

SATISH
RAMCHANDRA
SANGAR

Digitally signed
by SATISH
RAMCHANDRA
SANGAR
Date:
2022.12.16
17:23:36
+0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 377 OF 2004

The State of Maharashtra
(Lashkar Police Station)

... Appellant
(Orig. Complainant)

Versus

Indrakumar Ghisulal Solanki,
R/o. : 559, Centre Street,
Lashkar, Pune, District : Pune.

... Respondent
(Orig. Accused)

Ms.Sharmila S.Kaushik, APP for the Appellant – State.
Mr.Arjun Kadam, Advocate for the Respondent.

CORAM : S. M. MODAK, J.

DATED : 15th DECEMBER, 2022

P. C. :-

1. Heard learned APP Smt.Sharmila S. Kaushik for the Appellant – State and learned Advocate Shri.Arjun Kadam for the Respondent-Accused.

2. There is an acquittal by the Court of JMFC, (Cantonment) Court, Pune – 1 on 19th November, 2003, for the offences punishable under Sections 39 and 44 of the Indian Electricity Act, 1910 (IX of 1910) and under Section 379 of the Indian Penal Code, 1860 (Act No.45 of 1860).

The sum and substance of the allegations is that :-

3. The Respondent-Accused tampered with three meters from which there was a supply to his shop and residence. It was noticed when the Vigilance Officers visited his shop on 29th March, 2001. After carrying out the inspection and tests, they found that there was tampering of the

meters. They have documented the inspection and then, the Deputy Executive Engineer – Flying Squad – Mr.Makarand Subhedar lodged a complaint with Lashkar Police Station on 30th March, 2001. The Investigating Officer – Shakil Shaikh carried out the inspection and filed a charge-sheet.

4. In all, four witness were examined. Out of them, one of the Panch was PW No.1, whereas, PW No.4 was the Investigating Officer. The First Informant Makarand Subhedar was PW No.2 and Dinkar Jadhav PW No.3 was another member of Flying Squad. Some of the inspection reports were also tendered in evidence.

5. Learned APP has taken me through the particulars of the judgment. Learned Magistrate has acquitted the Respondent for the reason that these meters were inspected in a routine course by the Meter Reader, but he has never informed about the tampering. Another reason was that the Officers have not placed on record the torque report and even not explained the meaning of R-Phase, Y-Phase and B-Phase. There was allegation of theft of electricity to the tune of Rs.2,43,944/-. But, it is not explained as to how that figure was arrived at.

6. Both the sides have read over the evidence of all these four witnesses. Learned Advocate Shri.Kadam also pointed out to me the order passed by this Court in connected Criminal Appeal No.464 of 2004, wherein, the brother of the Respondent was the Respondent. That Appeal was preferred against the order of acquittal by the same Court involving the similar allegations. This Court on 28th March, 2006 was pleased to dismiss that Appeal summarily. According to learned Advocate Shri.Kadam, even this Appeal also needs to be dismissed.

7. On the point of powers of the Appellate Court, when there is an acquittal, he relied upon the judgment of Hon'ble Supreme Court in case of *Muralidhar Alias Gidda an Another V/s. State of Karnataka [(2014) 5 Supreme Court Cases 730]*, wherein, the Hon'ble Supreme Court has laid down certain principles to be followed by the Courts when there is an Appeal against acquittal.

8. Learned APP submitted that on reading the evidence of two Officers, one can very well say that meters were tampered and when the Respondent is owner of that meter, it was his responsibility to see that meter works properly. Whereas, according to learned Advocate Shri.Kadam for Respondent-Accused, considering the location of the meter, it was accessible to various persons and according to him, there were serious lacunae in the Prosecution evidence and hence, the trial Court has rightly given the benefit of doubt to the Respondent-Accused.

9. I have gone through the judgment of the trial Court minutely. It is true that from the evidence of PW No.2 and PW No.3, the Respondent has not put up a case that these two witnesses have cooked up a story of tampering of the meters. What has been put up is lapse on the part of Meter Reader in informing about the tampering and not producing the necessary supporting record. Furthermore, it is argued that the Investigating Officer has not sent the mater for testing. If it could have got tested, it could have thrown light about the functioning of the meter.

10. After reading the judgment, it can be said that the conclusion drawn by the learned Magistrate cannot be faulted with. He has rightly pointed out to certain lacunae in the Prosecution case. It is true that though PW No.2 has stated about carrying out torque test, in the FIR, he

has not mentioned about the same. Carrying out torque test in such a situation is very important.

11. While going through the record, it is also noticed that there were three inspection reports which are marked as Exhibit – 31 to Exhibit – 33 and even the trial Court has referred in Para No.12 of his judgment, but surprisingly, there is no comment on these reports. In fact, PW No.2 has prepared individual report as well as common report, but only common report was considered as Exhibit – 34. But, these individual reports were not at all considered. If the trial Court could have considered them, such comments about lacunae in Prosecution case ought not have come.

12. Learned Advocate Shri.Kadam also submitted that in fact, his client has already deposited an amount more than the amount of Rs.2,43,944/- and he has produced copy of receipt. The amounts were paid on 11th April, 2001. So, what it transpires is that the concerned stake holders have not dealt with the matter properly. Neither the APP In-charge of the case was instrumental nor the witness Nos. 2 and 3 have given proper evidence. On the basis of available reports, they ought to have explained during their evidence. Ultimately, it is a technical subject and they are the experts in that field. Even, learned Judge was seized of the matter has simply recorded the evidence without being conscious of his responsibilities. Be that as it may, the order of acquittal cannot be interfered with at this stage and particularly when the Respondent has deposited an amount more than the amount of Rs.2,43,944/-.

13. At this stage, I deem it proper to bring it to the notice of Joint Director, Maharashtra Judicial Academy, Uttan wherein training of newly appointed Judicial Magistrate First Class is undertaken. They may be

apprised about these facts particularly when they are dealing with a technical subject e.g. Electricity laws, Prevention of Food Adulteration Act, 1954, Food Safety and Standards Act, 2006, Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. These are the few instances of the Acts and there may be more such Acts. Even, such sensitization can be initiated when there is training of newly appointed District Judges.

14. For the above discussion, following order is passed :-

ORDER

- (i) Appeal is dismissed.
- (ii) No interference is warranted.
- (iii) Copy of this judgment be sent to Joint Director, Maharashtra Judicial Academy, Uttan for information and necessary action. He is requested to apprise the newly appointed Judges in district judiciary about their responsibilities, particularly when they are dealing with the cases involving technical subjects.
- (iv) They may also be appraised that they should not act as a silent spectator. But, if any technical subject is there, on their own, they can put certain questions to the witnesses by giving a right of cross-examination to the defence.

(S. M. MODAK, J.)