

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.159 OF 2023

BEST Undertaking ... Applicant

Versus

Muttum Abdul Khalid and ors ... Respondents

WITH

CRIMINAL APPLICATION NO.694 OF 2023

Muttum Abdul Khalid ... Applicant

In the matter between :

BEST Undertaking ... Applicant

Versus

Muttum Abdul Khalid and ors ... Respondents

Mr. Harvinder Toor a/w Ms. Heena Shaikh, Mr. Rakesh Singh i/b.
M. V. Kini & Co. for the Applicant in Cr. Revision Application
No.159 of 2023.

Mr. Karan Bhsole a/w Ms. Priyanka Dubey, Ms. Khushboo Acharya,
Krishna Shukla for the Applicant in Cri. Application No.694 of
2023 and for Respondent No.1 in Cri. Revision Application No.159
of 2023.

Mr. Kewal Ahya (VC) for Respondent No.2.

Ms. S. E. Phad, APP for the Respondent- State.

CORAM : S. M. MODAK, J.

DATED : 11th JULY 2024

P. C. :

1. Heard the learned Advocate Mr. Toor for the BEST

undertaking and the learned Advocate Mr. Bhosle for Respondent No.1 - licensee of consumer/Respondent No.1. Learned Advocate for Respondent No.2/consumer is virtually present.

2. These are two proceedings arising out of one order dated 15th May 2023 passed by the Special Court as per the Electricity Act, 2003. The BEST Undertaking is aggrieved because -

- (i) The Special Court even though concluded evidence is required to be adduced, has not dismissed the Application / kept it pending.
- (ii) The Special Judge directed the BEST Undertaking to deposit the amount in the Court and that is how they lost their money which they owe from the consumer for unauthorised use of the electricity.

3. Whereas the licensee of the consumer is aggrieved because the learned Special Judge has not dealt with the grievance raised in the Application. Few of them are -

- (a) Charging the amount by the Assessing officer for a period more than 12 months and this period is to be computed from the date of change of electric meter and not from the earlier date.

4. Mr. Toor read over the observations in the impugned order dated 15th May 2023 and he tries to differentiate the facts in the case of ***Dhairyashil Arun Doifode Vs. Maharashtra State Electricity Distribution Company Ltd. & another***¹. He emphasizes on the following facts-

- (i) In that case infact the chargesheet is not filed.
- (ii) The Special Court summoned the Electrical Inspector and he has also submitted the report.
- (iii) When the chargesheet was not filed, according to him, the Application for determining the civil liability cannot be entertained.

Some of the observations in ***Dhairyashil Arun Doifode*** (supra) is not applicable to the facts of this case for the following reasons -

- (i) Observations in paragraph no.6 “the Assessing Officer does not have the jurisdiction to assess the amount of loss because otherwise it will amount to giving an authority to the officer over the Special Court.”
- (ii) Observations that “the civil liability is independent and that can be determined without the prosecution of the accused for the offence” which clearly bad in view of the

1 2018 SCC Online Bom 2770

subsequent judgment of the Hon'ble Supreme Court in the case of *West Bengal State Electricity Distribution Company Limited and ors. Vs. Orion Metal Private Limited and anr.*²

He also relied upon few of the orders passed by the other High Courts-

- (i) *M/s. Kamachi Sponge & Power Corporation Ltd. Vs. The Chairman, Tamil Nadu Electricity Board and anr.*³

(Observations in paragraph No.3 – The civil liability can be determined after full fledged trial.

- (ii) *Bhagwandas Tiwari Vs. State of Madhya Pradesh and ors.*⁴

(Observations – The civil liability determined by the Special Court is dependent on the criminal liability).

- (iii) He placed reliance upon the observations made by the learned Special Judge in the order dated 16th March 2024 thereby rejecting the discharge Application of this Applicant.

5. Stand over to **2nd August 2024**. To be listed **high on board**.

[S. M. MODAK, J.]

2 (2020) 18 Supreme Court Cases 588

3 WP No.23715 of 2010 High Court at Madras

4 2011(3)M.P.L.J. 594