

**Tneb Vs. 1.State - Rep. by**

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**SooperKanoon Citation :** [sooperkanoon.com/1169668](http://sooperkanoon.com/1169668)

**Court :** Chennai

**Decided On :** Aug-05-2014

**Judge :** P.R.Shivakumar

**Appellant :** Tneb

**Respondent :** 1.State - Rep. by

**Judgement :**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED : 05.08.2014 CORAM THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR  
Crl.R.C.(MD)No.837 of 2010 TNEB rep.

by Superintending Engineer, Ramanathapuram District..Petitioner versus 1.State - Rep.

by The Inspector of Police, Thangachimadam Police Station, Rameshwaram.

Crime No.54/2001 ..Respondent No.1 2.N.Sivakumar ..2nd Respondent/ Accused  
Prayer: Criminal Revision Petition is filed under Section 401 r/w.

397 of Cr.P.C., to call for the records and set aside the order in C.C.No.1 of 2007 passed by the Principal Sessions Judge, Ramanathapuram, dated 26.08.2009 and order for retrial.

!For Petitioner : Mr.S.Satheesh Kumar ^For Respondent 1 : Mrs.S.Prabha  
Government Advocate (Crl.

side) For Respondent 2 : Mr.M.Subash Babu :

## ORDER

Arguments advanced by Mr.S.Satheesh Kumar, learned Standing Counsel for TNEB and by Mrs.S.Prabha, learned Government Advocate for the fiRs.respondent and by Mr.M.Subash Babu, learned counsel for the second respondent are heard.

The materials available on record are also perused.

2.A case was registered on the file of the Thangachimadam Police Station, Ramanathapuram District, in Crime No.54 of 2001 against N.Sivakumar, the second respondent herein, for alleged offences punishable under Sections 39(1) and 44(1)(c) of the Indian Electricity Act, 1910 and Section 484 of the Indian Penal Code.

However, before ever the investigation was completed, the Indian Electricity Act, 1910, was replaced by the Electricity Act, 2003 (Act 36 of 2003).The Investigating Officer submitted a final report alleging commission of the above said offences under the provisions of the Indian Electricity Act, 1910, which came to be repealed by the Electricity Act, 2003.

Though the Electricity Act, 2003, specifically repeals Indian Electricity Act, 1910, Section 185 of the Electricity Act, 2003, saves the proceedings initiated under the repealed Act and also enables the continuation of the investigation and initiation of the proceedings in accordance with the substantive provisions of the repealed Act as the general application of Section 6 of the General Clauses Act, 1897 has been preserved by sub Section (5) of Section 185 of the Electricity Act, 2003.

Section 6 of the General Clauses Act, 1897, sub Section (e) states that unless a different intention appears in the repealing Acts, the repeal shall not affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment and any such investigation,

legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture, punishment may be imposed as if the repealing Act or Regulation had not been passed.

Therefore, the Investigating Officer was correct in continuing the investigation and submitting a final reports alleging commission of offences punishable under Sections 39(1) and 44(1)(c) of the Indian Electricity Act, 1910 and Section 484 of the Indian Penal Code, even though the Indian Electricity Act, 1910, came to be repealed by the Electricity Act, 2003.

3.However, there is a difference between the Acts in respect of the forum in which the prosecution for the offences could be conducted.

So far as the naming of the forum is concerned, the provisions found in the repealed Act and that are found in the repealing Act, can be taken as procedural in nature rather substantive in nature.

Therefore, the cognizance made by the Special Judge, namely the Principal Sessions Judge designated as the Special Court under the Electricity Act, 2003, cannot be found fault with.

The provisions of the Electricity Act, 2003, make it clear that the Special Courts shall be manned by a judicial officer of the rank of not less than an Additional District and Sessions Judge.

The forum designated for trial of offences under the Electricity Act, being a Court of Session, as against its judgment, an appeal shall lie to the High Court as per the provisions of the Code of Criminal Procedure.

The Electricity Act, 2003, contains a provision in Section 151 enabling the Special Courts to take cognizance of the offences without there being a necessity of the case being committed by a committal magistrate.

Section 156 specifically makes Chapters XXIX and XXX of the Code of Criminal Procedure, 1973, applicable in respect of the powers of the appeal and revision of the High Courts against the judgment/orders of the Special Courts as in the case

of any other Court of Session.

4. Section 378 of the Code of Civil Procedure provides filing of appeal by the Public Prosecutor on the directions of the State Government or the Central Government, as the case may be, against an order of acquittal.

However, sub clause (3) of Section 378 requires a leave to be obtained for preferring an appeal against an order of acquittal, if the appeal is to be preferred by the Public Prosecutor on the directions of the State Government or the Central Government, as the case may be.

Admittedly, the prosecution against the second respondent was launched based on a police report and the trial ended in acquittal of the second respondent.

As such, the State Government could have directed filing of an appeal with the leave of the Court under Section 378 (1)(b) r/w.

(3) of Cr.P.C. For reasons best known to the State Government, it has not chosen to prefer any such appeal and no petition seeking leave was moved by the Public Prosecutor at the instance of the State Government.

Section 378 does not contemplate conferment of a right of appeal against the order on the de-facto complainant or a victim in a case instituted on police report.

On the other hand, it provides a right of appeal to a complainant when the case which ended in acquittal happens to be one instituted on complaint.

Such a right is also subject to a condition that a special leave for filing such an appeal should be obtained under sub section (4) of Section 378 Cr.P.C. A time limit has also been prescribed for applying for such special leave under sub section (5) of the said Section.

5. In the case on hand, the petitioner in the present revision was not the complainant and the case was also not one instituted on complaints.

Therefore, there shall be no question of the petitioner preferring an appeal under Section 378 of the Code of Criminal Procedure.

Before an amendment to Section 372 was made by Act 5 of 2009, the remedy available to a victim/de- facto complainant against the acquittal of the accused in a case instituted on police complaint, was to invoke the revisional powers of the Sessions Court or the High Court, as the case may be, depending upon the forum in which the prosecution resulting in acquittal was conducted.

But the position has undergone a total change by the amendment made by Act 5 of 2009 inserting a proviso to Section 372.

The proviso confers a right on a victim to prefer an appeal not only against an acquittal but also against the conviction for a lesser offence and also challenging the inadequacy of punishment.

When a right of appeal is provided, in the Code of Criminal Procedure, invocation of the revisional jurisdiction is barred under sub section (4) of Section 401 of the Code of Criminal Procedure.

Of course, the Sub Section (5) of Section 401 enables the High Court to treat the revision as an appeal provided it is satisfied that the revision came to be filed on an erroneous belief that no appeal would lie and that it shall be necessary in the interest of justice to treat the revision petition as an appeal.

6. In this case, the petitioner did not file the case on hand as a revision on an erroneous belief that no appeal will lie.

On the other hand, the petitioner representing the Tamil Nadu Electricity Board chose to file it as an appeal.

Without there being any opposition regarding its maintainability, the petitioner volunteered to file a petition in M.P.(Md.No.4 of 2010 for conversion of the appeal into a revision.

While dealing with the said petition, the attention of this Court was not drawn to the proviso to Section 372 Cr.P.C. whereunder a victim of the offence has been given a right of appeal against the acquittal.

The same was the reason why, the said miscellaneous petition came to be allowed on 08.11.2010.

For more than 3 1/2 years thereafter, the petitioner proceeded with the petition as a revision.

The above said facts will make it clear that there is absence of bona fide belief on the part of the petitioner that no appeal would lie which made the petitioner to file such miscellaneous petition in M.P.(MD)No.4 of 2010 for conversion of the appeal which was erroneously filed under Section 378 of Cr.P.C.On the other hand, the appeal ought to have been filed under the proviso to section 372 Cr.P.C.7.The second respondent having been acquitted by the trial Court has been made to undergo the ordeal of facing the proceedings before this Court fiRs.as an appeal, next as a revision, which according to this Court is not maintainable in view of Section 401 (4) Cr.P.C.Conversion of the revision once again as an appeal under the proviso to Section 372 Cr.P.C.and making the second respondent to face the said proceedings for a further period shall not be in the interest of justice.

Hence, this Court comes to the conclusion that it is not a fit case in which the powers conferred on this Court under sub Section 5 of Section 401 Cr.P.C.be used and that the interest of justice requires granting of the relief to the second respondent by dismissing the revision as not maintainable.

Accordingly, the Criminal Revision Case is dismissed.

To 1.The Principal Sessions Judge, Ramanathapuram.

2.The Inspector of Police, Thangachimadam Police Station, Rameshwaram.

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