

Criminal Appeal No.419 of 2010

- Laxmi Rao S/o VK Rao, Aged about 45 years, R/o Aadawal, Jagdalpur, Distt. Bastar (CG)

---- **Petitioner**

Versus

- State Of Chhattisgarh, through the Station House Officer, Police station Bodhghat, District Bastar (CG)

---- Respondent

For the appellant : Shri Palash Tiwari Advocate on behalf of
Shri Prakash Tiwari, Advocate
For the respondent/State : Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Ram Prasanna Sharma

Judgment On Board

22.10.2018.

1. This appeal is directed against the judgment of conviction and order of sentence dated 16.3.2010 passed by Special Judge under the Electricity Act, 2003, Jagdalpur (CG) in Special Electricity Case No.01/2008 wherein the said Court convicted the appellant for the commission of offence under Section 135 of the Electricity Act and sentenced to till rising of the Court and to pay fine of Rs.87,708/- which is three times financial gain on account of theft of electricity.

2. As per the prosecution case, on 01.3.2008, Asst. Engineer of Electricity Department, Jagdalpur along with other officers inspected the domestic electric meter of the appellant in his house and found that he was consuming electricity by using unauthorised wire thereby the Electricity Board suffered the loss

to the tune of Rs.29,236/-. Panchnama was prepared on the spot and thereafter the matter was reported to the police.

3. To substantiate the charges, the prosecution has examined as many 6 witnesses. Asst. Engineer Anwar Ahmed (PW-1) inspected the house of the appellant and reported the matter to Asst. Engineer Rajkumar Sonkar (PW-2) who made assessment of financial gain on account of theft of electricity by the appellant.

4. Learned counsel for the appellant submits that Asst. Engineer Rajkumar Sonkar (PW-2) is not an officer designated by the State Government, therefore, his assessment is not as per the provisions of Electricity Act. Assessing Officer as defined under Section 126(6) (a) of the Electricity Act means an officer of a State Government or Board or licensee, designated as such by the State Government. It is not disputed that the Asst. Engineer Rajkumar Sonkar (PW-2) is the officer of the Electricity Board and he has not been confronted that he has not been designated as assessing officer. Therefore, the Asst. Engineer who assessed the gain by the appellant will be treated as officer designated to assess the theft of the electricity.

5. Learned counsel for the appellants submits that provisional assessment has not served to the appellant as per Section 126 of the Act, therefore, assessment in the present case is not proper. In view of this Court the appellant had full opportunity to substitute his assessment regarding gain and the appellant has completely denied the assessment which is merit less. When the appellant has contested the assessment and denied flatly the assessment he cannot say that assessment by the officer is not proper. Looking to the entire evidence, it is established that the appellant gained by

tampering the meter by way of unauthorised wiring which is theft of electricity as defined under the Electricity Act for which the trial Court has rightly convicted the appellant and this Court has no reason to substitute a contrary finding.

6. The trial Court has awarded minimum fine sentence which is not less than three times of the financial gain on account theft of electricity and less then minimum cannot be awarded, therefore, sentence part is also not liable to be interfered with.

7. Accordingly, the appeal is dismissed.

Sd/-
(Ram Prasanna Sharma)
JUDGE