

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 49 OF 2015

The B. E. S. & T. Undertaking
Through its Superintendent,
Electricity Supply

...Appellant

vs.

Ekmal S/o. Anis Khan and Ors.

...Respondents

Mr.Abhishek Khare a/w Mr.Rakesh Singh, Mr.Ashwin Umrikar,
Ms.Heena Shaikh, Ms.Revanatti P. Shirode i/b. M.V.Kini and
Company - Advocate for Appellant.

Mr.S.P.Srivastav - Advocate for Respondent No.1.

None for Respondent No.2.

Mr.A.D.Kamkhedkar - APP for Respondent No.3 - State.

CORAM : S. M. MODAK, J.

DATE : 18th JANUARY 2024

P. C. :-

1. There is an acquittal for the offence punishable under Sections 135 and 138 of the Electricity Act, 2003. The Appeal is already admitted on 15th July, 2015. The Respondents were directed to furnish bail of Rs.500/- each. Farad-sheet mentions that it is complied with. Learned Advocate of Respondent No.2 is not present. Let learned Advocate for Respondent No.1 - Company have a word with his colleague.

2. Though on the complaint of BEST, the offence is registered and the prosecution is lodged by the Police, it is not

the State who has preferred the Appeal. Whereas, it is preferred by the First-Informant. After examining the four witnesses, the trial Court delivered the judgment of acquittal. It has been challenged. In addition to that, there is a prayer to decide a *civil liability*. For determining a *civil liability*, the BEST has filed an application purported to be under Sub-section 5 to Section 154 of the Electricity Act, 2003. (Page No.34). The Accused No.1 has also filed reply. (Page No.142).

3. The trial Court has refused to determine the liability for two reasons :-

- (a) Application was filed at fag end of the trial
And
- (b) No evidence was adduced. (Page No.201).

4. There is a provision of an Appeal under Section 156 of the Electricity Act, 2003. It does not specifically mention which orders can be challenged by way of an Appeal or Revision. It only provides a forum and the provisions of Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 ["Cr.P.C."] are to be followed. Chapters XXIX and XXX of the Code do not deal with contingency of deciding a *civil liability*. On this background, let learned Advocate for the Appellant to apprise the Court that the order passed refusing determination of *civil liability* can also be challenged by way of present Appeal.

5. The Appellant is at liberty to collect paper-book from the Office.
6. Stand over to **15th February, 2024**. To be listed for **“Final Hearing”**.

[S. M. MODAK, J.]