

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 27-01-2020

Delivered on 05-03-2020

CRA No. 29 of 2009

- Padum Lal Patel s/o. Shri Bhugadev Patel, aged about 55 years, r/o. Village Kotmara, Block Pusour, District Raigarh (CG).

---- Appellant

Versus

- State of Chhattisgarh Through Assistant Engineer, C.G. State Electricity Board, Distt.-Raigarh CG

---- Respondent

For Appellant : Mr. C.K. Nawarang, Advocate

For respondent/State : Mr. Ishwar Jaiswal, PL.

Hon'ble Shri Justice Ram Prasanna Sharma

CAV Judgment

1. This appeal is preferred against the judgment of conviction and order of sentence dated 16-12-2008 passed by the Special Judge (under Electricity Act, 2003) in Special Case No. 143 of 2007 wherein the said Court has convicted the appellant for commission of offence under Section 135 of the Electricity Act, 2003 (for short, "the Act, 2003") and sentenced him to undergo rigorous imprisonment for one year and to pay fine of Rs.1,00,000/- with default stipulation. The said court further imposed civil liability under

Section 154(5) of the said Act 2003 and fixed liability to Rs.2,50,000/- as civil liability.

2. As per version of prosecution, on 21-7-2007 around 6.30 p.m., the Executive Engineer and Assistant Engineer, Chhattisgarh State Electricity Board, Kondatarai, District Raigarh went to village Kotmara for inspection whereas it is alleged that the appellant was running Haler Mill after having connection by hooking wire in pole which was illegal. On the spot they seized the wire and other instruments and fastened liability of Rs.1,26,980/-. The matter was reported and investigated. After completion of trial, the trial Court convicted and sentenced him as aforementioned.

3. Learned counsel for the appellant submits as under:

- i) Prosecution witnesses have given contradictory statements, therefore, illegal connection from electricity pole is not established against the present appellant.
- ii The witnesses are departmental witnesses and no independent witness is adduced, therefore, the trial is not fair.

- lii) The trial court has not evaluated the evidence properly, therefore, finding of the trial court is liable to be set aside.

4. On the other hand, learned counsel for the State supporting the impugned judgment would submit that the finding of the trial Court is based on proper marshalling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

5. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

6 Now the question for consideration of this court is whether the appellant has illegally abstracted electric energy and caused loss to Electricity Board. As per version of Executive Engineer P.V. Sanjiv (PW/1), Assistant Engineer R. Dayasi (PW/2) and Assistant Line-man Shyamlal (PW/3), it is established that electric line of Haler Mill was disconnected three years ago due to non-payment of electricity bill, but the appellant illegally abstracted electric energy by connecting wire from L.T. Line of 10 MM. Version of these witnesses have been subjected to searching cross examination, but nothing could be elicited in favour of the defence. Their version is further supported by documents Ex.P/1, P/2 and P/3 prepared after enquiry.

- 7) Version of the witnesses is not rebutted by the appellant. Version of the appellant is plain denial which is merit less, therefore, there is no reason to disbelieve the testimonies of the witnesses and documents. Conviction of the appellant under Section 135 of the Electricity Act, 2003 is hereby affirmed. Jail sentence is not compulsory for the said offence, therefore, sentence of RI for one year is set aside while fine amount imposed by the trial court shall remain intact. The trial court also fixed civil liability to the tune of Rs.2,50,000/- and as per provisions of Electricity Act, 2003 the same is well within jurisdiction of the trial court and in the present case, value of theft of electric energy was found to be Rs.1,26,980/- and law provides fine of three times of valuation of energy abstracted, therefore, civil liability cannot be termed as excessive and same is not liable to be interfered with and same is affirmed.
- 8) With the aforesaid modification, the appeal is partly allowed.

Sd/-

(Ram Prasanna Sharma)
Judge

Raju