

IN THE HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE

(SB: Hon'ble Mr. Justice Alok Verma)

CRR No.547/2015

Abrar Khan and another

Vs.

Madhya Pradesh Pashchim Vidhyut Vitaran Company Ltd.

Shri SS Garg, learned counsel for the applicants.

Shri P. Prasad, learned counsel for the respondent.

ORDER

(Passed on this 7th day of September, 2015)

This Criminal Revision under section 397 read with section 401 of Cr.P.C. is directed against the order passed by learned Special Judge under the Electricity Act in Special Case No.2306/2010 dated 30.03.2015.

The facts giving rise to this revision are that inspection of the premises of the applicant was done by Assistant Engineer, Pashchim Kshetra Vidhyut Vitaran Company Limited on 08.12.2009. On inspection, it was found that as the amount was due against the applicant, therefore, the electricity connection of the present applicants was disconnected. According to the

allegations made in the complaint, present applicants reconnected the connection and started using electrical energy illegally and, therefore, committed offence under section 135 of the Electricity Act. According to counsel for the applicants, a false case is prepared by the respondent/company. After the inspection, a compromise took place between applicant No.1 and respondent/company and as per the terms of the compromise, he deposited all the amount with the respondent/company. Thereafter, he obtained one separate connection for commercial purpose and he had another meter for domestic use and he has been also depositing all the amount of the bills that he has been receiving. He further submits that his connection was never severed by the respondent/company and the punchnama prepared at the time of the inspection, does not show that his connection was severed. It is also alleged that respondent No.2 never signed the punchnama.

Hence, this revision is filed on the ground that when they have deposited all the amount with the respondent/company and also obtained one separate connection for commercial purpose then, no case is made out against the present

applicants under section 135 of the Electricity Act.

Counsel for the respondent raised a preliminary objection that this revision should have been filed under section 157 of the Electricity Act and not under the Criminal Procedure Code as, special provisions of the Electricity Act shall override the general provisions of the Criminal Procedure Code. He further submits that inspection was done in the year 2009 and present applicant never submitted papers and supplied copy to him so that the papers can be verified. Hence, he prays that this revision may be dismissed. He placed reliance on the judgment of Hon'ble the Supreme Court in the case of **Sanghi Brothers Pvt. Ltd. Vs. Sanjay Chaudhary and others** reported in 2008 (10) SCC 681 in which, it was held that a strong suspicion about the commission of offence and the involvement of the accused, it is sufficient for the court to frame a charge. Prospect of conviction should not be seen at this stage.

I have heard both the parties.

So far as mentioning of wrong provision is concerned, it cannot be a ground for depriving the present applicants from their right to file this revision. Secondly, papers filed by the present applicants show that on 03.06.2010 by notice

No.1364/E.E./West/Law, it was informed to the Court that the present applicants deposited Rs.33,958/- and also Rs.1,000/- and, therefore, case against the present applicants should not continue. Even after this, learned Special Judge continued the case against the present applicants.

In my considered opinion, there appears to be strong reasons to believe that present applicants had entered into compromise after inspection and, therefore, no case is made out against the present applicants in the light of above notice given to the Special Court. It appears that learned Special Judge did not take into consideration on a misconceived notion that no document submitted by the defence should be taken into consideration. However, established principle of law is that if, there are some documents which go to the root of the matter, it should be seen and taken into consideration even at the stage of framing of charges. This case, which is filed under section 135 of the Electricity Act is based purely on the documentary evidence. Such documents which are prepared by respondent and applicants and the correspondence between them, should be taken into consideration. There is also power of compromise given to the respondent in this Act and,

therefore, if it was asserted by the present applicants that compromise had taken place in this matter, the same should be considered by the Special Judge and in this case, not doing so, resulted in miscarriage of justice.

Accordingly, this revision is allowed. The impugned order and charges framed against the present applicants are set aside. The matter is remanded back to the learned Special Judge with direction that the documents filed by the present applicants should be taken into consideration and if, it is found that the matter has been compromised between the parties and all the required amount has been deposited by the applicants, they should be discharged, otherwise, the Special Judge is at liberty to proceed in accordance with law.

C.c as per rules.

(Alok Verma)
Judge

Kratika/-