

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :29/11/2019

Order passed on : 04/02/2020

CRR No. 154 of 2008

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

---- Applicant

Versus

1. State of Chhattisgarh Through The Station House Officer, Police Station City Kotwali, Tahsil and District Raigarh Chhattisgarh, Chhattisgarh
2. Samaru Kurre Son of Baratu Kurre, aged about 35 years, Caste Satnami, Occupation Chowkidar in the office of P.W.D., Resident of Village Puchhapara, Police Station and Tahsil City Kotwali, Raigarh, District Raigarh. (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 Vipin Punjabi, 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 07-08-2007 passed by Special Judge under the Electricity Act, Raigarh, C.G. in Special Case No.2/2007 by which Non-applicant No.2/respondent No.2 was acquitted of charge under Section 135 of the Electricity Act, 2003.
2. The facts of the case are these, that on 04-09-2005 an inspection of the house of Non-applicant No.2 was made by the officials of the

Electricity Board and commission of theft of electricity by use of illegal connection by him was found. The billing total was prepared vide Ex.-P/1 regarding loss caused to the Electricity Board and a complaint was made to the police station vide Ex.-P/2, on the basis of which FIR (Ex.-P/3) was lodged. Panchnama was prepared on the spot Ex.-P/5. The police has investigated the case and the charge sheet was filed before the Court concerned. The trial Court framed the charge against Non-applicant No.2, to which he denied and prayed for trial. After completion of the trial the Non-applicant No.2 was acquitted from the charge framed under Section 135 of the Electricity Act.

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 Non-applicant No.2/respondent No.2 and was in possession of the Non-applicant No.2, but the witnesses have very clearly stated that the Non-applicant No.2 was the person involved in theft of energy 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. Randhir Deyashi (PW-1) has stated that on 04-09-2005 Alok Chakravarti, Junior Engineer (PW-3) made inspection in the house of Non-applicant No.2 and found him consuming electricity through illegal connection. Thereafter, on that basis he proceeded against Non-applicant No.2 and this witness gave a written complaint vide Ex.-P/2 to the police station, on the basis of which FIR (Ex.-P/3) was lodged. Therefore, this witness was not present on the spot.
8. Alok Kumar Chakravarti (PW-3) has stated that he raided the house of Non-applicant No.2 and found him illegally consuming electricity through a direct connection. He then prepared Panchnama (Ex.-P/5) and made seizure of articles of illegal connection vide Ex.-P/6. In cross-examination he has stated that he was told by Laxminarayan and Pawan Kumar that the house belongs to Non-applicant No.2. He has denied knowledge that Non-applicant No.2 is resident of neighbouring house
9. Santosh Kumar Sahu (PW-2) was member of the team and Sub-Inspector B.R. Jangade (PW-4) investigated the case.
10. One defence witness Bikau (DW-1) has been examined and he has stated that Non-applicant No.2 works as Chowkidar in PWD, Raigarh and he is owner of the house in village Bhanwaradadar. In cross-examination he has denied that Non-applicant No.2 is owner of one house situated in Raigarh.
11. It was burden of the prosecution to bring evidence beyond

reasonable doubt that Non-applicant No.2 was the person who owned and possessed the house where the raid was conducted. Alok Kumar Chakravarti (PW-3) heard from the witnesses that the house belongs to Non-applicant No.2, but, no such witness has been examined in the trial and further no investigation was made by the I.O., B.R. Jangade (PW-4) regarding ownership of the house of Non-applicant No.2. The defence evidence brought contradicts the evidence brought in the prosecution, therefore, there is no such evidence on the basis of which it can be said with certainty that the house which was raided by the officials of the Electricity Board belonged to Non-applicant No.2. Therefore, the prosecution has failed to bring evidence against Non-applicant No.2 as it was required to be done. Accordingly, it is found that the learned Court below has not committed any error in acquitting the Non-applicant No.2. Therefore, this revision petition is found to be without any merit, which is dismissed.

Sd/-
(Rajendra Chandra Singh Samant)
Judge