

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 368 of 2009

Praveen Patil, S/o Chirkut Rao Patil, aged about 45 years, R/o Vardhaman Nagar, Deopuri, Police Station Man Camp, Raipur, (CG) ---Appellant

Versus

State of Chattisgarh through District Magistrate, Raipur(CG) ---Respondent

For Appellant	:	Mrs. Indira Tripathi, Advocate
For Respondent	:	Mr. Aman Kesharwani, PL

Hon'ble Smt. Justice Vimla Singh Kapoor

Judgment On Board

02/04/2019

Allegation against the accused/appellant who was the proprietor of Khushboo Plastic situated at Doomartarai, Raipur is that he dishonestly tempered with the electric meter by converting 100/5 ampere C.T. into 200/5 ampere C.T. and thereby committed the theft of electricity and caused a huge loss to the Chhattisgarh State Electricity Board (for short “CSEB”) amounting to Rs.2,03,129/-. After the spot inspection was carried out under Ex.P-1, certain seizures under Ex.P-3 were made under the acknowledgment (Ex. P-4A). As per FIR (EX.P-6) on 13.01.2006 the vigilance team of CSEB went to search the meter of the appellant where it was found by Harsh Gautam (PW-1) that Seal No. M11090 and M11091 were found to be tempered with. As a result of such tempering the meter was showing the half of the total consumed reading. On the basis of written report lodged by Satyanarayan (PW-4), FIR (Ex.P-6) came to be registered against the accused/appellant for the offences under Section 379 IPC and Section 135 of the Electricity Act. However, charge was framed under Sections 135 (1) and 138 (1) of the Electricity Act only.

2. Having gone through the evidence of the witnesses and taken into consideration the other material available on record the Court below vide judgment impugned dated 30.04.2009 passed in Special Case (Electricity)

No.8/2008 held the accused/appellant guilty under Sections 135 (1) and 138 (1) of the Electricity Act and sentenced him to under go RI for one year with fine of Rs.2 Lacs under Section 135 (1) and RI for six months with fine of Rs.5000/- under Section 138 (1) of the Electricity Act, plus default stipulation. Hence this appeal.

3. Counsel for the accused/appellant submits that except the interested witnesses of the Electricity Department no independent witness has come forward in support of the case of the prosecution and the approach of the Court below being based on conjecture and surmises is not sustainable in law. He submits that no incriminating articles have been seized from the appellant but even then he has been held guilty under the Electricity Act which is bad in law. He however submits that if the conviction of the accused/appellant is not going to be interfered with, at least the sentence imposed on the accused/appellant may be reduced to the period already undergone. State counsel however supports the judgment impugned to be just and proper warranting no interference with the same.

4. Though PW-2, PW-3, PW-4 and PW-6 - all witnesses of the Electricity Department, have stated that no layman can temper with the C.T. fitted in the electric meter yet PW-4 and PW-5 in their cross-examination have stated that any person or technician acquainted with the electricity related work can do such tempering. The way the meter was tempered by converting 100/5 ampere C.T. into the 200/5 ampere was made, it could not have been made without knowledge of the accused/appellant in whose premises the meter was installed. The tempering with the C.T. was purportedly made in order show half of the actual consumption made by the accused/appellant in consumption of electricity in his Khushbu Plastic organisation. PW-3 has categorically stated in her Court statement that during inspection by the vigilance team it was found that only half of the electric consumption was being shown as a result of tempering with electric meter. This Court does not find any substance in the argument advanced by the counsel for the appellant that witnesses being officers of the Electricity Department cannot be given

much credence for the reason that nothing has been brought forward by the accused/appellant as to why they would speak against him nor did he prove anything to show his implication at their hands in a false case. All the witnesses categorically stated that the accused had tampered with the electric meter installed in his factory premises and thereby caused a substantial loss to the exchequer of the Electricity Department. The prosecution has proved its case beyond reasonable doubt and so also the Court below has rightly convicted the accused as detailed above. Thus on the basis of testimony of the witnesses this Court is not inclined to take a different view to the one taken in the judgment impugned and thereby holds the view taken by the Court below to be just and proper warranting no disturbance therewith. Accordingly, the conviction of the accused/appellant under the Electricity Act as described above is hereby maintained.

5. As regards sentence, the record shows that the appellant has remained behind the bars for about a week and also keeping in mind the fact that no minimum sentence is prescribed for the offence alleged against the accused/appellant, this Court thinks it proper and in the interest of justice to reduce the sentence to the period already undergone. It is however made clear that the fine sentence imposed on the accused/appellant shall remain as it is.

6. Appeal is thus allowed in part.

Sd/-
(Vimla Singh Kapoor)
Judge