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Crl.A.No.278 of 2018

/IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2022

CORAM:

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

Crl.A.No.278 2018

R.Ravi ... Appellant

Vs

State, Rep by
Inspector of Police,
Minjur Police Station,
Thiruvallur District ... Respondent

Prayer: Criminal Appeal filed under Section 374(2) of Code of Criminal Procedure, to set aside the Judgment passed in S.C.No.236 of 2011 dated 27.03.2018 against the appellant by the learned Principal District Sessions Judge, Thiruvallur and acquit the appellant.

For Appellant : Mr.K.Ramanamoorthy

For Respondent : Mr.A.Gopinath
Government Advocate(Crl.side)

JUDGMENT

This Criminal Appeal is directed as against the Judgment dated 27.03.2018 passed in S.C.No.236 of 2011 on the file of the Principal District Sessions Judge, Thiruvallur, thereby convicted the appellant for the offence under Section 136 of Electricity Act.



2. The case of the prosecution is that when the defacto complainant carried out the inspection on 04.04.2008, they found that 100 Sq.Mts aluminum sheet was missing. Hence the complaint.

3. On receipt of the complaint, the respondent registered an FIR in Crime No.349 of 2008 for the offence punishable under Section 136 of Electricity Act. After completion of investigation, the respondent filed final report and the same has been taken cognizance by the Trial Court in S.C.No.236 of 2011.

4. In order to bring home the charge, the prosecution had examined P.Ws.1 to 5 and marked Exs.P1 to P8. The prosecution has also produced M.O.1. On the side of the appellant, no one was examined and no document was marked.

5. On perusal of the oral and documentary evidence, the Trial Court found the appellant alone guilty and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo three months simple imprisonment. Aggrieved by the same, the present appeal.



Crl.A.No.278 of 2018

6. The learned counsel appearing for the appellant would submit that there were totally six accused, in which the accused 2 to 6 were acquitted. The appellant is also standing in the same footing and as such, he is also entitled for the same benefit. Except no recovery, no other witnesses or no other material evidence is available to transpose the appellant as accused. On the strength of the confession statement, very meagre quantity of the stolen goods was recovered from the wastage shop. It is clearly a put up case since, except the confession statement and recovery of the stolen goods from the regular wastage shop as fixed by the prosecution, there is no evidence to fix the appellant as an accused.

7. Per contra, the learned Government Advocate (Criminal Side) submitted that in order to bring the charge, the prosecution has examined P.Ws.1 to 5. On the confession statement, the stolen goods were recovered. Therefore, The Trial Court rightly convicted the appellant for the offence punishable under Section 136 of Electricity Act.

8. Heard, Mr.K.Ramanamoorthy, learned counsel appearing for the appellant and Mr.A.Gopinath, learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.



9. A perusal of the evidence reveals that on inspection, P.Ws.1 and 2 found there was missing of 100 Sq.Mts aluminum sheet. P.W.1 lodged a complaint and the same was registered by the respondent. In support of the said complaint, P.W.2 also deposed and confirmed the missing aluminum sheet. However, they did not mention about the date and time of theft. The entire allegations is fictitious and no specific allegations with regard to the stolen aluminum sheet. No independent witness was examined in support of the case of the prosecution.

10. That apart, only on the basis of the confession statement, part of the stolen goods were recovered from the wastage shop. Though one was identified by P.W.1, it was marked through the investigation officer. The shop owner was also not examined by the prosecution. Therefore, it is clearly a put up case as against the accused for statutory report. In fact, there were totally six accused in which 2 to 6 were acquitted on the ground that there was no recovery. The stolen goods weigh more than one ton. Therefore, it is not at all possible to stole the materials without the help of other accused. Therefore, the prosecution failed to prove its case beyond any doubt. However, the Trial Court mechanically convicted the appellant for the offence under Section 136



Crl.A.No.278 of 2018

of Electricity Act. Therefore, the conviction imposed on the appellant cannot be sustained and it is liable to be set aside.

11. In view of the above, the Judgment dated 27.03.2018 passed in S.C.No.236 of 2011 on the file of the Principal District Sessions Judge, Thiruvallur, is hereby set aside. Accordingly, this Criminal Appeal stands allowed.

04.11.2022

Index : Yes/No
Internet : Yes/No
Speaking/Non Speaking order
Lpp

To

1. The Principal District Sessions Judge,
Thiruvallur

2. The Inspector of Police,
Minjur Police Station,
Thiruvallur District

3. The Public Prosecutor,
High Court, Madrs.



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Crl.A.No.278 of 2018

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Crl.A.No.278 of 2018

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