

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

CRM No.A-1609-MA of 2014 (O&M)

Date of decision: August 06, 2018

Dakshin Haryana Bijli Vitran Nigam Ltd.

...Applicant

Versus

Dwarka Prasad

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

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

Mr.Raman Chawla, 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 Dwarka Prasad, challenging the impugned judgment dated 03.06.2014 passed by learned Special Judge, Hisar, 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 challan was presented against accused-respondent Dwarka Parshad in case FIR No.58 dated 17.01.2010 under Section 135 of the Electricity Act, Police Station Sadar, Hisar. The

brief facts of the case as noted down in the judgment passed by learned Special Judge, Hisar, are as under:-

“2. The brief facts of the case of prosecution are that on 22.08.2009 Shri J.R.Salora, AGM, Enforcement, DHBVN, Hisar along with other officials was on routine checking regarding the theft of electricity and at bus stand Mangali, they noticed illegal extraction of electricity being done by accused Dwarka Parshad in his house. The house of accused was checked and theft was detected. Checking report was prepared on the spot. Compact disk was also prepared by Bhim Sen and photographs were taken. Copy of the checking report was handed over to accused Dwarka Parshad and another copy of the same was sent to SDO(Operation Satrod) for taking further necessary action. Accordingly, FIR was got lodged by Electricity Department regarding theft of the electricity against the accused. Statements of witnesses under Section 161 Cr.P.C. were recorded. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented in the court for trial against the accused.”

Learned Special Judge, Hisar, after appreciating the evidence, acquitted the accused-respondent vide impugned judgment dated 03.06.2014.

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 State counsel appeared and contested the application.

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.

The perusal of the record further shows that in the present case, complainant has relied upon the photographs Ex.P4 to Ex.P12 and a compact disk Ex.P3. No negatives have been placed on record nor the person, who clicked the photographs, has come to the witness box to depose that he had clicked the photographs and developed the same and the photographs have not been tampered with. Further, the compact disk has not also been proved as per law; what was the source from which the disk has been prepared; whether it was original disk or copy; whether it was prepared from the computer or from some other source. Therefore, no reliance can be placed on the photographs and compact disk.

Further, it is the case of the prosecution that PVC wire was fixed for committing theft of electricity. The witnesses were discrepant on the length of PVT wire. One witness said it was 60 feet, other said it was 35-40 feet and another one said it was 100 feet. The PVC wire was not handed over to the police nor it was taken by the police in its possession. It was neither sealed nor it was having Mark. Such type of PVC wires are available in the market, therefore, PVC wire cannot be connected with the present case.

I have also seen the checking report. In the checking report, there is nothing whether accused is owner of any shop nor it has been mentioned in the checking report that he has concern with any shop nor it is clear whether theft was committed in the shop or in the house. Learned trial

Court also discussed the discrepancies in the evidence. Further, raid was

conducted on 22.08.2009 and FIR was registered on 17.01.2010 i.e. after about 5 months. There is no satisfactory explanation for such a long delay. PWs were also discrepant as discussed above. Furthermore, it is admitted case that so many private witnesses were available but none of them was joined.

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 03.06.2014 passed by learned Special Judge, Hisar, 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.

August 06, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No