

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :29/11/2019

Order passed on : 04/02/2020

CRR No. 285 of 2008

- C.G. State Electricity Board, Through the 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 City Kotwali, Tahsil and District Raigarh Chhattisgarh, Chhattisgarh
2. Kamal Singh Son of Lakhan Singh Parihar, aged about 50 years, Occupation Businessman, Resident of Darogapara, Raigarh, Police Station Kotwali, Raigarh (C.G.). Present address Atal Nagar, Bye pass Shiv Mandir, Raigarh, Tahsil and District Raigarh (C.G.)

-----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 Rajkumar Pali, 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 25-07-2007 passed by Special Judge under the Electricity Act, Raigarh, C.G. in Special Case No.11/2007 by which Non-applicant No.2/respondent No.2 was acquitted of charge under Section 135 of the Electricity Act, 2003.
2. The facts of the case are these, that Junior Engineer Ishwar Singh Kanwar (PW-1) inspected the spot on 13-08-2006 and found that

the electrical energy was being consumed through illegal connection in the temple present on the spot. He was informed that the temple was built by Non-applicant No.2. He calculated the loss occurred to the Electricity Board, seized the articles of the illegal connection vide Ex.-P/1, prepared the map vide Ex.-P/2 and then made written complaint to the police vide Ex.-P/3, on the basis of which FIR (Ex.-P/4) was lodged. After completion of the investigation, charge sheet was filed against Non-applicant No.2. The trial Court framed the charge against Non-applicant No.2, to which he denied and prayed for trial. After completion of the trial the Non-applicant No.2 has been acquitted from the charge framed under Section 135 of the Electricity Act.

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 temple 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 the person involved in 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 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. Ishwar Singh Kanwar (PW-1) has given statement about inspection and seizure made on the spot and complaint made against the Non-applicant No.2. In cross-examination he has admitted that he did not find Non-applicant No.2 present at the time inspection. He had not gone inside the temple, therefore, he is not in a position to state that whether there had been any electrical wiring inside the temple. He has also admitted that there had been no electrical connection to the temple from the house of Non-applicant No.2.
8. Lakehswar (PW-2) has stated that he had informed to the Electricity Department regarding breakage of electrical wire, because of which his cow had died due to electrocution. The electrical wire that the broken was the wire between two electrical pillars. One separate electrical wire was found fixed with the broken wire which belonged to Non-applicant No.2. However, he has stated that he had not been to the house of Non-applicant No.2 or the temple built by him. This witness has been declared hostile and cross-examined in which he has not made admission in favour of the prosecution. In cross-examination by the defence he has admitted that he had never been to the temple which was built by Non-applicant No.2. On what basis he has stated that the connected wire belonged to Non-applicant No.2 has not been further clarified or explained.
9. Another witness Sanjay (PW-3) is a hostile witness. ASI Laluram Bhagat (PW-4) and ASI B.D. Sidar (PW-5) conducted the investigation procedure.

10. Dinesh Sahu (PW-6) is a departmental witness who has stated ignorance regarding the electrical connection hooked by Non-applicant No.2, therefore, he has been declared hostile.
11. On appreciation of the evidence brought by the prosecution, it is very clearly found that nowhere it is established that there had been illegal connection made for the temple and Non-applicant No.2 was the person who was responsible for the same. Therefore, there is practically no evidence against Non-applicant No.2 and the prosecution has failed to prove the case against Non-applicant No.2.
12. Consequently, it is found that the learned Court below has not committed any error in acquitting the Non-applicant No.2. Therefore, this revision petition is found to be without any merit, which is dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge