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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-35587-2022 in/and
CRA-S-1814-2022 (O&M)
Date of decision : 05.12.2022

Jarnail Singh

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Gurjot Singh Sadhrao, Advocate for the appellant.

Mr. Vishal Malik, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

On joint request of learned counsel for the parties, the main appeal is taken on Board today itself for final disposal.

Challenge in the present appeal is to the judgment of conviction dated 21.07.2022 and order on quantum of sentence dated 22.07.2022 passed by the Special Judge (Electricity Act), Kaithal, vide which, the present appellant alongwith one Gurdhyan Singh has been convicted and sentenced to undergo simple imprisonment for a period of three years and 10 months with a fine of Rs.10,000/- each, for the offence committed under Section 136(2) of the Electricity Act.

Learned counsel for the appellant has submitted that the

appellant has been convicted under Section 136(2) of the Electricity Act and has been sentenced to undergo simple imprisonment for a period of three years and 10 months and fine of Rs.10,000/- each has been imposed on the present appellant and his co-accused. It is further submitted that the appellant does not wish to challenge his conviction under Section 136(2) of the Electricity Act but has prayed that since, he has already undergone 2 years and 11 months of actual custody, thus, his sentence be reduced to the period already undergone. It is contended that in the present case, the present appellant and co-accused had confessed their guilt and the said fact has been recorded in para 6 of the judgment dated 21.07.2022 and it is primarily on the basis of said confession which was found to be voluntarily that the present appellant has been convicted and thus, he deserves leniency with respect to the sentence awarded.

On the other hand, learned State Counsel has submitted that the judgment dated 21.07.2022 passed by the Special Judge (Electricity Act), Kaithal is well reasoned and the Court has, after considering the entire evidence, rightly convicted the present appellant under Section 136(2) of the Electricity Act and has thus, prayed that the present appeal be dismissed. He has further pointed out that as per the provisions of Section 136(2) of Electricity Act, minimum sentence which can be awarded to the accused is six months and minimum fine that can be ordered is Rs.10,000/-.

This Court has heard the learned counsel for the parties and has perused the record.

The brief facts of the prosecution case is that on 05.02.2019, complaint was filed by the SDO Tarsem Singh which was received in the

concerned Police Station wherein it was stated that the material of transformers of several consumers was stolen during the midnight of 12.01.2019 and on the basis of said complaint, the FIR in question was registered and the accused namely Jarnail Singh and Gurdhyan Singh suffered disclosure statements in FIR No.103 dated 13.06.2019 to the effect that they have committed theft of transformer coils and other articles from January, 2018 to July, 2019 and in furtherance of Jarnail Singh's disclosure statement, 5 quintals 75 kg copper wires were recovered and on completion of investigation, report under Section 173 of Cr.P.C. was filed and thereafter, charges were framed under Sections 136 and 137 of the Electricity Act against the appellant and his co-accused. The prosecution had examined the following witnesses:-

1. PW1-SI Jagbir Singh No.102/KR,
2. PW2-SDO Tarsem Singh,
3. PW3-Ct. Rajender Singh No.952/KTL,
4. PW4-JE Aakashdeep,
5. PW5-Kuldeep Singh s/o Shri Joginder Singh,
6. PW6-JE Hazoor Singh,
7. PW7-Joga Singh son of Takhth Singh,
8. PW8-Harpal Singh son of Gurbish Singh

When the remaining witnesses were to be examined, the appellant and co-accused had expressed their desire to confess their guilt and after it was explained to the appellant and co-accused that the said confession could be used as evidence against them, they confessed their guilt voluntarily, without any threat, inducement or pressure and got the

confessional statement recorded separately. On the basis of said voluntary confession of their guilt, the Special Judge (Electricity Act), Kaithal had convicted Gurdhyan Singh and Jarnail Singh for the commission of offence under Section 136(2) of the Electricity Act. The accused persons were however, acquitted of the charges under Section 137 of the Electricity Act. The Special Judge (Electricity Act) Kaithal had thereafter, sentenced the present appellant and co-accused as has been detailed hereinabove.

In the present case, the appellant and co-accused have confessed to their guilt and the said confession has been found to be voluntary without any threat, inducement or pressure and has been duly recorded. Learned counsel for the appellant has reiterated the fact that the said confession is voluntary without threat, pressure, inducement and thus, keeping in view the abovesaid facts, and other evidence on record, the conviction of the present appellant and his co-accused under Section 136(2) of the Electricity Act, is upheld.

With respect to the sentence awarded to the present appellant, a perusal of Section 136(2) of the Electricity Act would show that minimum sentence that can be awarded shall not be less than six months. In the present case, the appellant has confessed to his guilt and he has also stated that he has three children i.e. two daughters and a son and is the sole breadwinner of his family and there is no one to take care of them, thus, keeping in view the abovesaid facts and circumstances, the sentence awarded to the present appellant is reduced from simple imprisonment for a period of 3 years 10 months to the period already undergone i.e. 2 years and 11 months. The fine of Rs.10,000/- is however maintained.

The appellant would be released subject to him not being required in any other case and subject to him depositing Rs.10,000/- i.e., the fine which has been imposed.

With the abovesaid observations, the present appeal is disposed of.

Since, the main case has been decided, application bearing CRM-35587-2022 for suspension of sentence of applicant-appellant is rendered infructuous and is disposed of as such.

All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

05.12.2022

Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No