

SRI A.M.C.S. SWAMY
ADE/DPE/HYD (CENTRAL)

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v.

MEHDI AGAH KARBALAI & ANR.
(Criminal Appeal No. 1102 of 2019)

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JULY 23, 2019

[R. BANUMATHI AND R. SUBHASH REDDY, JJ.]

Code of Criminal Procedure, 1973: s.482 – Quashing of criminal proceedings against respondent no.1 under the Electricity Act – The Electricity Department inspected the premises of consumer-respondent no.1 and found meter tampered – The said meter was replaced with another meter and earlier meter sent for examination which on examination was found to be tampered – Loss assessed at Rs.6.28 lacs – Case of appellant that offence committed by respondent no.1 was second offence and the first offence registered against respondent no.1 was compounded – Complaint registered under s.135 of 2003 Act – Special Court took cognizance of case under s.151 of the 2003 Act – Petition for quashing the proceedings filed on the ground that the Special Court took cognizance without any order of committal and the same was in violation of s.193 Cr.P.C. – High Court allowed the petition and quashed the proceedings – On appeal, held: Second proviso to s.151 of the 2003 Act specially empowers the Special Court constituted under s.153 of the 2003 Act to take cognizance of an offence without the accused being committed – In view of the specific provision under s.151 of the 2003 Act, Special Court is empowered to take cognizance without there being an order of committal as contemplated under s.193, Cr.P.C. – High Court did not consider the said proviso to s.151 while passing the impugned order – The impugned order is set aside – Electricity Act, 2003 – s.151 and its proviso, s.193.

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Allowing the appeal, the Court

HELD : It is true that as per the procedure under Section 193 Cr.P.C., no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has

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- A been committed to it by a Magistrate except as otherwise expressly provided by the Code, or any other law for the time being in force. Section 151 of the Electricity Act, 2003 is altogether a new provision. Section 151 of the Act provides that no court shall take cognizance of an offence punishable under the Act except upon a complaint in writing made by the
- B 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. Second proviso to Section 151 of the Electricity Act, 2003, specially empowers the Special
- C Court constituted under Section 153 of the Electricity Act, 2003, to take cognizance of an offence without the accused being committed. In view of the specific provision under Section 151 of the Electricity Act, 2003, Special Court is empowered to take cognizance without there being an order of committal as contemplated under Section 193 Cr.P.C. When there is express
- D provision in the Special Act empowering the Special Court to take cognizance of an offence without the accused being committed, it cannot be said that taking cognizance of offence by Special Court is in violation of Section 193 Cr.P.C. The High Court did not consider the said proviso to Section 151 and passed
- E the impugned order. The order impugned is liable to be set aside. [Paras 10, 11] [701-A, B, D-G]

- F *State of Andhra Pradesh, represented by its Public Prosecutor v. M/s. Shalini Steels Private Limited, Bollaram, Medak District* 2011 CrILJ 67 ; *Gangula Ashok & another v. State of Andhra Pradesh* (2000) 2 SCC 504 : [2000] 1 SCR 468 – referred to.

Case Law Reference

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|---|------------------|-------------|-----------|
| | 2011 CrILJ 67 | referred to | Para 4(c) |
| G | [2000] 1 SCR 468 | referred to | Para 4(c) |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1102 of 2019.

From the Judgment and Order dated 03.12.2018 of the High Court of Judicature at Hyderabad in Criminal Petition No. 13678 of 2011.

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Ms. Meenakshi Arora, Sr. Adv., Rakesh K. Sharma, Advs. for A
the Appellant.

A. Sirajudeen, Sr. Adv., M. Srinivas R. Rao, Sarath S. Janardanan,
Karri Venkata Reddy, Abid Ali Beeran P, S.Udaya Kumar Sagar, Advs.
for the Respondents.

The Judgment of the Court was delivered by B

R. SUBHASH REDDY, J. 1. Leave granted.

2. This Criminal Appeal is filed by the Officer of the State
Distribution Utility Southern Power Distribution of Telangana Limited
(formerly known as APCPDCL) challenging the order dated 03.12.2018 C
passed by the High Court of Judicature at Hyderabad in Criminal Petition
No.13678 of 2011.

3. By the aforesaid order, the High Court has allowed the Criminal
Petition No.13678 of 2011, which was filed under Section 482 of the
Code of Criminal Procedure, 1973, and quashed the proceedings in E.S.C. D
No.3 of 2011 on the file of 1st Additional Metropolitan Sessions Judge,
Hyderabad.

4.(a) Respondent No.1 herein is a consumer of electricity
with Service Connection bearing SC No.CZ007583 connected with a
load of 12903 W of Southern Power Distribution of Telangana Limited E
(SPDTL). On 12.11.2009 at about 12.26 hours, premises of respondent
No.1 was inspected in his presence by the concerned staff of the
appellant. At the time of inspection, the inspecting authorities have found
extra pressing and seal bit bulging marks along with seal wire on the
meter box seal. The said meter was replaced with another meter and
the earlier meter was sent to MRT Lab for examination. The MRT Lab, F
on examination, certified that the meter was tampered. The loss thereby
was assessed at Rs.6,28,383/- (Rupees six lakhs twenty eight thousand
and three hundred and eighty three only). It is a case of the appellant
that the offence committed by respondent No.1 is a second offence.
The first offence registered against respondent No.1 was in Crime G
No.491 of 2008 dated 25.11.2008. The first criminal case registered
against respondent No.1 was compounded on 03.08.2009 upon payment
of Rs.47,000/- (Rupees forty seven thousand only).

(b) When the appellant noticed tampering of meter, on receipt
of report from MRT Lab, the concerned officer has lodged a complaint H

A on 24.11.2009 and the same was registered as First Information Report No.440 of 2009 on 25.11.2009, for the offence punishable under Section 135 of Electricity Act, 2003. On filing the charge sheet, as contemplated under Section 173 of the Code of Criminal Procedure, 1973, on 10.01.2011, the Special Court took cognizance of the case under Section 151 of the Electricity Act, 2003 as amended by Act 26 of 2007, which came into force from 15.06.2007, and registered the same as E.S.C. No. 3 of 2011.

(c) Respondent No.1 herein has filed Criminal Petition No.13678 of 2011 before the High Court of Judicature at Hyderabad under Section 482 of the Code of Criminal Procedure, 1973, seeking to quash the aforesaid proceedings on two grounds. The first ground was that the complaint was not filed within twenty-four hours of disconnection as mandated under proviso to Section 135(1-A) of the Indian Electricity (Amendment) Act, 2007. Section 135(1-A) of the Indian Electricity (Amendment) Act, 2007, reads as under:

D “(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:

... ..

E 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.”

F The second ground was that the Special Court has taken cognizance without any order of committal and the same is in violation of Section 193 of the Code of Criminal Procedure, 1973. In support of the said contention, respondent No.1, before the High Court, relied on a decision in the case of **State of Andhra Pradesh, represented by its Public Prosecutor v. M/s. Shalini Steels Private Limited, Bollaram, Medak District**¹. In the said case, High Court by relying on the decision of this Court in **Gangula Ashok & another v. State of Andhra Pradesh**² held that committal order

¹ 2011 CrILJ 67

H ² (2000) 2 SCC 504 = 2000(1) ALT (CrI) 174 (SC)

is must, unless it is strictly made clear in the special enactment that committal order is not required. In the impugned order, the High Court, mainly on the ground that the Special Court has taken cognizance directly and the same is not disputed by the learned Public Prosecutor, quashed the proceedings. A

5. We have heard Ms. Meenakshi Arora, learned Senior Advocate, assisted by the Advocate on record for the appellant, and also Mr. A. Sirajudeen, learned Senior Advocate, assisted by the Advocate on record for respondent No.1. B

6(a) In this appeal, mainly it is contended by Ms. Meenakshi Arora, learned Senior Advocate appearing for the appellant, that the High Court has passed the impugned order without examining the proviso to Section 151 of the Electricity Act, 2003. It is submitted that the proviso to Section 151 of the Electricity Act, 2003, specially empowers the Special Court to take cognizance directly, as such, it cannot be said that taking cognizance by the Special Court is in violation of provision under Section 193 of the Code of Criminal Procedure, 1973. C D

(b) Further, by referring to the additional affidavit and other material placed on record, it is submitted that on 12.11.2009, when it was suspected that respondent No.1 has tampered the meter, the said meter was replaced with another meter on the same day i.e., 12.11.2009 and the supply was not disconnected on the said date and disconnection has taken place after receipt of the Lab report only, that is on 25.11.2009. To substantiate the said plea, the learned Senior Advocate further submitted that a bill was issued for consumption of energy by respondent No.1 for the period from 12.11.2009 till 25.11.2009. E

(c) It is submission of the learned Senior Advocate that in the case of **Shalini Steels Private Limited** (supra), on which reliance was placed, the High Court has rendered it based on the decision of this Court in the case of **Gangula Ashok** (supra), which was a case arising out of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is submitted that there is no provision in the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, equivalent to Section 151 of the Electricity Act, 2003. In that context, considering the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, this Court has held that the Special Court cannot take cognizance directly unless the F G H

A case has been committed to it by a Committal Court as contemplated under Section 193 of the Code of Criminal Procedure, 1973.

(d) It is submitted that though respondent No.1 herein is an offender of theft of electricity for the second time, the High Court has committed error in quashing the proceedings without taking into consideration the proviso to Section 151 of the Electricity Act, 2003.

7. On the other hand, Sri Sirajudeen, learned Senior Advocate appearing for respondent No.1, referring to the counter affidavit and other material on record, has submitted that the disconnection was made on 12.11.2009 and the complaint was lodged on 24.11.2009 which is *ex facie* time barred and the same is contrary to the proviso to Section 135(1A) of the Electricity Act, 2003 (Amendment Act 26 of 2007). It is further submitted that the Court which has taken cognizance of the offence is not a Special Court within the meaning of the Electricity Act, 2003. It is further submitted that merely because the Presiding Officer is of the rank of Additional Sessions Judge, it cannot be construed as a Special Court within the meaning of the Electricity Act, 2003. It is submitted that as the Court lacks jurisdiction, further the complaint was not lodged within twenty-four hours from disconnection, the cognizance taken against respondent No.1 is rightly quashed by the High Court and there are no grounds to interfere.

8. Having heard the learned counsel on both sides, we have perused the impugned order and the other material placed on record.

9. From a perusal of the order passed by the High Court, it is clear that the petition for quashing under Section 482 of the Code of Criminal Procedure, 1973, was filed by respondent No.1 only on two grounds viz., (i) the complaint was not lodged within twenty-four hours as contemplated under Section 135(1A) of the Electricity Act, 2003 (Amendment Act 26 of 2007), and (ii) the Special Court has taken cognizance directly without an order of committal as contemplated under Section 193 of the Code of Criminal Procedure, 1973. The High Court had relied on its earlier decision in **Shalini Steels Private Limited** (supra) which itself was rendered based on the decision of this Court in **Gangula Ashok** (supra). The High Court, only on the ground that taking cognizance of the case by the Special Court is not disputed by the learned Public Prosecutor, has passed the impugned order, quashing the proceedings.

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10. It is true that as per the procedure under Section 193 of the Code of Criminal Procedure, 1973, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate except as otherwise expressly provided by the Code of Criminal Procedure, 1973, or any other law for the time being in force. Section 193 of the Code of Criminal Procedure reads as under: A
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“193. **Cognizance of offences by Courts of Session:-** Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.” C

11. Section 151 of the Electricity Act, 2003 is altogether a new provision. Section 151 of the Act provides that no court shall take cognizance of an offence punishable under the Act except upon a complaint in writing made by the 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. Second proviso to Section 151 of the Electricity Act, 2003, specially empowers the Special Court constituted under Section 153 of the Electricity Act, 2003, to take cognizance of an offence without the accused being committed. In view of the specific provision under Section 151 of the Electricity Act, 2003, we are of the view that Special Court is empowered to take cognizance without there being an order of committal as contemplated under Section 193 of the Code of Criminal Procedure, 1973. When there is express provision in the Special Act empowering the Special Court to take cognizance of an offence without the accused being committed, it cannot be said that taking cognizance of offence by Special Court is in violation of Section 193 of the Code of Criminal Procedure, 1973. It appears that the High Court has not considered the said proviso to Section 151 and passed the impugned order. As the impugned order is passed only on the said ground, we are of the view that the order impugned is liable to be set aside by this Court. D
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12. Further, Mr. A. Sirajudeen, learned Senior Advocate appearing for respondent No.1, has submitted that the complaint was not lodged H

- A within twenty-four hours as required under Section 135(1A) of the Electricity Act, 2003, and also submitted that the Court which has taken cognizance is not a Special Court within the meaning of the Electricity Act, 2003. Ms. Meenakshi Arora, learned Senior Advocate appearing for the appellant, has submitted that the date of disconnection as mentioned earlier as 12.11.2009 is not correct and that the power supply
- B was disconnected only on 25.11.2009, as such, complaint was filed within the timeframe. Further, it is submitted by the learned Senior Advocate appearing for the appellant that the Government vide G.O.Ms. No.118, Energy (Power-II) Department, dated 18.10.2003, notified the 1st Additional District Judge's Court as a Special Court for the purpose
- C of cases arising under the Electricity Act, 2003, as such, the Special Court is having competent jurisdiction.

13. The aforesaid both grounds raised by respondent No.1 cannot be accepted to sustain the impugned order. In view of the submission made by the learned Senior Advocate appearing for the
- D appellant that the disconnection was within the specified time and further the Government has already issued notification notifying the 1st Additional District Judge's Court as a Special Court, we are not inclined to accept the submission made by the learned Senior counsel appearing for respondent No.1.

- E 14. For the aforesaid reasons, we allow this appeal and set aside the impugned order dated 03.12.2018 in Criminal Petition No.13678 of 2011 passed by the High Court of Judicature at Hyderabad. We make it clear that we have not gone into merits of the matter and it is open for the trial Court to record its own findings based on the evidence during trial.

- F 15. Accordingly, the appeal is allowed, with an observation as indicated above. Since the occurrence is of the year 2009, the trial court shall expedite the hearing of the case.