under Order 21 Rule 35 which prescribes for removal of any person who is bound by the decree.

8. Considering and following the said judgments, the submissions made by the counsel for the petitioner merits acceptance and are accepted. It is also to be noticed in the present case that the respondent tenant, having failed to establish any of his defenses as taken in reply to the SCC Suit, has tried one after the other tricks to avoid execution. The proceedings under Order 21 Rule 97, 98 and 101 CPC were not maintainable at his instance and were nothing but an abuse of the process of law, as such, the Executing Court has erred in directing for framing of issues.

9. Thus, the order dated 20.02.2024 passed by the Executing Court as well as the application filed under Order 21 Rule 97, 98 and 101 CPC deserves to be quashed and is accordingly quashed.

10. The Executing Court is directed to execute the decree within a period of two months as held in the case of **Periyammal (dead) (supra).** The executing court shall proceed to ensure that the vacant and peaceful possession of the suit property shall be handed over to the petitioner as a decree holder and if necessary, with the aid of the police. The said exercise shall be concluded within a period of two months from today.

11. The writ petition stands allowed in terms of the said order.

(2025) 4 ILRA 712

ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 04.04.2025

BEFORE

THE HON'BLE SAURABH SRIVASTAVA, J.

Application U/S 482 No. 551 of 2025

Devendra Pandey ...Applicant
Versus
State of U.P. & Ors. ...Respondents

Counsel for the Applicant:
Pankaj Kumar Gupta

Counsel for the Respondents:
G.A., Narendra Kumar Tiwari

Criminal Law - Indian Electricity Act, 2003 - Sections 135 & 149 - Against summon order - Quashing of - Applicant challenged proceedings which is primarily based on procedural illegality of implicating him in capacity of 'Manager' and instituting FIR against Institution under Electricity Act, 2003 - Such prosecution is not maintainable, as applicable provision is Section 149 of Act, which governs offences committed by group of person or association of individual, such as Committee of Management that runs educational institution, also covers offences under Sections 135, 136, and 138 - Hence, FIRs against such institution must proceed under Section 149 alone - Cognizance order dated 02.05.2024, summoning applicant as Manager of institution, is unsustainable as it ignores mandatory application of Section 149, and therefore quashed. (Para 6, 11, 14)

Application allowed. (E-13)

(Delivered by Hon'ble Saurabh Srivastava, J.)

<u>Order on Exemption Application No. Nil of 2025</u>

1. Sri Narendra Kumar Tiwari, learned counsel appearing for opposite party nos. 2 and 3 preferred counter affidavit along with exemption application,

which is taken on record, for seeking exemption of personal appearance of the Officer who has been directed to appear in person vide order dated 09.01.2025, reasons mentioned in the application appears as justified.

2. Exemption Application is hereby allowed.

3. Officer concerned is hereby exempted from personal appearance.

Order on Application U/S 482 Cr.P.C.

1. Heard Sri Pankaj Kumar Gupta, learned counsel for the applicant, Sri Narendra Kumar Tiwari, learned counsel for opposite party nos. 2 and 3 and learned AGA for the State.

2. The entire proceeding has been put under challenge through instant application precisely on the grounds that the FIR which has been lodged at Case Crime No. 0215 of 2019 under Section 135 of the Indian Electricity Act, 2003 (hereinafter referred to as 'the Act of 2003') and after conducting detailed investigation, chargesheet has been preferred on dated 24.06.2020, whereupon cognizance of offence has been taken up by learned Court of Additional District and Session Judge, Court No. 9, Prayagraj on dated 02.05.2024 in pursuance to Section 135 of the Act of 2003.

3. Learned counsel for the applicant submitted that the FIR has been lodged against an Institution namely, Raj Narayan Pandey, P.G. College, Berui, Garapur, Tharwai, Prayagraj under Section 135 of the Act of 2003, but the same is contrary to the Act of 2003, wherein specific provision for offence, if any, committed by companies which is further explained under Section 149(2)(a) of the Act of 2003 that 'Company' means a body corporate and includes a firm or other association of individuals; and under Section 149(2)(b) of the Act of 2003 that 'Director', in relation to a firm, means a partner in the firm.

4. Learned counsel for the applicant further submitted that Section 135 of the Act of 2003, wherein the applicant has been implicated solely deals with the theft of electricity if made by any individual, since the group of person or association has been clearly defined under Section 149 of the Act of 2003.

5. Learned counsel for the applicant submitted that chargesheet preferred by concerned investigating officer by way of implicating Devendra Pandey being the Manager of Raj Narayan Pandey, P.G. College, Berui, Garapur, Tharwai, Prayagraj which clearly shows that the implication of applicant is only being the Deputy Manager'of the Institution which is clarified with the certificate issued by the Registrar Society of Registration which has been renewed from time to time and the same has been extended till 15.12.2025, wherein name of applicant has been reflected at serial no. 4 and the responsibility has been mentioned as *'Up-Mantri'*.

6. The arguments raised by learned counsel for the applicant regarding challenging the entire proceeding is solely based upon the procedure adopted by the prosecution by way of implicating the applicant under the capacity of 'Manager' and institution of FIR against the Institution i.e. Raj Narayan Pandey, P.G. College, Berui, Garapur, Tharwai, Prayagraj, specifically under Section 135 of the Act of

2003, which is not maintainable since the provision contained and mandated as per law is only the Section 149 of the Act of 2003, which deals with the offence, if any, committed by group of persons, association of individuals etc and the educational institution is undisputedly run by Committee of Management (group of persons, associations).

7. Per contra, Sri Narendra Kumar Tiwari, learned counsel for opposite party nos. 2 and 3 submitted that the offence of theft is defined under Section 135 of the Act of 2003 only and if in any case, the contention as raised by learned counsel for the applicant may be admitted, the authorities concerned shall be debarred from taking any request for compounding the offence in pursuance to Section 152 of the Act of 2003, wherein the offence of theft is compoundable by way of paying the dues along with compounding fee. It is further submitted by Sri Narendra Kumar Tiwari that the offence of electricity theft is available only under Section 135 of the Act of 2003 and not under Section 149 of the Act of 2003 and as such if in any case, the FIR has to be instituted i.e. only under Section 135 of the Act of 2003 and implication under Section 149 of the Act of 2003 will not be attracted at the time of institution of FIR against company/group of association of individuals/group of certain persons associated.

8. After hearing the rival submissions extended by learned counsel for the parties, it is necessary to examine the crystal clear wordings mentioned under Section 135 of the Act of 2003 which is reproduced here below:-

"Section 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 supplier, as the case may be; 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 so damaged or destroyed as to interfere with the proper or accurate metering of electricity; or

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorised, 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 that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

Provided also that if it is proved that any artificial means or means not authorised by the Board or licensee or supplier, as the case may be, 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.

(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorised for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty-four hours from the time of such disconnection:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.]

(2) 2 [Any officer of the licensee or supplier as the case may be, 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 3 [has been or is being], used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which 1 has been, or is being, used for unauthorised use of electricity;

(c) examine or seize any books of account 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 therefrom 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 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 domestic places *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 apply, as far as may be, to searches and seizure under this Act."

9. Section 149 of the Act of 2003 which is also reproduced here below:-

***"Section 149. Offences by companies**.– (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of having committed the offence and shall be liable to be proceeded against and punished accordingly:Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.*

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of having committed such offence and shall be liable to be proceeded against and punished accordingly.Explanation.– For the purposes of this section-(a) "company" means a body corporate and includes a firm or other association of individuals; and (b) "director", in relation to a firm, means a partner in the firm.

10. At the same time the arguments raised by Sri Narendra Kumar Tiwari, learned counsel for opposite party nos. 2 and 3 regarding implementation of Section 152 of the Act of 2003 which might be in shape of handcuffing the appropriate authorities to proceed if in case any FIR under Section 149 of the Act of 2003 will be instituted, and as such Section 152 of the Act of 2003 is also reproduced here below:-

***"Section 152. Compounding Of Offences**- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Appropriate Government or any officer authorised by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table below:*

Nature of Service	***Rate at which the sum of money for compounding to be collected per Kilowatt (KW) /Horse Power (HP) or part thereof for Low Tension (LT) supply and per Kilo Volt Ampere (KVA) of contracted demand for High Tension (HT)***
1. Industrial Service	*twenty thousand rupees;*
2. Commercial Service	*ten thousand rupees;*
3.	*two thousand rupees;*

Agricultural Service	
4. Other Services	*four thousand rupees :*

Provided that the Appropriate Government may, by notification in the Official Gazette, amend the rates specified in the Table above.

(2) On payment of the sum of money in accordance with sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal court.

(3) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973 (2 of 1974).

(4) The Compounding of an offence under sub-section (1) shall be allowed only once for any person or consumer."

11. By bare perusal of Section 135 of the Act of 2003, although there is no specific mention regarding individual or group of person, it relates only to the theft of electricity, but the clarification with regard to individual and group of certain people/association of individuals has been clarified in later section available under Section 149 of the Act of 2003 which is crystal clear the offences by the companies. The word 'offence' is available under Chapter XIV of the Act of 2003, wherein the 'theft of electricity' under Section 135 of the Act of 2003 and 'theft of electric lines and materials' under Section 136 of the Act of 2003 are the offences which is further dealt under Section 138 of the Act of 2003 also and as such the offences mentioned under three sections i.e. Sections 135, 136 and 138 of the Act of 2003 are broadly mentioned only in one word under Section 149 of the Act of 2003 i.e. 'offences' which is plural in nature and capturing all the offences mentioned prior to Section 149 of the Act of 2003. The formation of the Act introduced by the legislation is almost crystal clear, in each and every law which has to be read from 'A to Z/1 to 100'. The reproduction of the same words need not to be dealt in each and every section and being the student of law, it is to be onus and duty of every person who is reading fine thread lines of the law available in the Act has to be carefully read in ascending order. The word 'offences' which is plural under Section 149 of the Act of 2003 deals with all the offences mentioned prior to Section 149 of the Act of 2003 which is available under Sections 135, 136 and 138 of the Act of 2003, meaning thereby the implication of companies/body corporate includes a firm or other association of individuals which is fully applicable in the instant matter that once an FIR has been lodged against an Institution which comes under the category of association of individuals directly attract Section 149 of the Act of 2003 only.

12. So far as the argument raised by Sri Narendra Kumar Tiwari, learned counsel for opposite party nos. 2 and 3 regarding impediment to exceed with Section 152 of the Act of 2003 is concerned, the same is not available and Section 152 of the Act of 2003 that the same shall be applicable only in respect of Section 135 of the Act of 2003. If that be so, the other sections mentioned as Sections 136 and 138 of the Act of 2003 shall be out of the ambit of Section 152 of the Act of

2003. The scope available for proceeding under Section 152 of the Act of 2003 attracts all the sections wherein the offence has been mentioned in the the Act of 2003 precisely under Sections 135, 136, 138 as well as 149 of the Act of 2003 also.

13. The institution of the FIR under Section 135 of the Act of 2003 was not in-consonance with mandate of law and proceed further in shape of preferring charge-sheet against the alleged Manager-applicant before concerned Court, specifically under Section 135 of the Act of 2003, whereupon cognizance has been taken up by learned court concerned is also not sustainable in the eye of law.

14. In view of aforementioned facts and circumstances, once the implication of the applicant being the 'Manager' of the Institution against which an FIR has been instituted is contrary to all cannons of legality and the attraction of Section 149 of the Act of 2003 has not been dealt with by learned court concerned while passing order dated 02.05.2024 through which cognizance of offence has been taken up while issuing summons to the applicant, the same is deserves to be quashed.

15. In the light of aforementioned discussions, the entire proceedings arising out of Case Crime No. 215 of 2019 under Section 135 of the Indian Electricity Act, 2003 are hereby **quashed** and **set-aside**.

16. The instant application u/s 482 Cr.P.C. stands **allowed** accordingly.

17. However, it is made clear that this order will not preclude the authorities concerned to proceed a fresh, if required against the applicant under specific sections available under the Indian Electricity Act, 2003.

(2025) 4 ILRA 718
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 05.04.2025

BEFORE

THE HON'BLE RAJIV GUPTA, J.
THE HON'BLE SAMIT GOPAL, J.

Application U/S 482 No. 3099 of 2024

Abhishek Mishra @ Pintu ...Applicant
Versus
State of U.P. & Anr. ...Respondents

Counsel for the Applicant:
Sri Vijay Kumar Pandey

Counsel for the Respondents:
Sri Ashok Kumar Gupta, G.A., Sri Sunil Vashishth

(A) Criminal Law - Negotiable Instruments Act, 1881 - Sections 138 & 143 - Dismissal of complaint for want of prosecution - Reference to Larger Bench on maintainability of revision vs. appeal - The Code of criminal procedure, 1973 - Sections 203, 204 , 256(1), 378(4) & 397 - Whether dismissal of complaint before issuance of summons amounts to acquittal - Where no summoning order under Section 204 Cr.P.C. is passed, dismissal of complaint is under Section 203 Cr.P.C., and not an acquittal under Section 256(1) Cr.P.C. - Section 256(1) Cr.P.C. not applicable where complaint dismissed prior to summoning stage under Section 203 Cr.P.C. - appeal under Section 378(4) Cr.P.C. does not lie where complaint dismissed under Section 203 Cr.P.C. - only remedy is revision - complaint dismissed before summons, pre-cognizance stage - Reference not answered as foundational facts did not attract the legal issue - Complaint dismissed under Section 203