IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE G.GIRISH

FRIDAY, THE 11TH DAY OF APRIL 2025 / 21ST CHAITHRA, 1947

CRL.REV.PET NO. 1775 OF 2013

AGAINST THE ORDER DATED 27.08.2013 IN C.MP.NO.2088/2013

IN SC NO.568 OF 2012 OF SESSIONS COURT, KOZHIKODE DIVISION

REVISION PETITIONER/PETITIONER/ACCUSED:

ASHARAF, S/O.KOYA, 55/11 PULAPARAMBIL HOUSE,
MEEMBALAKKUNNU COLONY, KOTTOOLI, KOZHIKODE DIST

BY ADVS.
ADV. K. PRAVEEN KUMAR
R. BINDU (SASTHAMANGALAM)

RESPONDENT/RESPONDENT/COMPLAINANT:

1 **SUB INSPECTOR OF POLICE**
MEDICAL COLLEGE POLICE STATION, KOZHIKODE DIST-673004

2 **STATE OF KERALA REP BY PUBLIC PROSECUTOR,**
HIGH COURT OF KERALA, ERNAKULAM

3 **KERALA STATE ELECTRICITY BOARD**
REPRESENTED BY SUB ENGINEER, ELECTRICAL SECTION,
KOVOOR, KOZHIKODE IS IMPLEADED AS ADDL.3RD RESPONDENT
AS PER ORDER DATED 26.11.2014 IN CRL.M.A 7310/14 IN
CRL.R.P 1775/13.

BY ADV SHRI.B.PREMOD, SC,
KERALA STATE ELECTRICITY BOARD

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 10.04.2025, THE COURT ON 11.04.2025 DELIVERED THE FOLLOWING:

O R D E R

The order dated 27.08.2013 of the Additional Sessions Court-I, Kozhikode, in C.M.P.No.2088/2013 dismissing the discharge petition filed by the accused in S.C.No.568/2012 on the files of the said court, is under challenge in this revision. The petitioner herein is the accused in the said case, who filed the discharge petition under Section 227 of the Code of Criminal Procedure, 1973 *(in short, 'Cr.PC')* before the learned Additional Sessions Judge. The prosecution in the said case is for the commission of the offence of electricity theft envisaged under Section 135 of the Electricity Act, 2003 *(in short, 'Act')*.

2. An inspection conducted by the KSEB officials at the industrial establishment of the petitioner on 23.09.2005 is said to have revealed theft of electricity. Accordingly, the Sub Engineer in charge preferred a complaint before the local Sub Inspector of Police on 03.10.2005, on the basis of which the Police registered a crime as Crime No.302/2005 of Medical College Police Station, Kozhikode. The petitioner thereupon filed Crl.M.C.No.3980/2005 before this Court for quashing the above First Information Report [FIR]. A learned Single Judge of this Court disposed of the above Crl.M.C. along with W.P.(C)

No.22972/2006 and 23 other Criminal Miscellaneous Cases by a common judgment dated 10.11.2006. The above said W.P.(C) No.22972/2006 was for quashing the proceedings in C.C.No.183/2005 on the files of the Judicial First Class Magistrate Court-I, Palakkad. In the above writ petition, the learned Single Judge passed the order holding that the cognizance taken by the learned Magistrate in the case C.C.No.183/2005 on the files of the Judicial First Class Magistrate Court-I, Palakkad, was without jurisdiction and accordingly, restrained the learned Magistrate from proceeding with that case. It was further directed in the above said writ petition that the KSEB or its authorised officer may file a written complaint before the learned Magistrate in the light of the materials in the report filed by the Police, and that in the event of such written complaint being filed, the learned Magistrate shall take cognizance of the offence and proceed with the case. It was further observed in the judgment of the learned Single Judge, referred above, that the above said directions will govern the Criminal Miscellaneous Cases wherein cognizance of the offences has been taken based on Police report. In respect of the other Criminal Miscellaneous Cases considered by the learned Single Judge, it was observed that the contentions raised thereunder are kept open, and

that the petitioners concerned can raise the same before the Trial Court. Therefore, the contentions of the petitioner in the present case, wherein the learned Magistrate had not taken cognizance, was left open as per the aforesaid judgment of the learned Single Judge. In the meanwhile, Section 151 of the Act was amended with effect from 15.06.2007 empowering the Court to take cognizance of an offence punishable under the Act upon a report of a Police Officer filed under Section 173 Cr.PC. Thereafter, in the year 2012, the Police filed a final report in respect of the electricity theft involved in this case, which was taken on to files by the Sessions Court, Kozhikode, as S.C.No.568/2012. The petitioner, thereupon, filed C.M.P.No.2088/2013 before the learned Additional Sessions Judge-I, Kozhikode, who was considering the aforesaid Sessions Case, under Section 227 Cr.PC for his discharge from the said proceedings stating the reason that the Police was not empowered to investigate the case and to file final report before the Sessions Court. It was contended by the petitioner in the above discharge petition that the amendment brought out to Section 151 of the Act, with effect from 15.06.2007, empowering the Court to take cognizance of the offence under Section 135 of the Act upon a Police Report under Section 173 Cr.PC, was having no

retrospective applicability, and hence, the final report filed by the Police in this case in respect of the incident said to have happened on 23.09.2005, was nonest in the eye of law. The learned Additional Sessions Judge dismissed the above discharge petition holding that as per the notifications of the Government of Kerala in S.R.O.No.703/2005 & 229/2005, the Sub Engineers of KSEB were notified as empowered officers to submit a complaint in respect of the electricity theft conducted within the areas of their local jurisdiction. It was further observed by the learned Additional Sessions Judge that since no prejudice has been caused to the petitioner in connection with the filing of the final report in the case, the prayer for discharge cannot be entertained. It is the aforesaid order of dismissal of C.M.P.No.2088/2013 by the Additional Sessions Court-I, Kozhikode, which is under challenge in this revision petition.

3. In the present petition, the petitioner would contend that the registration of crime, the conduct of investigation by the Police and the filing of the final report are invalid in the eye of law, since the Police were not empowered to conduct the investigation relating to the electricity theft under Section 135 of the Act. According to the petitioner, the amendment brought out to Section 151 of the Act with

effect from 15.06.2007 has no retrospective applicability, and hence, the investigation done by the Police in respect of the incident happened in this case on 23.09.2005, is nonest in the eye of law.

4. Heard the learned counsel for the revision petitioner, the learned Public Prosecutor representing the State of Kerala, and the learned Standing Counsel for KSEB.

5. The learned Standing Counsel for KSEB pointed out that the contention of the petitioner that the amendment brought out to Section 151 of the Act with effect from 15.06.2007 has no retrospective applicability, is no longer sustainable in law, in view of the dictum laid down by the Hon'ble Supreme Court in ***Vishal Agarwal & Anr. v. Chhattisgarh State Electricity Board and Anr.*** **[2014(1) KHC 390]**. As rightly argued by the learned Standing Counsel for the KSEB, the Hon'ble Apex Court has made it clear in the aforesaid decision that there is absolutely no fetter for the Police in registering a crime, conducting investigation and filing final report in respect of the electricity theft, as in the case of any other offences covered by the general law of criminal jurisprudence, and that the mere fact that some special provisions are provided under the Act for filing complaint by the officers designated thereunder in respect of the

offences under the Act, will not divest the powers of the Police to conduct investigation and to file final report as in the case of any other offences. Overruling the decisions rendered by various High Courts, including the Kerala High Court, and upholding the view of the Delhi High Court in ***Abhay Tyagi v. State NCT of Delhi and Anr.*** **[(2009) ILR 3 Delhi 610]**, and that of the Jharkhand High Court in ***Ashish Kumar Jain v. State of Jharkhand*** **[2010 KHC 7086]**, the Hon'ble Apex Court held in paragraph No.23 of its judgment as follows:-

> "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 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 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 S.154 CrPC and onward would become applicable and it would be the duty of the police to register the FIR and investigate into the same. S.135 and S.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 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 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 the cases under this Act are also to be governed by the Code of Criminal Procedure."

6. In the light of the law laid down by the Hon'ble Apex Court in the above regard, the argument advanced by the learned counsel for the petitioner that the Police was not empowered to file a final report in respect of the offence involved in this case, is totally unsustainable.

7. The learned counsel for the petitioner argued that, since this Court had already held in the judgment rendered on 10.11.2006 in W.P.(C)No.22972/2006 and 23 other Criminal Miscellaneous Cases, including Crl.M.C.No.3980/2005, that the FIR registered by the Police in respect of the offence under Section 135 of the Act is invalid in the eye of law, it has to be found that the subsequent decision of the Hon'ble Apex Court in ***Vishal Agarwal & Anr.*** (supra), cannot validate the above FIR which this Court had already found as invalid. With regard to the above argument, it has to be held that this Court

has not invalidated the FIR in this case as per the judgment rendered on 10.11.2006 in the aforesaid WP(C) and 23 other Criminal Miscellaneous Cases, including Crl.M.C.No.3980/2005. The aforesaid judgment of this Court referred by the learned counsel for the petitioner, has been reported in ***Paramasivam M. v. Union of India & Ors*** **[2007 KHC 5029]**. As already stated in paragraph No.2 above, W.P(C)No.22972/2006 referred in the aforesaid decision was filed challenging the proceedings in C.C.No.183/2005 on the files of the Judicial First Class Magistrate Court-I, Palakkad. The decision rendered in the above W.P.(C), contained in paragraph No.24 of the aforesaid judgment, is extracted hereunder for the sake of convenience and easy reference.

> "24. In the result, the Writ Petition is disposed of with the following directions/orders: (i) The cognizance of the offences in this case taken by the learned Magistrate without a written complaint by the K.S.E.B or its authorised officer is without jurisdiction and therefore, void. So, the learned Magistrate is restrained from proceeding with the case. (ii) The K.S.E.B or its authorised officer may file a written complaint before the Magistrate, in the light of the materials in the report filed by the police and also other materials, if any, available with it, In that event, the learned Magistrate shall take cognizance of the offences and proceed with the case. It will be open to the Magistrate to proceed with the trial from the stage where it was stopped. Unless prejudice is found to have been caused to the

> accused, de novo trial need not be conducted. (iii) The challenge against R.11 and 12 of the Electricity Rules, 2005 is repelled. (iv) Until Special Court is constituted for the area, the Judicial First Class Magistrate I, Palakkad can proceed with the trial of CC No. 183/2005, provided a complaint as mentioned in direction (ii) above is filed.
> Crl. M. C. Nos. 79, 1104, 2029, 2073. 2074, 2083, 2908, 2910. 3621, 3623, 3660, 3852, 3855, 3952, 3980, 4041, 4063, 4324 & 4385/2005, 34, 116, 1500 & 1704/2006:"

8. In paragraph No.25 of the said judgment, the learned Single Judge of this Court had observed that Section 379 of the Indian Penal Code, 1860, is not having any applicability in respect of the offence of electricity theft, since the electricity cannot be classified as a movable property. In paragraph Nos.26 & 27 of the said judgment, the learned Single Judge had dealt with the facts of Crl.M.C.Nos.2910/2005 & 1500/2006 and had made the relevant observations related to the said cases. In paragraph No.28 of the said judgment, the learned Single Judge ordered that the directions in paragraph No.24 of the said judgment will govern the Criminal Miscellaneous Cases wherein cognizance of offence has been taken based on the Police report. As regards the remaining cases, it has been observed by the learned Single Judge in paragraph No.29 of the

said judgment that the contentions are left open to be considered by the Trial Court.

9. It is pertinent to note that when the learned Single Judge rendered the above judgment on 10.11.2006, no cognizance was taken in respect of the crime involved in this case by the learned Magistrate, since the case was only at the crime stage at that time. Therefore, the directions in paragraph No.24 of the judgment rendered by this Court on 10.11.2006 are having no applicability in the instant case, since it is already made clear in paragraph No.28 of the same judgment that the directions thereunder in paragraph No.24 has got applicability only in respect of Criminal Miscellaneous Cases wherein cognizance of the offences has been taken based on Police report. As already stated above, going by the contents of paragraph No.29 of the said judgment of the learned Single Judge, the contentions in all other Criminal Miscellaneous Cases, including the present one, were left open to be considered by the Trial Court. Therefore, the argument of the learned counsel for the petitioner that the decision rendered by this Court in ***Paramasivam M. v. Union of India & Ors*** (supra) has invalidated the FIR registered in this case, and that the subsequent decision of the Hon'ble Apex Court in ***Vishal Agarwal & Anr.*** (supra) cannot validate

the above FIR, is totally baseless. It has to be stated that, at the time when the Police filed final report in this case in the year 2012, the contentions were remaining open as per the directions in paragraph No.29 of the judgment dated 10.11.2006 of the learned Single Judge. Thus, the decision rendered by the Hon'ble Supreme Court in ***Vishal Agarwal & Anr.*** (supra) is squarely applicable in the facts and circumstances of this case. Needless to say that the prosecution launched against the petitioner, in the crime involved in this case, is perfectly in order, and it cannot be said that the amendment made to Section 151 of the Act empowering the Police to investigate the case and file final report has no applicability to the incident involved in this case since it was prior to the aforesaid amendment. Accordingly, I find no merit in this Criminal Revision Petition filed by the petitioner challenging the impugned order passed by the learned Additional Sessions Judge-I, Kozhikode.

In the result, the petition stands dismissed.

(sd/-)

G. GIRISH, JUDGE

DST

APPENDIX OF CRL.REV.PET 1775/2013

PETITIONER ANNEXURES

Document	**Certified copy of judgment in Crl.M.C. No. 3980/2005**