

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for orders on :29/11/2019

Order passed on :04/02/2020

CR.R. No. 700 of 2008

Chhattisgarh State Electricity Board, Through : the Executive Engineer, O & M Division, Sakti, Tahsil – Sakti, District Janjgir-Champa, Chhattisgarh.

---- Applicant

Versus

1. Chanda Ram, aged 45 years, S/o. Shri Puniram Sahu, R/o. Village BHOTHI-DEENA, Police Station – Jaijaipur, District – Janjgir-Champa (C.G.)
2. State of Chhattisgarh, Through : the Officer Incharge-, Police Station – Jaijaipur, District Janjgir-Champa Chhattisgarh.

-----Non-applicants

For Applicant	: Shri M.D. Sharma, Advocate
For Respondent No.1	: Shri Dashrath Prajapati on behalf of Mr. Rakesh Pandey, 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 28-07-2008 passed by Special Judge under the Electricity Act, Janjgir, District Janjgir-Champa, C.G. in Criminal (Electricity) Case No.06/2007 by which respondent No.1 was acquitted of charge under Section 135 (A) of the Electricity Act, 2003.

2. Facts of the case are these that on 05-11-2005 a team of Chhattisgarh State Electricity Board conducted a raid in the premises of respondent No.1, where he was found running haller mill, flour mill with the help of electric connection directly hooked from main line. Finding it a case of theft of energy, Panchnama (Ex.P-1) was prepared on the spot and the articles of illegal connection has been seized vide Ex.P/2. complaint was given to the Police vide Ex.P-4 on the basis of which FIR, Ex.P-5 was lodged. Case was investigated and charge-sheet was filed. The respondent No.1 was charged with offence under Section 135 (A) of the Electricity Act to which he denied the charges. After completion of the trial, the learned trial Court has acquitted the respondent 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 the case beyond reasonable doubt. But the witnesses have very clearly stated that the respondent No.1 has committed theft of energy by taking illegal connection.

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.

4. 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.

5. Learned counsel for Non-applicant No.1 submits 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, 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.

6. Learned counsel for the State/Non-applicant No.2 makes formal objection.
7. Heard learned counsel for the parties and perused the record of the Court below.
8. Umend Kumar Sonwani (P.W.-4) was the Junior Engineer of C.S.E.B. conducted raid in the premises on the date of incident, who has stated accordingly, before the Court giving all the details.
9. After perusing all the evidence of prosecution, I am of this view that the learned trial Court has not correctly appreciated the evidence of prosecution witnesses for drawing conclusions in the case, therefore, the impugned judgment suffers from infirmity, which is required to be set-aside and remanded back to the trial Court.
10. Accordingly, the revision is allowed. The impugned judgment dated 28.07.2008 is hereby set-aside and the case is remanded back to the trial Court with direction to afford proper opportunity to the parties for hearing and pass the judgment in accordance with law.

Sd/-
(Rajendra Chandra Singh Samant)
Judge