

**IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR**

**SINGLE BENCH : HON'BLE MR. JUSTICE N.K.GUPTA, J.**

**Criminal Revision No.1835/2009**

Anand Dwivedi

**VERSUS**

The State of Madhya Pradesh

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Shri Raghvendra Kumar, Advocate for the applicant.

Shri Ajay Tamrakar, Panel Lawyer for the State/respondent.  
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**O R D E R**

(Passed on the 22<sup>nd</sup> day of March, 2013)

The applicant has preferred the present revision against the order dated 28.8.2009 passed by the learned Special Judge under Electricity Act, Katni in special case No.329/2007, whereby it was decided that the Special Court shall not try the offence punishable under section 429 of IPC and therefore, a separate trial be initiated against the applicant for offence punishable under section 429 of IPC.

**2.** The prosecution's case, in short, is that, on 27.8.2006 at village Kuthla, Police Station Kuthla, District Katni, it was found that two buffaloes were found dead near the stray wire of electric pole. It was found that the applicant took the connection from that pole and he did not

take a regular connection but, he took a direct wire from the pole to his house and therefore, due to break of insulating material of the wire that wire was touched with stray wire and therefore, the current was leaked and those two buffaloes died due to electrocution. The FIR was lodged to the Police Station Kuthla and therefore, after due investigation, a charge-sheet for offence punishable under section 429 of IPC and section 135 of the Electricity Act was filed before the Special Court.

**3.** The charges were framed and some witnesses were examined. Suddenly on 28.8.2009, the learned Special Judge in his own motion directed that no offence punishable under section 429 of IPC is triable by the Special Judge under Electricity Act and therefore, a separate charge-sheet be filed for that offence.

**4.** I have heard the learned counsel for the parties.

**5.** The learned counsel for the applicant has submitted that according to the provisions of sections 220 and 223 of the Cr.P.C., a joint trial is required for the offence punishable under section 429 of IPC and section 135 of the Electricity Act. Hence, the order passed by the learned Special Judge appears to be incorrect. The learned counsel for the applicant has placed his reliance upon the judgment

passed by Hon'ble the Apex Court in case of **“Vivek Gupta Vs. CBI and another”, [(2003) 8 SCC 628]**.

**6.** The learned Panel Lawyer did not object to the present revision. He has submitted that after framing of the charge and initiation of the trial, no criminal Court could review its own order and therefore, the order dated 28.8.2009 passed by the learned Special Judge, Katni appears to be of beyond jurisdiction.

**7.** After considering the submissions made by the learned counsel for the parties and looking to the facts and circumstances of the case, it is true that the Special Court under Electricity Act is constituted for trial of various offences of the Electricity Act. However, according to the provisions of section 155 of the Electricity Act, 2003, it is apparent that the Special Court has all the powers of the Sessions Court. The Special Court constituted under the provisions of Corruption Act is nowhere specially provided to try the other offences except of the offences of Corruption Act. However, in case of **Vivek Gupta** (supra), Hon'ble the Apex Court has directed that applying the provisions of section 3 and 4 of the PC Act and 220 and 223 of the Cr.P.C. and considering the circumstances of the case, special trial can be done for the offence, which are not the offence under the PC Act. The same situation is visible in the Special Act

under SC/ST (Prevention of Atrocities) Act. In the light of judgment passed by Hon'ble the Apex Court in case of **Vivek Gupta** (supra), the Special Court under the Electricity Act was not debarred to try the case for offence under section 429 of the IPC. Therefore, it cannot be said that the Special Court under Electricity Act has no power to try the other offences except of the Electricity Act. The applicant has committed theft of Electric energy and in that procedure, the current was leaked to a stray wire and therefore, two buffaloes died due to electrocution and therefore, the offence under section 429 of IPC and section 135 of the Electricity act are part and parcel of the same incident and event. Under such circumstances, where the Special Court under the Electricity Act has powers of the Court of Sessions and therefore, the case of offence punishable under section 429 of IPC could be tried by the Special Court under Electricity Act according to the provisions of sections 220 and 223 of the Cr.P.C.

**8.** Also, once the Special Court took the cognizance in the case and after framing of the charges proceeded with prosecution evidence then thereafter, the Special Judge under Electricity Act had no authority to pass such an order, which was passed on 28.8.2009 because that Court has no power of review.

**9.** On the basis of the aforesaid discussion, it is a fit case in which an interference is required from the side of this Court in the impugned order passed by the learned Special Judge under Electricity Act, Katni. Consequently, the revision filed by the applicant is hereby allowed. The impugned order dated 28.8.2009 is hereby set aside. The trial Court is directed to proceed with the case according to the charges framed against the applicant in the same trial and decide the case according to the law.

**10.** A copy of the order be sent to the trial Court for information and compliance.

**(N.K.GUPTA)**  
**JUDGE**  
22/3/2013

*Pushpendra*