

**HIGH COURT OF MADHYA PRADESH : BENCH AT INDORE**  
**[DIVISION BENCH: HON'BLE MR. JUSTICE VIVEK RUSIA AND**  
**HON'BLE MR. JUSTICE AMAR NATH (KESHARWANI)]**

**CRRF No. 1/2012**

*In Re. Special Judge (Electricity Act) No.5, Indore.*

**Date : 26.02.2022 :**

Shri Avinash Sirpurkar learned Sr. Advocate and Shri Vivek Singh, Advocate, amicus curiae.

**Per Vivek Rusia, J :**

The present reference is registered u/s. 395 of the Cr.P.C. on a letter dated 2.3.2012 whereby the District & Sessions Judge, Indore has forwarded a request for reference submitted by the Special Judge (Electricity Act) No.5, Indore.

The facts of the case which have resulted in sending the present reference to this Court are as under :

Police Station Bhanwarkua, Indore registered Crime No.1025/2011 u/s. 279 and 427 of the IPC and u/s. 139 of the Electricity Act, 2003 against accused Raju Chauhan. After investigation, a charge-sheet was filed before the Court of Judicial Magistrate, First Class (JMFC), Indore which was registered as Cr. Case No.28906/2011. Since the offence u/s. 139 of Electricity Act,2003 is liable to be tried by a Special Judge appointed under the Electricity Act, 2003, therefore, the concerned JMFC has transferred the aforesaid case u/s. 154(2) of Electricity Act, 2003 to the Special Court. The Special Judge took the cognizance of the offence only under sec 139 of the Electricity Act only in Special Case No. 2007/2012. The Special Judge thought that being Additional Session Judge, performing the duties of learned Special Judge, he cannot try the accused u/s. 279 and 427 of the IPC without committal, hence has made the present reference to this Court. Learned Special Judge (Electricity Act) has sent the following legal issues by way of this reference :

- “(1) *should the police file single chargesheet or separate chargesheets (if a single chargesheet is filed whether a special court can take direct cognizance or congizance after committal proceedings);*
- (2) *should the accused be subjected to different jurisdictions (Spl. Court and*

*magistrate court) for same or similar offences committed in the course of same transaction.*

(3) *how to negate the possibility of conflicting verdict for same or similar offence committed in the course of same transaction.”*

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Vide order dated 10.7.2018 this Court has appointed Shri S.K. Vyas, and Shri Avinash Sirpurkar, Senior Advocates and Shri Vivek Singh Advocate to assist this Court in the matter.

Chapter XIV of the Electricity Act, 2003 deals with the offences and penalties relating to the theft of electricity as defined u/s. 135 of the Act. Section 151 provides, 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 officers authorised, etc. However, the court may also take cognizance of an offence punishable under this Act on a police complaint filed u/s. 173 of the Cr.P.C. Section 153 provides the constitution of special courts. The State Government to provide speedy trial of offences referred to in Sections 135 to 140 and Section 150 by notification in the Official Gazette, may constitute as many special courts as may be necessary for such area. As per sub-section (3) of Section 153, a person shall not be qualified for appointment as a Judge of a Special Court unless he was immediately before such appointment, an Additional District Judge and Sessions Judge. Section 154 provides the procedure and power of the Special Court to try the offence u/s. 135 to 140 and Section 150 of the Electricity Act. Section 155 provides that the provisions of the Cr.P.C. insofar as they are not inconsistent with the provisions of the Electricity Act shall apply to the proceedings before the Special Court. Thereafter, Section 156 provides the remedy of appeal and revision to the High Court against the order passed by the Special Court.

For ready reference sections 136, 151, 153 & 155 of the Electricity Act are reproduced below :

**“Section 136. (Theft of electric lines and materials):** --- (1) Whoever, dishonestly -

(a) cuts or removes or takes away or transfers any electric line, material or meter from a tower, pole, any other installation or place of installation or any other place, or site where it may be rightfully or lawfully stored, deposited, kept, stocked, situated or located including during transportation, without the consent of the licensee or the owner, as the case may be, whether or not the act is done for

profit or gain; or

(b) stores, possesses or otherwise keeps in his premises, custody or control, any electric line, material or meter without the consent of the owner, whether or not the act is committed for profit or gain; or

(c) loads, carries, or moves from one place to another any electric line, material or meter without the consent of its owner, whether or not the act is done for profit or gain, is said to have committed an offence of theft of electric lines and materials, and shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

(2) If a person, having been convicted of an offence punishable under subsection (1) is again guilty of an offence punishable under that sub-section, he shall be punishable for the second or subsequent offence for a term of imprisonment which shall not be less than six months but which may extend to five years and shall also be liable to fine which shall not be less than ten thousand rupees.”

“**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 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.

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:

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.”

“**Section 153. (Constitution of Special Courts):** --- (1) The State Government may, for the purposes of providing speedy trial of offences referred to in 1[sections 135 to 140 and section 150], by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas, as may be specified in the notification.

(2) A Special Court shall consist of a single Judge who shall be appointed by the State Government with the concurrence of the High Court.

(3) A person shall not be qualified for appointment as a Judge of a Special Court unless he was, immediately before such appointment, an Additional District and Sessions Judge.

(4) Where the office of the Judge of a Special Court is vacant, or such Judge is absent from the ordinary place of sitting of such Special Court, or he is incapacitated by illness or otherwise for the performance of his duties, any urgent business in the Special Court shall be disposed of –

(a) by a Judge, if any, exercising jurisdiction in the Special Court;

(b) where there is no such other Judge available, in accordance with the direction of District and Sessions Judge having jurisdiction over the ordinary place of sitting of Special Court, as notified under subsection (1).”

“**Section 155. (Special Court to have powers of Court of Session)** : Save as otherwise provided in this Act, the Code of Criminal Procedure, 1973, insofar as they are not inconsistent with the provisions of this Act, shall apply to the proceedings before the Special Court and for the purpose of the provisions of the said enactments, the Special Court shall be deemed to be a Court of Session and shall have all powers of a Court of Session and the person conducting a prosecution before the Special Court shall be deemed to be a Public Prosecutor.”

It is not in dispute that u/s. 193 of the Cr.P.C., no Court of Sessions shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under the Cr.P.C. or

by any other law for the time being in force. Section 209 of Cr.P.C. provides that when in a case instituted on a police report or otherwise, the accused appears before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit the trial to the Court of Sessions.

In the present case, the police have registered the criminal case against the accused of an offence punishable u/s. 139 of the Electricity Act and u/s. 279 and 427 of the IPC. In view of the aforesaid provisions, the offence u/s. 139 of Electricity Act is triable by Special Court appointed under the provisions of Electricity Act. So far as the offence u/s. 279 and 427 of the IPC are concerned, same are triable magistrate first class, but there has to be an order of committal u/s. 209 of the Cr.P.C. as the Sessions Court can try the offence only by way of committal u/s. 193 of Cr.P.C. The Second Proviso of Section 151 of the Electricity Act, especially provides that a special court constituted u/s. 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial.

In the case of ***Southern Power Distribution Co. of Telangana Ltd. V/s. Mehdi Agah Karbalai : (2020) 11 SCC 704***, Supreme Court of India has held that Section 151 of the Electricity Act, 2003 is altogether a new provision. Which provides that no court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by the appropriate Government or appropriate Commission. Second Proviso to Section 151 of the Electricity Act specially empowers the Special Court constituted u/s. 150 of the Electricity Act to take cognizance of an offence without the accused being committed to it for trial. Therefore, for trying the offence under the provisions of the Electricity Act, no order of committal is required.

In the aforesaid case, the complaint was filed for trying the offence u/s. 135 of the Electricity Act only, but in the present case in hand, the police have registered an FIR for the offence punishable u/s. 279 and 427 of the IPC along with sec 139 of the Electricity Act 2003. Second Proviso to Section 151 of the Electricity Act empowers the Special Judge to take

cognizance for offences u/s. 135 to 140 and 150 of the Electricity Act only, but not for the offence under the Indian Penal Code, 1860 or any other enactment. Therefore, a reference is being made as to whether the police should file the single charge-sheet or a separate charge-sheet for two different offences and should the accused be subjected to different jurisdictions (Special Court and a Magistrate Court) for the same or similar offences committed in the course of the same transaction and how the possibility of the conflicting verdict can be avoided in the course of the same transaction?

Learned Special Judge in his reference-memo has referred that under different enactments like Commission of Sati (Prevention) Act, 1987; Essential Commodities Act, 1955; M.P. Dacoity Aur Vyaparan Prabhavit Kshetra Adhiniyam, 1981; Narcotics Drug Psychotropic Substances Act, 1985; Prevention of Corruption Act, 1988; Terrorist and Disruptive Activities (Prevention) Act, 1987, the Special Court can try an offence other than those mentioned in the Special Act also but there is no such enabling clause in the Electricity Act 2003, thus, a joint trial/joint charge-sheet in absence of the said provision becomes a remote possibility.

However, the learned Special Judge has cited a judgment of the Apex Court passed in the case of *Gangula Ashok Vs. State of A.P. reported in (2000) 2 SCC 504* which it has been held that the Court of Sessions, even after being specified as a Special Court, would continue to be essentially a Court of Sessions and when a case is committed by the Magistrate in accordance with the provisions of Cr.P.C. such Special Court can try further under the provisions of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act as well as other provisions like IPC and this procedure can be applied under the Electricity Act. This procedure can be applied in the Electricity Act, but there is a provision in the Electricity Act of filing a complaint directly to the Special Court by a person authorised or by the police. So far as offences related to the Electricity Act are concerned, there is no need to committal and the Special Court can directly take cognizance, but for the offences like offences under IPC, the Special Court being a Sessions

Court cannot take cognizance without there being any order of committal. Hence, the learned Special Judge has posed three questions for clarification by this Court that should the police file single charge-sheet or separate charge-sheets? The police can file a single charge sheet if it finds that both offences are committed under the Electricity Act as well as under the IPC. If the single charge sheet is filed, whether the Special Court can take direct cognizance or cognizance after committal.

So far as taking cognizance of the offences punishable under the Electricity Act is concerned, there is no issue in view of Section 151, 153, 154 and 155 of the Electricity Act. Under the first Proviso to Section 151, the Special Court can take cognizance directly. But so far as taking cognizance under other enactments in case of single charge-sheet, the answer is in Section 151 itself by way of the second proviso. The main part of Section 151 says that no Court shall take cognizance of an offence punishable under the Act, except upon a complaint in writing made by appropriate Government or appropriate Commission or any of their officer authorised by them. The First Proviso provides that the Court may also take cognizance of an offence punishable under this Act upon a report of a Police Officer...., and as per Second Proviso, it further provides that a special court constituted u/s. 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial. In the second proviso, the only word '**offence**' is used and not the words "**offence punishable under this Act**" as used in the first proviso as well in the main part of Section 151 which is again reproduced below :

**"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 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.

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:

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."

So far as the committal part is concerned, the special court is also having powers of Session Court by virtue of sec. 155, therefore, as per the

co-joint reading of Second Proviso to Section 151 read with Section 155 for other offences also, if they are included in the complaint as well as in a police report, the Special Court can take direct cognizance. The aforesaid answer to Question/Issue No.1 clarifies the situation, therefore, there is no need to consider the eventualities posed by way of Question Nos. 2 and 3. As per Question Nos. 2 and 3, the accused is likely to be subjected to two different jurisdictions i.e. to the Special Court as well as Magistrate Court for the same or similar offences committed in the course of the same transaction. By way of question No.3, the learned Special Judge has found the possibility of a conflicting verdict for the same or similar offence committed in the course of the same transaction. As per Answer to Question No.1, the Special Court has the power to take cognizance under the Electricity Act and also under the IPC, then, there would no possibility of facing two trials by the accused i.e. before the Special Court or before the Court of Sessions/Magistrate Court for the similar offence.

To be more precise let's examine the provision of U/s. 220(3) of the Cr.P.C., which says that if the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with and tried at one trial for each of such offences. Thus, u/s. 220(3) of Cr.P.C. also, there would be no occasion to try a person in two different trials in two different courts. In the case of *Essar Teleholdings Ltd. v. Delhi High Court, reported in (2013) 8 SCC 1* a similar problem in the trial of @G scam was considered by the Supreme Court of India .

“20. Section 220 CrPC relates to trial for more than one offence, if, in one series of acts so connected together as to form the same transaction more offence than one are committed and provides as follows:

“**220.Trial for more than one offence.**—(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of Section 212 or in sub-section (1) of Section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried

at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, or such acts.

(5) Nothing contained in this section shall affect Section 71 of the Penal Code, 1860.”

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25. Admittedly, the co-accused of 2G Scam case charged under the provisions of the Prevention of Corruption Act can be tried only by the Special Judge. The petitioners are co-accused in the said 2G Scam case. In this background Section 220 CrPC will apply and the petitioners though accused of different offences i.e. under Sections 420/120-B IPC, which alleged to have been committed in the course of 2G Spectrum transactions, under Section 223 CrPC they may be charged and can be tried together with the other co-accused of 2G Scam cases.

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29. Admittedly, 2G Scam case is triable by the Special Judge against the persons accused of offences punishable under the PC Act in view of sub-section (1) of Section 4. The Special Judge alone can take the cognizance of the offence specified in sub-section (1) of Section 3 and conspiracy in relation to them. While trying any case, the Special Judge may also try an offence other than the offence specified in sub-section (1) of Section 3, in view of sub-section (3) of Section 4. A Magistrate cannot take cognizance of offence as specified in Section 3(1) of the PC Act. In this background, as the petitioners have been shown as co-accused in second supplementary charge-sheet filed in 2G Scam case, it is open to the Special Judge to take cognizance of the offence under Section 120-B and Section 420 IPC.”

Accordingly, the reference is answered, as observed above. Let a copy of this order along with a record of the case be sent to the Principal District Judge Indore. Even otherwise, as per the report, the trial is not pending after sending a reference to this Court on 2.3.2012. The trial has already been concluded on 30.8.2012 by convicting the accused u/s. 139 of the Electricity Act and imposing the fine of Rs.8,000/- although the accused was tried by a Special Judge u/s. 279 and 427 of the IPC and u/s. 139 of the Electricity Act in Special Case No.207/2012.

[ VIVEK RUSIA ]  
JUDGE.

[AMAR NATH (KESHARWANI)]  
JUDGE.

Alok/-