

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :29/11/2019

Order passed on : 04/02/2020

CRR No. 275 of 2008

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

---- Applicant

Versus

1. Smt. Santoshi Ratre W/o Paras Ram Ratre, Aged About 30 Years, Occupation Housewife R/o Puchhapara Raigarh, Tahsil and District Raigarh Chhattisgarh, Chhattisgarh(Accused Person)
2. State of Chhattisgarh, through the Station House Officer, Police Station City Kotwali, Raigarh, Tahsil and District Raigarh, Chhattisgarh

-----Non-applicants

For Applicant : Shri M.D. Sharma, Advocate.
For Non-applicant No.1 : Shri Rajkumar Pali, Advocate.
For State/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 01-02-2008 passed by Special Judge under the Electricity Act, Raigarh, C.G. in Special Case No.49/2007 by which Non-applicant No.1/respondent No.1 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 Alok Chakravarti (PW-5), Junior Engineer of C.G. State Electricity Board along with his team made inspection of premises of Non-applicant

No.1 and found that she was committing theft of electricity with the help of illegal connection directly taken from the electric pole. Panchnama Ex.-P/2 was prepared on the spot and the seizure of articles were made vide Ex.-P/3 from the spot. A complaint was given to police vide Ex.-P/8, on the basis of which FIR (Ex.-P/9) was lodged against Non-applicant No.1. The case was investigated and the charge sheet was filed against Non-applicant No.1. She was charged with offence under Section 135 of the Electricity Act, to which she denied and prayed for trial. After completion of the trial, the trial Court acquitted Non-applicant No.1 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 premises 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, but 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. Alok Chakravarti (PW-5), Junior Engineer of the C.S.E.B. along with his team inspected the premises of Non-applicant No.1 and on the basis of finding on the spot he made documentation as mentioned hereinabove. In cross-examination he has admitted that he has not collected any document regarding ownership of the house and the house showing under ownership of Non-applicant No.1 and denied the suggestion that Non-applicant No.1 does not own any house in the said locality.
8. R. Deyasi (PW-4), Junior Engineer of the C.S.E.B. was also a member of the team.
9. Laxminarayan Kurre (PW-2) is an independent witness who was declared hostile by the prosecution.
10. Amritlal Sahu (PW-1) is a Lineman who has presented the seized articles in the police station which were seized by the police vide Ex.-P/1. ASI, Bhagwat Yadav (PW-3) has done the investigation in this case and SI, Janmejay Bagh (PW-7) has lodged the FIR (Ex.-P/9).
11. On appreciating the whole evidence presented by the prosecution in this case, it is found that no verification was made by the chief of the raiding party Alok Chakravarti (PW-5) regarding ownership of the house concerned, neither police has investigated the same. The suggestion in defence of Non-applicant No.1 is of denial of the ownership of the concerned house. Therefore, there is no such evidence on the basis of which it can be held with certainty that Non-applicant No.1 was owner of the premises in which the team of

C.S.E.B. conducted raid. Hence, it is found that the prosecution has failed to prove evidence beyond reasonable doubt as was required in this case. Therefore, in the considered view of this Court the learned Court below has not committed any error in acquitting Non-applicant No.1 from the charge against her. Hence, this criminal revision is found to be without any merit, which is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge