

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :29/11/2019

Order passed on : 04/02/2020

CRR No. 155 of 2008

- Chhattisgarh State Electricity Board Through 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 Sariya, Tahsil Sarangarh, District Raigarh Chhattisgarh, Chhattisgarh
2. Vibhishan Patel Son of Bengali Patel, aged about 80 years, Occupation Agriculturist, R/o Village Bore, Police Station Sariya, Tahsil Sarangarh, District Raigarh (C.G.) (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 Roop Naik, 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 28-09-2007 passed by Special Judge under the Electricity Act, Raigarh, C.G. in Special Case No.47/2007 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 T.C. Sahu (PW-1), Junior Engineer of Electricity Board along with his team raided and made

inspection of the huller mill of Non-applicant No.2 and found theft of electricity being committed by Non-applicant No.2 by use of illegal connection. The articles were seized and seizure (Ex.-P/1) was made on the spot. Ex.-P/2 spot map was prepared and a written complaint was given to Police Station Sariya vide Ex.-P/3. On being chargesheeted the Non-applicant No.2 was charged under Section 135 of the Electricity Act, to which he denied and prayed for trial. After completion of the trial, the Non-applicant No.2 has been acquitted of charge as it was 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 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. Junior Engineer of Electricity Board, T.C. Sahu (PW-1) has given statement regarding inspection and seizure made on the spot. He has also submitted that Non-applicant No.2 was a subscriber of the Board, however, the supply of electricity was disconnected because of non-payment of the bills. In cross-examination he has admitted that on the date of inspection, i.e., 22-09-2006 the huller mill was not found in running condition and there was no tampering with the meter fixed by the Electricity Board. He has also admitted that subsequent to the disconnection of electrical supply the Non-applicant No.2 had filed an application for reconnection which was pending. He has denied the suggestion that the supply to the Non-applicant No.2 was not at all disconnected.
8. Rajendra Kumar Sahu (PW-2) is employee of the Electricity Board. He has stated that he was present at the time of disconnection of the electrical supply of Non-applicant No.2 and the reading was 246 and on the date of inspection the reading was 268.
9. The independent witness Buti (PW-3) is a hostile witness. Arun Kumar Pradhan (PW-4) was present in the team of inspection. ASI R.P. Tiwari (PW-5) has proved the investigation.
10. There is only oral statement of Junior Engineer T.C. Sahu (PW-1) and Rajendra Kumar Sahu (PW-2) that the electricity supply of Non-applicant No.2 was disconnected because of non-payment of earlier bills and at the time of disconnection the reading was 246. No documentary evidence has been presented regarding the

disconnection of the electricity supply to the huller mill of Non-applicant No.2 and regarding the reading taken at the time of disconnection and neither these witnesses were the persons who made the disconnection. It has been admitted by both these witnesses that the supply of electricity to the huller mill of Non-applicant No.2 was being made through the meter, therefore, at the time of inspection the reading was found to be 268. Hence, it is a particular case, this evidence was needed to be essentially brought and established that there had been a disconnection of electricity supply. The oral statement regarding disconnection and the admissions regarding the electricity supply through electrical meter is completely contradictory statement and further there is no documentary proof regarding the disconnection. Therefore, it is found that the prosecution has not brought evidence beyond reasonable doubt regarding disconnection of the electricity supply of Non-applicant No.2 on the date the inspection was made. 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.

Sd/-
(Rajendra Chandra Singh Samant)
Judge