

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Crl. Appeal No. 470/2011 & Crl.M.B. 624/2011

% Reserved on: 9th November, 2011

Decided on: 3rd January, 2012

LOKESH CHANDELA Appellant
Through: Mr. S. Satyanarayana, Adv.

versus

STATE NCT OF DELHI & ORS. Respondents
Through: Mr. Manoj Ohri, APP for State.
Mr. Sunil Fernandes Standing Counsel
with Mr. Deepak Pathak, Adv. For
BSES Rajdhani Power Ltd./R-2.

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Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By these appeals the Appellant lays a challenge to the impugned judgment dated 25th and 28th February, 2011 whereby he has been convicted for offences punishable under Section 135 read with Section 150 of the

Electricity Act, 2003 (in short 'the Act'), arising out of complaint case Nos. 185/2007 and 186/2007. Both the appeals are being dealt with together as the facts and legal issues are common and the only difference is that in criminal complaint case No. 185/2007 the Appellant's tenant was one Rajiv who was the co-accused and a proclaimed offender and in complaint case No. 186/2007 the tenant was Pawan, the co-accused and a proclaimed offender.

2. Learned counsel for the Appellant contends that the Appellant was not the user of electricity and has been prosecuted only for the reason that he is the owner of the premises. The Appellant had examined himself as DW-1 and exhibited the rent agreements with the co-accused persons which clearly provided that no electricity connection would be provided for the said premises and in case of any electricity requirement, the tenant would use a generator set of his own. The Appellant was not found at the spot at the time of inspection. Merely by letting out the premises, the Appellant cannot be held vicariously liable and to have abetted the commission of offence. The Appellant was unaware of the acts of his tenants. Further both his tenants Rajiv and Pawan entered into settlement before the Permanent Lok Adalat, however did not honour the settlement and absconded. No notice of the Lok Adalat proceedings was given to the Appellant and he was not informed thereof even by the co-accused persons. Thus, the appeals be allowed and the Appellant be acquitted of the offences alleged. In the alternative the sentence awarded to the Appellant being harsh requires to be modified to the period undergone. The civil liability imposed on the Appellant is onerous and beyond his capacity to fulfill and hence the same be set aside.

3. Learned counsel for the Respondent No.2 on the other hand contends that the Appellant has himself admitted to be the owner of the said premises where inspection was carried out and on inspection it was found that direct theft of electricity was going on. The Appellant has been convicted on the basis of cogent and convincing evidence led by the Respondent in the form of witnesses who conducted the raid, the photographs taken and the material seized from the spot. The Appellant has earlier been convicted for offence under Section 135 of the Act and since this is a subsequent conviction, no leniency can be shown. The appeals, thus, deserve to be dismissed.

4. I have heard learned counsel for the parties and perused the record. Briefly the case of the Respondent is that on 8th May, 2006 an inspection was conducted at premises bearing No. NW-90, Vishnu Garden, Near Nala, Opposite 74B, New Delhi. At the time of inspection Rajiv and Pawan were found to be the user of the second floor and the first floor of the abovementioned premises respectively and the Appellant was found to be the owner. As per the Respondent, the Appellant in collusion with the co-accused indulged in direct theft of electricity by illegally tapping the BSES LV Mains through 6 illegal Teflon wires to the first floor and second floor through the main change over switch and cut out. At the time of inspection a load of 49.728 KW and 72.536 KW for industrial purpose was found on the second floor and first floor respectively. Pursuant to the inspection the Respondent raised a theft bill for Rs. 19,58,448/- and Rs. 28,56,801 respectively for the abovesaid two floors against the Appellant and the co-accused. After conclusion of trial vide the impugned judgment and order dated 25th February and 28th February, 2011 in complaint case 185/2007 the

Appellant was convicted for offence under Section 135 read with 150 of the Act and directed to undergo Rigorous Imprisonment for a period of 18 months and fine of Rs. 23,50,137/- and in default of payment of fine to undergo Simple Imprisonment for a period of three months and out of the fine amount if realized Rs. 15,66,758/- was to be given to the Respondent towards civil liability. In complaint case No. 186/2007 by the impugned orders dated 25th February and 28th February, 2011 the Appellant was convicted for offence under Section 135 read with 150 of the Act and directed to undergo Rigorous Imprisonment for a period of 18 months and a fine of Rs. 34,28,161/-. Further in default of payment of fine the Appellant has been directed to undergo Simple Imprisonment for a period of three months and out of the fine amount if realized, amount of Rs. 22,85,440/- was directed to be paid as civil liability towards the Respondent. Since the two complaint cases arose from a common inspection, the sentences of the Appellant were directed to run concurrently.

5. A perusal of the evidence adduced by the Respondent in the form of witnesses who conducted the inspection shows that the Respondent has examined the authorized representative PW-1 Pankaj Tandon, PW-2 Prasanjit Ghatak, PW-3 V.P. Yadav raiding team member and PW-4 Shri Harun, the photographer. The witnesses PW-2 & 3 have deposed that on the first floor of the premises PWC work was going on while on the second floor copper wire enameling plant was installed. There was no meter at the site and direct theft was resorted to from BSES LV Mains with 6 Teflon wires. A service line was entering the ground floor which was locked from all the sides in such a manner that the enforcement team could not enter the ground

floor. Further the Police staff had also to be called due to the mob gathering there. The connected load was found to be about 72 KW on the first floor and about 52 KW on the second floor. The inspection report, meter detail report, load report and seizure memo were exhibited as Ex.CW-2/A, Ex.CW-2/B, Ex.PW-2/C and Ex.CW-2/D respectively. The photographs also shows that industrial work was going on by resorting to direct connections.

6. The proviso to Section 135 of the Act provides that if it is proved that any artificial means or means not authorized by the Board or licensee exists 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. The Appellant to dispel this presumption has examined himself as DW-1. The defence of the Appellant is that the Appellant had let out the premises on rent to Rajiv and Pawan respectively in the two complaint cases and has exhibited the photocopy of the rent agreement in this regard. It may be noted that neither the original rent agreement nor certified copy thereof has been exhibited. Further even if the case of the Appellant is accepted and it is found that it has been rented out, the Appellant was certainly in the know of it, and is thus liable for the abetment of the offence. The alleged rent agreement exhibits that there is no electricity connection and in the absence of an electricity meter obviously the other co-accused would have delved into theft of electricity.

7. Learned counsel for the Appellant has strenuously contended that the Appellant cannot be held liable as he was the owner and not the user of the premises. The photocopy of the rent agreement does not prove conclusively

that the Appellant was not the user and even if the users were Rajiv and Pawan respectively, the Appellant has been convicted with the aid of Section 150 of the Act in view of the allegations of abetment of offence. It would be relevant to note the definition of the word 'consumer' under Section 2(15) of the Act which states that:

2(15) "consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;

A reading of Section 2(15) with Section 135 of the Act shows that both the user and the owner of the premises fall under the definition of the consumer and are thus liable to be punished, if illegal abstraction of energy is found at the premises.

8. Further, the non-intimation of the Lok Adalat proceedings to the Appellant does not vitiate the trial. In case the Appellant wanted, he had ample time to settle the matter with the Respondent de-hors the Lok Adalat proceedings, but the Appellant choose not to do so. Thus, I find no infirmity in the impugned judgments dated 25th February, 2011 convicting the Appellant for offence under Section 135 read with Section 150 of the Act in the two complaint cases.

9. As regards the quantum of sentence it may be noted that the Appellant has been convicted for this offence earlier also in complaint case No. 474/2006. One more complaint case No. 230/2007 is pending trial against

the Appellant, though he has been granted benefit of doubt in complaint case No. 313/2006. Since this is the second and third conviction of the Appellant, in view of Section 135 of the Act the minimum sentence to be prescribed to the Appellant is for imprisonment for a period of 6 months which may extend up to 5 years. Considering the fact that the Appellant is repeatedly indulging in theft of electricity, in the earlier instance being found as a user and in the present case taking the plea of being the owner and abetting the running of industrial units where electricity is used as one of the essential ingredients, I find no infirmity in the impugned orders dated 28th February, 2011 passed by the Learned Additional Sessions Judge directing the Appellant to undergo the sentences and pay the fine as stated above.

9. The appeals and applications are accordingly dismissed. The Trial Court Records be sent back.

(MUKTA GUPTA)
JUDGE

JANUARY 03, 2012
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