

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO.453 OF 2004**

The State of Maharashtra ) ..Appellant

V/s.

Rohit Narendra Dube )  
Age 24, years, R/O Palghar, Naveli, )  
Tal Palghar, District Thane ) ..Respondent  
(Orig. Accused)

Mrs. Anamika Malhotra, APP for State  
Mr. Sunil Prem Lalla a/w Ms Preeti Mahanta for Respondent

**CORAM : K.R.SHRIRAM, J.  
DATED : 11<sup>th</sup> DECEMBER 2020**

**ORAL JUDGMENT :**

1 This is an appeal impugning an order and judgment dated 1-1-2004 passed by Learned Judicial Magistrate First Class, Palghar, by which, respondent was acquitted under Section 248(1) of Criminal Procedure Code for the offence punishable under Sections 39 and 44 of Indian Electricity Act of 1910 and 1986.

2 According to prosecution, accused is the owner of M/s J. P Enterprises Ltd., company situated in BIDCO area plot no.17, Gala No.3, Palghar. On 15-6-1999 at about 1.00 p.m., the flying squad of Maharashtra State Electricity Board (MSEB) raided the premises of M/s.J. P Enterprises, inspected the meter installed against consumer I. P No.10107036 in the presence of respondent / accused and the raiding party found that the

meter had been tampered with. According to prosecution, due to the tampering, the meter was showing less reading than what it should have shown and, therefore, accused has committed theft of 123642 units of electricity for the period 27-5-1998 to 15-6-1999. Following the spot inspection report and recording of statement of accused, MSEB filed a worksheet bill which is at Exhibit 17. Based on that a complaint was lodged with the Palghar Police Station by Deputy Executive Engineer of flying squad. Charges were framed and the defence of accused, recorded under Section 313 of CrPC, is of total denial. Accused has also put up the defence that he is not the owner of M/s J. P. Enterprises but only an employee.

3 To drive home the charge, prosecution examined four witnesses. P.W.-1 Mr. Sunil Wamanrao Shirsagar, Deputy Executive Engineer of flying squad, who had carried out surprise flying visit, P.W.-2 Bhika Narayan Wani, Assistant Vigilance, A.P.P. in flying squad at Palghar, who was also part of the surprise flying visit, P.W.-3 Arvind Singh Darogasingh, a panch witness, who turned hostile and P.W.-4 Atmaram Sitaram Sonawane, the Investigating Officer.

4 As noted earlier, the main defence of accused was he was not the owner of M/s. J. P. Enterprises. Prosecution has not produced any evidence to show that accused is the owner of M/s. J. P. Enterprises. Prosecution has not produced any evidence to show that accused is the owner of M/s. J. P. Enterprises or he is even the consumer of MSEB to fasten the liability on

him. Investigating Officer (PW.-4) in his cross-examination has admitted that he has not seized any document which discloses who is the owner of M/s. J. P. Enterprises. Even if one accepts the evidence of PW.-1 and PW.-2 that there was a theft of electricity with which I will deal with later, still accused cannot be fastened with the charge of committing theft of electricity because there is no evidence to show accused to be the consumer of MSEB or the owner of M/s. J. P. Enterprises. When the flying squad visited, i.e., PW.-1 and PW.-2, they found that the meter box had a paper seal which was put by one Mr. More, who was an MSEB employee. PW.-1 admits that unless the paper seal was opened, nobody could do anything with meter terminal, its cover or in respect of any wire connected to meter. PW.-1 also admits that persons from Sub-Division office at Palghar regularly visit the industry for taking the meter reading every month. PW.-2 in his cross-examination admits that they have not produced any electricity bill to show that accused is connected with the said electric meter. PW.-2 also admits that unless the paper seal on the iron box is removed no one can do anything to the meter terminal. Spot inspection report at Exhibit 15 confirms that there was one paper seal of Mr. More dated 9-2-1999. PW.-2 admits that MSEB staff from Sub-Division office at Palghar used to visit the company in the industrial area for meter reading but before preparing consumption assessment statement, they did not consult with anybody from the Sub-Division Office at Palghar. PW.-3 panch witness says that he can understand Marathi but he is unable to speak or write Marathi smoothly.

P.W.-3 denies that on 19-6-1999 when he was called to sign the panchnama the other panch witness Sameer Shaikh or complainant Sunil Kshirsagar were present. P.W.-3 has also denied the contents of panchnama. P.W.-3 further states his signature was obtained on already prepared panchnama and its contents were not read over. P.W.-3 further states when he signed on panchnama no one else were present.

5 In the circumstances, in my view, the opinion of the Trial Court cannot be held to be illegal or improper or contrary to law. The order of acquittal, in my view, need not be interfered with.

6 Appeal dismissed.

(K.R. SHRIRAM, J.)

Meera  
M.  
Jadhav

Digitally signed  
by Meera M.  
Jadhav  
Date:  
2020.12.14  
18:07:25  
+0530