investigation. This Court does not find any merit in this petition. Therefore, this Court is not inclined to allow the petition.

18.Accordingly, the Criminal Original Petition is dismissed. Considering the age and nature of the case in Spl.C.C.No.3 of 2018 , this Court directs the Special Court i.e., Principal District and Sessions Court, Tuticorin to dispose of the case on or before 26th April 2024. Consequently, connected miscellaneous petitions are closed.

19.Registry is directed to send a copy of this order to the Special Court i.e., Principal District and Sessions Court, Tuticorin forthwith.

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