

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: March 31, 2014

Decision on: April 4, 2014

CRL.A. No. 60 of 2008

MRIGENDER CHAUHAN

..... Appellant-in-person.

versus

BSES RAJDHANI PRIVATE LIMITED

..... Respondent

Through: Ms. Anjali Sharma & Ms. Surabhi
Aggarwal, Advocates

CORAM: JUSTICE S. MURALIDHAR

J U D G M E N T

04.04.2014

1. This appeal is directed against the impugned judgment dated 15th December 2007 passed by the learned Additional Sessions Judge, Special Electricity Court in CC No. 1087/07, finding the Appellant guilty and convicting him under Section 135 of the Electricity Act 2003 ('Act') and the order on sentence dated 17th December 2007 sentencing the accused to detention till the rising of the Court and directing him to pay a sum of Rs. 80,000 (in addition to the sum of Rs. 20,000 already paid by him as a condition for obtaining bail) as compensation to the Respondent, BSES Rajdhani Power Limited ('BRPL'), and in default, to undergo simple imprisonment for a period of six months.

2. On 21st January 2008, this Court directed that the impugned order should remain in abeyance during the pendency of the appeal.

3. The case of the Respondent was that the Appellant and his wife, Amita Chauhan, lived in quarter No. 979, S-3, R.K. Puram, New Delhi (hereinafter the premises in question). From the documents placed on record, it appears that the premises in question had earlier been allotted to Mr. Jai Singh, the father of Mrs. Amita Chauhan. Upon the death of Mr. Jai Singh, Mrs. Amita Chauhan applied to the Directorate of Estates, Government of India for regularisation of the allotment in her name in accordance with the Government Accommodation (General Pool in Delhi) Rules, 1963. On 14th September 1990, by an office order No. 319/90, Mrs. Amita was appointed as a lower division clerk in the Ministry of Industry on probation for a period of two years. On 10th October 1990, the allotment of the premises in question in her name was regularised. Consequently, with effect from that date, the allottee of the premises in the records of the Government of India was Mrs. Amita Chauhan.

4. The case of the Appellant is that the electricity connection, which stood in the name of Mr. Jai Singh, had been asked to be transferred to the name of Mrs. Amita Chauhan and papers in that regard had been submitted even prior to the privatisation of electricity distribution in Delhi. For some reason, however, even after the privatisation of distribution of electricity, the connection continued to stand in the name of Mr. Jai Singh, who had expired way back in 1990.

5. The Appellant and his wife had been writing to the BRPL complaining of excessive billing. It appears that on 19th February 2004,

Mrs. Amita Chauhan deposited with the BRPL a sum of Rs. 16,010 which she and the Appellant claimed was on the higher side. On 24th March 2004, a complaint was filed with the BRPL that the meter was working fast and that there was misbehaviour by the BRPL staff. The case of the Appellant is that he and his wife kept making verbal complaints against the BRPL staff for misbehaviour and for excessive billing.

6. The case of the Appellant is that on 9th February 2005, some 15-20 people visited the premises in question and assaulted him for which he made a complaint with the Deputy Commissioner of Police ('DCP') (South-West). On 16th July 2005, it is stated that another 15-20 people came to the premises in question, knocked the door, pushed the wife of the Appellant aside and entered. They removed the electricity meter of the premises despite the protest of the Appellant. The Appellant immediately reported the matter in writing to the DCP (South-West), Vasant Vihar, New Delhi. The Appellant alleges that when he went to Police Station ('PS') R.K. Puram, New Delhi, the police refused to register a first information report ('FIR'). The Appellant stated that he also reported the matter to the Chief Executive Officer ('CEO'), BRPL as well as to the Commissioner of Police on 18th July 2005. It is stated in para 10 of the appeal as under:

"10. That the Appellant also reported the matter to CEO, BSES (CRM-Ms. Renu Anthony) and also to Commissioner of Police on 18.7.2005. The appellant and his wife were living without electricity for continuous three days and no action was taken by

the concerned authorities in spite of their repeated requests. Thereafter the appellant approached CPWD who maintains and repairs the Govt. accommodation and they have connected the electricity.”

7. It must be noticed at this stage that during the trial, the Appellant examined one Sub-Inspector Dhani Ram in the office of the DCP (South-West), Vasant Vihar, New Delhi as DW2. He confirmed that the complaint by the Appellant was indeed received on 22nd July 2005 and an inquiry was conducted, in which it was found that the BRPL officials had requested the police for help to remove the meter from the premises in question. DW-2 confirmed that a police team had accompanied the BRPL officials to the premises in question on 16th July 2005, and after the meter was removed, the police team returned to the police post and lodged a daily diary (‘DD’) entry to that effect.

8. One week after the removal of the meter, on 23rd July 2005, the BRPL officials again reached the premises in question at around 12:30 pm. The inspection report has been marked as ‘CW2/1’. In the column titled “observations”(any other remarks), it is stated as under:

“As per the direction of Manager enforcement, joint inspection team inspected the above mentioned premises. At the time of inspection consumer found indulged in the direct theft of electricity by tapping from BSES service line. No meter exists at the site. The necessary photographs were taken at the site by digital camera. Material evidence could not be removed due to

underground fitting and service line incoming through Flat No. 980 which is locked.”

9. Below the above noting, the Appellant has added by hand a ‘note’ which reads as under:

“I have already mentioned in Police/BSES report that if meter is not installed, I will have direct supply and the assessment of consumption is done for payment. I have lost my articles by BSES/Police Deptt. Still to be refunded. Clear case of harassment/robbery/misbehaviour (Not theft.)”

10. On the basis of the above raid, on 30th July 2005, a theft bill in the sum of Rs. 81,443 was raised in the name of the Appellant. This was followed by a complaint No. 532 of 2006 filed on 25th May 2006 in the Karkardooma Courts against the Appellant, who was mentioned as ‘user’ and Mr. Jai Singh was mentioned as ‘registered consumer’, under Section 135 of the Act. The allegation in the complaint was that on the inspection of premises in question, it was found that “consumer found indulged in direct theft of electricity by tapping from BSES service line. No meter exist at site.” The proviso to Section 135(1) of the Act was invoked to contend that “a presumption has to be drawn that the accused persons were acting dishonestly, because, during the course of the inspection conducted by the inspection team of the complainant, artificial means, and means not authorized by the complainant, were found to exist at the premises in question, for the abstraction,

consumption, or use of electricity.” In para 8 of the complaint, it was further stated as under:

“The complainant is also affirming that the accused persons have been acting in concert, and in complicity with each other, because the accused person no.2 is the registered consumer in this case, but the accused person no.1 was found to be using the sanctioned connection, and stated that he was using the sanctioned connection during the course of the inspection. The complainant submits that the same could only have been possible with the active connivance of the accused person no.2, and only if he were involved in, or in any case, abetting the commission of the offence under Section 135 of the Act. The complainant also submits in this regard that in any case, the facts in this matter disclose that the accused persons had common intention to commit the offence complained of.”

11. The affidavit of evidence dated 11th September 2006 of Mr. Sanjay Kumar, Manager (Enforcement), BRPL was a verbatim reproduction of the complaint. Clearly, the officials of BRPL had not cared to find out that the accused No.2, Mr. Jai Singh, had expired at least 16 years prior to the filing of the complaint. They had not bothered to make inquiries, although the complaint was filed more than ten months after the date of the raid.

12. PW1 was Mr. Vinay Kumar, the legal officer of BRPL. In his cross-examination, he stated that the Appellant was found present at the spot

and “he was found the user of electricity energy at that time and that is why the present complaint was filed against him.” He denied as incorrect the suggestion that the Appellant was not the registered allottee of the premises and that the complaint against him was false and wrongly filed. He had no knowledge that 7 days prior to the date of inspection, the meter itself had been removed.

13. PW2 was Mr. Abdul Salam, who was Deputy Manager, BRPL. He filed his affidavit dated 27th February 2007 confirming that the Appellant was present at the site during inspection and made his remarks on the inspection report. He stated that during the course of inspection, the team could not seize the material evidence “due to underground fittings and service line was coming from Flat No. 980, which was found locked at that time.” In his cross-examination in Court, he admitted that the Appellant had told him that seven days earlier to 23rd July 2005, BRPL officials had entered the premises in question, manhandled the Appellant and his wife, removed the meter forcibly “and also removed one purse containing Rs. 3,260, watch of the accused and gold chain belonging to his wife.” PW2, however, displayed the ignorance of the above events. He denied the suggestion that the Appellant had not indulged in direct theft of energy and that the complaint had wrongly been filed.

14. PW3 was Mr. Sanjeev Kumar, who was a member of the raiding party. He stated that the Appellant was alleged to have committed theft since “there was no meter at the premises and the electricity energy was

being used by directly tapping.” He stated that “I cannot comment upon as to whether the wife of the accused is an allottee of the premises in question which is a government residential accommodation vide document Ex. PW3/D4. It is incorrect to suggest that a false complaint has been filed against the accused and that too without any verification of the facts and previous record.”

15. DW1 was Assistant SI Samay Singh Yadav, who stated that, as per the DD register of 15th-16th July 2005, there was no entry of raid conducted by the BRPL officials in the premises in question.

16. The statement of accused under Section 281 Cr.PC was recorded on 3rd August 2007. The relevant questions and answers read as under:

“Q1. It is in evidence against you that on 23.07.05, a raid was conducted by the officials of the complainant company at premises no. S 979, Sector III, R.K. Puram, New Delhi in which you were the user of the premises. What do you have to say?

A. The said premises is a government accommodation which has not been allotted to me and one Amita Chauhan is the allottee but I do not deny the fact that a raid was conducted by the officials of the complainant company and I have given full cooperation to them and I had already made my remarks on Ex. CW2/1 on different pages.

Q2. It is in evidence against you that vide Inspection Report Ex. CW2/1 you were found indulged in the direct theft of electricity by taking from BSES Service Line and the Load Report Ex. CW2/2 was prepared as per which load of 6.183 KW was found connected. What do you have to say?

A. The Inspection Report Ex. CW2/1 was prepared on which I have given my remarks also but I was not indulged in the direct theft of electric energy and that no load as mentioned in the Load Report was connected in the premises.

.....

Q4. It is in evidence against you that the Supplementary Bill for the theft of electricity Ex. CW2/5 was raised against you. What do you have to say?

A. I deny the theft bill as wrong.

Q5. It is in evidence against you that no meter was found at the site at the time of inspection. What do you have to say?

A. It is correct that no meter was found at site but there was a meter which was removed by the complainant company itself with the help of the police on 16.07.05 i.e. seven days prior to the date of inspection against which I had informed the complainant company on 18.07.05 and to the Commissioner of Police also on the same day vide the document Ex. PW3/D1.

Q6. It is in evidence against you that at the time of theft the service line was found coming from the Flat No. 980 which was found locked at that time and as such the material evidence could not be seized. What do you have to say?

A. Since it was a government accommodation locality, the fixtures for the supply of electricity were provided by the CPWD itself and the wires were coming from upper portion to the lower portion in the multi storey flats and that no such service line was laid down either by me or by anyone except the CPWD.”

17. The Appellant maintained that he was falsely implicated in the case. One of the questions before the learned trial Court was whether the complaint was maintainable against the Appellant. The learned trial Court held that the Appellant “is the permanent occupant and permanent resident of the flat in question and he is aware of the fact of electricity consumption when he says that excessive consumption billing was being done by the complainant company and he had been writing protests to the company.” It further held that with the BRPL officials having removed the meter from the premises in question, if it was found subsequently that the supply had been restored by connecting the service line to the premises in question “then certainly accused being user and consumer of electricity was to hold himself responsible if such act of user and consumption of electricity was by way of dishonest intention.” Further, it was held “Likewise, he cannot avoid his

liability saying that apparatus and arrangement for supply of electricity in the flat, it being Government accommodation colony, was the responsibility of CPWD and they in fact restored supply when meter was removed. It is no case of accused that supply to the flat was restored by somebody or to say CPWD officials even without notice and knowledge of accused. Rather in the inspection report accused himself records a note that when meter was removed by officials of the complainant then he was entitled to take electricity directly. The point thus urged by accused fails to come to his rescue and to exonerate him of offence committed by him.”

18. Before this Court, the Appellant, who appeared in person, urged that the above findings of the learned trial Court were erroneous. It was submitted that the Appellant does not satisfy the definition of ‘consumer’ within the meaning of Section 2(15) of the Act. For the purpose of Section 135(1), it would have to be shown that it was the Appellant who had indulged in dishonest abstraction of electricity, whereas it is his case that after the removal of the meter, when he brought this fact to the Central Public Works Department (‘CPWD’), it was the CPWD which had given the connection to the premises in question through a service line. He further maintained that there was no dishonest intention as was evident from the fact that the Appellant had repeatedly urged for proper assessment of bills in relation to the premises in question and was prepared to pay whatever the charges were. The Appellant maintained that the premises had been allotted only in the name of his wife and she was the one who could be said to

be the consumer of electricity insofar as the premises in question were concerned. In the absence of making his wife an accused, there was no question of the Appellant alone being made an accused. He submitted that the BRPL officials had abused their powers, had not bothered to make any inquiry as to the correct factual position and had falsely implicated him in the case.

19. Ms. Anjali Sharma, learned counsel for the BRPL, submitted that the definition of consumer under Section 2(15) of the Act was an inclusive one. Since it was the Appellant himself who had been filing complaints with the BRPL for excessive billing and since he had admitted that he was an occupant of the premises and user of electricity, he could not avoid falling within the definition of 'consumer.' She placed reliance on the judgment dated 3rd January 2012 of this Court in Crl. A. No. 470 of 2011 (*Lokesh Chandela v. State NCT of Delhi*). She also referred to the Delhi Electricity Supply and Performance Standards Regulations 2007 and, in particular, to Regulation 15(ii) thereof whereunder it was made explicit that the electricity dues went along with the premises and not with the person and any person who came to occupy a premises in respect of which there were electricity dues had to bear the liability of arrears of electricity dues. It was accordingly submitted that in the present case, the liability was of the Appellant as well and he could not avoid Section 135 of the Act only because the premises had been allotted to his wife.

20. Before proceeding to examine the merits of the rival contentions, it would be useful to examine the relevant provisions, i.e., Section 2(15) and Section 135(1) of the Act, which read as under:

“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;

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 provided 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.

21. Section 135 occurs in Part XIV, which is titled “offences and penalties”. The provision, therefore, imposes a criminal liability and invites punishment after a regular criminal trial. Since this part of the statute contains penal provisions, it would have to be strictly interpreted. The Supreme Court, in *G.N. Verma v. State of Jharkand* (decided on 6th March 2014 in Crl. A. No. 122 of 2004), while holding that penal statutes must be interpreted strictly, observed in para 24 as under:

“24. The law is well settled by a series of decisions beginning with the Constitution Bench decision in *W.H. King v. Republic of India* (1952) SCR 418 that when a statute creates an offence and imposes a penalty of fine and imprisonment, the words of the section must be strictly construed in favour of the subject. This view has been consistently adopted by this Court over the last more than sixty years.”

22. For the purpose of Section 135, it would have to be shown that there was a dishonest abstraction of electricity by any of the means spelt out in Section 135(1)(a) to (e). The third proviso to Section 135(1) further mandates that once it is shown that artificial means, or means not authorised by the supplier, has been used for abstraction of electricity “by the consumer”, it shall be presumed “until contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.” Since in the instant case the BRPL has invoked the third proviso to Section 135(1) of the Act, it was necessary for it to show that the Appellant was the ‘consumer’ of electricity. That takes us to the definition of ‘consumer’ of electricity.

23. A reading of Section 2(15) shows that it envisages the consumer being a person “who is supplied with electricity for his own use by a licensee or the Government.” In this case, the allotment of the premises in question has been regularized in the name of the wife of the Complainant and she has, for reasons best known to BRPL, not been arraigned as an accused. If only the BRPL had cared to make inquiries,

they could have easily found out that the person named as the second accused, Mr. Jai Singh, had expired more than 16 years prior to the filing of the complaint and that the premises in question was allotted to his daughter.

24. The Court is of the view that Section 2(15) of the Act, which defines 'consumer', clearly mentions the categories of person who would fall within the ambit of that definition. Each of the categories requires the prosecution to prove a connection of such a person with the premises either as an owner or a tenant or a licensee or an allottee under the Government. That important link of establishing the connection of the Appellant with the premises in question is missing in the present case. The premises unquestionably has been allotted to the Appellant's wife who incidentally was in the premises when the raid took place. Even otherwise the BRPL could have with a little effort easily ascertained that fact. With the availability of a 'consumer' answering the description of Section 2(15) of the Act, it was not open to BRPL to pick and choose as to who it wanted to make an accused in the case.

25. Since Section 135 is a penal provision it requires strict interpretation as it has serious consequences for the accused. BRPL ought to take the extra caution of ensuring that only a person who answers the description of 'consumer' is arraigned as an accused. For invoking the third proviso to Section 135(1) of the Act, the initial onus of showing that the accused is a consumer within the meaning of Section 2 (15) is

on the prosecution. Once that onus is discharged, the burden of showing that he is not, in terms of the third proviso to Section 135(1), a 'consumer' of electricity shifts to the accused. BRPL had, in the above context, to explain two things. First, why it chose to omit making the person who had been allotted the premises as an accused and, secondly, why it chose to make the Appellant alone an accused, particularly when he does not answer the definition of 'consumer' within the meaning of Section 2(15).

26. The mere fact that the Appellant is the spouse of the allottee of the premises will not bring him *per se* within the definition of 'consumer' under Section 2 (15) read with Section 135 (1) of the Act. For the purposes of Section 2(15), a person could be termed as 'user' if the electricity connection stands in the name of such person. A casual visitor to the premises, for instance, cannot be said to be a 'user'. The fact that a person is 'occupying' the premises, without showing how such person has a connection with the premises, may also not be sufficient. In the present case, the electricity connection stood in the name of Mr. Jai Singh. After the death of Mr. Jai Singh, it was to be transferred in the name of the Appellant's wife who was Mr. Jai Singh legal representative. Therefore, the Appellant could not be said to be the 'user' of electricity either.

27. The decision in ***Lokesh Chandela v. State NCT of Delhi*** is distinguishable on facts. There, the Appellant was the owner of the premises, although not a 'user' of the premises. In the present case, for

the reasons discussed, the Appellant is neither the owner nor the user of the premises. In any event, the Appellant had produced documents to show that it was his wife who was the lawful allottee of the premises.

28. As regards the word 'whoever' occurring in the beginning of Section 135(1) of the Act, there can be no presumption that it is the Appellant who was responsible for the dishonest abstraction of electricity, after the meter was removed. A reading of the note appended by him to the inspection report shows that his stand was that if the meter was not installed, "I will have direct supply and the assessment of consumption is done for payment." This has to be seen in the context of the protests by the Appellant and his wife about excessive billing. It cannot be read *de hors* that context. Also, this note has been appended one week after the meter was in fact removed. The words 'I will have direct supply' cannot, *ipso facto*, mean a dishonest intention on the part of the Appellant to steal electricity. It could well mean that BRPL would be persuaded to restore the electricity connection or that CPWD would be asked to give a connection. This is because the above sentence is followed by the words 'not theft'. Even in his reply under Section 281 CrPC to the questions put to him at the end of the prosecution evidence, it is clear that it is the CPWD which gave him the electricity connection from the service line. It was open to the learned trial Court to have invoked Section 391 CrPC and issue notice to the CPWD to explain whether, indeed, any of its officials had been involved in the giving of electricity connection to the premises in

question. The BRPL could have also sought to summon a witness from the CPWD. However, neither of these courses was adopted.

29. The observations of the learned trial Court that it was not the case of the accused that supply to the flat “was restored by somebody, or to say the CPWD officials,” is contrary to the record. The Appellant has consistently stated that the connection was given to the premises in question, after removal of the meter, by the CPWD. Therefore, it was erroneous for the learned trial Court to have proceeded on the basis that it was the Appellant who had dishonestly abstracted the electricity in terms of Section 135(1) of the Act.

30. For all the aforementioned reasons, the impugned judgment dated 15th December 2007 of the learned trial Court convicting the Appellant for the offence under Section 135 of the Act and sentencing him to detention till the rising of the Court and the order dated 17th December 2007 requiring him to pay compensation are hereby set aside.

31. The appeal is allowed, with costs of Rs. 5,000 which will be paid by BRPL to the Appellant within four weeks.

S. MURALIDHAR, J.

APRIL 4, 2014

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