

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :29/11/2019

Order passed on : 04/02/2020

CRR No. 286 of 2008

- Chhattisgarh State Electricity Board, through the Executive Engineer (O&M), Division C.S.E.B. Raigarh, District Raigarh Chhattisgarh, Chhattisgarh

---- Applicant

Versus

1. State of Chhattisgarh Through: The Station House Officer, Police Station Baramkela, Tahsil Sarangarh, District Raigarh Chhattisgarh , Chhattisgarh
2. Dilip Kumar Patel Son of Santosh Kumar Patel, aged about 40 years, Occupation Agriculturist, Resident of Village Dabara, Police Station Baramkela, Tahsil Sarangarh, District Raigarh, Chhattisgarh. .. (Accused Person)

-----Non-applicants

For Applicant : Shri M.D.Sharma, Advocate
For State/Non-applicant No.1 : Shri Sudeep Verma, Deputy Govt. Advocate.
For Non-applicant No.2 : Shri Basant Kaiwartya, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
CAV Order

04/02/2020

1. This revision petition has been brought challenging the legality, propriety and correctness of the impugned judgment dated 21-11-2007 passed by Special Judge under the Electricity Act, Raigarh, C.G. in Special Case No.37/2007 by which Non-applicant No.2/respondent No.2 was acquitted of charge under Section 135 of the Electricity Act, 2003.
2. The case of prosecution is this, that Junior Engineer of Electricity

Department Rajeshwar Kumar Minj (PW-6) made inspection of the shop of Non-applicant No.2 on 08-12-2005 and found that he was committing theft by taking illegal connection by direct hooking from the electricity line. On the basis of which Panchnama Ex.-P/2 was prepared and seizure of article was made vide Ex.-P/1. A complaint was made to the police, on the basis of which the FIR Ex.-P/4 was lodged. On being chargesheeted the Non-applicant No.2 was charged under Section 135 of the Electricity Act. After completion of the trial, the Non-applicant No.2 has been acquitted of charge as it is mentioned hereinabove.

3. It is submitted by learned counsel for the applicant that the impugned judgment suffers from serious infirmity. It was held in the impugned judgment that the applicant had been unable to prove that the shop belongs to Non-applicant No.2/respondent No.2 and it was in possession of the Non-applicant No.2, but the witnesses have very clearly stated that the Non-applicant No.2 was present on the spot of inspection when the theft of energy was being committed.

Placing reliance on the judgment of Hon'ble the Supreme Court in the matter of **Jagmohan Mehtabsingh Gujaral & Ors. Vs. State of Maharashtra**, 2006 AIR SCW 5905, it is submitted that large scale theft of electricity is very alarming problem faced by all the State Electricity Boards causing loss to the State revenue. Therefore, commission of this offence should be viewed seriously.

Reliance has also been placed on judgment of Hon'ble the

Supreme Court in the matter of **Pooran Mal Vs. Director of Inspection (Investigation) of Income-tax New Delhi and others**, AIR 1974 SC 348.

Reliance has also been placed on the judgments of Hon'ble the Supreme Court in the matter of **Muddasani Venkata Narsaiah (D) Th. Lrs. Vs. Muddasani Sarojana**, AIR 206 SC 2250 and **State of Rajasthan Vs. Rajendra Prasad Jain**, 2008 CRI. L. J. 1935.

Further reliance has been placed on the judgments of Hon'ble the Supreme Court in the matter of **Ram Briksh Singh and others Vs. Ambika Yadav and another**, 2004 CRI. L. J. 3115 and **Johar & Ors. Vs. Mangal Prasad & Anr.**, 2008 CRI. L. J. 1627.

On behalf of the applicant reliance has also been placed on the judgments of Hon'ble the Supreme Court in the matter of **State Govt. of NCT of Delhi Vs. Sunil and another**, 2001 CRI. L. J. 504 and **Bhagwan Singh and others Vs. State of M.P.**, AIR 2002 SC 1621.

It is submitted that the relevant material witnesses present before the Court cannot be ignored only for the reason that no independent witness has testified in favour of the prosecution. The evidence present could not have been discarded which has been erroneously discarded by the Court below.

Further reliance has been placed on the judgment of M.P. High Court in the matter of **State of M.P. Vs. Ramcharan**, 2008 CRI. L. J. 201.

Reliance has also been placed on the judgment of Gujrat High Court in the matter of **Gopalbhai Chandubhai Rana Vs. State of Gujarat**, 2008 CRI. L. J. 4034 and further on the judgment of Punjab and Haryana High Court in the matter of **Surinder Pal & Ors. Vs. State of Punjab**, 2009 CRI. L. J. 4100 and on the judgment of Bombay High Court in the matter of **Bhagwant Nivrutti Jadhav Vs. State of Maharashtra**, 2011 CRI. L. J. 3304.

Further, reliance has been placed on behalf of the applicant on the judgment of Karnataka High Court in the matter of **Ningappa Parmanna Curikar Vs. State**, 2013 CRI.L. J. (NOC) 441 (KAR.) and it is submitted that in the case of theft of electricity the Junior Engineer of Electricity Board is not a police officer, therefore, his statement can be relied upon and usually independent witnesses do not come forward in such cases, therefore, absence of such witness cannot be made a ground to discard the evidence of departmental witness.

It is submitted that in **Radha Mohan Singh alias Lal Saheb & Ors. Vs. State of U.P.**, 2006 CRI. L. J. 1121, it is submitted that evidence of a hostile witness cannot be rejected completely if some part of his evidence is found to be dependable and in support of the prosecution found reliable after careful scrutiny, can be relied upon. It is also submitted that in **V. N. Ratheesh Vs. State of Kerala**, 2006 CRI. L. J. 3634, Hon'ble the Supreme Court has held that the paramount consideration of the Court is to ensure that miscarriage of justice is prevented. Therefore, any admissible evidence cannot be ignored. It is further submitted that in case of **Jagarnath Singh**

Vs. B.S. Ramaswami, in Criminal Appeals Nos.76 and 130 of 1963 decided on 22-09-1965 Hon'ble the Supreme Court has held that direct evidence of theft is rarely forthcoming. Therefore, evidence of existence of artificial means for such abstraction is prima facie evidence of such dishonest abstraction. Hence, the learned trial Court has not appreciated the evidence of prosecution in view of settled principles for appreciation of evidence, hence, the order of acquittal is illegal and incorrect. Therefore, it is prayed that the impugned judgment be set aside and appropriate order be passed.

4. Learned counsel for the State/Non-applicant No.1 makes formal objection.
5. Learned counsel for Non-applicant No.2 submits acquittal of the Non-applicant No.2 in this case is proper which needs no interference. The departmental witnesses have though made statement against Non-applicant No.2, that was not sufficient for giving a clear finding that Non-applicant No.2 was the person in possession of use of the energy which was procured by theft. Referring to the judgment of coordinate Bench of this Court in **Assistant Engineer CSEB Sarangarh Vs. Shri Satyanand**, 2014 (3) C.G.L.J. 101, it is submitted that making inspection of any premises or place by the officials of the Electricity Department was mandatorily required to follow the rules of CG State Electricity Rules, 2006 and on non-compliance of the said mandatory rules no error can be found in the acquittal of the accused from the charge under the Electricity Act, 2003. Therefore, it is submitted that the revision petition be dismissed.

6. Heard learned counsel for the parties and perused the record of the Court below.
7. Arvind Kumar Sharma (PW-2), member of the raiding team, has given statement about the raid conducted, panchnama prepared and the seizure made. In cross examination he had denied that the STDPCO belongs to some other person named as Rajkumar Patel. Another witness of the Electricity Department, Krishn Bahadur (PW-1) who is Lineman stated that the raid was conducted in the tailoring shop of Non-applicant No.2. In cross-examination he has admitted that he was not present on the spot.
8. The independent witness Dataram (PW-4) has not supported the prosecution case. Other witnesses, Head Constable Chakrasudarshan (PW-3) has proved the investigation procedure and ASI Karnal Singh (PW-5) has also made part of the investigation.
9. Rajeshwar Kumar Minj (PW-6) who is Executive Engineer (Vigilance) has stated that he was present at the time of inspection, preparation of Panchnama and seizure. In cross-examination he has admitted that he has not verified as to who is proprietor of the STDPCO where the raid was conducted and neither any such verification has been made in the investigation made by the police.
10. The learned Court below has in the impugned judgment held that respondent No.2/Non-applicant No.2 was the person in ownership and possession has not been proved by bringing any definite evidence, therefore, the claim of the applicant that it was Non-

applicant No.2 who was committing theft of Electricity and making use of the same for his own purpose is only based on the oral statement and no further verification was made on the other hand by the Electricity Department itself or by the police who has conducted the investigation. Therefore, it cannot be said with certainty that it was Non-applicant No.2 who was responsible for the offence charged. Further, there is no single statement that inspection of his place was carried out in accordance with rules 5 and 6 of CG State Electricity Rules, 2006 which is reproduced hereinafter:-

Entry, Search and Seizure

5. (i) For the purpose of detection of theft as defined in Section 135 of the Act the officer of Board/distribution licensee are authorised to carry out functions of the entry, search and seizure as per Section 135 of the Act. Assistant Electrical Inspector or Chief Electrical Inspector of Government of Chhattisgarh shall also be authorised for making entry, search and seizure for the purpose of detection of theft.

(ii) The officers, entering, inspecting, breaking open, searching any place shall record the reasons for doing so in Form-2.

(iii) In case the inspection, search and seizure of any domestic place or domestic premises is to be carried out as per sub section (2) of Section 135 of the Act, the reasons for doing so shall have to be recorded in Form 3 by the officer not below the rank of Assistant Engineer of Distribution Licensee or Assistant Electrical Inspector of the Chief Electrical Inspectorate. A Panchnama shall also be made in Form 4.

6. (i) Officer conducting search and seizure shall first disclose his identity and intention that he has come for detection of unauthorized use of electricity to the person or persons who may be present in the premises at the time and make search and seizure in presence of such persons as may be present.

(ii) The occupant of the premises or his representative or any other person who may be present shall be under obligation to sign the Panchnama in Form 4. However, in case of his refusal to do so, the officer shall record the same on the said Panchnama and other persons of the team shall also sign to substantiate that the person present has refused to sign the Panchnama.

(iii) The person refusing to sign the panchnama shall be dealt with as if he has not co-operated with a public servant in discharge of his duties and shall be liable for punishment under relevant provisions of law.

(iv) The person refusing to sign the panchnama may submit a written

statement under his signature as to why he has refused to sign the panchnama and make a statement on panchnama itself that he is submitting, a separate statement.”

11. There is no statement made by Rajeshwar Kumar Minj (PW-6) and Krishna Bahadur (PW-1) in what manner the compliance of Rule 5 and 6 of the C.G. State Electricity Rules was made before proceeding to prepare panchnama regarding panchnama of the spot. Therefore, the procedure of inspection made by the officials of Electricity Department suffers from serious lacuna and also for the reason that it has not been established beyond reasonable doubt that Non-applicant No.2 was the person responsible for the alleged theft of energy. Hence, it is found that the learned Court below has not committed any error. Therefore, this criminal revision is found to be without any merit, which is dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge