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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1389 OF 2003

The State of Maharashtra

..Appellant.

V/s.

Ramrao Babanrao Jagtap, Major,
Occu: Business,R/o.Shirur,
Taluka Shirur, District Pune.

..Respondent.

Mr.S.V.Gavand, APP for the Appellant-State.

Mr.M.T.Pise for the Respondent.

Coram : N.M.Jamdar, J.

Date : 30 June 2017

ORAL JUDGMENT

By this appeal, the State of Maharashtra has challenged the judgment and order dated 15 May 2003 passed by the Judicial Magistrate First Class, Ghodandi, Pune acquitting the Respondent-accused for the offence punishable under sections 39 and 44 of the Indian Electricity Act, 1910.

2. A First Information Report was lodged on 14 October 2000 by the Deputy Engineer, Maharashtra State Electricity Board, Pune with the police station, Ghodnadi, Pune. According to the case

of the prosecution, the Respondent-accused, who was the owner of Ajinkyatara Dhaba, had committed theft of electricity by taking illegal connection from the electricity pole nearby. A panchanama was drawn. Crime under section 379 of the Indian penal Code read with sections 39 and 44 of the Indian Electricity Act, 1910 was registered. Charge-sheet was filed and the case was tried by the learned Magistrate. The prosecution examined five witnesses and produced the complaint and panchanama on record. The learned Magistrate held that the ownership aspect of the Respondent was not proved and the electricity bill showed the name of some other person. The learned Magistrate also held that, looking at the length of the wire that was seized, it was not possible to take connection from the nearby pole. Accordingly, the learned Magistrate by the order impugned in this appeal, acquitted the Respondent-accused.

3. Heard Mr.S.V. Gawand, learned APP for the State and Mr.M.T.Pise, learned counsel for the Respondent.

4. Mr.Gawand, learned APP submitted that the trial Judge has erred in holding that the theft could not have taken place in view of the position of the electric pole. He submitted that it is not necessary that the connection could be taken from the electric pole as it was taken from the wire. I have seen the spot panchanama and the complaint. In the complaint, it is stated that bamboos were used along with the wire to take illegal connection. The length of the

bamboo is 12 ft. and wire is 17 ft. The learned Magistrate was not correct when he states that it was not possible to take connection from 40 ft. away pole with about 17 ft. length wire.

5. However, there is yet another ground on which the Respondent has been acquitted i.e. of ownership and connection of the Respondent-accused to Ajinkyatara Dhaba. It is the specific case of the prosecution, as seen from the F.I.R. against the Respondent-accused, that he was the owner of Ajinkyatara Dhaba, who had committed theft to take electricity illegally to the said Dhaba. This factum was denied by the Respondent-accused. Witness Arun Thorat, the Sub-Engineer admitted in his cross-examination that he has not verified or made inquiries regarding the ownership of the Dhaba or the licence holder. The electricity bill was produced on record at Exhibit 32. The name and address is mentioned as “Ramdas Baban Saswade, Ajinkyatara Dhaba”. The name of the Respondent-accused is Ramrao Babanrao Jagtap. How the Respondent-accused is connected with Ajinkyatara Dhaba and consequently committed the theft was not brought on record satisfactorily by the prosecution. The case of the prosecution that the Respondent is the owner is falsified. In the circumstances, the view taken by the learned Magistrate cannot be said to be a perverse view. Consequently, there is no merit in the appeal and it is accordingly dismissed.

(N.M.Jamdar, J.)