

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Reserved for orders on :29/11/2019**

**Order passed on :04/02/2020**

**CRR No. 287 of 2008**

- Chhattisgarh 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 Kotra Raod, Tahsil and District Raigarh Chhattisgarh, Chhattisgarh
2. Mohan Lal Patel Son of Shatrughan Prasad Patel, aged about 70 years, Occupation Agriculturist, Resident of Village Gejamuda, Police Station Kotra Road, Raigarh, Tahsil and District Raigarh, Chhattisgarh. ....(Accused Person)

**-----Non-applicants**

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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 Dhani Ram Patel, Advocate.

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**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 30-10-2007 passed by Special Judge under the Electricity Act, Raigarh, C.G. in Special Case No.8/2007 by which Non-applicant No.2 was acquitted of charge under Section 135 of the Electricity Act, 2003.
2. The facts of the case are these, that on 21-12-2005 a team of officials and staff of C.S.E.B. made an inspection of the premises of Non-applicant No.2 and found him committing theft of electricity

through illegal connection. Inspection report was prepared vide Ex.-P/1. The articles of illegal connection were seized vide Ex.-P/2 and a written complaint was given to police vide Ex.-P/3, on the basis of which FIR (Ex.-P/4) was lodged. The case was investigated and the charge sheet was filed against Non-applicant No.2. The trial Court framed the charge against Non-applicant No.2 under Section 135 of the Electricity Act, 2003, to which he denied and prayed for trial. After completion of the trial by the impugned judgment the Non-applicant No.2 has been acquitted from the charge framed against him.

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.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. Gokul Prasad Sonwani (PW-1), Executive Engineer, Vigilance headed the raiding party and inspected the premises of Non-applicant No.2 and found that the huller mill was being run by using illegal electric connection. Panchnama was prepared on the spot and articles of illegal connection were taken out and seized vide Ex.-P/2. In cross-examination he has denied knowledge that Non-applicant No.2 was holder of electric connection for his huller mill since 1997. He has also denied knowledge that Non-applicant No.2 had been making payment of bills regularly. He has stated that he has no knowledge about the complaint against Non-applicant No.2 regarding commission of theft through illegal connection and denied other suggestions given by defence.
8. B.B. Mishra (PW-2) was a Meter Inspector who has stated in examination-in-chief that there was no meter present for the huller mill, it is established in the cross-examination that it is an improved statement. He has denied knowledge that Non-applicant No.2 is subscriber of the Electricity Department since 1997 and that he was making regular payments of the bills.
9. Surendra Kumar Patel (PW-3) is an independent witness of search and seizure who has not supported the prosecution case.
10. Puniram Patel (PW-4), Lineman was present at the time of inspection. He has admitted in cross-examination that he was Lineman of the area where the inspection was made and Non-applicant No.2 was old subscriber of the Electricity Board.
11. Junior Engineer, Ramesh Kumar Patel (PW-5) has stated about the raid conducted in his examination-in-chief. He has also admitted in his cross-examination that Non-applicant No.2 was old subscriber of

the Electricity Board and during his tenure electric connection of Non-applicant No.2 was not disconnected. At the time of inspection huller and flour mill was not found in running condition, but, again he has made statement that the electric connection of Non-applicant No.2 was disconnected. He has also denied the other adverse suggestion given.

12. ASI, G.S. Dubey (PW-6) and Head Constable, Suresh Kumar Panda (PW-7) had done the investigation.
13. On appreciation of the evidence brought by the prosecution, it is found that there is admission by the prosecution witnesses that Non-applicant No.2 was an old subscriber of C.S.E.B. and electricity connection of Non-applicant No.2 was disconnected before the time of inspection, which could have been proved by production of relevant documents from the C.S.E.B. Further, admission that Non-applicant No.2 had been making regular payments of bills also creates confusion whether Non-applicant No.2 was making use of the electricity connection at the time of inspection as subscriber of C.S.E.B., further the huller mill was not found in running condition at the time of inspection. Therefore, this doubt so raised is in favour of Non-applicant No.2.
14. Hence, it is found that the learned Court below has not committed any error in acquitting the Non-applicant No.2. Therefore, this criminal revision is found to be without any merit, which is dismissed accordingly.

Sd/-  
**(Rajendra Chandra Singh Samant)**  
**Judge**