

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 4588 OF 2014

The Assistant Engineer,
Maharashtra State Electricity
Distribution Company Ltd.,
Latur

...Applicant

versus

The State of Maharashtra & anr.

...Respondents

.....
Mr. P. B. Paithankar, Advocate for applicant
Mr. D. V. Tele, A.P.P. for respondent No. 1
Mr. N. G. Kale, Advocate for respondent No. 2
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CORAM : N.W. SAMBRE, J.

DATE : 17th MARCH, 2016

ORAL ORDER :

Heard learned Counsel for the applicant.

2. This is an application for grant of leave to appeal in the matter of acquittal of the respondent No. 2-accused, as the accused faced trial for the charge of theft of electricity vide Special Electricity Case No. 02 of 2013.

3. The case of the complainant, as against the accused, is that he is owner of Stone Crusher Centre situated in the village

Molvanwadi and was provided electric connection vide Consumer No. 619700109151, which meter was locked of which key was with the Junior Engineer, who used to take reading from the meter.

4. It is claimed that the accused has committed theft of electric energy of 45766 units amounting to Rs.5,11,743/-. It is, thus, claimed that upon raid by flying squad of Maharashtra State Electricity Distribution Company Limited, theft in question, was recovered, resulting into initiation of prosecution in question. PW-1 Siddharth Sonsale, who is examined at Exhibit-18, claimed to be Junior Engineer, member of the flying squad. According to him, on 29/08/2013 along with his colleagues, he noticed the theft in question. Having noticed the theft, he removed electric meter, sealed the same in presence of representative of the accused. The accused was given notice to remain present on 31/08/2013 with the office of the complainant and panchnama at Exhibit-20 and inspection report at Exhibit-21 came to be drawn.

5. It is claimed that upon testing of the electric meter in the presence of accused, it was found to be not functioning/non-operation. Upon opening of the said meter, the meter resistance R-105, R-106 and R-107 was found cut down and then there was reconnection to the meter. One terminal of resistance R-108 was

found cut and then was reconnected. The meter thereafter was closed and resealed with the signature of the consumer. The report of the incident to the MSEDCL Police Station, Latur against the accused came to be lodged on 05/09/2013 alleging theft of 45766 unit causing loss of Rs.5,11,743/- and levy of Rs.3,30,000/- towards compounding was also charged. The assessment sheet was served on the accused.

6. PW-1, who was subjected to cross examination, admitted that the meter was installed in the tin box, provided which was locked and sealed and custody of the key was with junior engineer, who used to take reading of the meter upon his visit. He then noticed that when flying squad visited the spot, box was found in locked condition and was also sealed.

7. It is then brought on record in the cross examination that junior engineer regularly used to visit premises of the accused for taking down reading of the meter so as to raise bill of energy consumption. The seizure panchnama of the meter in question was disputed, as though same was prepared in the presence of representative of the accused, however, the details of such report are not mentioned. The other panch witnesses to Exhibits-20 and 21 i.e. spot panchnama and inspection report, were the employees of MSEDCL and no independent witnesses were examined.

8. It is to be noted that the authority of the complainant PW-1 was also questioned so as to lodge F.I.R., as no authorization in his favour was produced on record to do so.

9. In the above referred background, learned Court below has inferred that the seizure of the meter, particularly in the light of evidence of PW-1 and witnesses to the seizure panchnama was at all not proved.

10. The testing of the meter though is of technical expertize knowledge, however, there is hardly any material noticed in the evidence so as to infer that there was tampering of the meter at the behest of present accused, which was duly proved by the MSEDCL from its witnesses. The fact that when the meter was checked, it was found in sealed condition, so also box in which the meter was installed, was also locked and was in sealed condition, has prevailed upon before learned Sessions Court so as to deliver verdict of acquittal. Learned Sessions Court, having overall view of the matter, particularly the evidence of PW-1 and 4 who were members of flying squad and other two independent witnesses, has reached to a conclusion that the prosecution has failed to bring home guilt of the accused.

11. In my opinion, in view of above discussion, the view as is expressed by learned Sessions Court so as to infer that respondent-accused is to be acquitted, does not call for any interference, as no material illegality could be noticed in the verdict. Leave, as is sought, to file appeal, is refused. The application seeking leave to file an appeal stands rejected.

[N.W. SAMBRE, J.]