

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

I.A.NO.117535 OF 2017
IN
CRIMINAL APPEAL NO.156 OF 2018
(Arising out of SLP (Crl.) No.3670/2017)

SURESH GANPATI HALVANKAR APPELLANT(S)

VERSUS

THE STATE OF MAHARASHTRA & ORS. RESPONDENT(S)

O R D E R

Leave granted.

The impugned judgment of the High Court of Bombay dated 30th March, 2017 compounded the offence of theft of electricity under Section 135 of the Electricity Act but refused to do so qua Section 138 of the Electricity Act, stating that though the said section deals with maliciously injuring electric meters, since it does not directly relate to the offence of theft it would not be covered by Section 152 of the Electricity Act.

At this juncture, it is important to set out each of the three aforesaid Sections.

"Section 135 (Theft of Electricity):-

(1) Whoever, dishonestly-

(a)

(b) tampers a meter, installs or uses a tampered

meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity;

(d) uses electricity through a tampered meter; or

(e)

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Section 138. (Interference with meters or works of licensee):

(1) Whoever,-

(a)

(b)

(c)

(d) maliciously injures any meter, indicator, or apparatus belonging to a licensee or willfully or fraudulently alters the index of any such meter, indicator or apparatus or prevents any such meter, indicator or apparatus from duly registering.

Shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both, and, in the case of a continuing offence, with a daily fine which may extend to five hundred rupees; and if it is proved that any means exist for making such connection as is referred to in clause (a) or such re-connection as is referred to in clause (b), or such communication as is referred to in clause (c), for causing such alteration or prevention as is referred to in clause (d), and

that the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, it shall be presumed, until the contrary is proved, that such connection, reconnection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and willfully caused by such consumer."

Section 152. (Compounding of Offences):

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Appropriate Government or any officer authorized 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:

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;

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 (2 of 1974).

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

It will be seen that both Sections 135 and 138, which impose a maximum sentence of three years, both deal with theft of electricity. The High Court has taken a very narrow view of Section 152 by stating that an offence of theft is related *stricto sensu* to Section 135 since that section alone deals with the offence of theft, but would not specifically refer to Section 138 which only indirectly relates to the offence of theft. Both the respondent as well as the petitioner before us have moved the High Court stating that Section 138 would also be so subsumed and have continued to argue the same position before us. We are of the view that this is correct in law inasmuch as the language of Section 152 specifically states "an offence of theft" which according to Stroud's Judicial Dictionary, as well as Ramanatha Iyer's Law Lexicon, states that one meaning of 'an' is 'any'. If the word 'any' is substituted for the word 'an' in Section 152, it becomes clear that any offence relating to the theft of electricity is also within the ken of Section 152. Section 138 also relates to theft of electricity, be it through maliciously injuring meters, and is therefore also within Section 152, and can therefore be compounded.

In this view of the matter, we set aside the impugned judgment passed by the High Court. We have been informed by learned counsel for the intervenor that the appellant before us has been prosecuted for perjury and that the proceeding in that behalf is pending. We say nothing about the aforesaid proceedings. In that view of the matter, the appeal stands allowed.

I.A.No.117535 of 2017 is disposed of accordingly.

.....J.
(ROHINTON FALI NARIMAN)

.....J.
(NAVIN SINHA)

NEW DELHI,
JANUARY 22, 2018.

ITEM NO.54

COURT NO.12

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s).3670/2017

(Arising out of impugned final judgment and order dated 30-03-2017 in CRA No.768/2016 30-03-2017 in CRA No.455/2014 passed by the High Court of Judicature at Bombay)

SURESH GANPATI HALVANKAR

Appellant(s)

VERSUS

THE STATE OF MAHARASHTRA & ORS.

Respondent(s)

(IA 117535/2017 for clarification be listed on 22.1.2018)

Date : 22-01-2018 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE NAVIN SINHA

For Appellant(s)

Mr.Raju Ramchandran, Sr.Adv.
Mr.Chinmoy Khaladkar, Adv.
Mr.Aniruddha Deshmukh, AOR

For Respondent(s)

Mr.Simranjeet Singh, Adv.
Mr.Tavinder Pal Sidhu, Adv.
Mr.Gunjan Sinha Jain, Adv.
M/s.M.V.Kini & Asso.

Mr.Pravin Satale, Adv.
Mr.Rajiv Shankar Dvivedi, Adv.

Mr.Nishant Ramakantrao Katneshwarkar, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

IA No.117535 of 2017 is disposed of accordingly.

(Ashok Raj Singh)

(Saroj Kumari Gaur)

Court Master

Court Master

(Signed Order is placed in the file)