



Crl.A.No.266 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.11.2022

CORAM

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.A.No.266 of 2018

Elangovan

... Appellant

Vs

The State rep by
The Inspector of Police,
E-3, Minjur Police Station,
Minjur, Chennai.
(Crime No.331 of 2008)

... Respondent

Prayer:- Criminal Appeal filed under Section 378 of Criminal Procedure Code, to set aside the judgment passed by the learned Principal District and Sessions Judge, Thiruvallur, in S.C.No.240 of 2011 dated 27.03.2018 conviction and sentence imposed on the appellant under Section 136 of the Tamilnadu Electricity Act, on the appellant and direct the fine amount of Rs.1,000/- paid by the appellant to be refunded to the appellant, by allowing this Criminal Appeal.

For Appellant

: Mr.B.Thirumalai

For Respondent

: Mr.A.Gopinath
Government Advocate (Crl.Side)



WEB COPY



Crl.A.No.266 of 2018

JUDGMENT

This Criminal Appeal is arising out of the judgment passed in S.C.No.240 of 2011 dated 27.03.2018, by the learned Principal District and Sessions Judge, Thiruvallur, thereby convicting the appellant for the offence punishable under Section 136 of the Electricity Act, 2003.

2. The case of the prosecution is that on 27.03.2008, the defacto complainant lodged complaint alleging that the stacker machine No.2 was not functioned and on verification he found that 170 meter of copper wire was stolen by the accused. Immediately after informing the higher officials, he lodged the complaint. On receipt of the complaint, FIR was registered in Crime No.331 of 2008 for the offence under Section 379 of IPC. After completion of investigation, the respondent filed final report and the same has been taken cognizance by the trial Court in S.C.No.240 of 2011.

3. On the side of the prosecution, they examined P.W.1 to P.W.4 and marked documents as Ex.P.1 to Ex.P.6. They also produced



Crl.A.No.266 of 2018

WEB COPY

one material object in M.O.1. On the side of the accused no one was examined and no documents were produced. On a perusal of oral and documentary evidence, the trial Court found that the appellant alone found guilty for the offence under Section 136 of the Electricity Act and convicted and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo further period of three months rigorous imprisonment, as against which the present appeal.

4. The learned counsel appearing for the appellant submitted that there was a delay in lodging the complaint by P.W.1 and there was no proper explanation for the delay in lodging the complaint. M.O.1 was not marked through proper witness and it was marked through P.W.1, who is not a seizure witness. He admits that M.O.1 was recovered from the wastage shop. However, the wastage shop owner was not examined as witness. When the seizure itself is in question, it is fatal to the case of the prosecution. He further submitted that P.W.3 who arrested the appellant, recorded the confession statement and seized the material objects from the wastage shop owner. The confession statement is not at all corroborated



Crl.A.No.266 of 2018

with the other witnesses. Therefore, he prayed for acquittal of the appellant herein.

5. Per contra, the learned Government Advocate (Crl. Side) appearing for the respondent police submitted that in order to prove the charges, the prosecution examined P.W.1 to P.W.4 and marked Ex.P.1 to Ex.P.6. On the basis of the confession statement recorded from the appellant, there was a recovery, which was marked as M.O.1. The confessions statement leads to recovery and there is no ambiguity in the case of the prosecution. Therefore, the trial Court rightly convicted the appellant and prayed for dismissal of this appeal.

6. Heard Mr.B.Thirumalai, learned counsel appearing for the appellant and Mr.A.Gopinath, learned Government Advocate (Crl. Side) appearing for the respondent police.

7. P.W.1 was working as Assistant Executive Engineer in the Thermal Power Plant, North Madras. While being so, on 27.03.2008, the



Crl.A.No.266 of 2018

stacker machine No.2 was not running as such he along with other staff inspected the machinery. They found that 170 meters length of copper wire was stolen. Therefore, the said machine was not running. After verifying all the source, P.W.1 lodged complaint on 27.03.2008. On receipt of the same, the respondent registered FIR in Crime No.331 of 2008 for the offence under Section 379 of IPC.

8. While being so, on 13.05.2008, P.W.3 arrested the accused persons and recorded their confession statement. As per the confession statement of the appellant, copper wire weighing 20 Kg was recovered from Chandran wastage shop, Pudunagar. It was seized under seizure mahazar which was marked as Ex.P.3. The recovered object was also identified by P.W.1. Though the learned counsel appearing for the appellant submitted that there was contradiction, it would not affect the case of the prosecution, since minor contradictions are not fatal to the case of the prosecution.



Crl.A.No.266 of 2018

WEB COPY

9. Insofar as other accused persons are concerned, there was no recovery was made. Hence, the trial Court rightly found the appellant guilty and convicting him for the offence under Section 136 of the Electricity Act. The provisions under Section 136 of the Electricity Act provides minimum sentence of six months. However, considering facts and circumstances and age of the appellant, this Court is inclined to reduce the sentence.

10. Accordingly, the conviction imposed on the appellant by the judgement dated 27.03.2018 made in S.C.No.240 of 2011, by the learned Principal District and Sessions Judge, Thiruvallur, is hereby confirmed for the offence under Section 136 of the Electricity Act. Insofar as the sentence is concerned, it is reduced to the period already undergone by the appellant, on condition that the appellant shall pay a sum of Rs.20,000/- (Rupees twenty thousand only) as compensation directly to the office of P.W.1 on or before 21.11.2022, failing which the sentence imposed by the trial Court shall automatically stands restored.



Crl.A.No.266 of 2018

WEB COPY

11. In the result, the Criminal Appeal stands partly allowed.

02.11.2022

Index:Yes/No

Internet:Yes/No

Speaking/Non-speaking order

***Note :- Issue order copy on
or before 07.11.2022***

rts

To

1. The Principal District and Sessions Judge,
Thiruvallur
2. The Inspector of Police,
E-3, Minjur Police Station,
Minjur, Chennai.
3. The Public Prosecutor,
Madras High Court,
Chennai.



WEB COPY



Crl.A.No.266 of 2018

G.K.ILANTHIRAIYAN, J.,

rts

Crl.A.No.266 of 2018

02.11.2022