IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 23rd February, 2015
Judgment Pronounced on: 20th March, 2015

CRL.REV.P. 56/2007

MOHD. SALAUDDIN ..... **Petitioner**

Through: Mr. Ashwin Vaish, Mr. Vinod Pandey & Mr.Sanjeev Manchanda, Advocates

versus

STATE & ANR. ..... **Respondents**

Through: Mr. P.K. Mishra, APP for State.
Mr. Deepak Kumar, Ad. for R-2.

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. Aggrieved by the order on conviction dated 12.08.2004 and the order on sentence dated 26.08.2004 passed by the learned Metropolitan Magistrate, awarding the sentence to the petitioner to undergo rigorous imprisonment for two years and fine of Rs.5000/- under Section 39 of the Indian Electricity Act, in default of payment of fine to further undergo simple imprisonment for one month and upholding the same by the learned Additional Sessions Judge vide judgment dated 16.12.2006, the present revision petition

has been filed by the petitioner. However, the learned Additional Sessions Judge modified the sentence by releasing the petitioner on probation for a period of three years on furnishing the personal bond in the sum of Rs.20,000/- with an undertaking of good behaviour. The petitioner was ordered to pay a sum of Rs.4,00,000/- as compensation.

2. Factual matrix, as emerges from the record, is that on 25.03.2000, a raid was conducted at premises No.7231, Gali Gadhaiya, Kasabpura, Delhi. During the raid, a direct theft of electricity was detected by bye-passing the electricity meter. Three electricity meters were found installed at the premises. A factory was being run from the said premises. Two meters were burned and the third one was lying disconnected due to non-payment. Electricity theft was committed by connecting illegal cable directly from electricity pole. A complaint dated 30.03.2000 was made by Sh. Vikram Saini, Assistant Engineer, on the basis of which FIR No.120/2000 under Section 39/44 of the Indian Electricity Act and under Section 379 IPC was recorded. On completion of investigation, charge-sheet was filed.

3. Charge under Section 39 of the Indian Electricity Act was framed against the petitioner. The petitioner pleaded not guilty to the charge framed.

4. To prove its case, the prosecution examined 5 witnesses. After conclusion of prosecution evidence, the statement of the petitioner

was recorded under Section 281 Cr.P.C. in which he had claimed innocence. The petitioner opted to lead defence evidence and examined two defence witnesses. The learned Metropolitan Magistrate vide judgment dated 12.08.2004 held the petitioner guilty for the offence punishable under Section 39 of the Indian Electricity Act and convicted him for the said offence. The order on sentence was passed on 26.08.2004.

5. Thereafter, the petitioner filed an appeal bearing Criminal Appeal No.11/2005. The learned Additional Sessions Judge vide judgment dated 16.12.2006 confirmed the conviction of the petitioner, however he was ordered to be released on probation and ordered to pay a sum of Rs.4,00,000/- as compensation.

6. Feeling aggrieved by the same, the petitioner has preferred the present revision petition to set aside the judgments rendered by the Courts below and claiming acquittal.

7. Argument advanced by the learned counsel for the petitioner is that no offence was committed by the petitioner; place of alleged theft of electricity was not shown; petitioner was not the beneficiary; petitioner was not named in the complaint or FIR; it was not proved whether the petitioner was tenant or landlord of the premises; no document of occupancy was placed; defence witnesses duly proved that the petitioner had nothing to do with raid or theft.

8. In support the above contentions, learned counsel has referred to judgment in case of ***D.D. Chadha vs. State (NCT, Delhi) ILR***

Delhi 1999-II. Facts of the said case were that at the time of inspection the offending meters were in custody and control of M/s Ravi Sun Printers and they were found dishonestly abstracting the electrical energy but M/s Ravi Sun Printers were not charge-sheeted. It was observed that the learned Magistrate had misdirected himself in placing reliance on Section 2(c) of the Act for imposing criminal liability on the petitioner for the alleged offence.

9. Next judgment referred by the petitioner is in case of ***Raju vs. State NCT of Delhi 2007 (95) DRJ 577.*** In this case, the petitioner was convicted and sentenced under Section 39 of the Indian Electricity Act. While allowing the petition, it was observed that there was no evidence against the petitioner to prove his identity. Relevant portion from the judgment reads as under:

> "The facts of this case show that the courts below overlooked the material portions of deposition of PW-6 and gave no weight to the fact that PW-5 and PW-7 did not support the prosecution. Indeed, there was no evidence showing that the petitioner resided or used the premises, as alleged. There was evidence showing that some other persons with the same name were living in the vicinity; neither the raiding party, nor the police thought it appropriate to investigate the matter further. No witness identified the petitioner, as the culprit. In the absence of any direct evidence, it was incumbent upon the prosecution to lead strong circumstantial evidence to show the petitioner's guilt; such evidence, too, was lacking. The inevitable conclusion therefore, is that the prosecution failed to prove its allegations. The findings of the courts, that

> the petitioner had indulged in theft, and was guilty, are in complete variance with the evidence. This has led to manifest failure of justice, warranting exercise of revisional jurisdiction."

10. PW2 Naresh Kumar, Junior Engineer has stated that on 25.03.2000, he along with Sh. N.K. Sharma, Sh. C.P. Pahuja, Sh. Suresh Garg, Sh. Vikram Saini, Sh. K.K. Jain, Sh. Ramesh Chand, police staff and photographer conducted the raid at 7231, Gali Gadhaia; during raid, a direct theft of electricity was detected; three meters were found installed at the premises; photographs of the site were taken; illegal wires/service cable and meter were removed; connected load was noted down; joint report Ex.PW2/A was prepared.

11. As per testimony of PW2, on 25.03.2000 a raid was conducted at premises bearing No.7231, Gali Gadhaia where a direct theft of electricity was detected and illegal wires/service cable were removed after taking photographs of the site. The testimony of PW2 regarding conducting of raid at the aforesaid premises has duly been corroborated by PW4 Sh. Vikram Saini, Assistant Engineer. PW4 corroborated that on the said date, raid at 7231, Kassa Pura was conducted where a factory was being run; during raid it was found that electricity theft was taking place by bye-passing meter; photographs of the site were taken; joint report Ex.PW2/A was prepared; he made complaint Ex.PW4/A to the police for registration of FIR; he handed over case property to the police vide memo Ex.PW4/B and photographs were given vide memo Ex.PW4/C; accused was not present at the site and his name

was revealed as proprietor of the factory by the persons present at the site.

12. The testimony of the raiding party members (PW2 & PW4) duly proves that at the aforesaid premises a raid was conducted during which theft of electricity was detected. As per testimony of PW4, the owner of the factory was the petitioner where the electricity theft was detected. The joint report dated 25.03.2000 shows that both the electricity meters were found used by the petitioner, which were bye-passed to get the electricity supply.

13. The testimony of above witnesses and the joint report duly proves the case of the prosecution that it was the petitioner in whose name the meters were installed and at the time of raid, electricity theft was detected. In view of this evidence, the petitioner cannot get any assistance from the judgments in case of ***D.D. Chadha*** (supra) and ***Raju*** (supra) inasmuch as the name of petitioner figures in the action report as well as in the testimony of witness PW4.

14. Perusal of record further shows that a writ petition bearing CWP No.2986/2000 Ex.CW1/5 was filed by the petitioner for quashing the demand of Rs.9,80,733/- vide bill No.26768 issued by the Delhi Vidyut Board. In the said writ petition, the petitioner claimed himself to be resident of premises No.7231, Gali Gariyan, Kasabpura, Sadar Bazar, Delhi; he had applied for commercial connection in the said premises; there was another electricity connection in the same premises; one domestic connection was also

obtained. The contentions made in the said writ petition further established that the petitioner was possessor and occupier of the premises in question.

15. Next argument advanced by the learned counsel for the petitioner is that the Assistant Engineer who made the complaint to the police was not competent to make the complaint as he was not the Electrical Inspector as per Section 50 of the Indian Electricity Act. In support of the contention, he has referred to a judgment in case of ***Avtar Singh vs. State of Punjab AIR 1965 SC 666*** in which it was observed that the object of Section 50 is to prevent prosecution for offences against the Act being instituted by anyone who chooses to do so because the offences can be proved by men possessing special qualifications. That is why it is left only to the authorities concerned with the offence and the persons aggrieved by it to initiate the prosecution.

16. Section 50 of the Act reads as under :

> "**Institution of prosecutions**.- No prosecution shall be instituted against any person for any offence against this Act or any rule, license or order thereunder, except at the instance of the Government [or a State Electricity Board] or an [Electrical Inspector], or of a person aggrieved by the same."

17. Witness PW3 Sh. B.K. Chug, Executive Engineer had stated that he had given permission under Section 50 of I.E. Act on the basis of joint inspection report. He proved the permission as Ex.PW3/A.

18. Document Ex.PW3/A shows that witness PW3 gave permission under Section 50 of the I.E. Act in favour of Sh. Vikram Saini (PW4), Assistant Engineer by authorizing him to lodge FIR against the persons who were found indulged in the theft of electricity which was detected during raid on 25.03.2000. It was also mentioned therein that during inspection, person/consumer was found indulged in theft of electricity by direct tapping illegally from D.V.B. Mains/ Service line.

19. Document Ex.PW3/A duly proves that Sh. Vikram Saini (PW4) was duly authorized by the Executing Engineer (PW3) to lodge FIR against the petitioner and thus there was valid permission under Section 50 of the Indian Electricity Act. The petitioner cannot get any assistance from the judgment in case of ***Avtar Singh*** (supra) inasmuch as document Ex.PW3/A is an authorization in favour of PW4 to launch prosecution and it was not required that it should be in the name of the petitioner.

20. Next argument advanced by the learned counsel for the petitioner is that the learned Appellate Court by invoking Section 391 Cr.P.C. committed an error and exceeded its jurisdiction by directing to take further evidence; the learned Appellate Court asked the trial court to examine an officer of this Court to ascertain the fact regarding filing of Writ Petition by the petitioner; record produced by the official of this Court was not the part of charge-sheet nor any investigation on the same was conducted by the investigating authority; provision of Section 391 Cr.P.C. cannot be used as a tool

for creating new evidence. In support of this contention, reliance has been placed on judgment in case of ***Rambhau and Another vs. State of Maharashtra (2001) 4 SCC 759*** in which it was observed that a very wide discretion is available in the matter of obtaining additional evidence in terms of Section 391 of Cr.P.C., but this additional evidence cannot and ought not to be received in such a way so as to cause any prejudice to the accused.

21. To deal with this contention of the petitioner, this Court has gone through the provision of Section 391 Cr.P.C. which provides that while dealing with appeal, if the Appellate Court thinks additional evidence is necessary, it shall record its reasons and may either take such evidence itself or direct it to be taken by a Magistrate.

22. Section 386 Cr.P.C. envisages the normal and ordinary manner and method of disposal of an appeal, but it cannot be said to exhaustively enumerate the modes by which alone the Court can deal with an appeal. Section 391 of the Code is an exception to the ordinary rule and if the appellate Court considers additional evidence to be necessary, the provisions in Section 386 and 391 of the Code have to be harmoniously considered to enable the appeal to be considered and disposed of also in the light of the additional evidence as well. For this purpose it is open to the appellate Court to call for further evidence before the appeal is disposed of. The appellate Court can direct the taking up of further evidence in support of the prosecution. The primary object of Section 391 Cr.P.C. is the prevention of guilty man's escape through some

careless or ignorant proceedings before a Court or vindication of an innocent person wrongfully accused. Where the court through some carelessness or ignorance has omitted to record the circumstances essential to elucidation of truth, the exercise of powers under Section 391 Cr.P.C. is desirable. Section 391 Cr.P.C. has been enacted for the empowerment of the appellate court to see that justice is done between the prosecutor and the persons prosecuted and if the appellate Court finds that certain evidence is necessary in order to enable it to give a correct and proper findings, it would be justified in taking action under Section 391 Cr.P.C.

23. The Hon'ble Apex Court in ***Zahira Habibulla H. Sheikh and Anr. Vs. State of Gujarat and Ors. AIR 2004 SC 346*** while dealing with Section 391 Cr.P.C., held as under **:**

> "There is no restriction in the wording of Section 391 either as to the nature of the evidence or that it is to be taken for the prosecution only or that the provisions of the Section are only to be invoked when formal proof for the prosecution is necessary. If the appellate Court thinks that it is necessary in the interest of justice to take additional evidence it shall do so. There is nothing in the provision limiting it to cases where there has been merely some formal defect. The matter is one of the discretion of the appellate Court. As re-iterated supra the ends of justice are not satisfied only when the accused in a criminal case is acquitted. The community acting through the State and the public prosecutor is also entitled to justice. The cause of the community deserves equal treatment at the hands of the Court in the discharge of its judicial functions."

24. In view of the above discussion and in view of laid down in case of ***Zahira Habibulla H. Sheikh*** (supra), this Court is of the view that the discretion exercise by the learned Additional Sessions Judge to take additional evidence under Section 391 Cr.P.C. cannot be said to be exceeding of jurisdiction. The judgment referred by the petitioner in case of ***Rambhau*** (supra) does not render any assistance to him in view of above discussion.

25. In the judgment in case of ***Ram Briksh Singh and Others vs. Ambika Yadav and Another (2004) 7 SCC 665*** it was observed that the revisional court does not function as a court of appeal and, therefore, cannot re-appreciate the evidence. Sections 397 to 401 of the Code are group of sections conferring higher and superior courts a sort of supervisory jurisdiction. These powers are required to be exercised sparingly. The jurisdiction can be invoked to correct the wrong appreciation of evidence. Though the High Court is not required to act as a court of appeal but at the same time, it is the duty of the court to correct manifest illegality resulting in gross miscarriage of justice. The High Court is not required to interfere in the concurrent finding of facts. *This Court is of the considered opinion that the present case is not a fit case where the revisional jurisdiction is required to be exercised on the concurrent finding of facts recorded by the Courts below.*

26. Learned counsel for the petitioner has submitted that the compensation amount imposed by the learned Appellate Court is at the higher side. The petitioner is facing the proceedings since

2000. Out of the compensation awarded of Rs.4,00,000/-, the petitioner has already deposited Rs.1,00,000/-. He has prayed that the remaining amount may be set off.

27. In the present case, it is apparent from the record that FIR was registered on 30.03.2000; charge sheet was filed on 12.07.2000; judgment of conviction was passed on 12.08.2004; order on sentence was passed on 26.08.2004; criminal appeal filed by the petitioner was dismissed on 16.12.2006 and now we are in the year 2015. The learned Additional Sessions Judge released the petitioner on probation for a period of three years, which period is already complete.

28. In view of discussion made above, the judgments passed by the Courts below are upheld. However, the compensation amount of Rs.4,00,000/- is reduced to Rs.2,00,000/-, subject to adjustment of amount already deposited. In case of non-payment of remaining compensation amount by the petitioner, same would be recovered as fine.

29. The present revision petition is disposed of accordingly. File of the trial court be sent back.

P.S.TEJI, J.

March 20, 2015
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