

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM No.A-122-MA of 2015 (O&M)

Date of decision: October 25, 2018

Dakshin Haryana Bijli Vitran Nigam Ltd.

...Applicant

Versus

Om Parkash

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.P.S.Poonia, Advocate
for the applicant.

Mr.Anil Ghangas, Advocate
for the respondent.

INDERJIT SINGH, J.

Applicant-Dakshin Haryana Bijli Vitran Nigam Ltd. has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondent Om Parkash, challenging the impugned judgment dated 12.08.2014 passed by learned Special Judge, Bhiwani, vide which the accused-respondent was acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is, therefore, prayed that leave to appeal be granted.

From the record, I find that a complaint was filed by complainant Dakshin Haryana Bijli Vitran Nigam Ltd. against accused-respondent Om Parkash under Section 135 read with Section 151 of the

Electricity Act. The brief averments of the complaint as noted down in the judgment passed by learned Special Judge, Bhiwani, are as under:-

“Brief facts of the complaint are that Sanjay Kumar, Sub Divisional Officer/ AGM posted at, 'OP' Sub Division, DHBVN Tosham received information through reliable sources that electricity was being dishonestly consumed by the accused, who was registered consumer with the Dakshin Haryana Bijli Vitran Nigam Limited (for short called as “Nigam”) or with the consent or connivance with the consumer/occupant/owner on 16.01.2010. On receiving this information, a raiding party consisting of Diwan Chand, AGM Vigilance Hisar, Sunil Kumar HC and Meer Singh AFM was prepared. The complainant also gave details of the premises in which electricity was being illegally consumed.

2. It was stated that the inspection was made in the presence of Satish son of Hawa Singh, who signed the checking report and also received the copy of the same. During inspection it was found that the meter was existing but the entire supply used directly and that the supply was running at that time , hence committed theft of electricity and thereby caused a loss of Rs.1,67,417/- to the Nigam and compounding fee of Rs.2,00,000/- is to be paid by him.

3. It was stated that as the electricity was dishonestly consumed, the raiding party disconnected the supply of electricity and the same was Photographed/Video-graphed during checking. A separate seizure memo has also been prepared to this effect on the spot and since the theft of electricity has been committed by the accused, complaint was filed. Charge for the commission of offence punishable under section 135 of the Electricity Act, 2003 was framed against the accused on 10.01.2013, to which he pleaded not guilty and claimed trial.”

In support of its case, complainant examined PW-1 K.K.Sharma, Retd. XEN, formal witness, who mainly deposed that checking report Mark-A was produced before him for assessment of penalty and thereafter, he issued order of assessment. PW-2 Sanjay Kumar, SDO, mainly deposed that he filed present complaint being SDO on behalf of the complainant. PW-3 Jagdish Chander, SDO, formal witness, deposed that

checking report Mark A was produced before him for further action and he charged the penalty in terms of letter Ex.PA. PW-4 Mir Singh, AFM and PW-5 Dewan Chand, SDO, deposed as per complainant's version.

At the close of complainant evidence, the accused was examined under Section 313 Cr.P.C. and confronted with the evidence of the prosecution. He denied the correctness of the evidence and pleaded his false implication. He also tendered documents Mark B and C.

Learned Special Judge, Bhiwani, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 12.08.2014.

Aggrieved from the above-said judgment, present appeal along with application for grant of leave to appeal has been filed.

Notice of the application was issued. Learned counsel for the respondent appeared and contested the application.

Lower Court record was also requisitioned.

I have heard learned counsel for the parties and have gone through the record.

The perusal of the findings given by learned trial Court shows that these have been given as per evidence and law. In no way, the findings can be held as perverse or against the evidence and law. At the time of arguments, nothing has been pointed out as to which material evidence has been misread and which material evidence has not been considered by the trial Court. Nothing has been pointed out as to how the findings are perverse or against the law and what illegality has been committed by learned trial Court.

From the record, first of all, I find that in the present case one

Satish has been joined and it is the case of the complainant that he signed on the checking report on behalf of the accused but there is no evidence as to who is Satish and how he is connected with the accused. Satish has also not been examined. Even, it is not the case of the complainant that Satish was independent person. At the time of arguments before this Court, it is stated that Satish was neighbour of the accused. A neighbour cannot sign the checking report on behalf of another person.

Secondly, I find that it is the case of the complainant that occurrence was videographed and photographs were also taken. No video has been produced and proved by the complainant. Secondly, photographs have been produced on record as Mark PW4/1 to Mark PW4/22 but these have also not been proved as per law. No negatives have been produced nor there is any evidence as to who prepared these photographs nor there is any evidence that there is no tampering while preparing the photographs etc.

Further, I find that there is no evidence on record that premises belong to accused Om Parkash or he was in possession or he runs poultry farm there. There is nothing to connect accused Om Parkash with the premises. Even, perusal of the lower Court record shows that the electricity bill has been placed on record, which is also not in the name of accused but it is in the name of Dharam Singh, father of accused Om Parkash. Therefore, the complainant has failed to prove the guilt of the accused beyond reasonable doubt.

From the perusal of the judgment passed by the Court below, I find that the findings have been given by correctly appreciating the evidence in right perspective and accused-respondent has been rightly acquitted. In

no way, the judgment can be held as perverse or against the evidence.

In view of the above discussion, I find that the impugned judgment dated 12.08.2014 passed by learned Special Judge, Bhiwani, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

October 25, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No