

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :29/11/2019

Order passed on :04/02/2020

CRR No. 489 of 2008

- Chhattisgarh State Electricity Board, Through The Executive Engineer, Raigarh, Tahsil and District Raigarh (C.G.)

---- Applicant

Versus

1. Suresh Kumar Sao, Son of Late Shri Lala Sao, aged about 47 years, agriculturist and shopkeeper, resident of Village Kharsiya, behind the Ganja of Kharsiya, Tahsil Kharsia, District Raigarh (C.G.)
2. State of Chhattisgarh, through the Station House Officer, Police Station Kharsiya, District Raigarh Chhattisgarh, District Raigarh (C.G.)

-----Respondents/Non-applicants

For Applicant : Shri M.D.Sharma, Advocate
For Respondent No.1 : Shri Sanjay Agrawal, 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 20-03-2008 passed by Special Judge under the Electricity Act, Raigarh, C.G. in Special Case No.22/2007 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 02-09-2005, Executive Engineer K.S. Bhandari (PW-9) made inspection of the house of respondent No.1 and found that respondent No.1 had established a

connection separate from the meter installed and was committing theft of electricity. The panchnama Ex.-P/4 was prepared on the spot and seizure was made vide Ex.-P/1. A written complaint (Ex.-P/2) was given to Police Station Kharsiya, on the basis of which FIR (Ex.-P/3) was lodged. The case was investigated and 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 belonged to respondent No.1/Non-applicant 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/non-applicant 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. K.S. Bhandari (PW-9) has stated about the raid conducted in his examination-in-chief. He has admitted in his cross-examination that consumption of electricity was being made by the tenants of Ratiram and one of them has identified as respondent No.1.
8. Prakash Chand Mahananda (PW-1), Junior Engineer who was present at the time of inspection and raid, in his cross-examination he has admitted that at the time of inspection respondent No.1 was not present. In the same house there were four tenants and the supply of electricity to all the four tenants were being made through a single meter. He has also admitted that because of this said illegal connection all the four tenants were getting benefited.
9. Ram Kumar Rao (PW-2), Junior Engineer was also a member of the team, who has stated accordingly in his examination-in-chief. In his cross-examination, he has stated that the meter was installed in the veranda which is common pathway for all the four tenants of the house.
10. Bhupendra Dewangan (PW-3) is a Lineman who was a member of the team. Abhay Ram Nishad (PW-4) is also a Lineman and member of the team, in cross-examination he has admitted that there were no loop connection with the electric meter though the map shows the loop connection, therefore, the map prepared (Ex.-P/5) is incorrect.
11. Bhushan Lal Verma (PW-5), Junior Engineer was also a member of the team. In cross-examination he has admitted that no copy of seizure memo was given to respondent No.1 for the reason that he

was not present in the spot.

12. Gwal Prasad Thakur (PW-6) is also a staff of the C.S.E.B. who has made statement about handing over the seized articles to the police which were seized vide Ex.-P/7.
13. Jang Bhadur Singh (PW-7), Head Constable and B. Minj (PW-8), Inspector have done the investigation in this case.
14. The learned trial Court has held that the evidence of the prosecution was not convincing. There are discrepancies present in the evidence, firstly, respondent No.1 was not present at the time when the inspection was made and secondly, there is no evidence of tenants in this regard that respondent No.1 was occupier of one of the house and was making consumption to the said illegal electric connection. Landlord of the house was not examined to prove that respondent No.1 was a tenant of the same house and also one of the witnesses of the prosecution, namely, Abhay Ram Nishad (PW-4), Assistant Lineman of Electricity Board has himself stated that map (Ex.-P/5) is incorrectly prepared and at the time of inspection he did not see any loop line. Therefore, the evidence of the prosecution had not been brought beyond reasonable doubt in this case.
15. Consequently, 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