

**CRA-S-1739-SB-2015**

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CRA-S-1739-SB-2015 (O & M)**

**Date of Decision: 10.02.2020**

Dakshin Haryana Bijli Vitran Nigam Limited

... Appellant

Versus

Ramesh Kumar

... Respondent

**CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL**

Present: Mr. Pardeep Singh Poonia, Advocate,  
for the applicant-appellant.

Mr. S.R.Hooda, Advocate,  
for the respondent.

**HARNARESH SINGH GILL, J.**

**CRM-40328-2018**

The applicant has filed the present application under Section 378(4) of the Code of Criminal Procedure (for brevity, 'Cr.P.C.') for grant of leave to appeal against the judgment dated 03.07.2014 passed by the learned Additional Sessions Judge, Hisar, whereby the respondent was acquitted by the trial Court of the charge.

As per the prosecution version, the premises of the accused was checked on 09.05.2012 and it was found that he had been using direct electricity supply to his shop. The accused had caused a loss of revenue, amounting to Rs.80,503/-, to the Nigam. As per the rules of department, it was a case of theft of energy and accordingly, FIR No.57 dated 10.07.2012, under Section 135 of the Electricity Act, was registered at Police Station

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irrigation & Power, Hisar. After completion of investigation, challan against the accused was presented.

On 23.07.2013, the respondent-accused was charge-sheeted under Section 135 of the Electricity Act, to which he had pleaded not guilty and claimed trial.

To prove its case, the prosecution examined as many as six witnesses. Thereafter, the evidence of prosecution was closed by the learned P.P. for the State.

Statement of accused under Section 313 Cr.P.C. was recorded, wherein, he had denied all the incriminating evidence put to him and pleaded his false implication. However, he did not lead any evidence in his defence.

The prosecution examined as many as six witnesses. It is the case wherein PW 3 Dalbir Singh, SDO, alongwith other officials had inspected the premises of the respondent-accused. During the inspection, it was found that there had been a cut in the incoming cable before meter and from that point, supply had been running directly by connecting a separate wire. Other than the documentary record exhibited, photographs Mark-A to Mark-D were also placed on record.

The trial Court, after appreciating the evidence, acquitted the respondent-accused of the charge framed against him.

Being dissatisfied with the impugned judgment, the applicant has filed the present application seeking leave to appeal.

Learned counsel for the applicant contended that there had been a theft of energy by the accused by using direct supply to his shop. The

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prosecution witnesses had duly proved the case. Rather, they had no enmity with the accused to depose falsely against him. The officials of the electricity department found that from the cable itself, the direct supply had been taken and even though the entire record had been proved before the trial Court, yet the accused had been acquitted.

Per contra, learned counsel for the respondent has argued that the respondent had been falsely implicated in the present case. He further contended that other than the official witnesses, no private witness had been introduced. Moreover, there was a delay of two-month in lodging the FIR. The respondent had been rightly acquitted by the trial Court of the charge.

I have heard the learned counsel for the parties and with their able assistance, have gone through the record of the trial Court.

The alleged theft of electricity was committed on 09.05.2012 by the respondent, whereas the FIR was registered on 10.07.2012. The delay in lodging the FIR goes unexplained and creates a doubt on the genuineness of the allegations raised by the prosecution and there is no explanation qua the same.

The trial Court has also discussed that the witnesses examined by the prosecution were official witnesses and no independent witness had been examined by the prosecution despite the fact that the inspection in question had been conducted at about 10.15 a.m. Moreover, PW 3 Dalbir Singh, SDO could not point out as to whether the accused was the owner of the premises in question. He could not even disclose the property number of the premises or whether there was any boundary wall. He also stated that cable of the Nigam wherein cut had been made, had not been taken into

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possession. He also stated that the cable produced in the Court was neither put into any parcel nor it was sealed. PW 4 Hari Om J.E. also stated that PVC in which cut had been made and direct cable had been connected, had not been taken into possession by the raiding party. PW 5 Suresh Kumar ALM also stated that there had been no mark of identification on the said PVC cable. He also stated that PVC cable remained unsealed since the same had been handed over to him till it was deposited with the police. Moreover, no CD/videography of the spot was prepared as required in view of the instructions of the Nigam.

Thus, taking into consideration the evidence on record, the trial Court has rightly arrived at a conclusion that prosecution had failed to prove its case against the accused beyond the reasonable doubt.

Moreover, it is well settled by now that if the view adopted by the Court while acquitting the accused is a reasonable one and the conclusion reached by it had its grounds well set out on the material on record, the acquittal may not be interfered with. A Division Bench of this Court in case State of Haryana v. Satbir, 2013(7) R.C.R. (Criminal) 1490, has held as under:-

*“There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the*

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*conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where interference is imperative and the ends of justice so require and it is essential to appease the judicial conscience.”*

Still further, Hon’ble Supreme Court in State of Rajasthan Vs. Shera Ram @ Vishnu Dutta, Criminal Appeal No. 1502 decided on 1.12.2011 has held that if the two views are possible on the evidence adduced in the case, then one favourable to the accused, may be adopted by the Court. It was held as under:-

*“12. There is a very thin but a fine distinction between an appeal against conviction on the one hand and acquittal on the other. The preponderance of judicial opinion of this Court is that there is no substantial difference between an appeal against conviction and an appeal against acquittal except that while dealing with an appeal against acquittal, the Court keeps in view the position that the presumption of innocence in favour of the accused has been fortified by his acquittal and if the view adopted by the High Court is a reasonable one and the conclusion reached by it had its grounds well set out on the materials on record, the acquittal may not be interfered with. Thus, this fine distinction has to be kept in mind by the Court while exercising its appellate jurisdiction. The golden rule is that the Court is obliged and it will not abjure its duty to prevent miscarriage of justice, where inference is imperative and then ends of justice so require and it is essential to appease the judicial conscience.”*

Learned counsel for the applicant could not point out any

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misreading or misinterpretation of the evidence so as to warrant interference by this Court. It could not be pointed out that the conclusion drawn by the trial Court was arrived at by recording any perverse finding. In my opinion, the findings recorded by the trial Court are based on the evidence led by the parties.

From the above, I do not find any ground to grant special leave to file appeal. Therefore, finding no merit in the present application, the same is dismissed. Special leave to appeal is declined.

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Since the application for grant of leave to appeal has been dismissed, as stated above, consequently, the present appeal stands dismissed.

**10.02.2020**

parveen kumar

**(HARNARESH SINGH GILL)**  
**JUDGE**

|              |                           |   |        |
|--------------|---------------------------|---|--------|
| <b>Note:</b> | Whether speaking/reasoned | : | Yes/No |
|              | Whether reportable        | : | Yes/No |