

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

224-CRM-A-461-2022

Date of Decision: 29.10.2022

State of Haryana

... Applicant

VS.

Vijay Kumar

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Rahul Mohan, DAG Haryana for the applicant

Sandeep Moudgil, J. (Oral)

This application has been filed under Section 378(3) CrPC seeking leave to file appeal against the judgment of acquittal dated 23.11.2021 passed by the Additional Sessions Judge-cum-Special Judge, (under Electricity Act, 2003), Kurukshetra (in short, the trial court).

Facts leading to the case are that on 14.08.2017, an application bearing memo No.SDKR2/2017/694 dated 10.08.2017 was received in Police Station I&P, PS Ambala from the office of SDO, OP, Kurukshetra to lodge an FIR against the respondent Vijay Kumar alleging that Sanjeev Sharma, JE, along with other members of raiding team, checked the respondent-consumer premises through LL1 No.810/5 dated 08.08.2017 wherein respondent-consumer was found committing the theft of electricity in terms of Section 135 of Electricity Act, 2003 and as such a loss of Rs.17,403/- (Assessment charges Rs.17,403/-) had caused to the Nigam.

A notice was sent to consumer on 10.08.2017 but he did not pay the theft penalty. Resultantly, FIR No.4747 dated 11.08.2017 under Section 135 of Electricity Act, 2003 was registered at Police Station I&P, PS Ambala. Investigation was conducted and the respondent was sent to face trial. Consequently, vide judgment dated 23.11.2021 passed by the trial court, the

respondent was acquitted of the charges leveled against him on the ground that the prosecution has failed to prove its case against the respondent beyond shadow of reasonable doubt.

Feeling aggrieved of non-payment of theft penalty of Rs.17,403/-, the applicant-State has preferred the instant appeal.

Learned counsel for the applicant-State has contended that the trial court did not consider the statements of PW4 Ranbir Singh, SDO; PW5 Sonu JE and PW7 Mohinder Kumar Verma, who proved the fact that the premises of the respondent were inspected, who was found committing theft of electricity.

It is also submitted that the trial court ignored the fact that videography was conducted at the spot and LL1 was prepared at the spot, which was duly got signed by the accused and other members of the raiding party. Learned State counsel concluded the arguments praying that the acquittal is liable to be set aside and the respondent be convicted.

Heard learned counsel for the State-applicant and gone through the record.

This Court cannot lose sight of the proposition that a disclosure statement, on the basis of which no recovery was effected, has no relevancy in the eyes of law as the same is hit by the provisions of the Electricity Act, dealing with the statement of respondent recorded, while in police custody. It is apparent on record that PW2 HC Nirmal Singh, who registered the formal FIR, nowhere averred that he happened to be the witness of the theft of electricity by the respondent while using some artificial method. PW5 JE Sonu stated that on 08.08.2017, under the directions of SDO, a raiding party,

consisting of JE Sanjeev and Lineman Mohinder Verma, was constituted by him, who conducted a raid in the premises of respondent, videography was conducted and LL1 was prepared, at the spot. However, during cross-examination he admitted that no written order was given to him by SDO. More-so, no local inhabitants were joined at the time of raid by the raiding party of the electricity department, which surely create dent and serious doubt in the prosecution case.

The trial court rightly observed that the depositions of these witnesses do not inspire any confidence and as such, the evidence of these witnesses does not carry ring of truth for which their evidence may be relied upon and has rightly granted the benefit of doubt.

For the reasons afore-stated, this Court does not find any illegality and infirmity in the judgment of acquittal dated 23.11.2021 passed by the trial court.

Accordingly, the application for leave to appeal stands dismissed.

29.10.2022

V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)

Judge

- Yes/No
- Yes/No