

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE**

CRIMINAL APPEAL NO.879 OF 2003

The State of Maharashtra)....Appellant

V/s.

Sayyad Ali Mohammad Ali)....Respondent

Ms.Pallavi Dabholkar APP for appellant/State.

Mr.A.C.Gavnekar a/w Mr.G.S.Hiranandani i/by Mr.C.G.Gavnekar for respondent.

CORAM : K.R.SHRIRAM,J

DATE : 12.12.2019

P.C.:-

1. This is an appeal filed under Section 378(1) of the Code of Criminal Procedure 1973 impugning an order and judgment dated 25.3.2003 passed by the J.M.F.C. IV Court, Malegaon, Dist. Nashik, acquitting accused of charges under Section 353 (*Assault or criminal force to deter public servant from discharge of his duty*) & section 504 (*Intentional insult with intent to provoke breach of the peace*) of the Indian Penal code and section 39 (*Theft of energy*) & section 44 (*Penalty for interference with meters or licensee's works and for improper use of energy*) of Indian Electricity Act 1910.

2. It is the case of complainant-PW-3 that on 9.1.2001 when he was proceeding to collect the amounts payable under bills from the

consumers and when he was accompanied by the staff, he came to Numani Nagar, survey no.191/1, plot no.14 (the said premises). He saw some persons were loading some plastic materials, he suspected something fishy and therefore, went to the factory premises, inspected the meters, found something inappropriate and when accused came there, accused refused to sign the report and abused him and therefore, he filed complaint against accused. According to complainant, accused had tampered with the meters and dishonestly abstracted electricity and hence he was guilty of the offences mentioned above. According to complainant, accused has to pay sum of Rs.2,30,850/- towards stolen units. According to complainant he found the seals were broken by the consumer and meters were damaged and therefore, he came to a conclusion that consumer has committed theft of electricity.

3. Accused denied the charges.

4. To prove its charge, prosecution led evidence of six witnesses and after considering the evidence, judgment impugned was passed.

5. At the outset, Ms.Dabholkar learned APP, as an officer of

this Court, in fairness submitted that this matter does not call for any interference by this Court. Learned APP is justified in saying so because the two panch witnesses in whose presence police are supposed to have seized electric meter with cable wire, have turned hostile. They have also stated that they do not know that accused was running power loom factory.

6. PW 3 who was complainant also in his examination-in-chief says “As consumer has tampered with the electric meter and dishonestly, abstracted the electric energy to use his plastic manufacturing factory.....” Admittedly, the accused is not the consumer because in his examination-in-chief itself complainant PW-3 states that he found from the bill that name of consumer was Anisur Raheman Mohd. Rafi, Whereas the name of accused is Sayyedali Mohammadali. According to complainant, he came to know that accused has purchased the factory premises and he was running the factory but in cross-examination he admits that he has not produced any document to show that accused was the owner of the said premises. He also admits that accused is not the consumer of M.S.E.B. Coming to tampering of meters, he also admits in his cross-examination that after seizing the meters, he did not send the same to testing section for checking the meters. At the same time, he also says

that except testing report, he did not hand over to police any document and except testing report, he does not have any document to show that the seals have been tampered with. I ask a question, as to how could testing report be issued without testing the meters.

7. There is an acquittal and therefore, there is double presumption in favour of accused. Firstly, the presumption of innocence available to accused under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court. For acquitting accused, the Trial Court observed that prosecution had failed to prove its case.

8. In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, cannot be interfered with.

9. Appeal dismissed.

(K.R.SHRIRAM,J)