

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :29/11/2019

Order passed on :04/02/2020

CRR No. 478 of 2008

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

---- Applicant/Petitioner

Versus

1. Abdul Samad S/o. Jinayat Khan, aged about 60 years, Occupation- Shopkeeper, resident of Chandani Chowk, Raigarh, P.S. City Kotwali Raigarh, Tehsil & District Raigarh (C.G.)
2. State of Chhattisgarh, Through Station House Officer, Police Station - City Kotwali, Raigarh, Tehsil and District- Raigarh (C.G.)

-----Non-applicants/Respondents

For Applicant/Petitioner : Shri M.D.Sharma, Advocate
For Respondent No.1 : Shri Vineet Kumar Pandey, Advocate.
For State/Respondent No.2 : Shri Sudeep Verma, Deputy Govt. 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 31-03-2008 passed by Special Judge under the Electricity Act, Raigarh, C.G. in Special Case No.19/2007 by which respondent No.1 has been acquitted of charge under Section 135 of the Electricity Act, 2003.
2. The case of prosecution is this, that respondent No.1 was subscriber of an electric connection. On 08-12-2005 Junior Engineer Randhir Dayasi (PW-1) made inspection of the electric connection and found that respondent No.1 had tampered with the

meter by making additional connection because of which the actual reading of the same was not being recorded by the meter. The articles of additional connection were seized and panchnama (Ex.-P/1) was prepared on the spot. The calculation was made regarding loss caused to the Electricity Board vide Ex.-P/3. A written complaint was given vide Ex.-P/4 to police, on the basis of which FIR Ex.-P/5 was lodged. After completion of the investigation charge sheet was filed against respondent No.1. Respondent No.1 was charged with offence under Section 135 of the Electricity Act, to which he denied and prayed for trial. After completion of the trial respondent No.1 has been acquitted of the charge framed against him by the impugned judgment.

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 house belongs to respondent No.1 and was in possession of respondent No.1, but the witnesses have very clearly stated that respondent No.1 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 respondent No.1 submits that acquittal of the respondent No.1 in this case is proper which needs no interference. The departmental witnesses have though made statement against respondent No.1, but that was not sufficient for giving a clear finding that respondent No.1 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.
5. Learned counsel for the State/respondent No.2 makes formal objection.
6. Heard learned counsel for the parties and perused the record of the Court below.

7. Junior Engineer Randhir Dayasi (PW-1) has stated about the raid conducted and about the documentation made by him. In cross-examination he has stated that he has no knowledge regarding tenants residing in the same house.
8. Mahesh Prasad Verma (PW-5) was a member of the same team. In cross-examination he has admitted that no document was collected regarding ownership of respondent No.1 on the house inspected.
9. Shailendra Kumar Dubey (PW-2) presented the complaint in the police station on the basis of which the FIR (Ex.-P/5) was lodged.
10. Head Constable Radheshyam Shrivastava (PW-3) took part in the investigation and S.I., Janmejay Bagh (PW-4) has lodged the FIR.
11. On appreciating the whole evidence of the prosecution it is found that neither the officials of the C.S.E.B. nor the I.O. of police have made verification in this respect that the house belongs to respondent No.1. Further, it is a case of theft of electricity from electric connection already established, regarding which there is no documentary or oral evidence presented by the prosecution that respondent No.1 was subscriber of that electric connection, therefore, it is a case in which the prosecution has failed to bring evidence against respondent No.1 beyond reasonable doubt.
12. Therefore, 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