

**207 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRR No.675 of 2009 (O&M)****Date of decision : August 01, 2017****Ramesh Kumar****..... Petitioner****Versus****State of Haryana****..... Respondent****CORAM : HON'BLE MR. JUSTICE KULDIP SINGH****Present:-** Mr. Sandeep Kotla, Advocate for the petitioner.

Mr. Pawan Garg, AAG, Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J. (ORAL)

The present revision is directed against the judgment of conviction and order of sentence dated 28.02.2009, vide which learned Addl. Sessions Judge, Panipat by reversing the judgment of acquittal dated 05.09.2007 passed by the learned Chief Judicial Magistrate, Panipat, convicted and sentenced the petitioner as under:

<i>Sr. No.</i>	<i>Offence</i>	<i>Imprisonment</i>	<i>Fine</i>	<i>In default of payment of fine</i>
1	379 IPC	R.I. for one year	₹800/-	S.I. for 15 days
2	39 of the Electricity Act	R.I. for six months	₹700/-	S.I. for 15 days

Both the sentences were directed to run concurrently.

The short facts, which are required to be noticed are that on 28.04.2001, a raiding party of the electricity officials conducted a raid at Anchal Guest House, Railway Road, Panipat owned by one Sangeeta Rani. It was found that the present petitioner, Ramesh Kumar, who was stated to be in occupation of the said premises, was committing theft of energy by

taking direct electricity from the main line and caused loss to the tune of ₹50,088/- to the Electricity Board. On the written complaint of the S.D.O., on 11.05.2001, an FIR was registered against the present petitioner. The trial court charge-sheeted the petitioner for the commission of offence punishable under Sections 379 IPC and 39 of the Electricity Act. In order to prove the charges, the prosecution examined S.G. Vats, S.D.O. as PW1, Surinder Singh Dahiya as PW2, Krishan, ASI as PW3 and Bhushan Madan as PW4.

When examined under Section 313 Cr.P.C., the accused-petitioner denied that he was committing theft of energy. He claimed that his signatures were obtained forcibly on the blank form by the S.D.O. The accused-petitioner did not lead any evidence in defence.

After going through the evidence and hearing both the parties, learned Chief Judicial Magistrate, Panipat acquitted the accused, mainly on the ground that the premises belongs to one Sangeeta Rani and it is not shown as to how the present petitioner Ramesh Kuamr is connected with the said premises. Further, it was stated that the case property was not produced and there is no date on the photographs produced by the prosecution.

The State went in appeal. Learned Addl. Sessions Judge, Panipat, reversed the findings recorded by learned Chief Judicial Magistrate, Panipat, holding that to prove the photographs, photographer was examined. It was further held that petitioner Ramesh Kumar was in occupation of the said Anchal Guest House. He has not denied the rent agreement nor he has denied that he was in occupation of the said guest house. Therefore, he was in possession of the said guest house. He was

present at the spot. He claimed that his signatures were obtained forcibly on blank form by the electricity authorities. But, he did not make any complaint to any authority.

I have heard learned counsel for the parties and have also carefully gone through the case file.

A perusal of the original file shows that the findings recorded by the learned Addl. Sessions Judge, Panipat are correct and are according to the evidence led on the file. The present petitioner has nowhere claimed that he was not in possession of the said guest house. The theft is committed by the occupant and not by the owner. When the raid was conducted, the photographs, which were taken at the spot, were duly proved by the photographer. In the photographs it is shown that direct supply of the electricity was taken from the main line, resulting in theft of the energy. The officials of the Electricity Board, who appeared in the Court supported the prosecution case to state that there was no electricity meter and supply was being taken directly from the main line.

Petitioner claimed that his signatures were obtained under the threat of the police. In this case, police was not present at the spot and Electricity Board's officials were civilian and there is no reason for them that they will extend threat to the petitioner and the petitioner will act under their threat. He could simply refuse to sign the blank form. Therefore, I am of the view that the findings recorded by learned Addl. Sessions Judge, Panipat are correct. Thus, there is no illegality or infirmity in holding the petitioner guilty for the commission of offence punishable under Sections 379 IPC and 39 of the Electricity Act.

Faced with this situation, learned counsel for the petitioner has stated that the offence was committed in the year 2001 and 16 years have elapsed, therefore, leniency in awarding of sentence may be shown.

Considering the entirety of the facts and circumstances, there is scope for showing leniency in awarding of sentence. Accordingly, the sentence awarded for the commission of offence under Section 379 IPC is reduced from rigorous imprisonment for one year to rigorous imprisonment for six months, whereas the fine is enhanced from ₹800/- to ₹8,000/-. However, the sentence awarded under Section 39 of the Electricity Act is maintained.

With the abovenoted modification, the present revision petition is dismissed.

Let the petitioner be rearrested and confined to jail to undergo remaining part of the sentence.

(KULDIP SINGH)
JUDGE

August 01, 2017

sarita

Whether speaking / reasoned Yes

Whether Reportable: No