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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.822 OF 2002

State of Maharashtra	]	<u>Appellant</u>
Through :	]	Original
Jail Road Police Station, Solapur	]	Complainant

V/s.

Basavraj Sidramappa Kandalgaonkar	]	<u>Respondent</u>
age: 53 years, Occn. Service	]	Original
r/o block No.10, Vijapur Road	]	Accused
Solapur	]	

Mr. Amit Palkar, for the State
Mr. Ujwal Agandsurve, for the Respondent.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

CLOSED FOR ORDER ON : 08th MAY, 2017.

JUDGMENT PRONOUNCED ON : 9TH MAY 2017.

JUDGMENT

1] By this appeal, the State is challenging the judgment and order dated 27th February, 2002 passed by the Judicial Magistrate First Class No.3, Solapur, in R.C.C. No.117 of 1998 thereby acquitting respondent for the offence punishable under Sections 420,

511, 427 of Indian Penal Code and Sections 39, 44 and 56 punishable under Section 138 of the Indian Electricity Act.

2] Brief facts of appeal can be stated as follows :-

P.W.1 Birajdar was serving in Maharashtra State Electricity Board, at Sub Division Kavita Nagar, Solapur, since 1993 as Junior Engineer and was allotted the work to inspect the electric meters, to entertain complaints of consumers and to find out cases relating to the theft of electric energy. It is the case of prosecution that on 18.5.1998 at about 11.00 a.m. while P.W.1 Birajdar was present in his office, P.W.7 Manik Yedur came to his office and informed him that the respondent, who was serving in M.S.E.B. as Electric Meter Reader, has approached P.W.7 Yedur on 17.5.1998 with an assurance of reducing actual consumption of electric meter installed in his textile company, on payment of Rs.6,000/- for the said work. P.W.7 Yedur further informed P.W.1 Birajdar that he has told respondent that he will think about the proposal given to him. P.W.1 Birajdar, then suggested to P.W.7 Yedur that he should accept the said proposal of respondent so that respondent can be trapped in committing such dishonest act of tampering with the electric meter

and reducing reading of the electric meter thereby causing financial loss to the M.S.E.B. Accordingly, P.W.7 Yedur informed respondent and it was decided that respondent would visit the factory premises of P.W.7 Yedur on 29.5.1998 in between 6.00 a.m. to 8.00 a.m. for reducing the electric meter reading.

3] Accordingly a trap was arranged by P.W.1 Birajdar with the assistance of his superior officer and also P.W.2 Abhimanyu Deokar- Assistant Engineer working with M.S.E.B. Police help was also sought. On that day, they visited the premises of P.W.7 Yedur at 6.30 a.m. There, they trapped respondent while breaking open the seals of the electric meter installed in the factory premises of P.W.7 Yedur and thereby reducing the meter reading and actual consumption. P.W.1 Birajdar clicked photographs while respondent was breaking open the seals and reducing the meter reading. Respondent was caught raid handed and from his possession various articles used for breaking open the seals and reducing consumption were seized under panchnama. The statement of respondent also came to be recorded in which he admitted the commission of such act. Then P.W.1 Birajdar, took respondent and seized articles to Jail

Road police station and there lodged complaint Exh.27 against respondent.

4] On his complaint, C.R.No.122 of 1998 came to be registered against respondent. During the course of investigation, statements of witnesses came were recorded. Respondent was arrested and after completion of due investigation, chargesheet came to be filed in the court of Judicial Magistrate First Class No.3, Solapur.

5] On appearance of respondent, trial Court framed charge against respondent vide exh.7. Respondent pleaded not guilty and claimed to be tried, raising the defence of denial and false implication.

6] In support of its case, the prosecution examined in all 7 witnesses and on appreciation of their evidence and in view of interse contradictions and inconsistencies in their evidence, trial Court was pleased to hold that charge against respondent is not proved beyond reasonable doubt. As a result the trial Court acquitted

the respondent of all the charges levelled against him.

7] This judgment of the trial Court is challenged in this appeal by learned APP by submitting that the trial Court has given undue importance to the contradictions and inconsistencies which are of a very minor nature. It is the contention of the learned APP that in this case there is consistent evidence of P.W. 1 Birajdar and P.W.2 Deokar, supported with evidence of P.W.6 Constable Gobre P.W.5 Yeshwant Bidwali, who was working as Executive Engineer and had obtained permission for prosecution of respondent. This oral evidence was fully corroborated from the photographs and panchnama. In the face of such strong evidence, according to learned APP, the trial Court has committed a grave error in acquitting the respondent, by extending him the benefit of doubt on exaggerating the minor contradictions and omissions in the evidence of these witnesses. According to learned APP, therefore, the impugned judgment and order is required to be quashed and set aside.

8] Per contra, learned counsel for respondent has fully supported the impugned judgment and order by pointing out that

the material witness in the case, namely P.W.7 Yedur has given fatal admissions in his cross examination, thereby completely disowning the case of prosecution. Despite that he was not declared hostile or cross examined by the P.P. In such situation, according to learned counsel for respondent, interested version of P.W.1 Birajdar and P.W.2 Deokar, who were working alongwith respondent and were on cross terms with respondent, cannot be relied upon as gospel truth. It is submitted that, even both the panch witnesses P.W. 3 Bhimrao Mitha and P.W.4 Kankayya Yemul, to the panchnama, have not supported the prosecution case and hence there is no independent corroboration to the evidence of P.W.1 Birajdar and P.W.2 Deokar. According to learned counsel for respondent, therefore, the impugned judgment and order passed by the trial Court being just, legal and correct, in the appeal against the acquittal, having regard to the limited scope of jurisdiction of the Appellate Court, this Court should not only be slow but should also restrain itself from interfering with the impugned judgment and order of the trial Court.

9] In the opinion of this Court also, as rightly submitted by learned counsel for respondent, this appeal being directed against

the judgment of acquittal, the scope of jurisdiction of this Court needs to be kept in mind. The law relating to the same also is fairly well settled in the plethora of the judgments of Apex Court, one of such judgment being in case of **Tota Singh -vs- State of Punjab, A.I.R. 1987 SC 1083**. In this case, the Apex Court was pleased to observe as under :-

“The jurisdiction of the appellate Court, in dealing with the appeal against the order of acquittal is circumscribed by the limitation that no interference is made with the order of acquittal unless the approach taken by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the court below is such which could not have been possibly arrived at by any Court acting reasonably and judiciously and is therefore liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the Court below has taken a view which is a plausible one, the appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous.”

10] In another decision with **C. Antony -vs- K.G. Raghavan Nair A.I.R. 2003 SC 182**, the Apex Court was further pleased to observe,

“Though the appellate Court has power to review the evidence upon which the order of acquittal is passed still while exercising such an appellate power in a case of acquittal, the appellate Court is under an obligation to first come to a conclusion that the conclusions arrived at by the trial Court for good reasons are either unreasonable or contrary to the material on record. In the absence of any such finding, the High Court could not take a contra view merely because another view was possible on the material on record”.

11] In the light of this settled legal position, if this Court appreciates the evidence on record, it is found that the genesis of the prosecution case is on the information given by P.W.7 Yedur. According to prosecution case, it was P.W.7 Yedur, who has informed P.W.1 Birajdar that respondent has approached him on 17.5.1998 and given a proposal of reducing the actual consumption of electric meter so as to reduce the electricity bill of P.W.7 Yedur, on his giving an amount of Rs.6,000/- in consideration thereof.

12] According to further prosecution case, as deposed by P.W.1 Birajdar, that he told P.W.7 Yedur to accept this offer of respondent. Accordingly on 28.5.1998, trap was arranged in the early morning. It is the evidence of P.W. 1 Birajdar and P.W.2 Deokar that at the time of trap, they found respondent breaking open the seal of one of the electric meter of the factory premises of P.W.7 Yedur and reducing reading of electric meter. They caught him raid handed. They also took photographs of respondent while doing this act and then respondent admitted commission of such act. Panchnama was drawn accordingly and respondent was taken to police station, where complaint was lodged against him vide exh. 27.

13] Thus, the material evidence in this case was that of P.W.7 Yedur. In his examination-in-chief no doubt he has deposed that of respondent making such proposal; he had made oral complaint to P.W.1 Birajdar about it and on 28.5.1998 P.W.1 visited his factory and noted down the meter number and meter reading. He has also deposed that thereafter on 29.5.1998, respondent came to his factory and while respondent was busy in work of tampering with

the meter reading, P.W.1 Birajdar came there, took some photographs and made panchnama. However, in his cross-examination, this witness has given a totally different version. He has stated that he had not met P.W.1 Birajdar either on 17.5.1998 or on 18.5.1998. He also stated that contents in the complaint which he has lodged with P.W.1 Birajdar and the xerox copy of which he has produced on record, were written as per instructions of P.W.1.Birajdar. Further he has admitted in his cross-examination that respondent has never visited his factory prior to the date of incident or unless he was called. He has also admitted that he is unable to tell the reading of which electric meter was decided to be reduced. He is also unable to tell the exact meter reading and payment regarding any of the meter as on 28.5.1998. According to him, on 29.5.1998, on the receipt of phone call from P.W.1 Birajdar, he came to the factory and there he found some wire pieces lying in the meter room. According to him, respondent did not do anything with the meter on that day in his presence; even the photographs which were produced on record by P.W.1 Birajdar vide Exh. 16 to 25 were not taken in his presence, therefore, he has no idea who has actually taken those photographs. Further he has admitted that,

merely on the basis of those photographs, he cannot give any details about the actual things which happened on that day. He has further stated that electric meters were not seized from him and he has also not checked or verified their readings. He is also unable to say as to who had accompanied P.W.1 Birajdar on 29.5.1998. According to him after testimony of P.W.1 Birajdar was recorded in Court in this case, on 12.9.2000, P.W.1 Birajdar had come to his factory and requested him to give two electric meters, as same were required in the Court. Accordingly he gave those meters to P.W.1 Birajdar and P.W.1 Birajdar assured him to replace remaining 10 meters after recording of his evidence. He is, however, unable to tell the reason why those two particular meters were chosen.

14] Thus, even a cursory glance to the cross examination of this witness makes it clear that that he has not supported the prosecution case, though he was a star witness of prosecution. It is surprising to note that despite his giving such fatal admissions to the defence counsel in his cross examination, this witness is not disowned or declared hostile by prosecution, with permission of Court to cross examine him further. As a result, what is admitted by

him in his cross examination, has remained unshattered on record and these admissions go to show that this witness cannot be relied upon to prove prosecution case.

15] The other two independent witnesses who have not supported the prosecution case are panchas, namely P.W.3 Bhimrao and P.W.4 Kankayya. Both of them were workers in the factory of P.W.7 Yedur. However, both of them have denied the execution of panchnama Exh.26 in their presence. Both of them were declared hostile and cross examined by the learned APP, but nothing worthwhile is elicited in their cross examination to prove prosecution case. As a result independent independent corroboration to the testimony of P.W 1 Birajdar, is not coming from panchnama or evidence of panchas.

16] For that matter even P.W.2 Deokar, who as per prosecution case, had accompanied P.W.1 Birajdar at the time of trap and in whose presence panchnama was made, has admitted in his cross examination that he does not know who had signed the panchnama and when it was prepared. Furthermore, he has also

admitted that he does not know how many photographs were taken by P.W.1 Birajdar and what was its chronological order. He has further admitted in his cross examination that he has not stated before the police in his statement that he and P.W.1 Birajdar were sitting in one room at the factory premises of P.W.7 Yedur on 29.5.1998 and he had seen respondent and P.W.7 Yedur entering into one room. After panchnama, he had also not accompanied P.W.1 Birajdar to Police station.

17] As regards evidence of P.W.6 Police Constable Bhalchandra Gobre, who had accompanied P.W.1 at the time of laying trap, he has admitted that he was not given in writing any order to do so. He has further admitted that he does not remember which articles were seized under panchnama and who dictated the contents of panchnama. According to him, after the trap P.W.1 Birajdar and P.W.2 Deokar had came to the police station together; whereas P.W.2 Deokar has denied the said fact.

18] Coming to the evidence of P.W.1 Birajdar, he has admitted that the only case of M.S.E.B. against respondent is that

seal of meter No.1108919 was broken. He has further admitted that there are no allegations of theft of electricity through the said meter. According to him, he has not taken any acknowledgement of seal of any electric meter from P.W.7 Yedur. Moreover when he had visited the factory premises of P.W.7 Yedur on 28.5.1998, he had not drawn panchnama of the seals of meters and reading of the meters. Further he has admitted that the testing report of the meter was not produced at the time of filing complaint. He has also admitted that he has not verified the original seal numbers of the said meters prior to the raid. Further he has admitted that there was no financial loss to the M.S.E.B. in the instant case.

19] Significantly, his evidence that respondent admitted before him, everything including payment of Rs.6,000/- and also tampering with the seals with a view to reduce the electric meter reading is also difficult to be digested. It is to be noted that respondent was very much working in the M.S.E.B., as Meter Inspector. Therefore, it is not probable that respondent will admit such things in the presence of his superior. The trial Court has, has thus, rightly disbelieved the evidence of P.W.1 Birajdar on this

aspect. The trial Court, in its judgment also considered various other interse contradictions between the evidence of this witness and other witnesses like it is nowhere stated in the complaint Exh.27 that P.W.1 Birajdar visited the factory premises of P.W.7 Yedur on 28.5.1998 and took meter reading, which was material fact in order to confirm that on the next day respondent, by tempering with the meter reduced its reading. He has also not stated as to which method was adopted by respondent for reducing meter reading, out of several methods. The trial Court has also considered specific defence raised by the respondent that he and P.W.1 Birajdar are belonging two different unions of workers and they are on cross terms with each other, therefore, the possibility of respondent being implicated falsely in this case, out of enmity cannot be ruled out.

20] Thus, from perusal of the impugned judgment and order of the trial Court, it cannot be said that the view adopted by the trial Court is unreasonable or perverse, in the sense it is contrary to the material on record. In the absence of such finding, this Court cannot take contra view merely because another view may be possible on the basis of material on record. As a result, no interference is

warranted in the impugned judgment and order of the trial Court as the view adopted by the trial Court is also plausible view. Hence following order.

Order

Appeal stands dismissed.

[DR.SHALINI PHANSALKAR-JOSHI, J.]