

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 537 of 2020**

Akhilesh Tiwari, son of Mahendra Tiwari, aged about 44 years, Residence of Simga Ward No. 5, Thana Simga, District Balouda Bazar – Bhatapara (C.G.)

---- Applicant

Versus

State of Chhattisgarh, Through Simga, District Balouda Bazar – Bhatapara (C.G.)

----Respondent

For Applicant	:	Mr. Vikash Pandey, Advocate.
For Respondent	:	Mr. Praveen Shrivastava, Panel Lawyer.

Hon'ble Shri Justice N.K. Chandravanshi

Order On Board

03.08.2021

(1) The proceedings of matter have been taken-up through Video Conferencing.

(2) This revision is directed against the order dated 22.02.2020 passed by Special Judge (Electricity Act), Bhatapara, District Balodazar in Special Criminal Case (Electricity Act) No. 14/19 whereby charges under Section 304-A/34 of IPC, Section 139 of The Electricity Act, 2003 and Section 3 of The Prevention of Damage to Public Property Act, 1984 (henceforth “Act, 1984”) have been framed against the applicant.

(3) The facts of the case in brief are that near Jaiswal Poultry Form, Tihupara, Simga, piece of land of accused persons is situated. Near the said land, electric wire of old electric pole was hanging very low from the electric pole, which was created hurdle to other persons for their movement. On the date of incident i.e.

on 21.6.2019, co-accused persons namely Shiv Tandon & Dinesh Gaikwad @ Bau, without obtaining requisite permission from CSPDCL, took one Suresh Khunte to pull the wire. At their behest, Suresh Khunte was pulling the wire by climbing into electric poll. At that time, wire and electric pole got broken and Suresh Khunte fell down and electric pole and electric wire fall on him, as a result thereof, he sustained grievous injuries and during the course of taking him at Raipur for treatment, Suresh Khunte died (since deceased) on the same day. On being information received from Mission Hospital, Tilda, un-numbered merg report was registered at police station Tilda Nevra, on the basis of that merg report, numbered merg report was registered. After usual investigation, charge sheet under Section 304-A/34 of IPC, Section 139 of the Electricity Act, 2003 and Section 3 of the Act, 1984 was filed by police Station – Simga before Additional Sessions Judge/ Special Judge, Baloda Bazar.

(4) After considering the material available with the charge sheet, learned Special Judge, vide impugned order dated 22.02.2020, framed charges against the applicant as mentioned in paragraph 2 to this order, which has been challenged by the applicant by filing the instant revision petition.

(5) Learned counsel for the applicant submits that as per prosecution story, the plot, where the alleged incident had occurred, is said to be the plot of present accused/applicant -Akhilesh Tiwari. Police has recorded the statement of father of deceased namely Rajkumer under Section 161 Cr.P.C., in which, he (Rajkumar) has stated that Shiv Tondan told him that he himself and applicant Akhilesh Tiwari purchased five acres of the land in partnership. The electric poles were erected on that land, but no such document was seized or filed by the police, which shows their ownership over the said land/plot, or they are having possession over the said land. He would further submit that actual owner of the said land are one Ranjana Choubey and some other persons. Except this fact, no such evidence has been collected by the police and none of the witnesses have stated any material thing against the applicant, which fulfill necessary ingredients for any of the crime or charges framed against the applicant. He further submits that on being informed about the incident to the applicant, he

helped in the medical treatment of the deceased but only on this ground, it cannot be said that he is also involved in the said crime in question, but learned trial Court without properly appreciating the oral and documentary evidence collected by the police, has framed alleged charges, which are erroneous and not sustainable in law.

(6) Per contra, learned Dy. Govt. Advocate while opposing the submissions made on behalf of the applicant would submit that co-accused Shiv Tondon and present applicant were levelling the land / plot, where the incident took place and on being called by them and on their behest, deceased – Suresh Khunte was climbed into electric pole and pulling electric wire, due to which, the incident had occurred, therefore, learned trial Court has not committed any error by framing alleged charges against the applicant.

(7) I have heard learned counsel for the parties and perused the records of criminal revision which contains copy of entire charge-sheet.

(8) The police has recorded the Statement of Shyamkali (wife of deceased) under Section 161 of Cr.P.C and other relatives and witnesses. In the Police statement, Shyamkali has stated that in the evening of date of incident, accused persons namely Shiv Tondon and Dinesh Gaikwad @ Bau came to her house and both of them were taken her husband (Suresh Khunte). As per statements of father & mother of deceased namely Rajkumar and Smt. Kamla Bai, respectively, Shyamkali has told them that on being called by Shiv Tondon and Dinesh Gaikwad @ Bau, deceased had gone with them. Neither they nor other witnesses have stated that deceased was allegedly taken by the applicant for pulling the wire. The material available on record also shows that at the time of incident, the applicant was not there and no such documents have been seized by the police, which would show that present applicant is owner or having possession over the said land/plot or on his behest, alleged work was doing by the deceased or the applicant was assigned any work on the said land /plot by its owner.

(9) Aforesaid facts and other material available on record does not constitute necessary ingredients for framing of alleged charges against the applicant/accused but the trial Court without properly appreciating the evidence collected by the police, has framed the alleged charges against him, whereas as stated above, *prima facie* no case is made out against the applicant/accused. Thus, the impugned order is liable to be set aside so far as it relates to present applicant – Akhilesh Tiwari.

(10) Resultantly, as regards present applicant- Akhilesh Tiwari, the impugned order dated 22.02.2020 is set aside. Applicant/accused is entitled to be and is hereby discharged from the charges under Section 304-A/34 of IPC, Section 139 of The Electricity Act, 2003 and Section 3 of the Act, 1984.

(11) Criminal revision thus succeeds.

Sd/-

(N.K.Chandravanshi)
Judge

D/-

