

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL APPEAL NO. 687 OF 2002

The State of Maharashtra. V/s. Vijay Madhukar Zambare, Age 42 years, Occ.: Ice Factory, R/a. Nira, Tal.Purandar, Dist.: Pune.	... Appellant. ... Respondent.
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Mrs.A.A.Mane, APP for the appellant- State.

Prabhanjan Gujar for the respondent.

CORAM : S.B.SHUKRE, J.

DATED : 11th September 2015.

ORAL JUDGMENT :

This is an appeal preferred against the judgment and order dated 8th March 2002 passed in Regular Criminal Case No.93/2001 by Judicial Magistrate, First Class, Saswad, district- Pune thereby acquitting the respondent of the offence punishable under sections 39 and 44 of the Indian Electricity Act (hereinafter referred to as the "Electricity Act" for short). Briefly stated, the facts of the case are as under:

(a) The respondent, who runs an ice factory, was charged with an offence punishable under sections 39 and 44 of the Electricity Act and was

prosecuted for the same. The allegation against him was that during the period from 23rd September 1998 and 17th July 2001 he committed theft of electricity by tampering with seals of electricity meter and with dishonest intention used the electricity of Maharashtra State Electricity Board ("M.S.E.B." for short) thereby causing loss of Rs.9,16,353.75 to M.S.E.B. The alleged theft of the respondent was detected by the officers of the Flying Squad of M.S.E.B. when they visited the ice factory of the respondent on 17th July 2001. Upon noticing that seals of the electricity meter were tampered with, the officers of the Flying Squad prepared Panchanama and joint investigation report by noting the relevant facts and also produced extract of bill calculating actual loss occurred to the M.S.E.B. by dishonest extraction of electricity by the respondent.

(b) On merits of the case, learned Magistrate found that the appellant/ complainant failed to prove beyond reasonable doubt the offences which were alleged against the respondent and, therefore, by the judgment and order passed on 8th March 2002, the learned Magistrate acquitted the respondent of the offences punishable under sections 39 and 44 of the Electricity Act. Being aggrieved by the said order, the appellant-State is before this Court in the present appeal.

2. I have heard the learned A.P.P. for the State. I have carefully gone through the record of the case including impugned judgment and order.

3. This is an appeal preferred against the acquittal wherein scope for interference by the appellate Court is limited. It is not open to the appellate Court to upset the view taken by the trial Court just because another view is possible. Unless the view taken by the trial Court is shown as perverse or arbitrary or so illogical that it cannot be taken at all or shown to be the result of non-consideration of material evidence or consideration of some extraneous material or the view is shown to be based upon the conclusions so absurd as no man of ordinary prudence would draw them, the appellate Court cannot interfere with the findings recorded by the trial Court.

4. Applying these settled principles of law to the present case, I find it difficult to accept the contention of learned A.P.P. appearing for the State that this is a fit case for interfering with the impugned judgment and order.

5. The view taken by the trial Court in favour of the respondent-accused appears to be a plausible one and is based upon the evidence available on record. The learned Magistrate has particularly found the spot Panchanama vide Exh.23 and joint inspection report vide Exh.24 as the documents of doubtful nature for the reason that there is an admission given by PW.3- Arun Thorat, the Executive Engineer of M.S.E.B. that the outer seal of the meter was directed by him to be cut and before cutting of the outer seal he did not ensure to take photograph of the outer seal so that the condition of the outer seal before it was cut and its condition after it was cut could have been placed before the Court for its independent

assessment. This, in my view, creates a reasonable doubt about the genuineness of the Panchanama and joint investigation report (Exhs.23 and 24), if other circumstances are considered.

6. PW.1- Ramdas Bhujbal, the Junior Engineer of M.S.E.B., who signed the documents vide Exhs.23 and 24, has given admission in his cross-examination that from time to time he used to check the condition of the meter in question and he had found outer cover in proper condition with seals intact. He has also admitted that at the time the documents vide Exhs.23 and 24 were prepared he was not present although his signature appears thereon. Such evidence present on record creates a doubt about veracity of Panchanama and joint inspection report (Exhs.23 and 24) and, consequently of entire action taken by the members of the Flying Squad of M.S.E.B. against the respondent in the present case.

7. In the circumstances, I find that the view taken by the learned Magistrate cannot be said to be perverse or arbitrary or absurd. No interference with the impugned judgment and order is warranted. The appeal deserves to be dismissed.

8. Appeal stands dismissed.

(S.B.SHUKRE, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment.