

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

CRM-A No.1877-MA of 2014 (O&M)
Date of decision: 28.04.2015

Dakshin Haryana Bijli Vitran Nigam Limited

-----Applicant (s)

V/s

Sudhir Kumar

-----Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Pardeep Singh Poonia, Advocate
for the applicant(s).

HARI PAL VERMA, J (Oral).

This is an application filed under Section 378(4) CrPC seeking permission to grant special leave to appeal against the judgment of acquittal dated 23.8.2014 passed by Additional Sessions Judge, Narnaul, whereby the accused-respondent has been acquitted of the charges framed against him under Section 151/135/138 of the Electricity Act, 2003.

Briefly stated, a complaint under Section 151/135/138 of the Electricity Act was filed against the respondent-accused on the allegation that he is dishonestly consuming the electricity and is not registered as a consumer with Dakshin Haryana Bijli Vitran

Nigam Limited. An inspection was conducted on 24.7.2012 at 18.35 PM at Mundan by a raiding party lead by Vikash Deep Yadav, SDO/AGM. During the inspection, theft/dishonest use of electricity was found. It was also found that the tubewell was running directly by taking the electricity supply from yellow colour transformer without starter. Photographs were taken as per the Nigam Instructions. One Karan Singh was present at the time of checking, but he refused to sign on LL-1 dated 24.7.2012. On account of revenue loss to the complainant-applicant and for the act of theft of electricity, a detailed assessment was made as under:-

“Assessment of theft of electricity amount is Rs.38,000/- and compounding charges Rs.38,000/- total amounting to Rs.76,000/-. That the above facts indicates that the accused has been indulging in the above mentioned offence causing loss of revenue to Nigam amounting to Rs.76,000/-. In this regard order of assessment and notice dated 26.07.2012 and for compounding vide memo dated 26.07.2012 has been issued firstly in the name of accused. But no payment has been made by the accused person. SHO, P.S. Kanina was also requested for lodging of complaint against the accused vide memo no.2433 dated 26.07.2012 but no action has been taken against the accused by the police till today. The accused has committed an offence under Section 135 of Electricity Act, 2003 for the offence of theft of electricity and is liable to be punished accordingly.”

On the basis of aforesaid assessment, a complaint under Sections 151/135/138 of the Electricity Act was filed in Court.

The respondent-accused was chargesheeted vide order dated 20.5.2013 for commission of offence punishable under Section 135 of the Electricity Act. However, the accused-respondent pleaded not guilty and claimed trial.

The prosecution examined as many as four witnesses namely Lalit Mohan, JS as PW1, Satbir Singh SSA as PW2, Anil Kumar LM as PW3 and Vikash Deep, AGM as PW4 and closed the evidence.

The prosecution witness PW1 Lalit Mohan, JE deposed that on 24.7.2012 at about 18.35, he along with Vikash Deep Yadav, AGM, Satbir Singh, SSA, Pawan Kumar, ALM and Anil Kumar, ALM visited the tubewell of the accused-respondent and found that the tubewell was running directly by taking electricity from yellow transformer without starter by four core cable. The checking report Ex.P1 dated 24.7.2012 was prepared, which bears his signatures. Similar statements were suffered by PW-2 Satbir Singh, SSA, PW-3 Anil Kumar, LM and PW-4 Vikash Deep Yadav, AGM.

In his statement under Section 313 CrPC, the respondent-accused pleaded his innocence and led his evidence by examining Karan Singh as DW1 and also tendered documents Ex.D1 to Ex.D7 and closed his evidence.

Considering the rival contentions of the parties, learned trial Court dismissed the complaint vide judgment dated 23.8.2014 and acquitted the respondent-accused of the charges framed against him.

It is against the order dated 23.8.2014, the applicant has filed the present application seeking leave to appeal as provided under Section 378(4) CrPC.

I have heard learned counsel for the applicant.

Learned counsel for the applicant-complainant submits that the trial Court has not appreciated the evidence in its true connotation. He submitted that the team headed by Vikash Deep Yadav has found that the respondent was found running the tubewell directly by taking the electricity supply from yellow colour transformer without starter.

A bare perusal of the order shows that the respondent-accused had deposited the amount in 2010-11 vide receipts Ex.D1 to Ex.D7 and it was found that the complainant has failed to show as to whom the transformer shown in the above-mentioned photographs belong to and when the electric poles and transformer were installed. PW-4 Vikash Deep, AGM has placed on record photographs taken by him at the time of checking on 24.7.2012. However, on perusal of photographs Ex.P-9, Ex.P11 to Ex.P13 and Ex.P15 to Ex.P17, it is clear that from the transformer shown in these photographs, Sudhir Kumar was abstracting electricity. The complainant-applicant has failed

to show as to whom the transformer shown in the photographs belongs to. The complainant-applicant has also failed to establish that the electricity poles and transformers were installed. The trial Court has rightly observed that the transformer was got installed by the respondent after depositing the due amount as per the estimate made by the Nigam, but somehow, the connection was not released in the record of the Electricity Department as the work under the self-execution scheme was to be done by the applicant through a licenced contractor himself. Moreover, it has been admitted by PW-1 Lalit Mohan, JE that the department is negligent for not releasing the electric connection to the accused even after lapse of two years after depositing of fee. Accordingly, the applicant has failed to establish as to how electric lines and transformer were got installed by Sudhir Kumar, respondent, when these cannot be installed and attached with the main line without the consent of the officials of the department.

No other legal point, worth consideration, has either been urged or pressed by the learned counsel for the applicant.

Thus, no interference is warranted in the impugned order. Accordingly, finding no merit in the contention of the learned counsel for the applicant, the prayer made in the present application under Section 378 (4) Cr.P.C. for special leave to appeal is declined. The application is dismissed.

April 28, 2015
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(HARI PAL VERMA)
JUDGE