

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.385 OF 2003**

The State of MaharashtraAppellant/Complainant

Vs.

Mehabub Abdul Nadaf and Ors.Respondents/
Accused nos.1 and 2

Ms. Jyoti Lohokare, APP for appellant-State.
Mr. Anant Vadgaonkar for respondent no.2.

**CORAM : K.R.SHRIRAM, J.
DATE : 8th MAY 2019**

P.C.:

1 Respondents/accused were charged for offences punishable under Section 39 and 44 of Indian Electricity Act, 1910. It is the case of the prosecution that respondents/accused are owners of M/s. Dostana Feeds situated at Plot No.K-22 in M.I.D.C., Kupwad, manufacturing plastic granules and were granted load of 65 H.P. by M.S.E.B. The complainant, who is PW-6, was in the flying squad of M.S.E.B. engaged to detect theft of energy and illegal connections. M.I.D.C. Kupwad was within the jurisdiction of the complainant.

2 On 09.01.2002, the complainant alongwith his staff went to M/s. Dostana Feeds and introduced himself to accused no.2. Accused no.1, I am informed by Mr. Vadgaonkar, has died on 26.10.2014 and he tenders a copy of the death certificate issued by the Sangli Miraj-Kupwad City Corporation, which is taken on record and marked "X" for identification.

As the factory was closed for repairs of machinery, the complainant affixed his paper seal on the meter box and prepared inspection report Exhibit 23. On 11.02.2002, the complainant visited the factory twice at which time accused no.2 was present. Thereafter, he went to the meter box and found that the seal, that he had placed on 09.01.2002, was intact but the lead seal of the box had been tampered with. Hence, he sealed the same in the presence of accused no.2. The complainant then opened the box and verified the meter and found that three body seals were intact but the seal affixed was found to be tampered with. Hence the complainant once again sealed the whole thing in an envelope. The complainant claims to have found that the coating of the wire had been removed and against the granted loan of 65 H.P. the accused were drawing 68 H.P. load. Accordingly, a spot inspection report Exhibit 35 was prepared. A joint inspection report Exhibit 24 was also prepared. On 12.02.2002 the complainant went to Urban Division, Sangli as he was suspicious about the number of body seal and he collected the information from the Urban Division, Sangli and came to know that the plastic seal numbers 191232, 191268 and 191278 were affixed to the disputed meter. Subsequently, an assessment report Exhibit 37 was prepared based on which he came to a conclusion that there was theft of energy. Hence, he lodged his report Exhibit 38 at MIDC Police Station.

3 PSI Mr. Ingale registered the offence. On 14.02.2002 PSI Mr. Ingale visited the spot, i.e., M/s. Dostana Feeds and attached electric box and meter under panchanama Exhibit 48. On the same day, he recorded statement of three witnesses and on 15.02.2002 arrested both the accused and also recorded the statement of three witnesses. On 21.02.2002 electric meter was sent to Walchand Engineering College, Sangli, for testing. Mr. Vishram Bapat (PW-4), who is a Professor in the Walchand Engineering College and Head of Electrical Department had tested the disputed meter and submitted his testing report Exhibit 71. Based on the inspection, charges were framed. Both the accused pleaded not guilty. Their statement under Section 313 of the Code of Criminal Procedure was also recorded. Their defence was total denial.

4 Considering the evidence and the argument by the prosecution and the defence counsel, the Judicial Magistrate F.C. Miraj has acquitted both the accused by a judgment dated 14.10.2002. It is that judgment of acquittal which is impugned in this appeal by the State.

5 Prosecution examined eight witnesses in all. PW-1 and PW-2 were pancha witnesses, PW-3 is an employee of M.S.E.B., who had accompanied the complainant on the date of inspection, PW-4 is the expert, Professor of Walchand Engineering College, PW-5 is an employee of M.S.E.B., PW-6 is the complainant, PW-7 is also an employee of M.S.E.B.

and Head of Meter Testing Unit and PW-8 is the Police Sub Inspector, who was the investigating officer.

6 It is the case of the complainant that there has been theft of electricity from 1999 till 2002. Exhibit 37 indicates that as per the request of the complainant, the Deputy Executive Engineer, M.S.E.B., Urban Division, Sangli had informed him that on 22.02.1999 the plastic seals bearing no.191232, 191278 and 191268 have been affixed to the disputed meter. Admittedly the disputed meter had also been tested on 25.12.2002 by the Sub Division staff. If on 25.12.2002 the Sub Division staff removed the meter for testing, then certainly the three seals bearing no.191232, 191278 and 191268 will not be found again on the body of the meter, which was affixed on 22.02.1999. The complainant had relied on the communication from the Deputy Executive Engineer (Exhibit 36) to state that the meter had plastic seals no.191232, 191278 and 191268, which were affixed on 22.02.1999 but PW-7 - Mr. Karajgar, who is also an employee of M.S.E.B. and Head of the Meter Testing Unit, has stated on 07.12.1999 he affixed new seals bearing numbers 036732, 036733 and 036734 to the disputed meter body. This also shows that the complainant has not collected the correct information on what were the actual seals which were lastly put on the disputed meter. The complainant has also admitted that the disputed meter was tested on 25.10.2000 by Sub Division staff but there is nothing on record to indicate what was the number of the seals that were affixed to

the disputed meter on 25.10.2000. Therefore, it is difficult to accept that the accused have tampered with the seals or altered or changed the original seals affixed to the body of the meter by M.S.E.B.

7 It is also the case of the complainant that the lead seal of the meter box and seals of terminal cover had been tampered. When there is nothing on record to show which were the plastic seals that had been affixed on 25.10.2000 by the M.S.E.B. staff, it is difficult to accept that the lead seal of the meter box and plastic seals of terminal cover were also tampered with.

8 Even from the evidence of expert PW-4 - Mr. Vishram Nilkanth Bapat, who is a Professor and Head of the Electrical Department in Walchand College of Engineering, Sangli, does not indicate any wrong doing by the accused. In his cross examination, he has admitted that the consumer meter moved fast and had recorded a reading of 3 to 4% more. His report Exhibit 31 indicates the lead seals were intact. So also plastic seals and no hole appears to be made additionally on the meter body and there was no apparent sign of gear tightening. The meter ofcourse indicates a small error but that itself is not sufficient to think the time from when this error existed. No suspicious marks have also been observed on the digits of the meter. The wiring of the meter CTS and CB of the meter were intact and normal. If the report of PW-4 Exhibit 36 indicates all wiring of meter CTS and CB are

intact and normal, then it is difficult to accept the evidence of the complainant that the coating of the wire had been removed excessively. The report Exhibit 36 of the expert PW-4 - Mr. Vishram Nilkanth Bapat does not indicate there were any fault, defect or abnormality in the disputed meter.

9 It is the contention of the complainant that as against the sanctioned load of 65 H.P., the accused were drawing 68 H.P. load. There is nothing on record to show the test that the complainant took to arrive at this conclusion that the accused have been drawing 68 H.P. load instead of 65 HP load. Therefore, this allegation of the complainant also cannot be accepted.

10 In the report of the complainant Exhibit 38, it is alleged that the accused had been committing theft of electricity from 01.02.1999 to 31.01.2002. What is important to note is the disputed meter had been tested thrice, last of which, was on 25.10.2000. If the disputed meter had been removed on 25.10.2000 and tested by the appropriate authority of M.S.E.B., then the deposition of the complainant that the accused have been committing theft of energy from 1999 has to be false. The two pancha witnesses PW-1 and PW-2 have also not supported their panchanama.

11 The first pancha witness - Mr. Annasaheb J. Nikam in his examination in chief has stated that on 14.02.2002 M.I.D.C. Police called him at police station and obtained his signature on the paper. Though he

identified his signature, he has stated that he does not know anything about the contents of the panchanama. The witness was declared hostile and in the cross examination by A.P.P., PW-1 has categorically stated that it was not true that he and PW-2, the other pancha witness, had gone to Dostana Feeds alongwith the police or that the complainant had shown any electric meter to police or to them. Similarly the other pancha witness - Mr. Sanjay Swami (PW-2) has also turned hostile. Therefore, it does raise a suspicion as to whether the case of the prosecution is itself true.

12 Considering all these points and many other, the Trial Court has come to a conclusion that the accused have to be acquitted. The onus is on the prosecution to prove the accused guilty beyond reasonable doubt. I have considered the evidence, the statements recorded and the impugned judgment with the counsel for prosecution and counsel for respondent no.2. I do not find any reason for interfering with the decision of the Trial Court.

13 In the circumstances, appeal dismissed.

(K.R. SHRIRAM, J.)