

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :29/11/2019

Order passed on : 04 /02/2020

CRR No. 276 of 2008

- Chhattisgarh State Electricity Board, through the Executive Engineer Raigarh, Tahsil and District Raigarh Chhattisgarh, Chhattisgarh

---- Applicant

Versus

1. Munaku Vishwakarma S/o Janak Ram Vishwakarma, Aged About 21 Years, Caste Lohar, Occupation Agriculturist/ILabour, R/o Village Malda, Police Station and Tahsil Sarangarh, District Raigarh Chhattisgarh , Chhattisgarh ...(Accused Person)
2. State of Chhattisgarh, through the Station House officer, Police Station Sarangarh, Tahsil Sarangarh, District Raigarh (C.G.)

-----Non-applicants/Respondents

For Applicant : Shri M.D. Sharma, Advocate
For State/Non-applicant No.1 : Shri Hari Shankar Patel, Advocate.
For Non-applicant 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 10-01-2008 passed by Special Judge under the Electricity Act, Raigarh, C.G. in Special Case No.31/2007 by which Non-applicant No.1/respondent No.1 was acquitted of charge under Section 135 of the Electricity Act, 2003.
2. The case of prosecution is this, that Rajeshwar Minj (PW-4), Executive Engineer (Vigilance) of Electricity Board inspected the premises of Non-applicant No.1 on 02-09-2005 which was a Paan

shop and it was found that he was consuming the electricity through an illegal connection and thus committed theft of electricity. The articles of illegal connection were seized vide Ex.-P/1. Panchnama Ex.-P/2 was prepared on the spot. At the same time illegal connection connected to the house of Non-applicant No.1 was also found which was taken out and seized vide Ex.-P/3. Loss of electricity Board was calculated vide Ex.-P/9 and a written complaint was given to the police station Ex.-P/6, on the basis of which FIR, Ex.-P/7 was lodged. The police investigated the case and filed the charge sheet against Non-applicant No.1. The Non-applicant 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, Non-applicant No.1 has been acquitted of the charge framed against Non-applicant No.1 as has been 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.1/respondent No.1 and was in possession of the Non-applicant No.1, but the witnesses have very clearly stated that the Non-applicant 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 Non-applicant No.1 submits acquittal of the Non-applicant No.1 in this case is proper which needs no interference. The departmental witnesses have though made statement against Non-applicant No.1, that was not sufficient for giving a clear finding that Non-applicant 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/Non-applicant No.2 makes formal objection.
6. Heard learned counsel for the parties and perused the record of the Court below.
7. Rajeshwar Minj (PW-4) has stated about raid conducted by him and the documentation made by him. In cross-examination he has stated that Non-applicant No.1 himself stated that the Paan shop belongs to him and no other documents were seized regarding the property of Non-applicant No.1. He has further denied that the shop did not belong to Non-applicant No.1.
8. Satyavadi (PW-1) was a member of the raiding team. Devpanda (PW-3) is a hostile witness who has not supported the prosecution case. ASI R.K. Singh Rana (PW-2) proved the investigation made by him.
9. After appreciating the evidence brought by the prosecution it is found that apart from the oral statement that the shop and the house belonged to the Non-applicant No.1 there is no documentary evidence collected in the investigation and neither any other verification has been made by Rajeshwar Minj (PW-4) or by the I.O. in this case. Non-applicant No.1 is denying the ownership of the house and the shop in which the raid was conducted. Therefore, it was burden on the prosecution to bring evidence in this respect beyond reasonable doubt and the same has not been brought.

Therefore, the prosecution has failed to prove that Non-applicant No.1 is the person responsible for commission of offence as alleged in this case. Hence, it is found that the learned Court below has not committed any error. Therefore, this revision petition is found to be without any merit, which is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Aadil