

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.57 of 2009**

Indrajit Patel, S/o. Shri Gurudayal Patel, aged about 39 years,
Occupation Agriculture R/o. Village Jhalmala, Police Station
Pusaur, Distt. Raigarh (CG)

---- Appellant

Versus

Assistant Engineer, Chhattisgarh Electricity Board, Kodatarai,
Distt. Raigarh (CG)

---- Respondent

For the appellant : Shri Manoj Kumar Sinha, Advocate

For the respondent : Shri Preetam Tiwari, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****20.3.2019.**

1. The appeal is directed against judgment dated 31.12.2008 passed by Special Judge under the Electricity Act, 2003, Raigarh (CG) in Special Case No.125/2007 wherein the said Court convicted the appellant for commission of offence under Section 135 of the Electricity Act, 2003 (for short 'the Act 2003') and sentenced him to undergo RI for six months and to pay fine of Rs.25,000/- with default stipulation. The said Court further imposed civil liability as per Section 154(5) of the Act 2003 to the tune of Rs.20,000/-.

2. As per the version of the complainant side, the appellant was illegally using electric current for the purpose of irrigating his field and he also put 5 HP Submersible pump and connected it illegally with LT line and he used 6 MM VC wires for irrigation of his land. On 04.8.2007 at about 1.45 pm Assistant Engineer and other Engineers of the Electricity Board, Gharghoda went for inspection in the village

of the appellant and found that the appellant was illegally connected electric current and used 5 HP pump for irrigating his land. During the enquiry, the appellant was present there, panchnama was prepared and signed by the appellant. The appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) The trial Court recorded finding of conviction on the basis of statement of the engineers of the Electricity Board and their version is contrary in nature, therefore, departmental witnesses ought not have been believed by the trial Court.

(ii) Asst. Engineer, Sarangarh has no jurisdiction to enquire in the village of Jhalmala therefore, finding of the trial Court is not liable to be sustained.

(iii) As the appellant did not abstract energy illegally, finding of the trial Court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered with while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused the record of the Court below.

6. From the evidence of Asst. Engineer R. Dayasi (PW-1), he calculated the amount of theft of energy to the tune of Rs.9258/-. Asst. Engineer SK Sahu (PW-4) and Junior Engineer NP Patel (PW-5) deposed that they enquired the pump and electric connection in the field of the appellant and found that connection was not legally obtained and it was illegally connected by PBC wires of white colour

of 10 MM. Version of both these witnesses is unshaken during cross-examination.

7. Looking to the ample evidence collected against the appellant it is clearly established that the appellant abstracted energy through illegal connection and the act of the appellant falls within mischief under Section 135 of the Act, 2003.

8. The trial Court has awarded sentence of fine to the tune of Rs.25,000/- which cannot be termed as disproportionate looking to the provisions of the Act of 2003. So far as jail sentence of six months is concerned, the same is not compulsory as per provisions of Section 135 of the Act, 2003. In view of this provision, jail sentence of six months imposed by the trial Court is hereby set aside. However, fine amount of Rs.25,000/- shall remain intact.

9. So far as the civil liability under Section 154(5) of the Act, 2003 is concerned, the trial Court has not determined the exact period of theft, therefore, bill amount of Rs.9258/- shall be the civil liability of the appellant. Civil liability of Rs.20,000/- imposed by the trial Court is not sustainable as it is imposed without determining the exact period of theft of energy. Therefore, civil liability of Rs.20,000/- is hereby set aside and the appellant shall pay the actual bill amount of Rs.9258/- as civil liability.

10. With these modifications, the appeal is allowed in part.

Sd/-
(Ram Prasanna Sharma)
JUDGE