

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

CRM-A No.63-MA of 2015
Date of decision: 04.05.2015

Dakshin Haryana Bijli Vitran Nigam

-----Applicant (s)

V/s

Ashwani 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 17.4.2014 passed by Additional Sessions Judge, Bhiwani, whereby the accused-respondent has been acquitted of the charge framed against him under Sections 135(1)(a)(i) of the Electricity Act, 2003.

Briefly stated, that facts of the case are that the present complaint under Section 135 read with Section 151 of the Electricity Act, 2003 was filed by the complainant-applicant against the respondent-accused on the ground that a raid was

conducted at the residence of the accused on 4.8.2012 and during checking, it was found that the respondent-accused was committing theft of electricity. He was found using the middle phase of three phase meter by using a by-pass, making loop in coming with flexible wire. Checking report Ex.C1, order of assessment Ex.C2, notice to the consumer Ex.C3, application for lodging complaint against the accused Ex.C4 and the report of Ashwani Kumar Ex.C5 were also attached with the complaint.

The trial Court has framed charge against the accused-respondent on 19.3.2013 for the commission of offence punishable under Section 135(1)(a)(i) of the Electricity Act, to which, he pleaded not guilty and claimed trial.

The prosecution examined as many as four witnesses namely PW1 Vikram Singh, SDO, PW2 Manjit Singh, JE, CW3 Raj Kumar and CW4 Sanjay Kumar in support of its case.

PW1 Vikram Singh, SDO stated that he filed the complaint on the basis of LL-1 no.17/20 dated 4.8.2012, on the basis of which the amount of loss to the applicant-Nigam was assessed at Rs.4,23,458/- and Rs.1,00,000/- was shown as compounding fee. He proved the copy of the sundry charges Ex.C5 and LL-1, Ex.C1, memo for assessment and compounding as Ex.C2 and Ex.C3. The memo sent to the Police Station was proved as Ex.C4. Since the police did not register the case, the applicant filed the present complaint. Similarly, PW2 Manjeet Singh, JE stated that on 4.8.2012, when the raiding party

inspected the premises of the accused, he was found committing theft of electricity by making loop in one of the phases of his three phase meter. At the time of checking, the connecting load was 9.020 KW and he was accompanied by JE Raj Kumar, HC Sanjay Kumar and ASI Gajraj. Along with the members of the vigilance team, three linemen were also present. Similarly, Raj Kumar CW3 corroborated the version of CW2 and also stated that at the time of raid, videography of the premises was conducted. He proved the Compact Disk as Ex.C6 and meter of the premises as Ex.C7. CW4 Sanjay Kumar stated that on 4.8.2012, he along with PW2 Manjeet Singh, JE, CW3 Raj Kumar and Vinod, ALM etc. were the members of the checking party and C1 bears his signatures. He further identified the accused and stated that the videography was done at the spot.

Statement of accused under Section 313 CrPC was recorded, wherein the respondent-accused denied all the material evidence against him and pleaded his false implication.

No defence evidence as led by the accused.

The trial Court, vide order dated 17.4.2014, acquitted that accused of the charges framed against him and observed as under:-

“11. After hearing the learned counsel for the parties and after going through the case file carefully, it is observed that the prosecution has named four witnesses in their complaint. In the list of witnesses, the charge against the accused is that he was

indulging in theft of electricity and caused loss of revenue to the Nigam to the tune of Rs.4,23,458/- and Rs.1,00,000/- as compounding charges. The checking report Ex.C-1 has been perused as per which the total load on the residence of the accused was 9,020 kw. As per the checking report, the complainant not removed from the house of the accused. The raid was videographed but the person who prepared the compact disk has not been examined by the prosecution. The flexible wire which was allegedly being used by the accused has also not been produced in the Court. As per the checking report, the meter was not removed from the premises but the same was produced in the court during examination of witness Raj Kumar and he proved meter as Ex.C-7. The prosecution should have proved the loss which was caused to the Nigam by using any loop by the accused. The Nigam has not produced in the Court any of the electricity bills which were being paid by the accused rather they have just prepared a report on the basis of load in the in the premises of the accused but no where it has been mentioned or proved as to how much was the regular consumption of electricity of accused in the premises in question by which the loss caused to the Nigam could be proved. In criminal case the charge against the accused must be proved beyond the reasonable doubt but the prosecution in the present case has failed to do so as the discrepancies in the testimony of the witnesses with regard to the meter having been removed from the premises or not are serious enough as the offence relates to theft of electricity and the meter through

which the theft was committed was the crux of the whole case.”

Learned counsel for the applicant submitted that the checking report LL-1 no.17/20 dated 4.8.2012 was prepared at the spot and the entire exercise was videographed, but simply because the person who had videographed the exercise has not been examined by the prosecution, is no ground to acquit the respondent-accused. He further stated that the applicant/Nigam has been caused loss to the tune of Rs.4,23,458/- along with compounding fee of Rs.1 lac. He further submitted that the trial Court has not appreciated the evidence in its true perspective. PW-2 Manjit Singh, JE has categorically deposed with regard to the manner of committing the theft of electricity through middle phase of three phase meter by the accused, but his version was not given due weightage.

I have heard learned counsel for the applicant.

The accused has been charged that he was indulging in theft of electricity and has caused loss of revenue to the applicant to the tune of Rs.423,458/- along with compounding fee of Rs.1,00,000/-. The checking report (Ex.C1) reveals that the total load on the residence of the accused was 9.020 KW. The raid was videographed, but interestingly, a person who has undertaken the videography and has prepared the compact disk, has not been examined by the prosecution. Moreover, the flexible wire, which is stated to have been used by the respondent-

accused, has also not been produced in Court. Similarly, as per the checking report, the meter was not removed from the premises, but the same was produced in Court during examination of witness Raj Kumar CW3, who proved the meter as Ex.C7. It was incumbent upon the prosecution to prove the loss caused to the applicant/Nigam, but the Nigam has not produced any of the electricity bills which were being paid by the accused. Rather they have just prepared a report on the basis of load in the premises.

Considering the above fact, the trial Court has rightly observed that the prosecution has failed to prove the guilt of the respondent-accused, which was required to be proved beyond reasonable doubt. Thus, no illegality can be found in the impugned judgment dated 17.4.2014 passed by learned Additional Sessions Judge, Bhiwani, whereby the respondent-accused has been acquitted of the charges framed against him.

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

In this view of the matter, 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.

MAY 04, 2015
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(HARI PAL VERMA)
JUDGE