

HIGH COURT OF CHHATTISGARH, BILASPUR
CRR No. 149 of 2009

- C.G.State Power Distribution Co.Ltd. Earlier C.G. State Electricity Board Through Executive Engineer, City Division (West) Bilaspur, District Bilaspur (C.G.)

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer P.S. Sarkanda, Bilaspur (C.G.).
- Dr. Sita Ram Agrawal S/o Late Shri Puran Mal Agrawal, Age: 56 years, R/o Neharu Nagar, Sr. M.I.G. 3, Present Address-Sugam Hospital, Sipat Chauk, Sarkanda, Tahsil And Distt.-Bilaspur Cg

---- Respondent

For Applicant	: Shri Amiyakant Tiwari, Advocate.
For Respondent No. 1/State	: Shri UKS Chandel, Panle Lawyer.

Hon'ble Shri Justice Arvind Singh Chandel
Order On Board

11/09/2018

1. Being aggrieved by the judgment of acquittal dated 21.10.2008 passed in Electricity Criminal Case No. 30/2006 by the Special Judge (Electricity) and First Additional Sessions Judge, Bilaspur (C.G.), the Chhattisgarh State Power Distribution Company Limited has filed this revision.

2. The facts, briefly stated, are as under:-

On 01-03-2006 during inspection by vigilance team of complainant accompanied with In-charge Executive Engineer Shri A.K. Shrivastava (PW-1) in premises of Sugam Nursing Home, Sarkanda Bilaspur (C.G.), owned by Respondent No. 2/accused, was found in three illegal use of electricity by theft tempering of his service meter seal, with broking wire causing loss of Rs. 65,095/- to the complainant. Spot inspection report (Ex. D-1) was prepared and proposed bill of Rs.

650,95/- has also been prepared. FIR (Ex. D-8) has been lodged at Police Station Sarkanda, Bilaspur. After investigation a charge-sheet under Section 379 of the IPC and Section 126 & 135 of Electricity Act, 2003 was submitted before the Court. Charges were framed under Section 135 of Electricity Act. Learned Special Judge on a scrutiny of the evidence laid before it acquitted Respondent No. 2/accused of the charges framed against him.

3. Shri Amiyakant Tiwari, learned counsel for the Applicant, argued that the findings recorded by the Special Court are perverse, the Special Judge has not properly appreciated the evidence. The prosecution had proved the use of electricity by the accused with tempered meter seal, and thereby loss was incurred to the complainant, therefore, the essential elements for constituting the offence under Section 135 of the Electricity Act, 2003, were proved beyond reasonable doubt. Therefore, the acquittal of Respondent No. 2 vitiates.
4. I have heard learned counsel for the Applicant at length and have also perused the record of the Special Court.
5. Admittedly, premises of Sugam Nursing Home, Sarkanda, Bilaspur (C.G.) was owned by Respondent No. 2/accused. A.K. Shrivastava (PW-1) was posted as Executive Engineer at the relevant time. He deposed that on the date of incident, he enquired the meter installed at said Sugam Nursing Home. He found that three wires of meter were broken and one wire was loose and meter was tempered, thereby, electricity was stolen. He further states that the inspection has been done by his Assistant Engineer and proposed bill (Ex. D-4) for Rs. 65095/- was also prepared. During cross-examination, he admit the fact that at the time of inspection Respondent No. 2/accused was not present on the spot. Anshu Vasane (PW-7) supported the statement of AK Shrivastava (PW-1) and stated that on the date of incident, he accompanied AK Shrivastava (PW-1), during inspection of premises of Respondent No. 2, where found that meter was tempered. Rajendra Kumar Agrawal (PW-2) who lodged the FIR (Ex. D-8) has admitted the fact that in his department, there is a meter reader for reading the

meter. He also admitted the fact that when the meter reader reads the meter and prepared his report regarding meter reading this report has also been submitted by him to his higher officials, whereas in this case no intimation has been submitted by the meter reader regarding tempering of meter.

6. In appreciation of above evidence it makes clear that though the said Nursing Home owned by Respondent No. 2/accused was searched by AK Shrivastava (PW-1) in presence of Anshu Vasane (PW-7), but from the evidence adduced by the prosecution, it makes clear that at the time of inspection, accused was not present at the spot. With regard of tempering the meter, no report had been submitted by the meter reader. It is also clear that excess bill (Ex. D-7) for Rs. 650,95/- was also sent to the accused and the said bill has also been deposited by the accused. Therefore, finding of the Trial Court regarding theft of electricity done by the Respondent No. 2/accused has not been established and also there is no evidence against Respondent No. 2/accused which shows that the meter tempering has been done by him.
7. In **V.N. Ratheesh Vs. State of Kerala, AIR 2006 SC 2667** "It was held by the Hon'ble Supreme Court that there is no embargo on the Appellate Court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The Supreme Court said that the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and other to his innocence, the view which is favourable to the accused should be adopted. The supreme Court further said that the paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilt is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the

Appellate Court to re-appreciate the evidence where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not”.

8. In **Ramesh Babulal Doshi -Vs- State of Gujarat (1996) 9 SCC 225**, the Supreme Court said that “While sitting in judgment over an acquittal the Appellate Court is first required to seek an answer to the question whether the findings of the trial court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the Appellate Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the Appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only-reappraise the evidence to arrive at its own conclusions”.
9. I have gone through the entire evidence on record with a view to find out as to whether the views of the Special Court were perverse or otherwise unsustainable. After going through the entire evidence available on record, I do not find any compelling and substantial reason to interfere with the judgment of acquittal. It is not a case in which the judgment may be said to be unreasonable or a case in which relevant and convincing materials have been eliminated in the process of appreciation.
10. For the foregoing reasons, I do not find any substance in the revision. The revision filed by the Applicant, therefore is liable to be and is hereby dismissed.

Sd/-
(Arvind Singh Chandel)

Judge