

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :29/11/2019

Order passed on :04/02/2020

CRR No. 479 of 2008

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

---- Petitioner/Applicant

Versus

1. Shashi Kumar Biswal, S/o. Ganesh Ram Biswal, aged about 63 years, resident of Village Kusmunda, Thana Pusaur, Tehsil & District Raigarh (C.G.)
2. State of Chhattisgarh, Through Station House Officer, Police Station Pusaur, Tehsil & District Raigarh (C.G.)

-----Respondents/Non-applicants

For Applicant/Petitioner : Shri M.D.Sharma, Advocate.

For Respondent No.1 : Shri Sunil Sahu, 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 27-03-2008 passed by Special Judge under the Electricity Act, Raigarh, C.G. in Special Case No.21/2007 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 on 15-10-2005, Junior Engineer Mukesh Kumar Sahu (PW-5) made inspection of the premises of respondent No.1, where he found him committing theft of electricity

through an illegal electric connection. The article of illegal connection was seized vide Ex.-P/1. One panchnama Ex.-P/2 was prepared on the spot. A written complaint (Ex.-P/3) was given to police, on the basis of which FIR (Ex.-P/4) was lodged. The loss was calculated vide Ex.-P/5. 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 petitioner/applicant that the impugned judgment suffers from serious infirmity. It was held in the impugned judgment that the petitioner/applicant had been unable to prove that the premises 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 involved in the 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 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 Mukesh Kumar Sahu (PW-5) has given details regarding the raid conducted in his examination-in-chief and about documentation made by him. In cross-examination he has stated that he has admitted the suggestion given by the defence counsel that respondent No.1 had applied for electric connection and formalities for the same were completed. This suggestion given by the defence supports the version that respondent No.1 was owner and possessor of the premises in which the theft of electricity was committed.
8. B.B. Mishra (PW-1) is a meter inspector who was a member of the team and in his presence the raid was conducted. He has stated that respondent No.1 had applied for meter for electric connection, but the connection was not provided to him and he was committing theft of electricity. In cross-examination there is no challenge to the ownership and possession of respondent No.1 in the premises inspected. G.P. Sonwani (PW-2), Executive Engineer, Vigilance was also a member of the same team.
9. Sher Singh Thakur (PW-3) is a Lineman who was also a member of the same team. T.R. Chouhan (PW-6), ASI conducted the investigation. S.I., P.C. Sahu (PW-7) has also made part of the investigation.
10. On appreciating the evidence brought by the prosecution, it is found that at the time of inspection respondent No.1 himself was not present and there is no statement of any witness that illegal connection that was found on the spot was being used for running

any machinery or any other electrical equipment. There is a clear admission by the witnesses that respondent No.1 had already applied for the electric connection which was not established till the date of inspection. There is further admission of Meter Inspector, B.B.Mishra (PW-1) in his cross-examination that the connection could not be established because the transformer was to be installed, same admission has been made by Executive Engineer, Vigilance, G.P. Sonwani (PW-2). Lineman Sher Singh Thakur (PW-3) has admitted in his cross-examination that just 10 to 15 days before the transformer was installed and it was not possible to give any electric connection to respondent No.1 before installation of that transformer. Therefore, on the basis of this evidence in the admissions made it is difficult to make an assumption that illegal electricity connection was already established being used for committing theft of energy by respondent No.1 for the reason that before installation of transformer making of such illegal connection was not possible and also at the time of inspection no machine or electrical equipment were found running showing consumption of any energy. Therefore, I am of this view that the prosecution has failed to bring evidence to prove the charge against respondent No.1 beyond reasonable doubt.

11. In view of the above discussion, 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 accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge