

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.728 OF 2002

THE STATE OF MAHARASHTRA)...APPELLANT

V/s.

**1) MOHAN VISHWANATH JOSHI)
2) SATISH BAPURAO BHUJBAL)...RESPONDENTS**

Mr.S.V.Gavand, APP for the Appellant – State.

Mr.Amol Gatne, Advocate for Respondent Nos.1 and 2.

CORAM : A. M. BADAR, J.

DATE : 20th JANUARY 2018

JUDGMENT :

1 By this appeal, the appellant/State is challenging the judgment and order dated 22nd March 2002 passed by the learned Judicial Magistrate First Class, Ghodnadi, Pune, thereby acquitting the respondents/accused persons of offences punishable under Sections 39 and 44 of the Indian Electricity Act, 1910, (hereinafter referred to as the Electricity Act for the sake of brevity).

2 Facts leading to the prosecution of the respondents/accused persons, in nutshell, are thus :

- (a) First Informant PW5 Arun Thorat, Deputy Executive Engineer of the Maharashtra State Electricity Board (hereinafter referred to as MSEB for the sake of brevity) along with his squad, on 4th July 2001, inspected electric meter of M/s.Vidyawati Agro Chemicals Private Limited owned by respondent/accused no.1 Mohan Joshi. During inspection of the electric meter, the inspecting party found that the seal of the meter box was broken. Three lead seals on the meter body were also found to be handled. Wire of the lead seal on head of the meter was found broken and wire of other two seals was found to be woven in one hole of the screw, facilitating opening of the meter without opening of the seal. Terminal cover of the electric meter was also found missing. Upon testing, the meter was found to be slow by 54% thereby showing less consumption of electricity. It was also noted by the inspecting party that

electric supply from the same meter was given to the neighbouring factory named Divya Jjoti Engineering Works. In this manner, though sanctioned load was only 30 horse power, actually, 56 horse power electric energy was found to be drawn from the said electric meter. In this way, according to the prosecution case, the respondents/accused persons had committed theft of electric energy to the tune of 143767 units causing Rs.6,28,980/- for the three years period ranging from June 1998 to June 2001.

- (b) During the course of inspection, the Joint Inspection Report came to be drawn by PW5 Arun Thorat, Deputy Executive Engineer, and on the very same day, he lodged report against the respondents/accused persons, which has resulted in registration of Crime No.28 of 2001 by Shikrapur Police Station, District Pune. During the course of investigation, the spot cum seizure panchnama Exhibit 33 was drawn and the electric meter came to be seized.

- (c) On completion of routine investigation, charge-sheet for the offence punishable under Sections 39 and 44 of the Electricity Act came to be filed against the respondents/accused persons. They abjured guilt and claimed trial.
- (d) In order to bring home the guilt to the respondents/accused persons, prosecution has examined in all five witnesses. PW1 Haribhau Bodkhe – is an employee of the MSEB, who was member of the raiding team. Exhibit 22 is the Joint Inspection Report. PW2 Vijay Yadav is a panch witness, who turned hostile to the prosecution. Junior Engineer of the MSEB namely Anil Bhakta is examined as PW3. He was also present during inspection of the electric meter. Investigating Officer Sridhar Jadhav, Assistant Police Inspector of Shikrapur Police Station is examined as PW4. First Informant Arun Thorat, Deputy Executive Engineer of the MSEB is examined as PW5. Exhibit 37 is the First Information Report (FIR) lodged by him.

(e) Defence of the respondents/accused persons is that of total denial. After hearing the parties, by the impugned judgment and order dated 22nd March 2002, passed in Criminal Case No.529 of 2001, the learned Judicial Magistrate First Class, Ghodnadi, Pune, was pleased to acquit the respondents/accused persons of offences punishable under Sections 39 and 44 of the Electricity Act.

3 I have heard the learned APP appearing for the State. He argued that evidence of PW1 Haribhau Bodkhe, PW3 Anil Bhakta and PW5 Arun Thorat is consistent and is reflecting commission of theft of electric energy by the respondents/accused persons by tampering the meter. In submission of the learned APP, Joint Inspection Report at Exhibit 22 as well as the FIR at Exhibit 37 lends assurance to the prosecution case. The learned trial court erred in acquitting the respondents/accused persons.

4 As against this, the learned advocate appearing for the respondents/accused persons argued that evidence on record goes

to show that the entire inspection was photographed by the officers of the MSEB. The photographer was also shown as a panch to the Joint Inspection Report. However, neither the photographer who had photographed the event is examined by the prosecution nor the photographs are produced on record. Even the seized meter was not produced and identified by the prosecution witnesses. My attention is drawn to the evidence of prosecution witnesses to show that electric consumption bill was regularly paid.

5 I have carefully considered the rival submissions and also perused the entire evidence on record including deposition of witnesses as well as documentary evidence.

6 Evidence of PW5 Arun Thorat – First Informant is crucial in the instant case. This witness was the leader of the team which undertook inspection of electric consumption meter at M/s.Vidyawati Agro Chemicals Private Limited. It is in his evidence that on 4th July 2001, by disclosing his identity to the

owner of the Company, he inspected the electric consumption meter of the said factory. He deposed that, he found the meter box seal in broken condition and lead seal of the meter box was also out. As per version of PW5 Arun Thorat, he found the electric meter running slow by 52 to 54%. All three seals of the meter were broken. This witness further deposed that 50 mm cable was connected from the meter to another factory namely Divya Jyoti Engineering Works. Instead of 30 horse power load, the load drawn was 56 horse power. This witness further deposed that then he called Junior Engineer PW3 Anil Bhakta and Assistant Engineer PW1 Haribhau Bodkhe and then Common Inspection Report was prepared. The Common Inspection Report was then signed by Mohan Joshi and Satish Bhujbal i.e. accused persons. Then, he lodged report Exhibit 37. This witness further deposed that by inspecting billing record, he found that the accused persons had committed theft of 1,43,000 units, costing Rs.6,28,000/-. This witness further stated that police seized the meter box.

7 Cross-examination of PW5 Arun Thorat reveals that once in a year, the electric meter was used to be inspected and prior to lodging of the report, there was no complaint against the accused persons. He further admitted that prior to filing the report, accused persons had paid the bills for consumption of electricity. Cross-examination of this witness further reveals that he is unable to tell electric energy in exact units stolen by the accused persons.

8 Evidence of this witness PW5 Arun Thorat, as such, shows that initially he had inspected the electric meter and then he called PW1 Haribhau Bodkhe, Assistant Engineer, and PW3 Anil Bhakta, Junior Engineer, working with the MSEB. PW1 Haribhau Bodkhe has deposed that when he visited the premises, he found the meter box in broken condition and the electric meter was not having terminal seal. Three seals of the meter were found to be handled and electric energy of 58 horse power load was drawn instead of sanctioned load of 38 horse power. This witness further deposed that the Agro Chemical Company and the

workshop were found running on the same electric meter which was slow by 54%. Then, as per his version, Joint Inspection Report, Exhibit 22 came to be prepared. Cross-examination of this witness shows that meter reading of the subject electricity meter was regularly taken during the year 1998 to 2000 but the person taking the reading had never complained about broken seal of the meter. This witness further deposed in cross-examination that electric meter used to be inspected periodically in each year but there was no complaint against the accused persons regarding tampering of the electric meter. This witness further stated that another customer had taken electric connection from the same meter.

9 PW3 Anil Bhakta, Junion Engineer of the MSEB, has not deposed about tampering of the electric meter, breaking or handling of its seal and lead seals on the meter body. He has only stated that after getting information regarding theft of electric energy by breaking seal, he visited the spot. Load of the meter was checked, the electric meter was tested and found to be

running in slow speed. There was electric supply connection from the said meter to another Company. This witness further deposed that the accused persons committed theft of electric energy since last three years.

10 The ocular evidence coming on record from these three prosecution witnesses namely, PW1 Haribhau Bodkhe, PW3 Anil Bhakta and PW5 Arun Thorat goes to show that though PW1 Haribhau Bodkhe and PW5 Arun Thorat have deposed about tampering of electric meter, PW3 Anil Bhakta, Junior Engineer, has not spoken about this fact. Their evidence consistently shows that reading of the electric meter was used to be taken regularly by the employee of the MSEB, but that employee had not reported about tampering or breaking open of seal of the electric meter. Their evidence further shows that there used to be periodical checking and inspection of the electric meter once in a year, but on earlier occasions, there was no complaint against the respondents/ accused persons. PW1 Haribhau Bodkhe has candidly stated in the cross-examination that, another consumer

had not taken electric connection from the meter in question. Evidence of PW3 Anil Bhakta shows that electric meter used to be checked once in three months. As against this, what is alleged in the prosecution case is, theft of electric energy by the accused persons for a period of three years ranging from June 1998 to June 2000. As seen from the FIR Exhibit 37, First Informant PW5 Arun Thorat was not in a position to demonstrate as to how he calculated the amount of alleged theft of electric energy. In the wake of periodical inspection of meter once in each year, it cannot be said that there was theft of electric energy for three years, going unnoticed during the course of yearly inspection and quarterly reading of the meter. The prosecution case becomes suspect on this count.

11 Though the prosecution witnesses deposed that Joint Inspection Report Exhibit 22 is signed by the accused persons, perusal thereof does not show that any of the accused persons had signed on the Joint Inspection Report Exhibit 22 prepared on 4th July 2001. Perusal of the said Joint Inspection Report shows that the entire event was photographed. The tampered electric meter

was secured by applying paper seal containing signatures of both the accused persons. The said electric meter, as seen from evidence of PW4 Sridhar Jadhav, Assistant Police Inspector, came to be seized on the very next day, i.e. on 5th July 2001, during the course of investigation vide Spot cum Seizure panchnama at Exhibit 33. Cross-examination of PW4 Sridhar Jadhav, Assistant Police Inspector, shows that the seized electric meter was not produced before the trial court nor it was shown to any of the prosecution witnesses to demonstrate that it was tampered and then it was secured by a paper seal containing signatures of both accused persons. Tampered electric meter, in the case in hand, is a valuable piece of evidence, which, it appears, is deliberately not produced before the court for inspection. This fact coupled with the fact that the assessment was made for three years, when there used to be yearly inspection of the electric consumption meter, makes the prosecution case doubtful. Even the photographs taken during inspection were not produced and the photographer, who is shown as a panch witness to Joint Inspection Report Exhibit 22, is also not examined. In view of this discrepant prosecution

evidence coming on record only from the mouth of the interested witnesses, they being employees of the Electric Supply Company, learned trial court rightly discarded case of the prosecution by acquitting the respondents/accused persons.

12 At this juncture, it is apposite to quote judgment of the Hon'ble Apex Court in the matter of **State of U.P. Vs. Babu & Ors.**¹ wherein the Hon'ble Apex Court has made the following observations :

“10 Recently in **State of Punjab Vs. Karnail Singh (2003 AIR SCW 4065)** it was observed 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 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 the other to his innocence, the view which is favourable to the accused should be

¹ 2013 ALL MR(Cri) 2356 (S.C.)

adopted. 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 guilty 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 even where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. [See Bhagwan Singh Others Vs. State of Madhya Pradesh (2002(3) JT (SC) 387) : [2003 ALL MR (Cri) 564 (S.C.)]]. The principle to be followed by appellate Court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference. These aspect were highlighted by this Court in Shivaji Sahabrao Bobade and another Vs. State of Maharashtra (1973(2) SCC 793), Ramesh Babulal Doshi Vs. State of Gujarat (1996)(9) SCC 225) and Jaswant Singh Vs. State of haryana (2000(4) JT (SC) 114).”

13 Reassessment of evidence of the prosecution for the reasons stated in the foregoing paragraphs, indicates that a plausible view was taken by the learned trial court while acquitting the respondents/accused persons of alleged offence. Hence, no interference in the same is warranted by this court.

14 In the result, the following order :

ORDER

The appeal stands dismissed.

(A. M. BADAR, J.)