

***CRL.A No.621 of 2012
C/W CRL.A No.647 of 2012
AND CRL.A No.901 of 2012***

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF DECEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

**CRIMINAL APPEAL NO.621 OF 2012 (C)
CONNECTED WITH
CRIMINAL APPEAL NO.647 OF 2012 (C)
AND
CRIMINAL APPEAL NO.901 OF 2012 (C)**

IN CRL.A. NO.621/2012:

BETWEEN:

1. SHAMIULLA
S/O. KHADIR SAB
AGED ABOUT 28 YEARS
OCC: MASON
RESIDING AT SEEGBAGE
BHADRAVATHI
SHIMOGA DISTRICT.
2. MARUTHI
S/O. THIMMEGOWDA
AGED ABOUT 25 YEARS
OCC: AGRICULTURIST
RESIDING AT ASHWATH NAGAR
BHADRAVATHI
SHIMOGA DISTRICT.

...APPELLANTS

(BY SRI P.B. UMESH, ADVOCATE, FOR SRI R.B. DESHPANDE)

AND:

THE STATE OF KARNATAKA
BY BELUR POLICE STATION.

...RESPONDENT

(BY SRI DIVAKAR MADDUR, H.C.G.P.)

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***CRL.A No.621 of 2012
C/W CRL.A No.647 of 2012
AND CRL.A No.901 of 2012***

IN CRL.A. NO.647/2012:

BETWEEN:

1. MANJUNATH @ KATHLE MANJA
S/O. SHANKARAPPA
AGED ABOUT 28 YEARS
CARPENTER
HOSAMANE, BHADRAVATHI
SHIMOGA DISTRICT.
2. MANJUNATHA
S/O. GANGADHARA
AGED ABOUT 38 YEARS
BAR BENDING WORK
SURGI THOPU
BHADRAVATHI
SHIMOGA DISTRICT.

...APPELLANTS

(BY SRI B.S. PRASAD, ADVOCATE)

AND:

THE STATE OF KARNATAKA
BY HASSAN RURAL POLICE STATION.

...RESPONDENT

(BY SRI DIVAKAR MADDUR, H.C.G.P.)

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IN CRL.A. NO.901/2012:

BETWEEN:

1. SANTHOSHA
S/O. CHANNAPPA
AGED ABOUT 26 YEARS
AUTO DRIVER
HOSAMANE
BHADRAVATHI.

**CRL.A No.621 of 2012
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2. ALTAF AHAMAD
S/O. ABDUL KAREEM
AGED ABOUT 35 YEARS
MASON WORK
HANUMANTHANAGARA
BHADRAVATHI.

3. KUMARA
S/O. ELUMALAI
AGED ABOUT 18 YEARS
PAINTING WORK
HANUMANTHANAGARA
BHADRAVATHI.

...APPELLANTS

(BY SRI B.S. PRASAD, ADVOCATE)

AND:

THE STATE OF KARNATAKA
BY BELUR POLICE STATION.

...RESPONDENT

(BY SRI DIVAKAR MADDUR, H.C.G.P.)

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THESE CRIMINAL APPEALS ARE FILED UNDER SECTION 374(2) OF THE CR.P.C. PRAYING TO SET ASIDE THE JUDGMENT OF CONVICTION AND ORDER ON SENTENCE DATED 30-4-2012 PASSED BY THE ADDITIONAL SESSIONS JUDGE, HASSAN, IN SPECIAL CASE NO.118 OF 2010 CONVICTING THE APPELLANTS/ACCUSED NOS.1 TO 7 FOR THE OFFENCES PUNISHABLE UNDER SECTION 136 OF THE INDIAN ELECTRICITY ACT, 2003, AND UNDER SECTION 379 OF THE INDIAN PENAL CODE, 1860.

THESE CRIMINAL APPEALS HAVING BEEN HEARD AND RESERVED ON 5-12-2025, COMING ON FOR PRONOUNCEMENT, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT

Criminal Appeal No.621 of 2012 is filed by the appellants/accused Nos.4 and 5, Criminal Appeal No.647 of 2012 is filed by the appellants/accused Nos.1 and 6, and Criminal Appeal No.901 of 2012 is filed by the appellants/accused Nos.2, 3 and 7 praying to set-aside the judgment of conviction and order on sentence dated 30.04.2012 passed by the learned Additional Sessions Judge, at Hassan, in Special Case No.118 of 2010, whereby the accused are held guilty for the offences punishable under Section 136 of the Indian Electricity Act, 2003 (for short, 'Electricity Act') and Section 379 of the Indian Penal Code, 1860 (for short, 'IPC') and are sentenced to undergo simple imprisonment for a period of two years each for the aforesaid offences.

2. Brief facts of the prosecution case are that on 19-9-2010 at about 9:30 p.m., there was interruption in supply of electricity at Beluru 66 K.V. Line. Hence, the complainant along with his staff went to inspect the line

and found that, within the limits of Soorapura Village, some miscreants had stolen electricity wire of 800 meters worth Rs.1,02,000/-. Hence, on 20-9-2010 at 9:30 a.m., he lodged a complaint. Based on the complaint, the case has been registered and the Investigating Officer laid the charge-sheet against the accused.

3. After receipt of the charge-sheet, the trial Court complied with Section 207 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') by supplying prosecution papers and framed charges against the accused for the aforesaid offences. The accused pleaded not guilty and claimed to be tried. Thus, the prosecution, in order to prove its case, examined in all nine witnesses as PW1 to PW9, got marked seventeen documents as per Exs.P1 to P17 and thirteen material objects as per MOs.1 and 13. Assessing the entire evidence, the trial Court arrived at a conclusion that, the accused committed the offences charged against them and thus, convicted them for the offences punishable under Section 136 of Electricity

Act and under Section 379 of IPC. Being aggrieved by the same, the accused have preferred the appeals.

4. Heard the learned counsel for the appellants-accused Nos.1 to 7 and the learned High Court Government Pleader for the respondent-State.

5. Sri P.B. Umesh and Sri B.S. Prasad, learned counsel for the appellants, have contended that the conviction and sentence passed by the trial Court is contrary to law, evidence and probabilities of the case. The prosecution is guilty of material suppression of evidence and has not come forward with true origin of the incident. There is delay in filing the complaint and the delay has been conveniently used by the prosecution to foist a false case against the accused. The trial Court has mainly relied on the evidence of PWs.2 to 5, which is full of material omissions, contradictions, and suffers from legal infirmities. The trial Court also relied on the evidence of PW2, Investigating Officer, and contents in Ex.P9-recovery mahazar, wherein PWs.6 to 8 have not supported

the case of the prosecution and thus, the recovery of articles is not proved in accordance with law. The evidence of PW5 is not corroborative with the evidence of PW2, which seriously doubts the case of the prosecution and thus, the same goes to roots of the case. Further, the Investigating Officer has not followed due procedures while seizing the articles and therefore, the recovery itself is doubtful. The trial Court should have given the benefit of doubt and acquitted the accused. The trial Court committed serious error in relying on statements of PWs.6 to 8 at Exs.P15 to P17 made before PW9, wherein the same has not been proved in accordance with law. The trial Court ought to have extended the benefit available under Sections 3 and 4 of the Probation of Offenders Act, 1958, to the accused. On all these grounds, they prayed to allow the appeals.

6. *Per contra*, Sri Divakar Maddur, learned High Court Government Pleader for the respondent-State, submits that the trial Court convicted the accused based on the material evidence available before it. The recovery of

material objects at the instance of the accused is proved by examining the independent witnesses to seizure mahazars. All the witnesses have supported the case of the prosecution and hence, no interference is called for by this Court. Thus, he prayed to dismiss the appeals.

7. In view of the submissions made by the learned counsel for both parties, the point that arises for the Court's consideration is,

Whether the judgment and order of conviction and sentence passed by the trial Court requires interference at the hands of this Court?

8. Firstly, to connect the accused to the theft of electricity wires, the prosecution must establish specific legal elements of the offence provide concrete evidence linking the individual to the crime. The primary burden of proof is on the prosecution to prove the guilt beyond reasonable doubt. Secondly, the prosecution must prove that the accused had willful and dishonest intention in committing theft of electric wires. The act of committing theft of electric wires for

personal gain is often considered *prima-facie* evidence of this intention. Thirdly, the prosecution must prove the physical act of the accused that he performed the physical act of cutting, removing, taking away, transferring, possessing the electric lines or materials without the owner's consent. Fourthly, the act must have been done without the authorisation or consent of the licensee or owner of the property. Fifthly, the property in question must be identified as the specific electric lines or materials that were stolen. Sixthly, if the accused cannot provide a reasonable or legal explanation for possessing the materials, his conduct can fortify the allegations of theft.

9. In the light of the above propositions, it is just and necessary to analyse the evidence of the prosecution witnesses.

10. The complaint was lodged by PW1, Harish Kumar, who was working as Junior Engineer, KPTCL. He has stated that on 19-9-2010 around 9:00 p.m., there was interruption in supply of electricity line. Hence, he informed

the said fact to his superior Officers and lodged the complaint as per Ex.P1. The Police drew spot mahazar as per Ex.P4 in his presence at the scene of occurrence. He has further stated that, thereafter, the Police called him to the Police Station, where he saw one Tata Sumo vehicle and in the said vehicle, the stolen wires, axe-saw blade, cutting-plier and pipes were kept. The accused, who committed theft of copper wires, were present in the Police Station. He identified MOs.1 to 13. He further stated that approximate cost of wires would be between Rs.65,000/- and Rs.70,000/-. In the cross-examination, nothing has been elicited to discredit his testimony.

11. PW2, Investigating Officer, has deposed that on 20-9-2010, the Sub-Inspector of Police, has informed him over phone about the registration of the crime. Accordingly, on the same day, he visited to the spot and drew mahazar on the spot shown by the complainant as per Ex.P2 and deputed his staff to trace the accused. He further stated that on 24-9-2010, when he was on duty, he received credible

information and immediately, he along with his staff went to Hagare Reserve Forest Area and noticed the accused in Tata Sumo vehicle, bearing Registration No.KA-02 B-9024, and also noticed 10 bundles of copper wire. He enquired the accused, they told that the said wires were installed to the Towers situated at Soorapura Village. Therefore, he brought the accused to the Police Station and recorded their voluntary statements. He further stated that, on the same day, in between 12.30 p.m. and 1.30 p.m., he drew mahazar in the presence of panchas as per Ex.P3 and seized Tata Sumo vehicle, 10 bundles of copper wire weighing 358 kgs., PVC pipe tied with axe-saw blade and 7 feet height PVC pipe tied with rubber tube. He further stated that accused No.1 gave his voluntary statement stating that he would show the place, where he has kept the stolen articles. Pursuant to his voluntary statement, they went to Government Eucalyptus Forest Area at Hagare Village and accused No.1 showed the spot and accordingly, he drew mahazar as per Ex.P4 and took photographs of the said place as per Exs.P5 to 8. He further stated that accused Nos.1 and 4 gave voluntary

statements admitting the commission of theft of copper wire and as per the order of this Court, he took accused No.1 to his custody and on the voluntary statement of accused No.1, he led accused No.1 and pancha witnesses in their Departmental Jeep to Scrap Shop situated at Channagiri and accused No.1 showed PW6 to whom he had sold the wires and in turn, PW6 also identified accused No.1 and produced 44 ingots and he recovered the same under Ex.P9. Though he was cross-examined by the learned counsel for the accused, nothing erstwhile has been elicited to disbelieve his testimony with regard to his role of investigation.

12. PW3, Sub-Inspector of Police, Beluru Police Station, has stated that on 20-9-2010 at about 9.30 a.m., the complainant lodged the complaint as per Ex.P1. He registered the case, sent First Information Report to the Court as well as to his superior Officers and handed over further investigation to the Circle Inspector of Police.

13. PW4, Assistant Line Man at TLM Branch, Beluru, has stated that Soorapura Border comes under his

jurisdiction and on 19-9-2010 at about 9:30 p.m., at Soorapura Border 66 K.V. Line, there was theft of copper wire in six Towers, worth Rs.1,02,000/-. Therefore, PW1 took him and others to the spot at about 10.30 p.m. In the cross-examination, he has admitted that on 24-9-2010, the Police have recorded his statement. He admits that out of three electricity lines, the left side line, which was drawn from Hassan to Beluru was stolen. He admits that it is not possible to touch the electricity line by the common people. He further admits that he does not know whether PW1, or the witnesses, who were present at the spot, attested the mahazar or not and he does not know, who have put signatures to the mahazar. Though this witness was thoroughly cross-examined by the learned counsel for the accused, nothing much has been elicited so as to disbelieve his testimony.

14. PW5, witness for seizure mahazar-Ex.P3 and spot mahazar-Ex.P4, has deposed that on 24-9-2010, he attested the mahazar at Hagare Police Station and at that time, he

noticed Tata Sumo Vehicle in the Police Station and in the Tata Sumo vehicle, he also noticed 10 bundles of copper wires, which were seized by the Police as per Ex.P3 and the accused were also present. He identified the accused before the Court. He further stated that the accused admitted the commission of theft and stated that they would show the spot, where they committed theft of electricity wire. Therefore, the Police took him along with the accused to the spot and drew mahazar as per Ex.P4 and he attested the same. He further stated that the Police shown the stolen articles to him and he identified the same as per MOs.1 to 13 before the Court. Though this witness has been thoroughly cross-examined by the learned counsel for the accused, nothing much has been elicited so as to disbelieve his testimony.

15. PW6 is a receiver of stolen property. He has deposed that he is running Scrap Shop, by name and style, ZS Scrap Shop at Channagiri Town. He does not know accused Nos.4 and 6 and he has not purchased the copper

wire bundles from accused Nos.4 and 6. Though he has identified his signature on Ex.P9-recovery mahazar, but he has stated that he cannot identify 10 bundles of copper wire and he has not given any statements before the Police. He was treated as hostile and was cross-examined by the learned Assistant Public Prosecutor, where he denies that on 25-9-2010, the Police brought accused No.1 to his Shop and informed that accused No.1 along with other accused committed theft of copper wires from electric Towers drawn from Hassan to Beluru and sold the same to him and he had produced ingots, which were converted out of the wires purchased through the accused and the Police seized the same by drawing mahazar. Therefore, the evidence of this witness is not useful to the prosecution.

16. PW7 and PW8 are the witnesses for recovery mahazar-Ex.P9 for having recovered 44 ingots from the shop of PW6. However, these witnesses have turned hostile and not supported the case of the prosecution.

17. PW9, Senior Civil Judge and Judicial Magistrate First Class, Holenarasipura. He has deposed that on 15-11-2010, the Circle Inspector of Police, Beluru, filed application to record the statements of PWs.6 to 8. He further deposed that on 19-11-2010 PWs.6 to 8 appeared before him, he enquired them and they informed that they voluntary came to give statements and he ascertained that PWs.6 to 8 have come voluntarily to give statements and there is no force from the Police. Therefore, he recorded the statements of PWs.6 to 8 in his own handwriting as per Exs.P.15 to 17, respectively.

18. In the instant case, the first informant/PW1 and the Assistant Line Man/PW4 of the KPTCL have clearly stated that near Soorapura border, there was theft of electric copper wires in six Towers, worth Rs.1,02,000/- which belongs to KPTCL. PW3 confirms registration of the F.I.R., PW5 speaks regarding drawing of seizure and spot mahazars, respectively as per Exs.P3 and P4. PW9, Senior Civil Judge, recorded the statements of PWs.6 to 8. PW2 is the Investigating Officer,

who has clearly stated regarding theft by the accused, drawing of seizure, spot and recovery mahazars and hence, from the evidence of these witnesses, it is clear that the accused have committed the crime.

19. PWs.6 to 8, independent witnesses to recovery mahazar-Ex.P9, have turned hostile and not supported the case of the prosecution.

20. The testimonies of PWs.1 and 3 to 5 clearly reveal that the stolen electric copper wires were recovered by the Investigating Officer at the instance of the accused, which is the best piece of evidence to connect them to the crime. Hence, the prosecution has been able to establish the guilt of the accused beyond all reasonable doubt.

21. The trial Court, after appreciating the oral and documentary evidence and after assigning proper reasons, has convicted the accused for the charged offences. Hence, there is no illegality committed by the trial Court.

22. Learned counsel for the appellants alternatively contended that the trial Court convicted the accused for a period of two years each for the alleged offences and the sentences were ordered to run concurrently. The accused were arrested on 25-9-2010 and were in custody throughout trial and were released on bail by this Court on 13-9-2012. Hence, they submit that as the accused have served substantial sentence of one year, eleven months and eighteen days, there is no point in keeping the accused in custody for another twelve days. Hence, they prayed for set-off under Section 428 of Cr.P.C. for the period already undergone by the accused.

23. *Per contra*, the learned High Court Government Pleader submitted that since the accused are still to serve twelve days of sentence, no leniency should be shown against them. Thus, he sought for rejection of the prayer of the learned counsel for the appellants.

24. In view of the submission made by the learned counsel for both parties, it is just and necessary to analyse Section 428 of Cr.P.C., which reads as under:

"428. Period of detention undergone by the accused to be set off against the sentence of imprisonment.— *Where an accused person has, on conviction, been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, enquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him."*

(emphasis supplied)

25. The Hon'ble Supreme Court in the case of **Mr. Vinay Prakash Singh v. Sameer Gehlaut and Others** reported in **2022 LiveLaw (SC) 974**, at paragraph No.12, held as follows:

"12. As far as Section 428 of Cr.P.C. is concerned, an indispensable requirement to invoke Section 428 of Cr.P.C. is that there must be a conviction. The conviction must be followed by a sentence of imprisonment. It must be for a term and it should not be imprisonment in default of payment of fine. If these requirements exist, then the occasion opens up for applying the beneficial provisions of Section 428 of Cr.P.C. However, for it to be invoked the existence of detention undergone by the convict during investigation, enquiry or trial in the 'same case' is indispensable. If these requirements are satisfied, the convict would be entitled to the set off for the period of detention which he has undergone."

Therefore, from the above, it is clear that the benefit of set-off under Section 428 of Cr.P.C. can only be applied if the detention is undergone in the same case in which the conviction was imposed, not in other cases, emphasizing this is a key and indispensable requirement for the beneficial provision to apply.

26. In this case, the accused have been convicted and sentenced to undergo imprisonment of two years each for the offences punishable under Section 136 of Electricity Act and under Section 379 of IPC and now, they have sought for set-off under Section 428 of Cr.P.C. in respect of the sentence already undergone by them and they are not seeking set-off in respect of imprisonment in default of payment of fine. Thus, the accused have fulfilled the requirements as referred in the decision cited supra.

27. The trial Court has sentenced the accused for a period of two years each for the offences punishable under Section 136 of Electricity Act and under Section 379 of IPC. As per the judgment of the trial Court, it reveals that the accused were arrested on 25-9-2010 and were in custody throughout trial, and they were released on bail by this Court on 13-9-2012. Hence, they have served the sentence of one year, eleven months and eighteen days, which is nearly two years. The offence is committed in the year 2010 and thus, no purpose would be served in keeping the accused in custody for another twelve days

and hence, the benefit of set-off as contemplated under Section 428 of Cr.P.C. is given to the accused. Therefore, in the facts and circumstances of the case, the appeals filed by the accused deserve to be partly allowed. Hence, the following

ORDER

- i. Criminal appeals are ***partly allowed***.
- ii. The judgment of conviction dated 30-4-2012 in Special Case No.118 of 2010 passed by the Additional Sessions Judge, at Hassan, against the appellants/accused Nos.1 to 7 for the offences punishable under Section 136 of the Electricity Act, 2003, and under Section 379 of the Indian Penal Code, 1860, is hereby confirmed.
- iii. The sentence imposed against the appellants is hereby modified and they are given set-off for the period of detention already undergone by them, i.e. for a period of one year, eleven months and eighteen

days, as per Section 428 of the Code of Criminal Procedure, 1973.

- iv. The appellants are set at liberty, if they are not required in any other case.
- v. The bail bonds, if any, of the appellants shall stand cancelled.

The Registry is directed to return the trial Court record with a copy of this judgment, forthwith.

**Sd/-
(VENKATESH NAIK T)
JUDGE**

KVK