

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 346 of 2009**

- Subhash Gupta s/o. Padamlochan Gupta aged about 25 years occupation Agriculture r/o. Village Gautma, P.S. Pusaur, Dist. Raigarh (CG).

---- Appellant**Versus**

State of Chhattisgarh through Police Station Pusaur, Dist. Raigarh (CG)

---- Respondent

For the appellant : Mr. Manoj Kumar Sinha, Adv.

For the respondent/State : Mr. Afroz Khan, P.L.

Hon'ble Shri Justice Ram Prasanna Sharma**Judgment on Board****25.3.2019.**

1. The appeal is directed against judgment dated 14-4-2009 passed by Special Judge under the Electricity Act, 2003, Raigarh (CG) in Special Case No.47 of 2008 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. The said Court further imposed civil liability as per Section 154(5) of the Act 2003 to the tune of Rs.5,113/-.

2. As per the version of the complainant side, on 25-11-2008 the Executive Engineer, CG Electricity Board went for inspection during which he found illegal electric connection in the STD/PCO of the appellant. After investigation it was that no electric

connection was taken by the appellant from the Electricity Board and he illegally took electric current by hooking from the main line of electric and electric was illegally used in the shop of the appellant which resulted loss of Rs.7210/- to the Board. One panchnama was prepared and the appellant was charge sheeted and convicted as mentioned above.

3. Learned counsel for the appellant submits as under:

- (i) Statement of prosecution witnesses are contradictory and such statements are not reliable and admissible under the law.
- (ii) Finding of the trial Court is based on imagination but the prosecution failed to see that in cross examination PW/1 R. Dayasi has admitted that no document has been submitted regarding shop to show that the shop was of the appellant. It has not been established that the shop is owned by the appellant, therefore, conviction is not sustainable.
- (iii) PW/2 B.P. Meshram admitted in his cross examination that panchnama was not prepared in presence of any witness, therefore, finding of the trial Court is not liable to be sustained.

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 R. Dayasi (PW-1) who is Executive Engineer, S.K. Dubey, who is examiner Grade-II and PW/4 Shersingh Thakur who is Assistant Lineman of Electricity Board, it is established that the appellant abstracted energy by hooking two wires 5 meters each which was seized during course of investigation. From the evidence it is established that the shop is owned by the appellant and he abstracted energy by hooking wire illegally which is disconnected in presence of these witnesses and seized during investigation. All the witnesses have been subjected to searching cross examination but they remained firm and their version is unshaken. Their version is further supported by Panchnama (Ex.P/1), spot inspection report (Ex.P/2), Map (Ex.P/3) and valuation of energy (Ex.P/5). It is further supported by seizure of two wires length five meters each as per Ex.P/6. The entire oral and documentary evidence goes to show that the appellant abstracted energy from illegal connection, therefore, argument

advanced on behalf of the appellant is not sustainable. The act of the appellant falls within mischief under Section 135 of the Act, 2003 for which the trial Court convicted him and same is hereby affirmed.

7. As per provisions of Section 135 of the Act, 2003, offence is punishable with jail term or with fine. Jail term is not compulsory. Fine shall not be less than three times the financial gain on account of such theft of electricity. Looking to the legal aspect that jail term is not compulsory, sentence of one year awarded to the appellant is hereby set aside. He is sentenced to pay fine of Rs.22,000/- (Rupees twenty-two thousand). If fine amount is not deposited, then the appellant to suffer jail term for six months.

8. 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.5,113/- is not liable to be interfered with. The civil liability imposed by the trial court shall remain intact.

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

Sd/-

(Ram Prasanna Sharma)
JUDGE

Raju