

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.273 OF 2011

JUDGMENT:

This Criminal Appeal, under Section 374 (2) of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), is filed by the appellant/accused aggrieved by the judgment, dated 15.02.2011, rendered in C.C.No.1 of 2007 on the file of the I Additional Sessions Judge, Medak at Sangareddy, whereby and whereunder, the appellant/accused was sentenced to pay a fine of Rs.1,92,665/-, in default of payment of fine, the accused was sentenced to undergo simple imprisonment for a period of six months for the offence under Section 135 of the Electricity Act and the accused was further sentenced to pay a fine of Rs.10,000/-, in default of payment of fine, the accused was sentenced to undergo simple imprisonment for a period of two months for the offence under Section 138 of the Electricity Act.

2. Heard the learned counsel for the appellant/accused, the learned Additional Public Prosecutor representing the respondent/State and perused the record.

3. Learned counsel for the appellant/accused would contend that the appellant is not responsible for illegally restoring the electricity supply to his house through Service Connection No.262 of Kolgur Village. However, without there being any oral and documentary evidence, he is convicted and sentenced for the offences punishable under Sections 135 and 138 of the Electricity Act. The fine amount imposed at Rs.1,92,665/- is excessive. The petitioner/accused was in judicial custody for a period of 40 days

and he paid Rs.50,000/- towards part of the fine amount and ultimately prayed to allow the appeal by setting aside the conviction and sentence imposed against the appellant/accused.

4. The learned Additional Public Prosecutor would contend that there is evidence of P.Ws.1 to 3 and also documents to substantiate that the appellant/accused had illegally restored electricity supply to his house through service connection No.262. The trial Court rightly analysed the evidence, convicted and sentenced the appellant/accused. There is no infirmity in the impugned judgment and ultimately prayed to dismiss the appeal.

5. In view of the submissions made by the learned counsel for both sides, the point that arises for determination is “Whether the conviction and sentence imposed against the appellant/accused is liable to be set aside?”

6. To substantiate the accusation against the appellant/accused of the offences under Sections 135 and 138 of the Electricity Act, the prosecution examined PWs.1 to 10 and got marked Exs.P1 to P7. No evidence, either oral or documentary, was adduced on behalf of the appellant/accused.

7. The specific case of the prosecution is that the electricity Service Connection No.262 belonging to the appellant/accused was disconnected. When an inspection was conducted on 13.04.2004 by P.W.1-ADE concerned in the premises of the appellant/accused, he found that the electricity connection was illegally restored and electric consumption was made. As per the records and the evidence of P.W.1, the electricity connection to the house of the

appellant/accused was disconnected in July, 1999 for non-payment of arrears. As seen from the evidence on record, the appellant/accused has consumed 16425 units of electricity during the period of disconnection till the date of inspection made by P.W.1. The rate of unit is Rs.3.91. The trial Court having found the accused guilty for the offences under Sections 135 and 138 of the Electricity Act and imposed penalty of Rs.1,92,665/- i.e., minimum three times loss caused to the electricity department in view of the language prescribed under Section 135 of the Electricity Act. There is also evidence of P.Ws.2, 3 and 5 with regard to the disconnection of the service of accused. There are documents marked as Ex.P1 inspection note, Ex.P2 Inspection report, Ex.P3 complaint, Ex.P4 letter dated 26.07.2004, Ex.P5 Consumer Particulars, Ex.P6 Certificate issued by V.A.O. and Ex.P7 first information report to substantiate the case of prosecution. There is oral evidence of other witnesses to substantiate the accusation against the appellant/accused to the effect that the house belonging to the appellant/accused, situated at Kolgur Village and has Service Connection No.262. It is also pertinent to state that the appellant/accused was present during the time of inspection made by P.W.1 and he endorsed the inspection notes prepared by P.W.1 on that date i.e., on 13.04.2004. Having analysed the whole evidence, the trial Court rightly convicted and sentenced the accused for the offences under Sections 135 and 138 of the Electricity Act. There is no infirmity in the impugned judgment.

8. It has been urged before this Court that the appellant/accused was in judicial custody for a period of 40 days before his sentence of imprisonment was suspended. It is also brought to the notice of this Court that Rs.50,000/- was paid as a part of fine amount prior to the order of suspension of sentence granted by this Court *vide* order dated 28.03.2011 in CrI.A.M.P.No.573 of 2011. As far as finding of the appellant/accused guilty for the offences under Sections 135 and 138 of the Indian Electricity Act is concerned, there are no grounds to set aside the same, however, as the appellant/accused had undergone imprisonment for a period of 40 days, fine amount imposed by the trial Court can be reduced to some extent.

9. Under these circumstances, the fine amount for the offence under Section 135 of the Indian Electricity Act imposed by the trial Court in C.C.No.1 of 2007 *vide* judgment 15.02.2011 is reduced from Rs.1,92,665/- to Rs.1,00,000/-. Insofar as the fine amount of Rs.10,000/- for the offence under Section 138 of the Electricity Act, is concerned, the same remains unaltered. The amount of Rs.50,000/-, which was paid by the appellant as a part of fine amount, shall be given credit to. The balance fine amount of Rs.60,000/- is ordered to be paid within two months from the date of this judgment. In the event of non-payment of the balance fine amount, the trial Court is at liberty to issue non-bailable warrant against the appellant/accused to serve the remaining default sentence imposed in the subject C.C.

10. With the above modification in fine amount, the appeal is disposed of.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed.

Date: 29.01.2019
ssp

Dr. SHAMEEM AKTHER, J