

Bombay High Court

Sudhakar Narhari Gulhane vs State Of Maharashtra Through Pso, ... on 11 October, 2017

Bench: R. B. Deo

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO.389 OF 2012

Sudhakar Narhari Gulhane,
Aged 46 years, Occ. - Labourer,
R/o Bori, Tahsil - Chandur Railway,
District Amravati.

.... APPELLANT

VERSUS

State of Maharashtra,
through M.S.E.B.,
(P.S.O. Nandgaon Khd.)

.... RESPONDENT

Shri S.D. Harode, Advocate for the appellant,
Mrs. M.H. Deshmukh, Addl.P.P. for the respondent.

CORAM : ROHIT B. DEO, J.

DATED : 11 OCTOBER, 2017.

th ORAL JUDGMENT :

The learned Additional Sessions Judge, Amravati has, by judgment and order dated 23-8-2012, convicted the appellant (accused) of offence punishable under Sections 135 and 138 of the Electricity Act, 2003 and sentenced the accused to suffer simple imprisonment till rising of the Court and to payment of Rs.29,805/- as 2 apeal389.12 fine.

2. The accused is not aggrieved by the said sentence. However, the accused is aggrieved by the direction issued to pay compounding charges of Rs.1,00,000/- to Maharashtra State Electricity Distribution Company Limited (complainant) and in default to suffer simple imprisonment for three

months.

3. The short submission of the learned Counsel for the accused is that the direction to pay compounding charges is ultra virus the provisions of the Electricity Act, 2003. Section 152 of the Electricity Act, 2003 provides for compounding of offences and reads thus :

"152. Compounding of offences - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Appropriate Government or any officer authorised by it in this behalf may accept from any officer authorised by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table below :

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TABLE

Nature of Service Rate at which the sum of money for compounding to be collected per Kilowatt(KW)/Horse Power (HP) or part thereof for Low Tension (LT) supply and per Kilo Volt Ampere(KVA) of contracted demand for High Tension (HT)

(1) (2)

1. Industrial Service twenty thousand rupees;
 2. Commercial Service ten thousand rupees;
 3. Agricultural Service two thousand rupees;
 4. Other Services four thousand rupees:
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Provided that the Appropriate Government may, by notification in the Official

Gazette, amend the rates specified in the Table above.

(2) On payment of the sum of money in accordance with sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal court.

(3) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973.

(4) The compounding of an offence under sub-section (1) shall be allowed only once for any person or consumer."

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4. A bare perusal of Section 152 of the Electricity Act, 2003 will reveal that sub-section (1) is an enabling provision which permits the appropriate Government or any officer authorised by it to accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under the Electricity Act, a sum of money by way of compounding of the offence. Sub-section (2) provides that on payment of the sum of money in accordance with sub-section (1), any person in custody in connection with the offence shall be set at liberty and shall be immune from criminal prosecution. Sub-section (3) provides that compounding shall be deemed to amount to an acquittal within the meaning of Section 300 of the Code of Criminal Procedure, 1973.

5. The learned Counsel for the accused is right in contending that since the accused opted not to seek compounding, faced trial and is convicted and sentenced to suffer imprisonment and to payment of fine, the learned Sessions Judge could not have directed payment of compounding charges.

6. The direction incorporated in paragraph (2) of the operative order of the judgment impugned, which is reproduced below, 5 appeal389.12 is set aside.

"(2) The accused is also directed to pay compounding charges of Rs.1,00,000/- to M.S.E.D.C.L. Rajura Division, Tq. Chandur Railway, District Amravati within 10 days. In default, he shall suffer S.I. for three months in view of provisions of Section 146 of the Electricity Act."

The appeal is partly allowed. The conviction and sentence is maintained. However, the direction to pay compounding charges of Rs.1,00,000/- is set aside.

JUDGE adgokar