

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 236 of 2007

Krishna Kumar, S/o Ramgopal Rungta, Aged about 40 years, R/o Ganjpara Durg, Thana & District Durg (C.G.)

---- Applicant

Versus

State of Chhattisgarh, through District Magistrate, District Durg (C.G.)

---- Respondent

For Applicant :

Shri Ashish Surana, Advocate

For Respondents :

Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

08/12/2016

1. This revision has been brought against the judgment passed in Criminal Appeal No. 395/2003 by XII Additional Sessions Judge (F.T.C.) Durg on 14/05/2007, whereby the judgment of conviction and sentence passed by Manish Kumar Naidu, Judicial Magistrate First Class, Durg in Criminal Case No. 406/2002 on 27/08/2003 was upheld.

2. The facts of the case are, that on 08/04/1998 K.S. Dewangan (PW-1) Junior Engineer M.P.E.B. along with Lineman Salikram Sahu (PW-2) raided and searched the premises in possession of present applicant in village Kachandur and found that a stone crusher machine was being operated by the applicant by extracting energy through the illegally hooked connection from the main line passing through the place. A Panchnama (Ex.P/1) was prepared and seizure of the material used for hooking the electrical energy was made vide (Ex.P/2). A formal complaint was lodged in Police Outpost Jevra Sirsa, District Durg vide (Ex.P/3), on the basis of which FIR (Ex.P/4) was registered under Section 379 of IPC and Section 39 of Indian Electricity

Act, 1910 (for short, '*Act, 1910*'). Investigation was made and seizure of the seized articles of hooking was made vide (Ex.P/5) and (Ex.P/6). The statement in the form of application by Dakesh (PW-4) and Maniram Yadav (PW-3) vide (Ex.P/7 and Ex.P/8) was recorded and obtained. Spot map (Ex.P/9) was prepared. A numbered FIR was recorded in Police Station, Pulgaon. Statement of witnesses were recorded under Section 161 of Cr.P.C. and on completion of investigation applicant was charge-sheeted.

3. Applicant was charged under Section 39 of the Act, 1910 to which he denied. Trial was conducted. On examination under Section 313 of Cr.P.C. applicant pleaded innocence and examined one witness in defence. Trial court passed the judgment of conviction under Section 39 of the Act, 1910 and sentenced the applicant with imprisonment of six months RI and fine Rs. 1000/- with stipulation of non-payment of fine. Appeal No. 395/2003 was heard and decided by the XII Additional Sessions Judge (F.T.C.) Durg on 14/05/2007, whereby the conviction and sentence by the trial Court was upheld.

4. The grounds raised in this revision are that the conviction against applicant is bad in law and contrary to the facts and circumstances of the case, prosecution had failed to prove the case against the applicant beyond reasonable doubt, for these reasons applicant deserves to be extended benefit of doubt.

5. It is submitted by the counsel for applicant, that K.S. Dewangan (PW-1) is Junior Engineer of M.P.E.B. had no authority to file complaint. The deposition of Maniram Yadav (PW-2) was not completed, even then it was relied upon by the trial Court and the lower appellate Court. Independent witness Dakesh (PW-4) had been a hostile witness. For these reasons there were no evidence to make out a case of theft of energy by the applicant. In the alternative it has been argued that the appellant has been in custody for about 13 days. He was taken in custody on 14/05/2007, i.e. date of judgment

of the lower appellate Court and was released on bail vide order dated 23/05/2007 of this Court on 26/05/2007. Looking to the facts and circumstances of the case if this Court is not inclined to set-aside the conviction against the applicant, at least the sentence part may be modified to the imprisonment of the period already undergone in custody.

6. Counsel for the State has opposed the grounds of revision and the argument submitted on behalf of applicant. It is submitted that prosecution has proved its case beyond reasonable doubt, which clearly makes out a case of theft of electricity against the applicant, for these reasons there is no ground for interference in the judgment of the Courts below.

7. The revisional Court has limited jurisdiction to consider on the legality, propriety and correctness of any order passed by subordinate Court. Under this criteria the impugned judgment and the judgment of the trial Court has to be viewed and finding has to be arrived at.

8. Section 50 of the Indian Electricity Act, 1910 provides, that no prosecution shall be instituted against any person for any offence under this Act or Rule etc. except at the instance of the government or the State Electricity Board or an Electrical Inspector or by a person aggrieved. A technical question has been raised in this revision petition. On perusal of Section 50 of the Act, 1910 it is very clear that prosecution can be initiated only by the person and authorities named in the provision, which means that the prosecutor shall be one of the person or authority named in Section 50 of the Act, 1910. There is no scope in the Section that the prosecution can be launched by the Police Department.

9. The prosecution launched in this case whether can be considered as launched within the direction Section 50 of the Act, 1910. As per the trial record the complainant K.S. Dewangan (PW-1) Junior Engineer of M.P.E.B. conducted the raid and seized the articles used for theft of energy vide

(Ex.P/1 and P/2) and presented one application (Ex.P/3) to the in-charge of Police Out Post, Jevra Sirsa, District Durg. Ex.P/3 is addressed to in-charge of Police Out Post, Jevra Sirsa, District Durg. There is no formal complaint addressing the Court by the complainant on the record of the trial Court. On the basis of Ex.P/3 criminal case was registered, investigated and charge-sheeted by the Police Station, Pulgaon. For these reasons the prosecution in this case seems to have been launched by the police department. Had there been a single formal application addressed to the Court by the complainant in this case, that should have been regarded as a complaint by the complainant to the Court, but this is not the case here. For these reasons technically this prosecution cannot be regarded to be launched as per the direction under Section 50 of the Act, 1910. This provision has made it very clear that except at the instance of government or the State Electricity Board or an Electrical Inspector or by a person aggrieved, no prosecution can be instituted or entertained by any Court of law.

10. At this stage, counsel for the State has drawn attention that the lower appellate Court has in the impugned judgment given this finding, that Junior Engineer of Electricity Board is an aggrieved party as defined under Section 50 of the Act, 1910. A number of case laws were cited before the lower appellate Court in which it has been invariably held that the prosecution can be launched at the instance of the parties mentioned in Section 50 of the Act, 1910. It was one judgment by M.P. High Court in **State of M.P. v. Babusingh, 2000 (1) MPJR 131** which has been cited in the judgment by lower appellate Court, wherein it was held that Assistant Engineer can be regarded as aggrieved person and he can file a complaint.

11. It has been discussed in previous paragraphs that Section 50 of the Act, 1910 contemplates filing of a complaint under Section 200 of Cr.P.C., hence there had to be a formal application addressed to the Court that could have been considered as a complaint, but that being not a case the technical

defect in prosecution of this case cannot be disregarded simply. Police Station, Pulgaon has formally submitted a charge-sheet under Section 173 of Cr.P.C. which is not a mode of prosecution meant under Section 50 of the Act, 1910, hence for the reason for non-compliance of the legal provision for prosecution of applicant in this case and the trial of applicant vitiated under Section 461 of Cr.P.C. because without the compliance of Section 50 of the Act, 1910, Magistrate was not empowered to conduct trial against applicant in this case. In view of this technical ground, the revision brought by the applicant succeeds, the judgment of conviction and sentence passed by the trial Court and upheld by the lower appellate Court is liable to be set-aside. The revision is allowed. The conviction and sentence against the applicant by the Courts below is hereby set-aside.

Sd/-

(Rajendra Chandra Singh Samant)

JUDGE