VISHAL AGRAWAL & ANR. A

v.

CHHATTISGARH STATE ELECTRICITY BOARD & ANR.

(Criminal Appeal No. 275 of 2014)

JANUARY 29, 2014 B

[K.S. RADHAKRISHNAN AND A.K. SIKRI, JJ.]

ELECTRICITY ACT, 2003:

s. 151r/w ss.135/126 of the Act and r.12 of Electricity Rules, 2005 — Theft of electricity – Officers authorized to file complaint – Cognizance of offences – Plea that Assistant Engineer had no authority to make a written complaint – Held: Amendment to s.151 is clarificatory in nature – Further, notwithstanding the provisions of s. 151 of the Act, an FIR could be filed with the police — Even when a Magistrate is to take cognizance on a complaint filed before him, that would not mean that no other avenue is opened and complaint/FIR cannot be lodged with the police — Offences under Electricity Act are also to be tried by applying the procedure contained in the Code — It cannot be said that a complete machinery is provided under Electricity Act as to how such offences are to be dealt with — If the offence under the Code is cognizable, provisions of Chapter XII containing s.154 Cr.P.C. and onward would become applicable and it would be the duty of police to register FIR and investigate into the same – Code of Criminal Procedure, 1973 – ss.4, 154 and 172. C D E F

The appellants, who were consumers of electricity and getting supply thereof from State Electricity Board, were found committing theft of electricity. The Board lodged a complaint at the Police Station. An FIR for offences punishable u/ss 135/126 of the Electricity Act, 2003 was registered on 31.3.2006. After investigation into the matter, a challan was filed before the Special Judge, G

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A who passed orders dated 30.6.2006 taking cognizance of the offence. The appellants filed petition before the High Court seeking to quash the proceedings on the ground that the Assistant Engineer had no authority to make any written complaint and the Special Judge could not have
B taken cognizance of the offence without complying with the provisions of s.151 of the Electricity Act, 2003. The High Court directed the appellants to approach the Special Judge, who held that since the complaint had not been made by the officers named in r. 9 of the
C Chhattisgarh State Electricity Rules, 2006, cognizance thereof could not be taken. Accordingly, the appellants were discharged from the case. The Board filed a criminal revision before the High Court by on 4.2.2007. Meanwhile, the Electricity Act was amended by inserting, *inter alia*,
D ss. 151(A) and 151(B) to the Act with effect from 15.6.2007. The High Court reversed the orders of the Special Judge holding that as per r. 12 of the Rules, the police was authorised by the Central Government to forward the complaint received by the officers authorised u/s 151 of
E the Electricity Act to the court concerned and, therefore, the complaint was validly instituted.

In the instant appeal filed by the accused-consumers, the question for consideration before the Court was: whether the amendment in s. 151 of the
F Electricity Act, 2003, which empowered the court to take cognizance of an offence upon a report made by the police u/s 173 of the Code of Criminal Procedure, 1973, would be applicable to the pending complaints filed prior to the said amendment.

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Dismissing the appeal, the Court

HELD: 1.1. In view of the judgment of this Court in *Satyendra Rai's case**, conclusively holding that amendment to s.151 is clarificatory in nature and further
H that notwithstanding the provisions of s. 151 of the Act,

an FIR could be filed with the police, the matter stands clinched in favour of the Board. [para 17] [871-G]

*** *Assistant Electrial Engineer* vs. *Satyendra Rai & Anr.* (2012) 1 PLJR 476 - relied on.**

1.2. As far as the scheme of the Code of Criminal Procedure is concerned, it demarcates the offences into two categories, namely, cognizable and non-cognizable offences. Section 154 of the Code prescribes that in respect of every offence which is a cognizable one, information thereof is to be given to an officer in-charge of a police station, who shall reduce the same into writing. Thus, it is the duty and responsibility of the police authorities to register an FIR. Sub-s. (3) of s. 154 further obligates the police authorities to investigate the same as per the manner prescribed in subsequent sections and thereafter submit the report to the Magistrate, who is empowered to take cognizance of the offence on police report u/s 173 of the Code, on completion of investigation. [para 19] [878-B-E]

1.3. Section 4 of the Code makes it clear that provisions of the Code would be applicable where an offence under the IPC or under any other law is being investigated, inquired into, tried or otherwise dealt with. These offences under any other law could also be investigated, inquired into or tried with according to the provisions of the Code except in case of an offence where the procedure prescribed thereunder is different than that under the Code. It is so specifically provided u/s 155 of the Electricity Act also. Thus, it is not a case where any special or different procedure is prescribed. Rather, the procedure contained in the Code is made applicable for the offences to be tried under the Electricity Act as well. [para 21] [871-B-D]

A *M. Narayandas v. State of Karnataka and Ors.* **2004 Cri LJ 822 – approved.**

1.4. Thus, even when a Magistrate is to take cognizance on a complaint filed before him, that would not mean that no other avenue is opened and the complaint/FIR cannot be lodged with the police. The offences under the Electricity Act are also to be tried by applying the procedure contained in the Code. Thus, it cannot be said that a complete machinery is provided under the Electricity Act as to how such offences are to be dealt with. In view thereof, if the offence under the Code is cognizable, provisions of Chapter XII containing s.154 Cr.P.C. and onward would become applicable and it would be the duty of the police to register the FIR and investigate into the same. Sections 135 and 138 of the Act only prescribe that certain acts relating to theft of electricity etc. would also be offences. It also enables certain persons/parties, as mentioned in s.151, to become complainant in such cases and file complaint before a court in writing. When such a complaint is filed, the court would be competent to take cognizance straightaway. However, that would not mean that other avenues for investigation into the offence which are available would be excluded. It is more so when no such special procedure for trying the offences under the Electricity Act is formulated and the cases under this Act are also to be governed by the Code of Criminal Procedure. [para 23] [881-H; 882-A-E]

1.5. It is significant to note that the notification dated 8.6.2005 issued by the Central Government in exercise of powers u/s 176 of the Act contains the Electricity Rules, 2005. Rule 12 provides, *inter alia,* that police shall take cognizance of the offence punishable under the Act on a complaint, investigate such complaint and forward the report to the court for trial. [para 24] [882-F-H; 883-A]

Chacko, A.K. & Anr. Vs. Assistant Executive Engineer, K.S.E.B. **(2010) 2 KLJ 569;** *Biswanath Patra Vs. Divisional Engineer* AIR 2007 Cal 189; *Ranjeet Kr. Bag Vs. State of West Bengal* **(2006) 1 C CrlJ (Cal) 334;** *Paramasivan vs. Union of India* **(2007) 2 KLT 733;** *Kumaran Chemicals (P) Ltd. Rep. By its Managing Partner D. Thillairaj and Ors. vs. Government of Pondicherry rep. by the Inspector of Police* **MANU/TN/ 0584/2010 — disapproved.**

Bimla Gupta vs. NDPL **136(2007) DLT 521; and** *Asish Kumar Jain vs. State of Jharkhand* **(2010) Cri LJ 271— approved.**

Anjan De vs. *State of West Bengal* **(2008) 1 Cal LT 486 – referred to.**

Case Law Reference:

K.S.E.B. **(2010) 2 KLJ 569**	**disapproved**	**para 12**
AIR 2007 Cal 189	**disapproved**	**para 12**
(2006) 1 C CrlJ (Cal) 334	**disapproved**	**para 12**
(2007) 2 KLT 733	**disapproved**	**para 12**
MANU/TN/0584/2010	**disapproved**	**para 12**
NDPL **136(2007) DLT 521**	**approved**	**para 13**
(2010) Cri LJ 271	**approved**	**para 13**
(2008) 1 Cal LT 486	**referred to**	**para 13**
(2012) 1 PLJR 476	**relied on**	**para 14**
2004 Cri LJ 822	**approved**	**para 22**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 275 of 2014.

From the Judgment & Order dated 26.02.2008 of the High

A Court of Chhattisgarh at Bilaspur in Criminal Revision No. 49 of 2007.

Navin Prakash, Harmeet Ruprah, S.K. Verma for the Appellants.

B C.S. Vaidyanathan, Jugalkishore Gilda, AAG, Abhimanyu Singh (For C.D. Singh), Yogmaya Agnihotri, Ashok Kumar Singh for the Respondents.

The Judgment of the Court was delivered by

C **A.K. SIKRI, J.** 1. Leave granted.

2. A pure question of law which arises for consideration is: whether the amendment in Section 151of the Electricity Act, 2003 (hereinafter referred to as the Act] which empowers the D Court to take cognizance of an offence upon a report made by the police under Section 173 of the Code of Civil Procedure [hereinafter referred to as the Code], would be applicable to the pending complaints filed before the aforesaid amendment. To answer this question, scope and interpretation of Section E 151, as it stood prior to the amendment, also needs to be considered. This issue has arisen in the following set of facts:

3. The respondent, viz. Chhattisgarh State Electricity Board (hereinafter to be referred as the 'Board') is the supplier of F electricity in the State of Chhattisgarh. The appellants are the consumers of the Electricity and getting supply thereof through the Electricity connection provided by the Board. As per the Board, the appellants were found committing theft of the electricity which was revealed on 23.3.2006 when the Electricity meter of the appellant was inspected by the Inspection Team G of the Board. It transpired that instead of the approved 55.204 KW, the appellants were using load of 59.810 KW and the meter was also tampered with. The Board made a complaint to the Station House Officer (SHO), Police Station, Civil Lines, Bilaspur. On the aforesaid allegations with request to the SHO H to register a FIR against the appellants on the basis of a

complaint dated 30.3.2006, the FIR was registered by the SHO on 31.3.2006 being FIR No. 227 of 2006 under Section 135/126 of the Act. After investigating into the matter, officer in-charge of the Police Station filed the challan before the Special Judge, Bilaspur who passed orders dated 30.6.2006 taking cognizance of offence under the aforesaid provisions of the Act.

4. Against this order, the appellants filed quashing petition before the High Court on the ground that the Assistant Engineer had no authority to make any written complaint and the Special Judge could not have taken cognizance of the offence without complying with the provisions of Section 151 of the Act. This petition was disposed of by the High Court with a direction to the appellants to approach and raise the said objection before the Special Judge. On that basis, the aforesaid plea was pressed before the Special Judge as well by filing an application to this effect. The contention of the appellants was found convincing by the Special Judge who passed orders dated 26.9.2006 thereupon holding that since the complaint had not been made by the officers named in Rule 9 of the Chhattisgarh State Electricity Rules, 2006, cognizance thereof could not be taken. As a sequittor, the appellants were discharged from the case. At the same time liberty was also given to the Board to take appropriate action in accordance with law.

5. The Board did not accept the aforesaid order and challenge the same before the High Court by filing Criminal Revision on 4.2.2007. Within four months thereof the Electricity Act was amended by inserting, inter alia, Sections 151(A) and 151(B) to the said Act with effect from 15.6.2007. The High Court has by impugned order dated 26.2.2008, reversed the orders of the Special Judge holding that as per Rule 12 of Chhattisgarh State Electricity Rules, the police has been authorised by the Central Government to forward the complaint received by the officers authorised under Section 151 of the

A Electricity Act to the concerned Court and, therefore, the complaint was validly instituted.

6. Before we take note of the contentions advanced before the High Court and the manner in which the High Court
B has dealt with the same, it would be apt to reproduce relevant provisions of the Electricity Act as well as Chhattisgarh Electricity Rules, interpretation whereof is involved in the present case.

7. Section 151 of the Act, as it existed before the
C amendment, is as follows:

"151. Cognizance of offences:- No Court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by appropriate
D government or appropriate Commissioner or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or Licensee or the generating company, as the case may be, for this purpose."

In exercise of powers conferred by Section 176 of the
E Electricity Act, 2003 the Central Government framed Electricity Rules, 2005, Rule 12 reads thus:-

"12. Cognizance of the Offence –

F (1) The police shall take cognizance of the offence punishableunder the Act on a complaint in writing made to the police by the appropriate Government or the appropriate Commission or any of their officers authorized by them in this regard or a Chief Electrical Inspector or an Electrical Inspector or an
G authorized officer of Licensee or a Generating Company, as the case may be.

(2)The police shall investigate the complaint in accordance withthe general law applicable to the
H investigation of anycomplaint. For the purposes of

investigation of the complaintthe police shall have all the powers as available under the Code of Criminal Procedure, 1973.

(3) The police shall after investigation, forward the report along with the complaint filed under sub-clause (1) to the Court fortrial under the Act.

(4) Notwithstanding anything contained in sub-clause (1), (2) and (3) above, the complaint for taking cognizance of an offence punishable under the Act may also be filed by the appropriate Government or the appropriate Commission or any of theirofficers authorized by them or a Chief Electrical Inspector or an Electrical Inspector or an authorized officer of Licensee ora Generating Company, as the case may be directly in the appropriate Court.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every special court may take cognizance of an offence referred to in Sections 135 to 139 of the Act without the accused being committed to it for trial.

(6) The cognizance of the offence under the Act shall not in anyway prejudice the actions under the provisions of the Indian Penal Code."

The principal Electricity Act, 2003 was further amended by the Electricity (Amendment) Act, 2007 and apart from other amendments in Section 151 of the prinicipal Act was also amended and provisions in Sections 151, 151(A), 151 (B) were inserted. In the Statement of Objects and Reasons for amending the Act, it was stated as under:

"4. As per the provisions contained in Section 151 of the Act, the offences relating to theft of electricity, electric lines and interference with the meters are cognizable offences.

A Concerns have been expressed that the present formulation of Section 151 stands as a barrier to investigation of these cognizable offences by the police. It is proposed to amend Section 15 so as to clarify the position that the police would be able to investigate the
B cognizable offences under the Act. The expedite the trial before the Special Court, it is also proposed to provide that a Special Court shall be competent to take cognizance of an offence without the accused being committed to it for trial.

C 1.Short title and commencement. (1) This act may be called the Electricity (Amendment) Act, 2007.

2. It shall come into force on such date as the CentralGovernment may, by notification in the
D Official Gazette,appoint:

"15. Amendment of Section 151. - In Section 151 of the Principal Act, the following provisos shall be inserted, namely:-

E Provided that the Court may also take cognizance of an offence punishable under this Act upon a report of a police officer filed under Section 173 of the Code of Criminal Procedure, 1973 (2 of 1974).

F Provided further that a special court constituted under Section 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial.

16. Insertions of new Sections 151-A and 151-B – After
G Section 151 of the principal act, the following sections shall be inserted namely:-

"151-A. Power of police to investigate – For the purposes of investigation of an offence punishable
H under this Act, the police officer shall have all the

powers as provided in Chapter XII of the Code of Criminal Procedure, 1973 (2 of 1974).

151-B Certain offences to be cognizable and non-bailable. - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence punishable under Sections 135 to 140 or Sections 150 shall be cognizable and non-bailable."

8. As per unamended Section 151 of the Act the cognizance of the offence punishable under the Electricity Act can be taken only when complaint is made in writing by:

(i) Appropriate Government, or

(ii) Appropriate Commissioner, or

(iii) Any of their officer authorized by them, or

(iv) A Chief Electrical Inspector,

(v) Electrical Inspector,

(vi) Licensee, or

(vii) The Generating Company, as the case may be.

9. It was the submission of the appellant that the complaint could be made to the Court by the appropriate Government or any of its officers so authorised (as other persons specifically named to make such complaints under Section 151 were not relevant). It was argued that the State of Chhattisgarh has framed Chhattisgarh State Electricity Rules, 2005 in exercise of powers under Section 151 of the Act. As per Rule 9 of the said Rules, the persons who are authorized to make the written complaints were either Assistant Electrical Inspector of Chief Electrical Inspectorate of the State Government or an officer not below the rank of Junior Engineer of the Board or Distribution

A Licensee. It was the submission of the appellant that in the present case the complaint was made by the Assistant Engineer who was below the rank of Junior Engineer and, therefore, was not authorised to lodge the complaint under Section 151. It was also argued that as per the provisions of
B Section 151 of the Act, the complaint was required to be made in the Court and not to the police and both these mandatory conditions contained in Section 151 of the Act were not adhered to.

C 10. The High Court rejected the aforesaid contention holding that Rule 12 of the Electricity Rules authorised the police to take cognizance of the offence punishable under the Act and, therefore, it was not necessary for the Board to file the complaint under Section 151. The High Court also held that by adding proviso to Section 151 along with insertion of
D Sections 151(A) and 151 (B) vide Electricity (Amendment) Act, 2007, this position was made abundantly clear namely cognizance of an offence punishable under the Act could be taken upon a report of police officer filed under Section 173 of the Code of Criminal Procedure. Contention of the appellants
E that the said amendment came into effect only from 15.6.2007 with the passing of Electricity Amendment Act, 2007 has been repelled by the High Court taking note of the Statement of Objects and Reasons for amending the Act which makes it absolutely clear that the purpose for amendment is to clarify the
F position already prevailed viz. the police would be able to investigate the cognizable offences under the Act. These are the reasons given by the High Court for setting aside the order of the Trial Court and allowing the Revision Petition of the Board.

G 11. Before us arguments of the parties remained the same. The submission of learned Counsel for the appellant was that proviso to Section 151 as well as provisions contained in Section 151(A) and 151(B) of the Electricity Act are substantive
H provisions which could operate only prospectively i.e. the date

on which the amendment was notified and could not have retrospective operation, more particularly when the provisions are in the realm of criminal law. He also referred to certain judgments of few High Courts wherein such a view has been taken. Learned Counsel for the respondent-Board, on the other hand, extensively relied upon the reasoning of the High Court in the impugned judgment and cited certain decisions of other High Courts which have taken this very line of action.

12. We may mention at the outset that there is difference of opinion on this issue among various High Courts. Kerala and Calcutta High Court, have taken the view which goes in favour of the appellant herein, in the following cases:-

Chacko, A.K. & Anr. Vs. Assistant Executive Engineer, K.S.E.B. (2010) 2 KLJ 569; *Biswanath Patra Vs. Divisional Engineer* AIR 2007 Cal 189; *Ranjeet Kr. Bag Vs. State of West Bengal* (2006) 1 C CrlJ (Cal) 334; *Paramasivan vs. Union of India* (2007) 2 KLT 733; *Kumaran Chemicals (P) Ltd. Rep. By its Managing Partner D. Thillairaj and Ors. vs. Government of Pondicherry rep. By the Inspector of Police* MANU/TN/0584/ 2010.

13. A contrary view has been taken by High Courts of Delhi and Jharkhand in the following cases:

Bimla Gupta vs. NDPL 136(2007) DLT 521; *Ashish Kumar Jain vs. State of Jharkhand* (2010) CriLJ 271

Interestingly, though Calcutta High Court has taken different view in the two judgments cited above, which are of the years 2006 and 2007, different view has been taken in the case *Anjan De vs. State of West Bengal* (2008) 1 Cal LT 486 which is in tune with the judgments of Delhi and Jharkhand High Courts.

14. Before we embark on detailed discussion, it is pertinent to point out that this Court has already dealt with the same issue in the case of *Assistant Electrial Engineer* vs. *Satyendra Rai & Anr.* (2012) 1 PLJR 476 wherein it has

A accepted the proposition that FIR with the police can be registered *de hors* Section 151 of the Act (unamended) which provides for filing of the complaint before the Special Court. The relevant portion of the said judgment is as under:-

B Though the report was made by the Assistant Electrical Engineer, it was pointed out before the High Court that even if the police had decided to file a report under Section 173 Code of Criminal Procedure. Complaining the theft, the Court could not have taken the cognizance as provided under Section 151 of the Act and only a complaint should C have been filed in writing by the appropriate Government or their officers.

The High Court accepted this contention and held that the very inception of the case was not in accordance with law D and, therefore, the first information report in the present case could not be sustained. This is the judgment which has fallen for our consideration.

We have heard learned Counsel appearing for the parties E and gone through the appeal.

Considering the position in law, it is obvious that the High Court has completely misconstrued the relevant provision. Considering the definition of "theft" of electricity in Section 135 of the Act, there could be no difficulty that in the first F information report, the theft as contemplated in Section 135 of the Act was reported. The only question is as to whether the police could have investigated on that basis and could have filed a charge sheet against the Respondent No. 1-accused, particularly in view of the language of Section 151 G of the Act.

15. In that very judgment this Court also categorically pointed out that proviso to Section 151 of the Act was clarificatory in nature. This is so observed in para 9 which is H as follows:

Therefore, considering the language of para 4 of the Statement of Objects and Reasons, it is clear that the amendment brought in is clarificatory in nature and as such it would take into its ambit even the pending matters and in that sense it would be a retrospective amendment.

16. Yet, there is one more reason given by the Court to hold that FIR with the police officer would be competent, as can be found from the following extracts from the said judgment:-

There is one more reason why the High Court's order can be faulted. The High Court has clearly ignored the First Schedule of the Code of Criminal Procedure and more particularly the second part thereof, which is under the head "Classification of Offences against other laws". The second entry reads as follows:

If punishable with imprisonment for three years, and upwards but not more than seven years, then such offences are held to be cognizable, non-bailable and triable by the Court of Magistrate of the first class.

Therefore, the High Court ought to have considered this provision which makes the first information report acceptable by the police in the sense that the police could investigate into the matter and if found guilty could have also filed a report under Section 173 Code of Criminal Procedure, before the Court on which the Court could have taken the cognizance of the offence.

17. In view of the aforesaid judgment of this Court, conclusively holding that amendment to Section 151 is clarificatory in nature and further that notwithstanding the provisions of Section 151 of the Act, a FIR could be filed with the police, the matter stands clinched in favour of the Board. However, at the same time we would like to elaborate the view taken by this Court in the aforesaid judgment.

18. It would be essential to first take note of the relevant

provisions of the Electricity Act and the Code of Criminal Procedure. The five provisions of the Electricity Act which are referred to are Sections 135, 138, 151, 154 and 175 and these may be reproduced at this stage:

"S. 135. Theft of electricity.

(1) Whoever, dishonestly,

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee; or

(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 damaged or destroyed as to interfere with the proper or accurate metering of electricity, 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:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use-

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further than if it is proved that any artificial means or means not authorised by the Board or licensee exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(2)Any office authorised in this behalf by the State Government may-

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity [has been or is being], used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which [has been or is being], used for unauthorised use of electricity;

(c)examine or seize any books of accounts or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under Sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts there from in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list

A of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any B domestic place or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4)The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure shall C apply, as far as may be, to searches and seizure under this act.

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D S. 138. Interference with meters or works of licensee.-(1) Whoever,

(a) unauthorisedly connects any meter, indicator or apparatus with any electric line through which electricity is supplied by a licensee or disconnects the same from any E such electric line; or

(b) unauthorisedly reconnects any meter, indicator or apparatus with any electric line or other works being the property of a licensee when the said electric line or other F works has or have been cut or disconnected; or

(c) lays or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee; or

G (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 H 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.

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S. 151. Cognizance of offences.-No court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorised by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose.

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S. 154. Procedure and power of Special Court.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under Sections 135 to 139 shall be triable only by the Special Court within whose jurisdiction such offence has been committed.

(2) Where it appears to any court in the course of any inquiry or trial that an offence punishable under Sections 135 to 139 in respect of any offence that the case is one which is triable by a Special Court constituted under this

A Act for the area in which such case has arisen, it shall transfer such case to such Special Court, and thereupon such case shall be tried and disposed of by such Special Court in accordance with the provisions of this Act.

B Provided that it shall be lawful for such Special Court to act on the evidence, if any, recorded by any court in the case of presence of the accused before the transfer of the case of any Special Court:

Provided further that is such Special Court is of opinion C that further examination, cross-examination and re-examination of any of the witnesses whose evidence has already been recorded, is in the interest of justice, it may re-summon any such witness and after such further examination, cross-examination and re-examination, if any, D as it may permit, the witness shall be discharged.

(3) The Special Court may, notwithstanding anything contained in Sub-section (1) of Section 260 or Section 262 of the Code of Criminal Procedure, 1973 (2 of 1974), try the offence referred to in Sections 135 to 139 in a summary E way in accordance with the procedure prescribed in the said Code and the provisions of Sections 263 to 265 of the said Code shall, so far as may be, apply to such trial:

Provided that where in the course of a summary trial under F this sub-section, it appears to the Special Court that the nature of the case is such that it is undesirable to try such case in summary way, the Special Court shall recall any witness who may have been examined and proceed to re-hear the case in the manner provided by the provisions of G the said Code for the trial of such offence:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding five years. H

(4) A Special Court may, with a view to obtaining ;the evidence of any person supposed to have been directly or indirectly concerned in or privy to, any offence tender pardon to such person or condition of his making a full and true disclosure of the circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof, and any pardon so tendered shall, for the purposes of Section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered under Section 307 thereof.

(5) The Special Court may determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil court.

(6) In case the civil liability so determined finally by the Special Court is less than the amount deposited by the consumer or the person, the excess amount so deposited by the consumer or the person, to the Board or licensee or the concerned person, as the case may be refunded by the Board or licensee or the concerned person, as the case may be, within a fortnight from the date of communication of the order of the Special Court together with interest at the prevailing Reserve Bank of India prime lending rate for the period from the date of such deposit till the date of payment.

Explanation.-For the purposes of this section, "civil liability" means loss or damage incurred by the Board or licensee or the concerned person, as the case may be, due to the commission of an offence referred to in Sections 135 to 139.

A S. 175. Provisions of this Act to be in addition to and not in derogation of other laws:- The provisions of this Act are in addition to and not in derogation of any other law for the time being in force."

B 19. As far as the scheme of the Code of Criminal Procedure (hereinafter referred to as the 'Code') is concerned, it is essential to point out that it demarcates the offences into two categories, namely, cognizable and non-cognizable offences. As per Part II of Schedule I of the Code, any offence punishable with three years or more of imprisonment is a C cognizable offence. Section 154 of the Code prescribes that in respect of every offence which is a cognizable one, information thereof is to be given to an officer in-charge of a police station, who shall reduce the same into writing. Thus, it is the duty and responsibility of the police authorities to register D a First Information Report. Sub-section (3) of Section 154 further obligates the police authorities to investigate the same as per the manner prescribed in subsequent sections and thereafter submit its report to the Magistrate, who is empowered to take cognizance of the offence on police report, E under Section 173 of the Code, on completion of investigation."

20. Here, the provisions of Section 4 of the Code become relevant which provide a complete answer to the submission of the appellant. It reads:

F "4. Trial of offence under the Indian Penal Code and other laws. -

(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried and otherwise G dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the H

time being in force regulating the manner of place of investigation, inquiring into, trying or otherwise dealing with such offences."

21. It is apparent from the reading of Section 4 that provisions of the Code would be applicable where an offence under the IPC or under any other law is being investigated, inquired into, tried or otherwise dealt with. These offences under any other law could also be investigated, inquired into or tried with according to the provisions of the Code except in case of an offence where the procedure prescribed there under is different than the procedure prescribed under the Code. It is so specifically provided under Section 155 of the Electricity Act also. Thus, it is not a case where any special or different procedure is prescribed. Rather, the procedure contained the Code is made applicable for the offences to be tried under the Electricity Act as well.

22. We would like to discuss here the judgment in the case of In *M. Narayandas v. State of Karnataka and Ors.* 2004 CriLJ 822, which has direct bearing on the issue at hand. The question arose as to whether Section 195 and Section 340 of the Code. affect the power of police to investigate into a cognizable offence. Section 195 provides for prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. It also states that no Court shall take cognizance of the offences specified therein except on a complaint in writing of that Court or of some other Court to which that Court is subordinate. Section 340 of the Code prescribes the procedure as to how the complaint may be preferred under Section 195 of the Cr.P.C. Alleging that the accused had committed an offence under Section 195, the complainant had made a complaint to the police and police had initiated investigation thereon. The accused/respondent had contended that since the case was filed under Section 195 of the Code it was provisions of Chapter XVI of the Code which

A would apply and not Chapter XII thereof (relating to investigation by the police). This contention was rejected in the following manner:

"8. We are unable to accept the submissions made on behalf of the respondent. Firstly, it is to be seen that the B High Court does not quash the complaint on the ground that Section 195 applied and that the procedure under Chapter XXVI had not been followed. Thus such a ground could not be used to sustain the impugned judgment. Even otherwise, there is no substance in the submission. The C question whether Sections 195 and 340 of the Criminal Procedure Code affect the power of the police to investigate into a cognizable offence has already been considered by this Court in the case of *State of Punjab v. Raj Singh;* 1998 Cri LJ 1104 . In this case it has been held D as follows:

> We are unable to sustain the impugned order of the High Court quashing the FIR lodged against the respondent alleging commission of offences under E Sections 419, 420, 467 and 468 IPC by them in course of the proceeding of a civil suit, on the ground that Section 195(1)(b)(ii) CrPC prohibited entertainment of and investigation into the same by the police. From a plain reading of Section 195 F CrPC it is manifest that it comes into operation at the stage when the court intends to take cognizance of an offence under Section 190(1) CrPC; and it has nothing to do with the statutory power of the police to investigate into an FIR which discloses a G cognizable offence, in accordance with Chapter XII of the Code even if the offence is alleged to have been committed in, or in relation to, any proceeding under the Code is not in any way controlled or circumscribed by Section 195 CrPC. It is of course true that upon the charge-sheet (challan), if any, filed H

on completion of the investigation into such an offence the court would not be competent to take cognizance thereof in view of the embargo of Section 195(1)(b) CrPC, but nothing therein deters the court from filing a complaint for the offence on the basis of the FIR (filed by the aggrieved private party) and the materials collected during investigation, provided it forms the requisite opinion and follows the procedure laid down in Section 340 CrPC. The judgment of this Court in *Gopalakrishna Menon* v. *D. Raja Reddy*; 1983 (3) SCR 836 on which the high Court relied, has no manner of application to the facts of the instant case for there cognizance was taken on a private complaint even though the offence of forgery was committed in respect of a money receipt produced in the civil court and hence it was held that the court could not take cognizance on such a complaint in view of Section 195 CrPC.

Not only are we bound by this judgment but we are also in complete agreement with the same. Section 195 and 340 do not control or circumscribe the power of the police to investigate under the Criminal Procedure Code. Once investigation is completed then the embargo in Section 195 would come into place and the court would not be competent to take cognizance. However, that court could then file a complaint for the offence on the basis of the FIR and the material collected during investigation provided the procedure laid down in Section 340 of the Criminal Procedure Code is followed. Thus no right of the respondent much less the right to file an appeal under Section 341, is affected."

23. Thus, the clear principle which emerges from the aforesaid discussion is that even when a Magistrate is to take cognizance when a complaint is filed before it, that would not

A mean that no other avenue is opened and the complaint/FIR cannot be lodged with the police. It is stated at the cost of repetition that the offences under the Electricity Act are also to be tried by applying the procedure contained in the Code. Thus, it cannot be said that a complete machinery is provided under
B the Electricity Act as to how such offences are to be dealt with. In view thereof, we are of the opinion that the respondent's Counsel is right in his submission that if the offence under the Code is cognizable, provisions of Chapter XII containing Section 154 Cr.P.C. and onward would become applicable and
C it would be the duty of the police to register the FIR and investigate into the same. Sections 135 and 138 only prescribe that certain acts relating to theft of electricity etc. would also be offences. It also enables certain persons/parties, as mentioned in Section 151, to become complainant in such cases and file
D complaint before a Court in writing. When such a complaint is filed, the Court would be competent to take cognizance straightway. However, that would not mean that other avenues for investigation into the offence which are available would be excluded. It is more so when no such special procedure for trying the offences under the Electricity Act is formulated and
E the cases under this Act are also to be governed by the Code of Criminal Procedure.

24. In this backdrop, the notification dated 8.6.2005 issued by the Central Government in exercise of powers under Section
F 176 of the Electricity Act also requires a mention. Vide this notification the Electricity Rules, 2005, have been framed and Rule 12, which is relevant, reads as under:

12 (1) The police shall take cognizance of the offence
G punishable under the Act on a complaint in writing made to the police by the Appropriate Government or the Appropriate Commission or any of their officer authorized by them in this regard or a Chief Electrical Inspector or an Electrical Inspector or an

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authorized officer of Licensee or a Generating Company, as the case may be.

(2) The police shall investigate the complaint in accordance with the general law applicable to the investigation of any complaint. For the purposes of investigation of the complaint, the police shall have at the powers as available under the Code of Criminal Procedure, 1973.

(3) The police shall after investigation, forward the report along with the complaint filed under Sub-clause (1) to the Court for trial under the Act.

(4) Notwithstanding anything contained in Sub-clauses (1), (2) and (3) above, the complaint for taking cognizance of an offence punishable under the Act may also be filed by the Appropriate Government or the Appropriate Commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or an authorized officer of Licensee or a Generating Company, as the case may be directly in the appropriate Court.

(5) Notwithstanding anything contained in the Code of Criminal Procedure 1973, every special Court may take cognizance of an offence referred to in Section 135 to 139 of the Act without the accused being committed to it for trial."

25. In view of the aforesaid discussion, we hold that the decisions of Kerala High Court as well as Calcutta High Court and Madras High Court in *Chacko, A.K. & Anr. Vs. Assistant Executive Engineer, K.S.E.B.* (2010) 2 KLJ 569; *Biswanath Patra Vs. Divisional Engineer* AIR 2007 Cal 189; *Ranjeet Kr. Bag Vs. State of West Bengal* (2006) 1 C CrlJ (Cal) 334; *Paramasivan vs. Union of India* (2007) 2 KLT 733; *Kumaran Chemicals (P) Ltd. Rep. By its Managing Partner D. Thillairaj and Ors. vs. Government of Pondicherry rep. by the Inspector*

A *of Police* MANU/TN/0584/2010 do not lay down correct law and the view taken by the High Court of Delhi in *Abhay Tyagi v. State NCT of Delhi & Anr.* and *Asish Kumar Jain vs. State of Jharkhand* (2010) CriLJ 271 is hereby approved.

B 26. As a result this appeal fails and is hereby dismissed with costs.

R.P. Appeal dismissed.