

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.03.2019

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Appeal No.146 of 2014

Tamil Nadu Electricity Board, a statutory Board,
Rep.by its Assistant Executive Engineer,
Tamil Nadu Electricity Board,
Veeraganur,
Salem District.

... Appellant/Defacto Complainant

/versus/

1.M.Chandrasekar
2.State Rep.by Inspector of Police,
Thalaivasal Police Station.

... Respondents/Accused/Complainant

Criminal Appeal filed under Section 378 of the Criminal Procedure to set aside the judgment of acquittal passed against the appellant on 20.01.2010 in S.C.No.108 of 2008 on the file of the learned Principal Sessions Judge, Salem and punish the accused.

For Appellant :Mr.V.Viswanathan

For Respondents :Mr.S.Sathiachandran for R1
Mrs.Kritika Kamal,P.
Government Advocate for R2

J U D G M E N T

This appeal is preferred by the Tamil Nadu Electricity Board represented by the Assistant Executive Engineer, Veeraganur, Salem District, aggrieved by the impugned order passed by the Principal Sessions Judge, Salem in S.C.No.108 of 2008 acquitting the first respondent herein from the charge under Section 135(B) of the Electricity Act, 2003.

2. The gravamen of the First Information Report leading to the criminal prosecution is that on 02.02.2004 at about 06.30 a.m. PW-1 [Tr.Mehamood, the then Assistant Executive Engineer],

Tamil Nadu Electricity Board along with PW-2 [Tr.Manickam, Assistant Executive Engineer] made a check of service connection No.800, Periyeri Distribution owned by the accused. They found that 30 HP motor was running in the mill but, the reading meter not functioning. Even after removing 3 fuse carriers, which ought to have disconnected the power supply, they found that there was power supply and the motor was running. Thereafter, they found that 3 phase wires were directly connected to the motor from the electrical pole. Thus, they have found theft of electricity. Considering the consumption based on the working hours and the load they calculated the total loss of energy theft as 95,000 units. The calculation sheet for the loss of energy was arrived at Rs.9,21,945/-. Based on this inspection report and calculation sheet, complaint was given to the second respondent-police. Thiru. Krishnamoorthy [PW-5], after completion of investigation filed final report against the accused/first respondent.

3. The trial Court, after examining 6 witnesses on behalf of the prosecution and 12 exhibits relied on by the prosecution along with 4 material objects, has concluded that the prosecution has failed to prove the charge against the accused beyond all reasonable doubt. As a result, the accused was acquitted.

4. Aggrieved by the order of acquittal, the present appeal is filed on the ground that the trial Court has miserably failed to appreciate the evidence and law in proper perspective. The mahazar prepared by the Investigation Officer based on the complaint given by the Electricity Board Officials and the seizure of incriminating materials from the premises of the accused have not been properly considered by the trial Court. Contrarily, it has arrived at an erroneous conclusion that there was no evidence to show that the Superintendent of Police has deputed the Inspector of Police to conduct the investigation, which is not a mandatory requirement under law. The conclusion of the trial Court was based on surmises and conjunctions totally contrary to the evidence placed before the Court. Section 39 of the Electricity Act, 2003 which gives a statutory presumption for theft of energy has not been considered by the trial Court, while appreciating the evidence.

5. In the course of argument, it is submitted by the learned counsels appearing for the appellant and the respondents that pending appeal against the acquittal, the first respondent has approached the defacto complainant for a fresh service connection and in that connection there was writ proceedings initiated by the first respondent, wherein a sum of Rs.2,00,000/- was deposited, as a conditional order, to get new

service connection. Later, in the appeal preferred by the first respondent to the Department, he agreed to pay the entire amount calculated by the Department towards loss of energy and paid the entire sum of Rs.9,21,945/- to the Department in installments.

6. The learned counsel appearing for the first respondent would draw the attention of this Court to Section 152 of the Electricity Act, 2003 wherein, the Act provides for compounding the offence, if the value of the electricity alleged to have been stolen is paid by the consumer. In this case, the trial Court, for some reason assigned, has acquitted the first respondent. Nevertheless, the first respondent has paid the entire money towards the alleged electricity theft.

7. In the said circumstances, nothing survives in this Criminal Appeal for the Court to appreciate and give finding, except to record the fact that on payment of Rs.9,21,945/-, the offence gets compounded. The complainant/appellant has also condoned the act of the consumer by receiving the money and giving fresh service connection to him. Hence, this Criminal Appeal is liable to be dismissed.

8. Accordingly, this Criminal Appeal is dismissed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

- 1.The Principal Sessions Judge, Salem.
- 2.The Public Prosecutor, High Court, Madras.
- 3.The Inspector of Police,
Thalaivasal Police Station, Salem.

+1cc to Mr.S.Sathiachandran, Advocate, S.R.No.31403

+1cc to Mr.V.Viswanathan, Advocate, S.R.No.30778

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CS/16/04/2019