

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved on: 14th May, 2015
Judgment Pronounced on: 01st July, 2015

CRL.REV.P. 511/2008

ANUP KUMAR GUPTA

..... Petitioner

Through: Mr. F.K. Jha, Advocate.

versus

THE STATE (NCT OF DELHI) & ANR.

..... Respondents

Through: None.

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

P.S.TEJI, J.

1. Aggrieved by the judgment of conviction dated 09.02.2004 and order on sentence dated 11.02.2004 passed by the learned Metropolitan Magistrate, awarding the sentence to the petitioner to undergo rigorous imprisonment for a period of two years and fine of Rs.5,000/- for offence under Section 39/44 of the Indian Electricity Act (in short the I.E. Act), in default of payment of fine to further undergo simple imprisonment for five months and

upholding the judgment of conviction and sentence by the learned Additional Sessions Judge vide judgment dated 05.09.2008, the present revision petition has been filed by the petitioner. However, the sentence was modified to one year rigorous imprisonment with fine of Rs.5,000/- for the offence punishable under Section 39/44 of the I.E. Act and in default of payment of fine to undergo simple imprisonment for one month.

2. Factual matrix, as emerges from the record, is that the petitioner was owner of M/s S.K. Rubber Udhyog and M/s J.M.O. Oils Pvt. Ltd. at premises bearing Kh. No.46/8, Village Khera Kalan. A joint raid was conducted by the electricity department at the said premises where two electricity meters were found installed. On 29.04.1998, during inspection, it was observed that service line of one connection was found tapped in changeover switch before meter and electricity was being used by connecting the load directly with changeover switch. A joint inspection report was prepared, photographs of the spot were taken and material was seized. A complaint was made on 01.05.1998 and then the FIR No.276/1998 was registered in PS S.P. Badli for offence under Section 39 of the I.E. Act.
3. On completion of investigation, charge-sheet was filed against the petitioner. Charge under Section 39/44 of I.E. Act was framed against the petitioner. The petitioner pleaded not guilty to the charge framed.

4. To prove its case, prosecution examined 8 witnesses. After conclusion of prosecution evidence, the statement of the petitioner was recorded under Section 313 Cr.P.C. in which he had claimed innocence. The learned Metropolitan Magistrate vide judgment dated 09.02.2004 held the petitioner guilty for the offence punishable under Section 39/44 of the I.E. Act and convicted him for the said offences. The order on sentence was passed on 11.02.2004.
5. Thereafter, the petitioner filed criminal appeal bearing Criminal Appeal No.26/2006. The learned Additional Sessions Judge vide judgment dated 05.09.2008 upheld the conviction and sentence awarded to the petitioner. However, the sentence was modified.
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. I have gone through the ratio of judgment in case of ***Ram Briksh Singh and Others vs. Ambika Yadav and Another (2004) 7 SCC 665*** in which 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.*

8. During the course of arguments, learned counsel for the petitioner did not press the present revision petition on merits and restricted his arguments on the quantum of sentence. It is submitted that the petitioner be released on probation under Section 4 of the Probation of Offenders Act, 1958. Learned counsel has relied upon a judgment in case of ***Virender Singh vs. State 110 (2004) DLT 632.***
9. In case of ***Virender Singh*** (supra), the appellant was ordered to be released on probation of good conduct. Relevant portions from the judgment are reproduced as under :

“Having heard learned Counsels for the parties and having given my careful consideration to the material available on record, I am of the view that in the present case, the petitioner has suffered agony of trial lasting for about 7 years. Besides that, he has already undergone some period in custody and there is no allegation that the petitioner is a previous convict.

Keeping these circumstances in mind and the fact that the offence of which the petitioner has been convicted is not punishable with life imprisonment,

he deserves the benefit of probation under Section 4 of the Probation of Offenders Act, 1958. In these circumstances, while maintaining the conviction of the petitioner, the sentence of imprisonment and fine as awarded to him is set aside.”

10. In the present case, the allegations against the petitioner are serious in nature to the effect that he was found indulged in direct electricity theft. The prosecution witnesses have specifically deposed against the petitioner that while conducting inspection in the premises of the petitioner, service line of one connection was found tapped in changeover switch before meter and electricity was being used by connecting the load directly with changeover switch. The learned Additional Sessions Judge considering the circumstances of the present case, already taken a lenient view and modified the sentence of imprisonment awarded to the petitioner. In view of this position of the matter, this Court is of the view that no case is made out to release the petitioner on probation. Therefore, the petitioner cannot get any assistance from the judgment in case of ***Virender Singh*** (supra).
11. In view of discussion made above, this Court does not find any procedural irregularity, overlooking of material evidence, misreading of the same or miscarriage of justice. There is no jurisdictional error in the judgments passed by the Courts below. Neither there is any failure to exercise the jurisdiction or exceeding of jurisdiction by the learned trial Court and appellate Court while

passing the judgment. Thus, the judgment of conviction and order on sentence passed by the learned trial Court as well as the judgment passed by the learned appellate Court are upheld. The petitioner is directed to surrender before the concerned learned Chief Metropolitan Magistrate to serve the remaining sentence of imprisonment.

12. Consequently, the present revision petition is dismissed.

P.S.TEJI, J.

July 01, 2015

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