



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) No.852 OF 2020

Navin Prakashsingh Thakur,
Aged about 45 years,
Occupation : Business,
R/o. Hirabai Plots, Gandhi Nagar,
Adarsha Colony, Akola,
Tq. and Distt. Akola. : APPLICANT

...VERSUS...

1. State of Maharashtra,
Through P.S.O., P.S. Akot File,
Akola, Tq. And Distt. Akola.
2. Sandip Rambhau Kayande,
Addl. Executive Engineer,
Flying Squad MAHAVITARAN
Akola, Tq. and Distt. Akola. : NON-APPLICANTS

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Mr. J.B. Gandhi, Advocate for Applicant.
Mr. Nikhil Joshi, Additional Public Prosecutor for Non-applicant No.1.
Mr. A.M. Quazi, Advocate for Non-applicant No.2.

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CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.
RESERVED ON : 29th SEPTEMBER, 2025.
PRONOUNCED ON : 09th OCTOBER, 2025.

JUDGMENT : (Per : Nandesh S. Deshpande)

1. Heard. Admit. Heard finally by consent of learned
counsel appearing for the parties.

2. This is an application seeking quashing and setting aside of the First Information Report No.401/2020 filed by the non-applicant No.2 at Police Station Akot File, Akola for the offence punishable under Section 135 of the Electricity Act, 2003.

3. The F.I.R. is filed at the behest of respondent No.2. As per the allegations in the said F.I.R. the applicant along with a tenant, namely, Syed Ejaj Syed Faiyyaj and one Rupali Wagh are indulged in theft of electricity. It is further stated in the F.I.R. that on 25.8.2020 at about 12.30 a.m. non-applicant No.2, who is Additional Executive Engineer of the Flying Squad of the Maharashtra State Electricity Distribution Company Limited (MSEDCL) inspected the premises belonging to the applicant. During this inspection a person, namely, Syed Ejaj Syed Faiyyaj restrained them from entering the premises which prompted them to check the electric meter. During the inspection it was found that the applicant along with said Syed Ejaj Syed Faiyyaj and one Rupali Nandkishor Wagh has intentionally loosened the nut-bolt of the meter so that the display of consumption should be zero. Accordingly, it was found that said persons have unauthorizedly tampered with the electric meter and connection and have committed theft of electricity amounting of Rs.5,36,856/- for the

previous five months. The compounding charges were accordingly assessed to Rs.8,04,200/-. Thus, an offence under Section 135 of the Electricity Act, 2003 was clamped against the accused persons and a First Information Report was lodged. It is this First Information Report which is challenged in the present application.

4. We have heard Mr. J.B. Gandhi, learned counsel for the applicant, Mr. Nikhil Joshi, learned Additional Public Prosecutor for the non-applicant No.1 and Mr. A.M. Quazi, learned counsel for non-applicant No.2/first informant.

5. Learned counsel for the applicant submits that the applicant is a Proprietor of a firm M/s. Shri Saibaba Enterprises, who is owner of the premises bearing Plot No.M-228, at MIDC Phase-4, Akola. Out of said portion the applicant had leased out a portion admeasuring 3000 Sq. ft and further area of 2500 Sq. ft. to said Syed Ejaj Syed Faiyyaj by a rent agreement which was entered into on 31st January, 2020.

6. The learned counsel for the applicant took us through the rent agreement which came into effect from 1st February, 2020 and the lease expired on 31.12.2020. As per the stipulations in the said agreement the tenant said Syed Ejaj Syed Faiyyaj was permitted to use the electricity from the meter bearing Consumer No.310219043440 of 75 HP. However, it was on a condition that

said tenant would not indulge in any unauthorized or illegal use of electricity and if so done in that case he shall be responsible for the said act of unauthorized use. He also submits that spot inspection report prepared by the non-applicant No.2 clearly states that said tenant is using the meter for consumption of electricity. It is, therefore his submission that said tenant and one Rupali Wagh, who had tampered with the meter and thus committed the offence and the applicant is only being implicated for no reason.

7. It is his further submission that the said tenant has paid amount as per final demand note issued by non-applicant No.2. But, however, as the compounding charges are not paid, the F.I.R. is lodged even against the applicant. He has further submitted that the tenant has thus breached the terms of rent agreement which compelled the applicant/landlord to issue a legal notice to him terminating the rent agreement. He has also placed on record judgment and decree of the 2nd Joint Civil Judge, Senior Division, Akola in Small Cause Case No.03/2021. The suit filed by the applicant was decreed and the tenant has been directed to hand over vacant possession of the suit premises within three months.

8. On the other hand, learned learned Additional Public Prosecutor for the non-applicant No.1 and learned counsel for the non-applicant No.2 strongly opposed the prayer made by the

learned counsel for the applicant for quashing of the First Information Report. In the submission of Mr. A.M. Quazi the *interse* agreement between the landlord and tenant would not be binding on a licensee like MSEDCL. He further submits that the letter written by the applicant seeking details of the procedure to sublet is to the Maharashtra Industrial Development Corporation, and, therefore, cannot be a pointer to the fact to gaudge the bona fides of the applicant. He further submits that even though the First Information Report in question points out the theft of electricity for the past five months, the fact as to whether the theft of electricity was continued for a longer period than that would require evidence and, therefore, quashing of First Information Report at such nascent stage would not be proper. It is, therefore, his submission that this is not a fit case to exercise inherent jurisdiction under Section 482 of the Criminal Procedure Code for quashing the First Information Report.

9. In the backdrop of these facts we have perused the submissions made by the learned counsel for the respective parties. At this stage, it would be relevant to refer to certain provisions of Electricity Act 2003. The Electricity Act, 2003 was brought in force to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking

measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas. It further provided for rationalization of electricity tariff, ensuring transparent policies regarding subsidy, promotion of efficient and environmentally benign policies and for other matters incidental thereto. Section 2(15) defines “Consumer” to be any person who is supplied with electricity for his own use by a licensee or the government or by any other person engaged in the business of supplying the electricity to the public under the said Act or under any other law for the time being in force. It further includes any person whose premises are for the time being connected for the purposes of receiving electricity with a works of a licensee. Section 135 of the Electricity Act finds place in Part XIV of the Act titled as ‘offences and penalties’. Section 135 provides for theft of electricity and begins with the word ‘Whoever, dishonestly’, -

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b.....

c.....

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10. After perusal of definition of consumer and the wording of Section 135, in our opinion there is a clear distinction

between the two and a person committing theft of electricity need not necessarily be a consumer within the meaning of Section 2(15) of the Act. It is more so since the consumer, contemplates a consumer who is being supplied with electricity and a person committing theft can be any person, obviously including a consumer. It is thus clear that theft of electricity can be committed even by a person who is not a consumer.

11. The controversy in the present matter needs to be appreciated in the background of these facts emerging from the legal provisions. From the documents filed on record it can be said that said Syed Ejaj Syed Faiyyaj was a tenant of the present applicant and was let out a portion as mentioned in the lease agreement. It can further be seen that the fact that said tenant was a user is fortified by the spot inspection report prepared by the non-applicant No.2 which clearly states the name of owner as the applicant and user as said tenant. It can thus be inferred that even the non-applicant No.2 found that it was the said tenant who was using the electricity from the meter in question. It can further be seen that the applicant vide letter dated 9.10.2020 addressed to the non-applicant No.2 clearly stated that the electricity supply to the meter should be disconnected on a permanent basis with immediate effect so as to restrict the misuse of electricity. It can also be seen

that the applicant/landlord had filed a suit before the Civil Judge, Senior Division, Akola which was decreed on 30th November, 2021. In the said judgment and decree the tenant i.e. the user of the premises was directed to handover vacant possession of the tenanted premises. As can be seen from the tenancy agreement placed on record it was the said tenant who was using electricity from the consumer number mentioned supra and it was further his obligation that he should not indulge in any unauthorized use or electricity. From all these aspects it can be inferred that the applicant is nowhere concerned with theft of electricity, since it was the tenant who was consuming the electricity from the said meter. The applicant cannot be made vicariously liable in view of the material referred above in absence of a specific provision in the Electricity Act, 2003.

12. The offence registered against the applicant under Section 135 of the Electricity Act, 2003 is, therefore, nothing but an abuse of process of law since except for the fact that he is the owner of the premises, there is nothing to connect him with the alleged offence. Thus, from the averments in the F.I.R. no offence is made out as far as present applicant is concerned. Therefore, continuance of criminal proceedings against the applicant would be an abuse of process of law and as per the guidelines mentioned in **State of**

Haryana and others Vs. Ch. Bhajan Lal and others, reported in **AIR 1992 SC 604**, In para No.105, sub-paras 1 to 5 are reproduced as under :

“1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.”

13. In the light of these facts, we are of the opinion that this is a fit case to exercise inherent powers and quash the F.I.R. as far as applicant is concerned. Accordingly, we proceed to pass following order :

ORDER

(i) The application is allowed.

(ii) The First Information Report bearing No.401/2020, registered with Police Station Akot File, District Akola for the offence punishable under Section 135 of the Electricity Act, 2003 is hereby quash as far as the applicant is concerned.

(iii) Application is disposed of accordingly.

(Nandesh S. Deshpande, J.)

(Urmila Joshi-Phalke, J.)

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