

31.03.2023

Court No.35
Item No. 15

CRA 169 of 2011

**Sk. Bablu @ Sk. Ambar
Vs.
The State of West Bengal**

Ms. Sibangi Chattopadhyay

... Amicus Curie

Mr. Pravas Bhattacharya,
Mirza Firoj Ahmed Begg.

... for the State

Impugned, in this appeal is the judgment and order of sentence of Judge, 2nd Special Court at Purulia dated 09.03.2011 passed in Electric G.R. Case No. 29 of 2007. The appellant/convict was tried for an offence punishable under Section 135 (1) (a) of the Electricity Act, 2003.

The learned Court found the appellant guilty of the offence as alleged, convicted him for such an offence and sentenced him to pay a fine of Rs.10,000-/ as per Section 248 (2) Cr.P.C, 1973, in default of which he would suffer simple imprisonment for ten months.

The appellant being aggrieved and dissatisfied with the said judgment of the trial Court filed the present appeal. However the appellant is not represented in this case. Hence, Ms. Sibangi Chattopadhyay has been appointed as Amicus Curie to assist the Court. State is represented.

The prosecution case started pursuant to lodging of the FIR being

Raghunathpur Police Station Case No. 30/2007 dated 23.06.2007 under Section 135 (1) (a) of the Electricity Act, 2003. The de facto complainant, i.e, the Assistant Engineer, Raghunathpur (O & M) alleged in the said FIR that during inspection by a team comprising himself and other three officials of the department, on 22.06.2007 at about 8.00 p.m in the night, the team detected theft of electricity by the present appellant at his residential premises. Allegedly the team detected consumption of unauthorized amount of electricity by the appellant by illegal hooking from the nearest L.O.T, overhead line of WBSEDCL. It is stated in the FIR that the said premises though was previously connected through a meter but the electricity line to the same was disconnected due to non-payment of outstanding dues. The following equipments said to have been seized in the operation :- (1) Lamp 8 nos. (2) Fan – 3 nos (coiling) (3) T.V 20 and (4) T.V Black 1 no. Those have been described as hooking devices. It is stated that seizure list was prepared. Accordingly the de facto complainant has alleged an offence punishable under Section 135 (1) (a) of the Electricity Act, 2003 against the present appellant.

Investigation proceeded and ultimately upon finding the prima facie material against the accused person/appellant, charge sheet was submitted. The Court frame charges against the appellant on 12.03.2008, under the aforesaid provision of law and the trial commenced. Five witnesses have been examined. P.W 1 is the de facto complainant. P.W 2 is the Senior Linesman (Higher Grade), who was the inspection team member. P.W 3 is the staff of Raghunathpur Group Electric Supply, who was also a inspection team member. P.W 4 is the

inhabitant of the village where the resident of the appellant situated. He has been cited possibly as independent witness. P.W 5 is the investigating officer.

Section 135 of the Electricity Act, 2003, has provided for punishment for an offence of theft of electricity. The relevant portion is extracted, as herein bellow :

(1) Whoever, dishonestly,--

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier, as the case may be

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

Such being the provision of law, the prosecution in this case shall have to prove to the standard of beyond all reasonable doubts, involvement of the appellant, in tapping with the overhead line, to abstract, consume and use electricity. Keeping in mind these ingredients of offence, let the evidence of the case be gone into.

Before going into the ocular evidence of the witnesses, it would be beneficial if discussion be made at the outset regarding material evidence in this case. Hooking materials are said to have been seized, during the operation. Seizure list as said to have been prepared by the officer (P.W 1) has been identified by him and marked exhibit in this

trial. Unfortunately the prosecution has not been able to produce in Court the seized article in support of the ocular as well as documentary evidence as regards the seizure. The seizure list is also not in compliance with law in order to be reliable enough as a corroborating evidence. Thus at the outset, it is noted that in this trial the prosecution has not been able to prove the seizure of the alleged hooking materials, by any cogent evidence much less of any evidence beyond scope of any doubt.

Thereafter the substantive evidence advanced by the prosecution witnesses may be looked into. P.W 1, 2 and 3 being the inspection party members, have supported the prosecution case. They have stated to have visited the place of occurrence, i.e, the residence of the appellant, conducted inspection there and to have found unauthorized consumption of electricity by the appellant by the means of hooking from the over head line. The sole witness examined as an independent witness from the locality, i.e, P.W 4 has however not corroborated the ocular evidence of P.W's 1, 2 and 3 as above. Even then on the strength of the evidence of the said three witnesses, who have been discharging the duty of inspection in terms of their official discourse, appellant's guilt might have been found as proved, had the seizure in this case been proved beyond all reasonable doubts. The seizure as well the inspection, visitation to the residence of the appellant and finding incriminating material there from are all part of the same transaction, where in view of one part thereof having not been proved, the other part of same transaction cannot be construed to have been substantial established by the prosecution.

In such view of the fact the decision of the trial Court in the impugned judgment that the evidence of the witnesses, would unerringly point out to the guilt of the accused person and its order convicting him for the offence as alleged, is not found to be based on prudent reasons and careful consideration of the evidence. Instead the same is appearing to be de hors due consideration of the evidence on record and the applicable laws. This renders the impugned judgment of the trial Court to be improper and the findings to be perverse which are required to be interfered into by this appeal Court.

It is also worth noting in this appeal that the appellant having been assessed of unauthorisedly using electricity and defalcating rates, of an amount of Rs.5453/-, has already remitted the said amount against the assessment bill, with the department. In view of the compoundable nature of the offence alleged against the accused person, the said fact is also taken into account in this appeal.

Considering all above the impugned judgment and order of sentence of Judge, 2nd Special Court at Purulia dated 09.03.2011 passed in Electric G.R. Case No. 29 of 2007, is found liable to be set aside. Hence, the same is set aside, the appellant is found not guilty of the offence under Section 135 (1) (a) of the Electricity Act, 2003 and is hereby acquitted his release from the bail bond with immediate effect.

Before parting, the Court appreciates the able assistance put in by the Ld. Amicus Curie in this case. Let the High Court Legal Services

Committee take necessary steps to pay fees to the learned Amicus Curiae in accordance with the scale applicable to “Category-A” lawyer in its panel. The same may be paid within a period of one month from the date. A copy of this order be immediately forwarded to the Secretary, High Court Legal Services Committee, for doing the needful.

CRA 169 of 2011 is allowed, connected application, if any, is disposed of.

Urgent certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

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(Rai Chattopadhyay, J.)