

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 19th April, 2016

+ CRL.A.610/2012 & CrI.M.A.6521/2012

RAJU

..... Appellant

Through Mr.S.S.Ahluwalia, Advocate

versus

BSES RAJDHANI POWER LTD. & ANR. Respondents

**Through Mr.Rishab Raj Jain, Advocate
for respondent No.1.**

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. The appellant impugns the judgment dated 18th January, 2012 passed by the learned Special Electricity Court, Dwarka, New Delhi in CC No.408/10/08 u/s 135 of Electricity Act, 2003 whereby the appellant was held guilty under Section 135 of Electricity Act, 2003 (hereinafter referred to as "the Act") and order on sentence dated 25th January, 2012 whereby he was sentenced to pay a fine of Rs.1,45,566/- in default to undergo simple imprisonment for four months. He was also liable to pay civil liability u/s 154(5) of the Act which was assessed to Rs.97,044/- along with interest @ 6% per annum from the due date of the bill, i.e., 23.07.2008 till its realization. The amount of civil liability was to be paid out of fine, if realized.

2. A complaint under Section 135 of the Act was filed by the respondent/complainant against the appellant, *inter alia*, on the allegations that on 17th June, 2008, at 12:55 pm, a joint inspection team headed by Mr. K.P. Solanki, Sr. Managar, Enforcement of the complainant company along with photographer Sh. Jai Prakash from M/s Arora Photo Studio inspected the premises number A-11-12, JJ Cluster, Maya Puri, New Delhi which was used and occupied by accused who disclosed his name as Raju. No electricity meter was found installed at the premises. Accused was indulging in direct theft of electricity by tapping LV mains of the complainant with the help of wires which were connected to the connected load of the premises as shown in diagram prepared at page 3 of inspection report. The connected load was 12.510 KW used for non-domestic purposes. The videography of the premises was done. The wires were removed and taken into possession vide separate seizure memo. Inspection report including meter report and load report were prepared and offered to the accused who refused to receive and sign the same. A theft bill was raised against the accused which remained unpaid. Hence the complainant was filed.

3. Two witnesses were examined by the complainant in pre-summoning evidence. Thereafter the accused was summoned for offence u/s 135 of the Act. Notice under Section 251 Cr.P.C. was given to the accused to which he pleaded not guilty and claimed trial.

4. Four witnesses were examined by the complainant to substantiate its case. All the incriminating evidence put to the accused was denied by him in his statement u/s 313 Cr.P.C. wherein he took the defence that he was not

using the premises. One meter was installed in his name in the premises. There was no theft of electricity, however, he did not prefer to lead any defence evidence.

5. After evaluating the oral and documentary evidence led by the complainant, vide impugned judgment it was held that complainant was able to establish that appellant was found indulging in direct theft of electricity but it could not be prove that it was for non-domestic use therefore, he was convicted for committing theft of electricity for domestic purpose, however, no substantive punishment was awarded to him in view of his plea that he was a first offender; he has family to support including his children; the complainant could not prove the non-domestic use of the premises. As such, by taking liberal view, only fine was imposed upon the convict.

6. Challenge is laid by learned counsel for the appellant to the impugned judgment on the ground that there are allegations of direct theft of electricity by the appellant for non-domestic use and it is alleged that videography was done, however, it was admitted in cross-examination by the complainant's witnesses that the appellant was not shown in the videography. Moreover, no document was collected by the complainant to prove that *jhuggi* belongs to him. Moreover, there was no pole in the area and, therefore, plea that accused was committing direct theft of electricity is fallacious. No independent witness was joined in the raid, as such, prosecution has failed to bring home the guilt of the accused beyond reasonable doubt and the appellant is entitled to be acquitted of the offence.

7. Per contra, learned counsel for the respondent submits that although it is true that in the videography, the appellant is not shown but that itself is not sufficient to infer that either the jhuggi does not belong to the appellant or he was not present at the spot. In this regard, reference was made to para 6(d) and (e) of the grounds of appeal wherein there was no specific denial that jhuggi does not belong to the appellant. The only plea taken was that the appellant was not present at the jhuggi on the alleged date of inspection and he was in his native place. If according to the appellant, the jhuggi does not belong to him, then it was for him to prove as to whom the jhuggi belongs. Raiding party was not authorized under the Electricity Act to seize lathe machine and five hand moulding machines. Although there was ocular testimony of the complainant's witnesses and the inspection report, to show that the appellant was using the electricity for non-domestic purposes, however, since the machines etc. were not shown in the videography, therefore, benefit was granted to the appellant for user of the premises for domestic purposes. The impugned judgment does not suffer from any infirmity which calls for interference.

8. In rebuttal, learned counsel for the appellant admitted that the *jhuggi* belongs to him but he was not present at the time of raid and there was no direct theft of electricity.

9. I have given my considerable thoughts to the respective submissions of learned counsel for the parties and have carefully perused the record.

10. Out of four witnesses examined by the prosecution, material witnesses are PW1-Sh. Naveen, DET, Division Punjabi Bagh, BSES, RPL,

Delhi and PW4-Sh. K.P. Solanki, Sr. Manager, Division O & M, Vasant Kunj, BSES RPL, New Delhi. It has come in the statement of PW1-Naveen that on 17.06.2008, he along with Mr.K.P. Solanki (Sr.Manager), Mr.G.P.Singh (FE), Randhir (Lineman), Mr. Jai Prakash (videographer) from M/s. Arora Photo Studio along with CISF and Delhi Police Team inspected the premises bearing A-11-12, JJ Cluster, Maya Puri, New Delhi. During inspection, it was found that no electricity meter was installed at the site for supply of electricity. At the time of inspection, one person was present at the spot who was found to be user of the premises and that person disclosed his name as Raju. At the time of inspection, accused/user was using the electricity by directly tapping from LV Mains of the complainant company for non-domestic purpose, i.e., for running hand moulding machine, electrical appliances etc. The connected load was found to be 12.510KW. Single core blue colour wire of size 7/22 SWG and of length 0.75 meter was seized. Videography was conducted by Jai Prakash, Photographer from M/s. Arora Photo Studio. Inspection report, meter details report, load report and seizure memo Ex.CW2/A to Ex. CW2/D were prepared at the site. The reports were offered to the accused but he refused to receive and sign the same. Later on, the complainant company had raised a theft assessment bill Ex.CW2/F against the accused.

11. To the same effect is the testimony of PW4-Sh.K.P. Solanki. Despite cross-examination, material could be elicited to discredit the testimony of these witnesses. It has come in the cross-examination that area pertaining to the raid is a slum area and the same was electrified. The gate of the premises was opened and three persons including Raju were present at the

time of inspection. The persons present at the premises were asked to produce the documents pertaining to the ownership/user-ship of the raided premises but they refused the same. They denied the suggestion that there was no BSES pole in the area pertaining to the raided premises within a distance of 1 km or that no raid was conducted at the premises. Initially learned counsel for the appellant submitted that there was no proof that jhuggi belongs to the appellant, however, subsequently, it was admitted by him that the same belongs to the appellant. The main thrust of the argument of the learned counsel for the appellant is that no independent person was joined in the raiding party. According to PW1 and PW4, besides the four team members, there were also officials from CISF and Delhi Police. It is true that nobody from Delhi Police or CISF has been examined by the complainant but that itself is not sufficient to discard the testimony of PW1&4 with whom no animosity, ill will or grudge is alleged by the appellant. No reason has been assigned for his false implication in this case. Moreover, a plea was taken by him that at the relevant time, he was not present at the spot and has gone to his native village, however, no evidence has been led by him to substantiate this fact. On the other hand, it is disclosed by the complainant's witnesses that the inspection was carried out in the presence of the appellant. The inspection report, meter details report, load report etc. were prepared at the site which was offered to the accused, however, he refused to receive and sign the same. There is no challenge to this part of their testimony in cross-examination. Moreover, although a plea was taken that one meter is installed in his name in the premises and there was no theft of electricity, however, the appellant failed to substantiate this plea as neither the electricity connection number has been disclosed nor any

electricity bill which may have been received and paid by him has been placed on record or proved. Under the circumstances it was rightly held that the accused was found at the spot and was found indulging in direct theft of electricity in the premises without having any electricity connection.

12. According to the complainant, the electricity was being used for non-domestic purpose and as per raid report Ex.PW2/C, one lathe machine and five hand moulding machines and three fan including other appliances were found in the premises and, therefore, the connected load was assessed as non-domestic purpose and bill was issued accordingly, however, the CD Ex.CW2/E did not show the existence of lathe machine and hand moulding machines. Moreover, there was nothing on record that any finished goods were lying at the site or what commercial activity was going on in the premises, as such, benefit was given to the appellant by observing that the complainant could not prove that the premises was used for commercial purposes. However, the videography shows the existence of one tube light, one ceiling fan, one pedestal fan, one TV and one heater which are ordinarily used for domestic purposes, as such, it was held that the domestic user of electricity connection was proved. Under Section 135 of the Act, the onus was on the complainant to prove theft of electricity on the part of the accused, which was duly discharged by them. Thereafter the onus shifted upon the accused to show that he was not indulging in theft of electricity. Nothing was placed on record by him to show that he was having any authorized meter or was getting electricity by lawful means, therefore, he failed to discharge the onus. Accordingly, he was convicted of the offence.

There is no infirmity in this finding of the Special Electricity Court which warrants interference.

13. As regards the sentence, the bill was raised for a sum Rs.4,65,812/- on a load of 12.510 KW for commercial purposes, however, since the complainant failed to prove the commercial purpose, it was taken that the convict was using the load for domestic purposes, as such, the load comes to 2.5 KW and the amount comes to Rs.97,044/-. Taking the same into consideration coupled with the circumstances, set up by the convict regarding hardship which he will face in case any substantive sentence is awarded to him, the Court took a liberal view while awarding only the sentence of fine amounting to Rs.1,45,566. Civil liability was required to be assessed in view of Section 154(5) of the Act which was assessed at Rs.97,044/- and, therefore, it was ordered that the amount of civil liability be paid out of fine, if realized. Over and above, the appellant was also directed to pay interest @ 6% per annum from the due date i.e., 23rd July, 2008 till its realization. It was further ordered that the convict is entitled for interest @ 6% per annum on the amount already deposited by him.

14. Counsel for the appellant submits that the appellant is a rickshaw puller and earns hardly around Rs.150/- per day. As such, amount of fine and civil liability is upheld however three months time is granted to the appellant to pay the same. In case said amount is paid then the interest of 6% as awarded will be waived off failing which the complainant will also be entitled to interest as awarded by the Special Electricity Court.

The appeal stands disposed of accordingly.

Trial Court record be returned forthwith.

Pending applications, if any, also stand disposed of.

(SUNITA GUPTA)
JUDGE

APRIL 19, 2016/rs

