

IN THE HIGH COURT AT CALCUTTA
(Criminal Appellate Jurisdiction)
Appellate Side

Present:

The Hon'ble Justice Rai Chattopadhyay

C.R.A. 27 of 2012

WBSEDCL

Versus

The State of West Bengal & Anr.

For the Appellant

: Mr. Aniket Mitra

For the State

: Mr. N.P. Agarwala,
Mr. Pratick Bose.

Hearing concluded on : 26/09/2022

Judgment on: 23/11/2022

Rai Chattopadhyay, J. :

1. Appellant, an electricity distribution company and the defecto complainant namely West Bengal State Electricity Distribution Company Limited, is aggrieved and dissatisfied with the judgment and order dated 27th July, 2011, of acquittal of respondent no.2, passed by the trial court in the Case No. Spl. (EL) 35 of 2010.
2. The trial was done in connection with Saltora Police Station Case No.21/10 dated 25.03.2010 under Section 135 (1) (a) of The Electricity Act, 2003. By dint of the said judgment and order dated 27th July,

2011, which is impugned in this appeal, the trial court has acquitted the opposite party no.2 from the charges under Section 135 (1) (a) of The Electricity Act, 2003.

- 3.** The criminal justice system was set in motion by the appellant company by filing a written complaint in Saltora Police Station on 25.03.2010. The contentions therein inter alia may be narrated as hereinafter :

The officers of the company conducted inspection on 25th March, 2010, between 15:30 and 16:15 hours at the domicile of the respondent no.2. Respondent no.2 has been a consumer under the appellant company having and possessing 'WBSEDCL consumer no. A390242 and a meter (No. LL260829) and service line. Allegation against the respondent no.2 is of theft of electricity by tempering his supply line and meter. The inspection team is said to have found that the terminal cover of the meter used by the respondent no.2 to have been removed and incoming phase cable thereof to have been opened. It is alleged in the said complaint that the meter was found tempered in the way as stated above for which the actual consumption of the electricity could not be recorded there on.

- 4.** Thus, the inspection is said to have found sufficient material and proof of tempering of meter and theft of electricity by the respondent no.2

and consequently certain steps were taken by them like disconnection of electricity line, seizure of the meter and other articles, preparation of seizure list, preparation of inspection report and assessment of load which was said to have been assessed at 2.758 K.W. Immediately the said complaint was lodged and the police case in Saltora Police Station Case No.21/10 dated 25.03.2010 under Section 135 (1) (a) of the Electricity Act, 2003 was registered.

- 5.** This being the factual background of the case and the investigation having ended into filing of the charge sheet by police, the trial court has embarked upon conducting trial in the matter. Available witnesses were examined, electric meter was produced as exhibit in the case.
- 6.** Upon consideration of the entire evidence, oral, documentary and material exhibit, the judgment was delivered by the trial court dated 27th July, 2011, which is impugned in this appeal.
- 7.** Now this court is to consider in appeal whether on the basis of the evidence produced the trial court has been just and proper in finding the accused person as not guilty, the prosecution having failed to bring home the charges against him and passing a judgment of acquittal or any interference would be necessary as to the said impugned judgment and order.

- 8.** Mr. Mitra has represented the appellant company. He has tried amply to take a dim view of the impugned judgment, addressing the same to be incorrect and not coherent with the factual background of the case, evidence on record or the settled legal principles on the relevant points.
- 9.** Firstly, he has submitted that the six witnesses examined in the case has duly corroborated each other's evidence in order to leave no scope of doubt as to the truth of the matter deposed or credibility or acceptability of the said ocular evidence. According to him there is no discrepancy so far as the offence is concerned in the evidence of the witnesses. He says that such coherence in the deposition of six different persons could never be ignored, which the trial court has erroneously failed to consider. Thus, according to him the evidence of the witnesses were not considered and weighed by the trial court in a manner as it should have been.
- 10.** Secondly, he submits that the allegation of unmetered consumption of electricity has been labelled. However, while delivering the judgment the trial court is absolutely silent of the point and has not considered from the material available before it as to the same. Hence, it is submitted that the case is not assessed as against its entire perspective and thus the impugned judgment is is not to be a proper one. He urges that since neither the I.O nor any seizure

witness could be examined in this case, the case should be remanded back for a fresh trial.

11. Entire submission on behalf of the appellant is motivated with the idea that in a case of theft of electricity more circumspection and caution could have been undertaken while conducting the trial as the case basically deal with something having the flare of the public purpose or public good.

12. Mr. Agarwala is appearing on behalf of the state. According to him, in this trial it is a failure on part of the prosecution to bring home the charges in so far as there are many flaws as regards the investigation as well as regarding production of appropriate evidence on the part of the prosecution. He has pointed out about the seizure list not containing the signature of the seizure witnesses, the seized articles not containing the seal and label of the department, non-examination of the I.O etc to have been considered by the Trial Court as the loopholes in this trial. For the rest he has left this matter at the discretion of this court.

13. Before plunging into discussing the merits of the appeal, let the relevant provision of law be narrated as here under:-

“135. Theft of electricity – [(1) Whoever, dishonestly,-

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier, as the case may be;

(b)

(c)

(d)

(e)

So as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.”

14. Therefore, the provision of statute with which the accused person is booked in the case would require the prosecution to prove in court that the accused person with a dishonest intention to abstract or consume or use electricity, which he is not authorised to use, either taps or makes or causes any connection to be made with over head or underground or under water cables, or service wires or manipulates the service facilities of a licensee or supplier in any manner as mentioned above.

15. Appellant defacto complainant has pleaded prosecution’s failure to bring home the charges against him in trial and the propriety and correctness of the impugned judgment. It is now for this court to assess an examine if the appeal is sustainable or not on the grounds pleaded.

16. Two sets of witnesses have been examined by prosecution in this case. PW 1, PW 2, PW 3 and PW 4 are the inspection team members. PW 5 and PW 6 are the co-villagers of the accused person. Notable is

that the prosecution has not cited either any expert or the Investigating Officer of the case as witness in this case.

17. PW 1 is the station manager of Saltora Gr. Electricity Supply Line. He deposes that he was a member of the inspection team at the residence at village Barkona of the accused person on 25th March, 2010, along with Ashoke Kumar Samal, Tarapada Ghosh, ASI Mr. Sammadar. He states that during inspection usage of electricity by unlawful means was discovered. He further states that electricity connection was severed and hooking devices were taken away. He deposes that one DVD, 100 watts lamp and an electric meter were seized under the seizure list and the same was prepared by him. He identified his handwriting and signature. He also identified the inspection report to have been prepared by him, both the documents were marked exhibits. Accused person was identified by him at dock, though, however, he states that at the time of inspection, the accused person was not available at his residence. PW 1 has also identified the label affixed to an electric meter produced in court, to have been signed by him and also the DVD in the similar manner. The label signed by him on both the devices were marked as “Mat. Ext. I series”.

18. PW 2 is the Divisional Engineer who visited on 25th March, 2010, the residence of the accused person at Barkona village. He has also deposed about discovery of unauthorised usage of electricity by the accused person by unlawful means. He has deposed about seizure of

meter, DVD and bulb. He has indentified the material exhibits in court, and the documentary exhibit, i.e, seizure list, to have been prepared after completion of inspection. However, he could not identify the accused person in court.

- 19.** PW 3 that is an employee, Higher Grade L.F attached at Saltora Gr. Elec. Supply has deposed to have visited Barkona village on 25.03.2010 at 3:30 p.m., along with Ashoke Kumar Samal and Ajoy Kumar and others to inspect the house of the accused person. He had deposed that upon inspection the electric meter was found motionless, that according to the direction of the senior officer, electric line was disconnected and the meter was seized. The seizure list was also prepared and the confiscated devices were taken to the police station.
- 20.** PW 4 is the Sr. Technical Supporter, he has asserted to have visited the house of Swapan Majhi, i.e, the accused person/respondent on 25th March, 2010. He has deposed to have assisted the disconnection work, that a seizure list was prepared and about their returning back to the police station along with all the materials.
- 21.** Cross-examination of the PW 4 was declined. The trend of cross-examination of the other three witnesses as mentioned above would show that the defence has tried to unfold the fact that the witnesses have not at all visited the place of occurrence and done as they have stated above in their chief examination respectively. PW 1 in his

cross-examination has asserted that seized article has not been affixed with any departmental seal or label. He has also asserted that the seizure list was not signed by any independent local witness. This fact is corroborated by PW 2. PW 2 has asserted to have given his statement before the Investigating Officer.

22. PW. 5 and 6 are the villagers who have identified the accused person on dock. However, both of them have denied the presence of any officials from the complainant's department at the house of the accused person, on the specified date and time. They have denied about possessing any knowledge of hooking or illegal consumption of electric by the accused witness. Cross-examination of the both these witnesses are declined.

23. This is a sum and substance of the prosecution evidence in this case.

24. According to the submission on behalf of the appellant, the evidence of PW 5 and 6 may not at all be taken into consideration while examination in chief of PW 1, PW 2, PW 3 and PW 4 would be sufficient to consider the charges against the accused person to have been duly brought home.

25. It is submitted that there is no inherent non-coherence in the evidence of all four witnesses as mentioned above in so far as all of them were members of the inspection party and have deposed about

their visit to the residence of the accused person on a particular date, i.e, 25th March, 2010, finding unauthorised consumption of electricity, there by the consumer/accused person/respondent by way of unlawful means, finding the electric meter to be motionless and tempered. They have unequivocally stated about seizure of the meter along with DVD and LAN. It is submitted that PW 1 has seized all the materials as above under his signature which he identifies in court. Accordingly, the evidence as above should not leave any scope of doubt as to the credibility and probative value of the same and the fact as stated by the witnesses should be construed to be proved in the trial. According to the appellant this fact has totally being overlooked by the trial court to have arrived at an erroneous finding as regards the failure of the prosecution to bring home the charges against the accused person.

- 26.** It is however a trite law that the evidence of a witness or a portion thereof should not be considered in isolation but the same should be considered as a whole to find out if the prosecution could prove the charges against the accused person beyond all reasonable doubt. It is to be emphasised that the standard of proof as envisage in criminal law is that of a proof which is beyond all reasonable doubt and mere preponderance of probability would not facilitate in prosecution's success.

27. In this trial in order to bring whom the charges against accused person. The prosecution is to prove beyond all reasonable doubt the following facts:

- I. Dishonest and unauthorised use of electricity by the accused person by using unlawful means.
- II. Inspection by the respective officers of the service related tools at the residence of the accused person.
- III. Finding sufficient material to show temper in the meter to facilitate consumption of unauthorised electricity by way of unlawful means.
- IV. Seizure of all the relevant materials in accordance with law.

28. So far as the first point is concerned, though PW 1- PW 4 have deposed about their visit to the house of the accused person on a particular date, i.e, 25th March, 2010, to conduct an inspection the same fact is put to a serious doubt in view of the statements made by PW 5 and PW 6 in their examination in chief. Since cross-examination of PW 5 and PW 6 is declined, therefore the said statement of PW 5 AND 6 denying the claim of PW 1, PW 2, PW 3 and PW 4, stands uncontroverted.

29. One may question that if this fact only would be sufficient to say that charges against the accused person is proved beyond doubt. It is

definitely not though the same has definitely cast a doubt as regards the relevant portion of the evidence on this particular point by the witnesses PW 1 – PW 4.

30. Which of these statements would stand as credible, shall depend upon the further materials/ facts emerging from the evidence of the witnesses.

31. Meter and other devices like DVD, lamp, etc. are said to have been seized under a seizure list. Those materials were produced in court and the seizure list is also identified by PW 1. All the documents and materials were marked exhibits. However, those, if would have any probative value or not, would depend on certain other facts. Admittedly the material evidence is not affixed with any departmental stamp and seal. If for the sake of argument it is taken that the statement of PW 1 to have affixed label and his signature on the material exhibits to have been proved, such a proof would not be sufficient in absence of the departmental seal and stamp, on the label affixed with the seized material. This would definitely lead to the suspicious situation as to whether the representatives of the department carried departmental seal with them while conducting an inspection and consequently if at all any inspection was conducted. Since the witnesses seized the material on behalf of the department fixation of seal and label of the department on the label was a pre-condition in support of seizure of the material exhibit.

32. So far as the seizure list is concerned. Admittedly, the same is devoid of signature of any independent local witness, which is also a mandatory requirement under law. Thereafter neither the seizure list nor the seized article can be said to have the probative value to be acceptable as evidence in this case. Thus, lies an enormous discrepancy as regards the evidence of the inspection team members. The submission made about existence of due coherence in their evidence is not likely to inspire any confidence in the mind of this court.

33. Further may be mentioned about non-examination of the expert and the Investigating Officer in this case. The expert would have been the person to deposit if the seized meter was tempered or not. He also should have been exposed to cross-examination. This was not done in this trial.

34. Investigating Officer who has conducted investigation in the case, examined the witnesses and who might have collected the reports as regards the seized devices, is also not been examined or subjected to cross-examination. One cannot but consider these lacunas by the prosecution in this trial to be fatal for it.

35. Hence, this court finds that the prosecution in this trial is far from proving the guilt of the accused person, far less beyond any reasonable doubt and the same has miserably failed to do so. On the entire

discussion as above, the findings and the decision of the Ld. Trial Court in the present case cannot be termed as illegal or improper in any way. The appeal thus is not found to be maintainable and is liable to be dismissed.

36. Hence, CRA 27 of 2012 is dismissed.

37. Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon usual undertaking.

(*Rai Chattopadhyay, J.*)