

HIGH COURT OF CHHATTISGARH, BILASPUR**CRA No. 1248 of 2018**

- Narayan Singh Kanwar S/o Ghasiyaram Kanwar Aged About 45 Years R/o- Village Meregaon, Police Station Dongargarh, District- Rajnandgaon, Chhattisgarh., District : Rajnandgaon, Chhattisgarh

---- Appellant**Versus**

- State Of Chhattisgarh Through- Police Station Dongargarh, District- Rajnandgaon, Chhattisgarh., District : Rajnandgaon, Chhattisgarh

---- Respondent

For the Appellant : Mrs. Itu Rani Mukherjee, Advocate.

For the State/Respondent : Mr. Avinash K. Mishra, PL.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Judgment on Board

26/10/2018

1. This appeal has been preferred against the judgment of conviction and order of sentence dated 5.4.2018 passed by the learned Special Judge (Electricity Act), Rajnandgaon, District-Rajnandgaon, Chhattisgarh in Special Cr. (Electricity) Case No.26/2015 convicting the accused/appellant under Section 135 of Electricity Act, 2003 & Section 379 of the Indian Penal Code (for short 'the IPC') and sentencing him to undergo RI for 6 months with fine of Rs.1,50,000/- in default of payment of fine further R.I. for 4 months.
2. The prosecution case, in brief, is this that on 30.4.2015 the officials of

CSPDCL, Dongargarh raided the premises of appellant and found that he was committing theft of electric energy by direct hooking from the supply line and using motor of 3 HP load in his borewell. The total theft of revenue was calculated to be Rs.1,36,331/-, the appellant did not pay the same and did not compromise with the CSPDCL. Subsequent to which, complaint was filed before the concerned Court. T

3. The appellant denied the substance of accusation and prayed for trial. Statement of appellant under Section 313 of CrPC has been recorded in which he denied all the incriminating evidence available against him, pleaded innocence and false implication. No witness was examined in defence. After completion of trial, impugned judgment has been passed in which the appellant stands convicted and sentenced as aforesaid.
4. It is submitted by counsel for appellant, that the prosecution has not proved itself case beyond reasonable doubt. There is no evidence available on record to show, that it is the appellant who was making use of electric energy by putting a hook the direct supply line. The prosecution has also not proved that the property from where the material of hooking was seized belonged to this appellant. Hence, for the aforesaid reason, the appellant is entitled to be acquitted by extending him benefit of doubt.
5. Learned counsel for the State has opposed the grounds raised in this appeal as also the arguments advanced by the counsel for the appellant. It is submitted that the prosecution has proved its case

beyond reasonable doubt. There is no scope for interference in the impugned judgment. Hence, the appeal is liable to be dismissed.

6. I have heard learned counsel for the parties and perused the record of the trial Court including the impugned judgment.
7. The question that requires determination in this appeal is as to whether on the basis of evidence available on record the prosecution has been able to establish guilt of accused/appellant beyond reasonable doubt ?
8. Junior Engineer of CSPDCL, Rajnandgaon, has stated that earlier the appellant had an electricity connection, but due to non-payment of electricity bill, the electricity supply was disconnected. On subsequent day when the premise of appellant was raided, it was found that appellant was using submersible pump of 3HP in his borewell by putting a hook on the supply line. The Panchnama ExP-1 was prepared with respect to the articles of hooking and inspection report ExP-2 was prepared on the spot by this witness. In cross-examination, he has denied that at that time of proceedings the appellant was not present on the spot and has confirmed that the place was the agriculture field of the appellant. On perusal of rest of the statement in his cross-examination, it appears that there is nothing so as to impeach his creditworthiness.
9. Lala Ram Janghel PW-2 was present at the time of this proceeding and has appending his signature over the panchanama ExP-2 and spot inspection report ExP-2. In cross-examination, this witness

remained firm. Nandlal Thakur PW-3 is the local witness, who has supported the prosecution case stating that the borewell situated in the field of appellant the wire articles of illegal connection was seized by the personnel of the electricity department vide panchanama Ex.P-1. In cross-examination, though he has admitted that he was not present on the spot when the articles of electrical connection were collected, but no question has been put to him that collection of those articles were not made from the field of the appellant. Ganeshram Kanwar PW-4 was also present at the time of the proceeding recorded in panchanama ExP-1 and though this witness has also admitted that he was not present on the spot at the time of recovery of articles from the spot but no question has been put to this witness also that the field from where the articles of illegal electrical connection were collected did not belong to the appellant.

10. ASI K.K. Rai PW-6 has investigated the case. In his cross-examination, he has stated that he had been to spot and prepared the spot map vide ExP-8. Though he has admitted that he has not collected the revenue papers regarding the land on the spot, but he has made a statement that according to the statement given by other witnesses, the appellant herein was the owner and in possession of the said field.

11. The appellant had though denied that the seizure of articles of connection were not made from his land, but he has failed to discharge this burden by bringing positive evidence on record in this respect. According to the evidence of the witnesses, the seizure of

the articles of illegal electrical connection were made from the spot i.e. from the field belonging to the appellant herein. This is sufficient and formal proof which has to be accepted without there being any rebuttal to it. Further, appellant had not made any statement or produced any evidence to show that he had any authority from electricity department to use the electrical energy. Hence, it is a case of theft of electrical energy by hooking direct supply line of the Electricity Department for the use of borewell pump by the appellant, which amounts to an offence of theft of electricity as defined under Section 135 of the Electricity Act, 2003.

12. Hence, on the basis of discussion herein-above, this Court is of the view that the impugned judgment of conviction does not suffer from any illegality or infirmity warranting interference by this Court in exercise of its appellate jurisdiction.

13. Learned counsel for appellants submits that the appellant is in jail since 19.5.2018 and he is unable to pay huge amount of fine imposed upon him by the trial Court. Hence, the sentence of fine may be reduced.

14. As per provisions of Section 135 of the Electricity Act, the Court has limited discretion in imposing sentence of fine, and in accordance with the first proviso to Section 135 of the Act, 2003 where the theft of electricity does not exceed 10 kilowatt, the fine imposed for the first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six

times the financial gain on account of such theft of electricity. As it appears that the appellant is the first offender under the Electricity Act, 2003, hence, the fine equal to three times of the loss occasioned to the Electricity Department was supposed to be imposed upon the appellant. According to the evidence on record, the loss caused to the Electricity Department was Rs.1,36,331/-, whereas the Court below has imposed fine sentence of Rs.1,50,000/- only. Hence, the sentence of fine imposed upon the appellant is already on the lower side which is not in accordance with the penal provisions. The appeal has been brought by state for enhancement of sentence. Thus, under these circumstances, I am of this opinion that there is no substance in this appeal.

15. Resultantly, the appeal has no substance, the same is liable to be dismissed and is accordingly dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

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