

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No.135 of 2009**

Sanjay Bondiya, S/o. Late Shri Radhe Shyam Bondia, aged about 36 years, Occupation Crusher Industry, R/o. Gandhi Ganj, Raigarh, presently residing at Proprietor Radhe Gramodhyog, Timarlaga, Police Station Sarangarh, Distt. Raigarh (CG)

---- Appellant

Versus

State Of Chhattisgarh Through The Station House Officer,
Police Station Sarangarh Distt. Raigarh (CG)

---- Respondent

For the appellant : Ku. Sharmila Singhai, Advocate

For the State/respondent : Shri Ravish Verma, Govt. Advocate

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment On Board****18.3.2019.**

1. The appeal is directed against judgment dated 30.01.2009 passed by Special Judge under the Electricity Act, 2003, Raigarh (CG) in Special Case No.48/2007 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 one year and to pay fine of Rs.6 lakh with default stipulation. The said Court further imposed civil liability as per Section 154(5) of the Act 2003 to the tune of Rs.4 lakh.

2. The appellant was prosecuted with offence under Section 135 of the Electricity Act, 2003 on the allegation that he has committed theft by breaking the seal of the electric meter and changed CT after opening the meter. The appellant established one Radhe Gramodhyog for the purpose of crushing stone at village Timarlaga,

Distt. Raigarh. For running the crusher, the appellant obtained electric connection with the Electricity Board for supply of CT-1 connection. After careful scrutiny the Electricity Board sanctioned CT-1 connection of 40HP to the appellant unit. It is alleged by the prosecution that on 14.11.2006 when the Executive Engineer of the Electricity Board inspected the unit of the appellant and prepared the inspection report, it is mentioned that all the seals of the meter were found in the proper condition except outer seal of the meter board and the same was found broken. It is alleged that the appellant changed the CT of 200/5 Amp. To 100/5 Amp., therefore the meter facto was 02 whereas it should be 01. It is further alleged by the prosecution that due to this act of the appellant, the Electricity Board suffered loss of Rs.1,50,000/-. The matter was reported and the appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

(i) As per the version of RK Patel (PW-5) new meter was installed in the year 2005 in the premises of the appellant unit in which he has installed CT of 100/5 Amp. and at the time of inspection, CT of 100/5 Amp. was found by the inspecting team of the Board and no case is made out against the appellant.

(ii) Evidence of GP Sonwani (PW-8) was overlooked by the prosecution who stated that at the time of the inspection CT of 100/5 Amp. was found in the meter.

(iii) The trial Court has ignored the billing description, therefore, finding of the trial Court is not sustainable.

(iv) From perusal of Section 154(5) of the Act 2003 it is clear that the Special Court shall determine the civil liability in terms of money but the trial Court without calculating the actual amount

imposed the liability to the tune of Rs.4 lakh which is excessive and against the provisions of the Act. Therefore, 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. PS Yadav (PW-4) is Executive Engineer, RK Patel (PW-5) is Asst. Engineer and Dandheer Dayal (PW-6) is also the Asst. Engineer. All these officers of the Electricity Board deposed that inspection of Radhe Gramodhyog was conducted by them at village Timarlaga. They found the seal of the meter box was tampered, that is why they prepared loss of the Board which comes out to Rs.1,50,000/-. Version of all these witnesses is supported by version of Executive Engineer Gokul Prasad (PW-8) and the entire evidence is unrebutted after searching cross-examination. There is nothing on record to say that these officers have not inspected the unit of the appellant and did not find any fault. Looking to the entire evidence, the trial Court opined that it is a case of theft of energy and recorded conviction against the appellant.

7. After reassessing the entire evidence, this Court has no reason to substitute a contrary finding. Therefore, conviction of the appellant for commission of offence under Section 135 of the Act, 2003 is hereby affirmed.

8. As per Section 135(1)(c) proviso clause -(ii) where load abstracted exceeds 10 Kilowatt, the fine imposed on first conviction shall not be less than three times. The trial Court awarded sentence of fine to the tune of Rs.6 lakh which is not less than three times, therefore, the same is not liable to be interfered with.

9. So far as the jail sentence imposed by the trial Court is concerned, the same is not compulsory as per the provisions of Section 135 of the Act, 2003. The Special Court can impose jail sentence or fine or with both. As the jail sentence is not compulsory, therefore, it would not be proper to send the appellant to jail for first default. Therefore, the sentence of one year imposed by the trial Court is hereby set aside.

10. The trial Court imposed civil liability under Section 154(5) of the Act, 2003 to the tune of Rs.4 lakh, but the trial Court has not determined the period of theft of energy. The assessment by the authorities of the Electricity Board goes to show that it is about Rs.1,50,000/-. Looking to the fact that the trial Court has not determined the civil liability, Rs.1,50,000/- which is bill amount is imposed as civil liability modifying the order of the trial Court regarding civil liability to the tune of Rs.4,00,000/-. As per the version of the appellant, he has already deposited bill amount which is civil liability to the tune of Rs.1,50,000/-. If the bill amount is paid, then there shall be no recovery of civil liability, otherwise it will be recovered.

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

Sd/-
(Ram Prasanna Sharma)
JUDGE