

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.446 of 2009

1.Subramaniam

2.Thulasiammal Appellants/Accused

Vs

State rep. By
The Inspector of Police,
Annur Police Station,
Coimbatore District.
(Crime No.83 of 2002)

... Respondent/Complainant

Criminal Appeal filed under Section 374(2) of Cr.P.C., to set aside the judgment passed in Spl.C.C.No.5 of 2008 on the file of the Principal District and Sessions Judge cum Special Court, Coimbatore dated 16.07.2009.

For Appellant : Mr.K.Selva Kumarasamy
for Mr.S.Gunalan

For Respondent : Mr.R.Sekar
Govt. Advocate (Crl. Side)

JUDGEMENT

The appellants are A1 & A2 in Spl.C.C.No.5 of 2008 on the file of the Principal District and Sessions Judge cum Special Judge, Coimbatore. They stood charged for offences under Section 135 of Electricity Act. After full-fledged trial, the learned Sessions Judge, by judgment dated 16.07.2009, convicted A1 and A2 under Section 135 of the Electricity Act and sentenced them to undergo Rigorous Imprisonment for 6 months and to pay a fine of Rs.1000/- each, in default to suffer rigorous imprisonment for one month. Challenging the above said conviction and sentence, A1 and A2 are before this Court with this Criminal Appeal.

2. The case of the prosecution, in brief, is as follows: A1 and A2 are the son and mother respectively. They are residing at Door No.3/77, Thulasiram Textiles, Pothiyampalayam, Coimbatore District. A2 is the owner of the premises and having service connection in her name bearing SC

No.127, Pothiyampalayam, Coimbatore District, to run powerlooms. According to the prosecution, there are also two other service connections available in the said premises standing in the name of A2 in SC No.63 - meant for residential purpose and SC No.199 - meant for agricultural purpose.

3. On 18.02.2002, P.W.1, the then Assistant Executive Engineer along with P.W.2, the then Assistant Executive Engineer made a surprise inspection at the above premises. At that time, both A1 and A2 were present. P.W.1 also gave a notice of inspection to A2 and in the presence of A2, P.W.1 & P.W.2 conducted inspection, during which, they noticed the seals on the meter in the service connection relating to the power-looms were found tampered with. So, they developed suspicion and on opening the meter, they found that the wire in the meter got disconnected. The other seals in the meter were also found tampered with. Then, P.W.1 prepared an observation mahazar and a report in this regard. Thereafter, P.W.1 gave an offer to A1 & A2 to pay a sum of Rs.3,26,115/- as compounding fees so as to avoid any complaint to the police. A1 & A2 did not pay the amount. Therefore, P.W.1 preferred a complaint at Annanur Police Station under Ex.P.3. Based on the said complaint, P.W.5, the then Sub Inspector of Police, registered a case in Crime No.83 of 2002 for the offence under Section 39(1), 44(1), 44(1)(c) and Section 44(1)(d) of The Indian Electricity Act. After registering the complaint, he proceeded to the place of occurrence at 08.30 p.m. and prepared an observation mahazar under Ex.P.3 and a rough sketch Ex.P.8 in the presence of P.W.4 and another. He requested P.W.3 to take photographs of the meter board. He examined the prosecution witnesses P.Ws.1 to 4 and recorded their statements. He recovered the electricity meter along with wooden board [M.O.1 series]. Later on, P.W.5 arrested A1 at Pothampalayam bus stand on 19.08.2002 and forwarded him to the court for judicial remand. Then, he forwarded the material objects to the court for onward submission to the Forensic Science Laboratory for examination. He examined the photographer and collected the photographs with negatives. The photographs taken at the place of occurrence are M.O.2 (series) and negatives are M.O.3 (series). While so, P.W.5 was transferred. His successor P.W.6 assumed charge of the station on 10.08.2003.

4. P.W.6, the Inspector of Police, took up the case for further investigation. He obtained the report from the Forensic Sciences Laboratory and on completing the investigation, he laid the final report under Section 31(1), 39(1), 44(1c) of Indian Electricity Act against both the accused.

5. The learned Magistrate took cognizance on the said police report and after complying with the requirements of

Section 207 of Cr.P.C. committed the case to the Court of Sessions for trial.

6. Based on the above materials, the Court of Sessions framed a lone charge under 135 of The Indian Electricity Act. Both A1 and A2 denied the charge and, therefore, the Court of Sessions proceeded with the trial. In order to establish the case of the prosecution, as many as 6 witnesses were examined by the prosecution as P.Ws.1 to 6, besides 11 documents were exhibited and 3 material objects were marked. The meter along with the meter board was marked as M.O.1 [series] and Photographs and Negatives were marked as M.O.2(series) and M.O.3 (series) respectively.

7. P.W.1 and P.W.2 have spoken to about the inspection made and the examination made on the meter in question. P.W.3 has spoken about the photographs taken at the place of occurrence. P.W.4 has spoken about the preparation of observation mahazar by the Sub Inspector of Police. P.W.5 & P.W.6 are the investigating officers who have spoken to about the registration of the case and the investigation.

8. When the incriminating materials that appeared against the accused were put to them by the trial court under Section 313 of Cr.P.C., they denied the same. However, they did not examine any witness on their side, nor did they mark any document. Having considered the available materials, the trial court convicted the accused as stated in the second paragraph of this judgement. That is how, the accused are now before this court with this appeal.

9. I have heard the learned counsel appearing for the appellants/A1 & A2 and the learned Government Advocate (Criminal Side) for the State. I have also perused the records meticulously.

10. The learned counsel for the appellant would submit that absolutely there is no material to show that the appellants tampered with the meter and even if seals were found to be tampered with, no offence is made out under Section 135 of the Electricity Act, in absence of any allegation that any artificial means or means not authorized by the Board was used for abstraction of electric energy whereas the stand of the Board is that on finding several seals being tampered with, inspecting team have come to the conclusion that it had been intentionally done to suppress the actual recording. P.W.1 merely on finding that seals being tampered with, had come to the conclusion that there is likelihood of reducing the actual meter reading by means of foreign object, by tampering with the seals in the meter and opening the top of the meter. No material whatsoever has been produced by the prosecution to prove that what was done to the meter was a perfected artificial means by reason of which dishonest abstraction, consumption or use of electrical energy

was possible. The prosecution must have proved that energy was being consumed by the accused over and above what was recorded by the meter. The learned counsel for the appellants in support of his contention referred to a judgment in Ram Chandra Prasad Sharma v. State of Bihar AIR 1967 SC 349. In support of his case, the learned counsel also referred to a judgment of this court in State rep. by Sub-Inspector of Police v. Kali [C.A.No.986 of 1998 and Crl.R.C.No.1220 of 1998 dated 11.12.2006].

11. Per contra, the learned Government Advocate for the respondent would submit that the inspection was conducted by P.Ws.1 and 2 after issuing appropriate inspection notice under Ex.P1 and A1 acknowledged the same. In the presence of A1 only the inspection was carried out during which the seals in the electricity meter were found tampered with. Thereafter, the meter was seized with the board and on examination by the Experts in the Forensic Science Lab it was found that the seals were tampered with and by making such tampering, one could easily insert a foreign substance through the gap between the meter cover and base to stop the rotation of the disc and prevent registration of the consumption of the power in the meter reading. The appellants have got no explanation to offer for the same. The trial court has rightly found them guilty of offence and convicted them accordingly. There is no reason to interfere with the judgment of the court below. He, therefore, prays for dismissal of the appeal.

12. I have considered the rival submissions and also perused the records carefully.

13. P.W.1 was the then Assistant Executive Engineer, Tamil Nadu Electricity Board. He along with P.W.2, another Assistant Executive Engineer, has inspected the electricity meter installed at the appellants' premises. According to P.W.1 during such inspection the security seals in the meter have been found broken and tampered with. The top seal and the left seal of the meter were also found tampered with.

14. In Ex.P1, report, the expert from the Forensic Science Lab, Chennai, noticed the following defects on the meter in question:-

1. The damages on the screw bearing the right seal were due to mechanical means and they were not due to natural causes (vide para 2 (ii)).

2. The damages at the open end of the sealing wire of the top seal were also caused by mechanical means and they were not due to natural causes (vide para 2 (i))

3. The top seal and the left seal were tampered (para 1 (iii), 1(iv) and 2(i))

4. The right and left seals bear similar impressions. The top seals bear impressions different from the impressions of the right and left seals of the meter.

5. A thin metal wire or stick or film like substance could be inserted through the gap between the meter cover and the base and thereby, the rotation of the disc could be stopped causing non registration of the consumption of the power in the meter reading (vide para 2(ii))

Please note that

(i) the seal for the meter cabinet bearing S.No. "148 1065" was not received in this department.

(ii) The positions of the right and left seals of the meter have been described with respect to the meter and not with respect to the observer.

(iii) all seals were removed for the examinations and packed separately.

(iv) During examination a piece of the metal got detached from the left screw at the tip portion and it was packed separately.

The meter and seals are packed, sealed and returned herewith.

The report is to the effect that the damages to the seal were by mechanical means and they were not due to natural causes and there is likelihood of stopping the rotation of the disc to cause non registration of the consumption of the power in the meter reading by inserting a thin material through the gap between the meter cover and the base.

15. The evidence of P.W.1 and P.W.2 coupled with the Expert's Report Ex.P.11 would go to show that the seals were found broken and tampered with; there were damages to the open end of the sealing wire of the top seal and to the screw bearing the right seal ; and the top seals bear impressions different from the impressions of the right and left seals of the meter. According to the Expert, there was every possibility of inserting a stick or film like substance between the meter cover and the base in order to cause stoppage of registration of consumption of electricity power. But, absolutely there is no material to show that the appellants have tampered with the meter intentionally in order to dishonestly abstract the reading of the electricity consumption by any artificial means by inserting or using any foreign materials.

16. In Ram Chandra Prasad Sharma v. State of Bihar AIR 1967 SC 34, the Hon'ble Supreme court, in para 7, has held thus:-

"7. In our opinion, the conviction of the offences under Section 39 is unsustainable. It is no doubt true that the meter had been tampered with. But there is nothing to show that there was any perfected artificial means in existence so as to raise the presumption of dishonest abstraction under Section 39 prior to the stopping of the meter. The mere fact that the consumption of energy between June 28 and July 1, 1958 was about 300 units per day whereas it was much less prior to that date does not necessarily lead to the inference that in the past there was dishonest abstraction of electric energy. The rise in consumption between June 28 and July 1, could be accounted for by circumstances such as longer working hours, user of current in a wasteful manner, user of current for more appliances and so on. In the circumstances, therefore, we do not think that the High Court was right in convicting the appellants under Section 39 of the Act. We, therefore, set aside their convictions and sentences in respect of the offence under Section 39."

17. This court, following the above said dictum, in State rep. by Sub-Inspector of Police v. Kali [C.A.No.986 of 1998 and CrI.R.C.No.1220 of 1998 dated 11.12.2006], in para 23, has held as under:-

"23. In this case, it is relevant to be noted that P.W.2, the Assistant Executive Engineer, Tamil Nadu Electricity Board, has categorically stated in his cross-examination that there is absolutely no symptom of tampering found on the electricity meter at the time of inspection. He has further stated in his cross-examination that during his inspection, he has not found any signs of use of artificial means to abstract the electricity by tampering the meter seal. Added to this admission of P.W.2, it is also disclosed from the material available on record that one Pugalendhi, the official, who has fixed the seals on the electricity meter at the premises of A1 was not at all examined by the prosecution to prove its case. Therefore, the above said decision of the Apex Court is squarely applicable to the facts of this case."

18. P.W.1 in his cross examination admitted that during his inspection, the power-looms were running. It is not the specific case of the prosecution that at the time of

inspection P.W.1 found any dishonest abstraction of energy by using a foreign object. Even though P.W.1 denied the suggestion that there was increase in the average bi-monthly consumption preceding the date of inspection from July 2001, his evidence is to the effect that the units recorded during July 2001, September 2011, November 2001 and January 2002 were 4510, 5120, 6430 and 5220 units respectively which shows no abnormal variation in the meter reading. P.W.1 in his cross examination tacitly admitted that usually if energy theft is detected, the tampered meter should be replaced then and there. But, in the instant case, admittedly, the meter alleged to have been tampered with, was not replaced. P.W.1 and 2 inspected the premises of the accused on 18.02.202 and prepared report in this regard. The said report has not been filed as a document in this case on behalf of the prosecution. Further, the observation, mahazar said to have been prepared by P.W.1 at the very initial stage during his inspection along with P.W.2, has also not been proved in evidence which are material infirmities in this case.

19. In view of the foregoing discussions and in the light of the decisions relied on by the learned counsel for the appellant, this court is of the considered view that there is absolutely no evidence to show that the appellants have dishonestly abstracted energy by tampering with the meter by any artificial means or by inserting or using foreign materials in the meter. But, the trial court in the absence of any material to support the prosecution version had erroneously found the appellants guilty of offence which in the considered opinion of the court is not at all sustainable. Thus, this court is of the view that the prosecution has miserably failed to prove the charges against the appellants that they dishonestly abstracted energy. Merely because the security seals were found damaged, in the absence of any evidence to show that the appellants used any artificial means to abstract energy, they cannot be convicted under Section 135 of the Electricity Act. सत्यमेव जयते

20. In the result, the Criminal Appeal is allowed and the conviction and sentence imposed on the appellants/A1 and A2 by the trial court are set aside, and the appellants/A1 and A2 are acquitted of the charges. Fine amount already paid, if any, shall be refunded to them. Bail bonds executed by the appellants shall stand cancelled.

dh/kmk

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Principal District and Sessions Judge cum Special Court,
Coimbatore.

2.The Public Prosecutor, High Court, Madras.

3.The Inspector of Police,
Annur Police Station,
Coimbatore District.

4.The Judicial Magistrate
Avinasi, Coimbatore District

5.do-Thro The Chief Judicial Magistrate,
Coimbatore

6.The District Collector
Coimbatore

7.The Director General of Police
Mylapore, Chennai 4

Copy to:The Section Officer,
Criminal Section
High Court, Madras 104

+1cc to M/s.S.Gunalan Advocate Sr.No.80252

RJ(CO)
sm:12.6.2018

CrI.A.No.446 of 2009

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