

BAIL SLIP

The petitioners (Accused 1 and 2 Namely Krishnaraj (A1) and Pazhanisami(A2) were released on bail in CrI MP.1/09 in CrI.A.No.240/09 date 20/05/09 on the file of this court

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.08.2017

C O R A M

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Appeal No.240 of 2009

1. Krishnaraj
S/o.Arumuga Gounder

2. Pazhanisami
S/o.Nanjappa Gounder

... Appellants/Accused

-Vs-

State by
Inspector of Police,
Karumathampatti Police Station,
Coimbatore District.
[Crime No.289 of 1999]

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of the Code of Criminal Procedure against the judgement dated 27.04.2009 in Special C.C.No.2 of 2008 passed by learned Principal Sessions Judge/Special Judge, Coimbatore and to set aside the same.

For Appellants : Mr.N.R.Elango
Senior Counsel for M/s.K.Goviganesan

For Respondent : Mr.V.Arul
Additional Public Prosecutor.

J U D G M E N T
सत्यमेव जयते

This appeal arises against the conviction of the appellants for an offence under Section 135 of Electricity Act, 2003 in case tried in Special C.C.No.2 of 2008 on the file of learned Principal Sessions Judge/Special Judge, Coimbatore.

2. The case of the prosecution is that on 17.08.1999, the appellants/accused are committed theft of electricity worth about Rs.1,54,576/- by way of stopping the electric meter. PW-1 preferred a complaint-Ex.P2 before PW-4 Sub-Inspector of Police, Karumathampatti Police Station and a case in Crime No.289 of 1999 was registered against the appellants/accused for the offences under Sections 39(i) and 44(i)(c) of Indian Electricity Act and Section 379 IPC. The FIR is Ex.P7. PW-4 went to the

place of occurrence and prepared Observation Mahazar Ex.P6 and Rough Sketch Ex.P8 in the presence of PW-3 and another. He seized Wooden Meter Board, Fuse Carrier 3 Nos., Meter safety Box (G.I.Box) and Film Polyester paper inserted in Meter Box, under Seizure Mahazar Ex.P5. He examined PWs-1 to 3 and recorded their statements. Upon completion of investigation, on 20.08.1999, he filed charge sheet informing the commission of offence under section 135 of Indian Electricity Act. The case was tried in Special C.C.No.2 of 2008 on the file of learned Sessions Judge (Special Court), Coimbatore.

3. Before trial Court, prosecution examined 4 witnesses and marked 8 exhibits and 1 material object. None were examined on behalf of the defence nor any exhibits marked. When questioned u/s.313 Cr.P.C., accused denied charges. On appreciation of materials before it, trial Court, under judgement dated 27.04.2009, convicted the appellants/accused for offences u/s.135 of Electricity Act, 2003 and sentenced them to 2 years R.I. and fine of Rs.5,000/- each i/d 3 months S.I each.

4. Heard learned Senior counsel for appellants and learned Additional Public Prosecutor for respondent. Perused the records.

5. This appeal succeeds on the sole contention of learned Senior Counsel that the alleged occurrence is of 17.08.1999 and the final report was filed in the year 2001, informing the commission of offence under Sections 39 and 44 of Indian Electricity Act, 1910, whereupon cognisance was taken by the jurisdictional Magistrate for offences under Sections 39(i) and 44(i)(c) of Indian Electricity Act, 1910, on 09.10.2002. But for some inexplicable reason, the matter was put up for trial before Court below and Court below framed a charge for offence under Section 135 of Electricity Act 2003, which had come into force only on 01.06.2003.

6. This Criminal Appeal succeeds on the reasoning that no charge under the Electricity Act, 2003 can be framed for offence admittedly committed prior to coming into force of such enactment and investigation therein also stands completed therebefore. Under Section 185 of the Electricity Act, 2003, the Indian Electricity Act, 1910 (9 of 1910) has been repealed. Sub-Section 5 thereof informs that save for matters specifically otherwise provided for Section 6 of the General Clauses Act, 1897, with regard to the effect of repeals shall apply.

7. Section 6 of the General Clauses Act, 1897, reads as follows:-

"6. Effect of repeal - Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) revive anything not in force or existing at the time at which the repeal takes effect, or

(b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed, or

(d) Affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed, or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding, or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.

6A. Repeal of Act making textual amendment in Act or Regulation- Where any (Central Act) or Regulation made after the commencement of this Act repeals any enactment by which the text of any (Central Act) or Regulation was amended by the express omission, insertion or substitution of any matter, then, unless a different intention appears, the repeal shall not affect the continuance of any such amendment made by the enactment so repealed and in operation at the time of such repeal."

8. Thus, trial in the present present case ought to have been proceeded with in keeping with the provisions of the Indian Electricity Act, 1910. The failure to do so and the prosecution of the case in keeping with the Electricity Act, 2003, totally vitiates the proceedings.

9. The Criminal Appeal shall stand allowed. The conviction and sentence passed by learned Principal Sessions Judge/Special Judge, Coimbatore, in Special C.C.No.2 of 2008 on

27.04.2009, are set aside and appellants are acquitted of all charges. Fine amount, if any, paid shall be refunded Bail bond (s), if any, executed shall stand cancelled.

sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

kmi

To

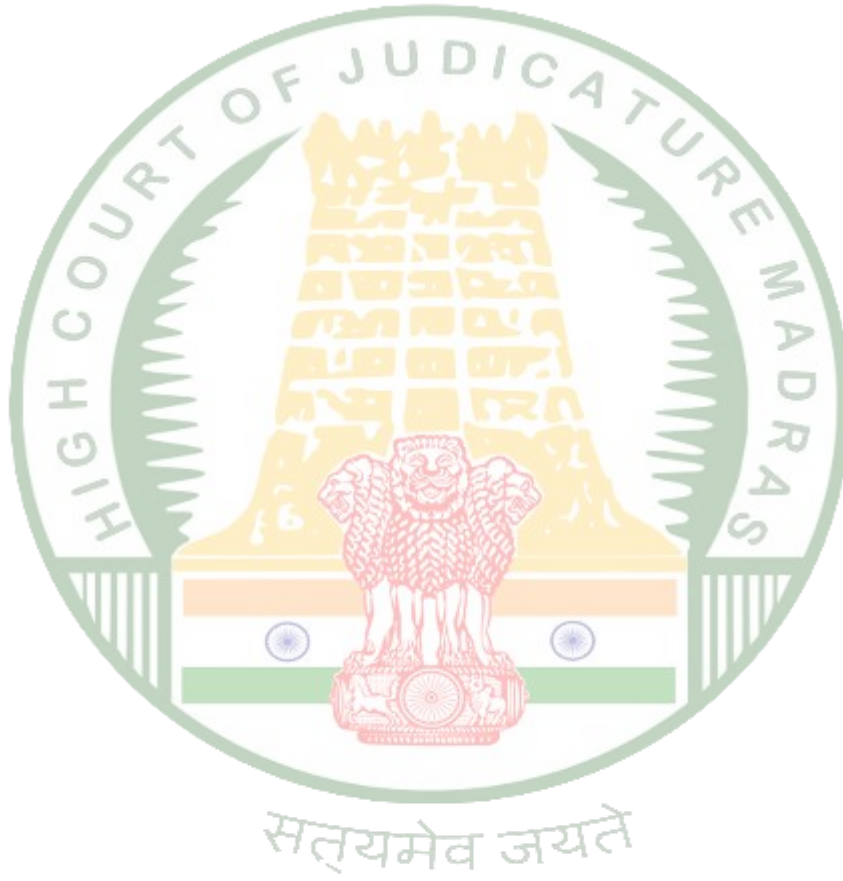
- 1.The Principal Sessions Judge,
Special Court,
Coimbatore.
- 2.The Inspector of Police,
Karumathampatti Police Station,
Coimbatore District.
- 3.The Public Prosecutor,
High Court, Chennai.
- + 1 cc to M/s.K.Govi Ganesan, Advocate sr.60652

RK[CO]
RR 27/11/2017

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