



Crl.A.(MD).No.337 of 2016

IN THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 19.09.2023

PRONOUNCED ON : 10.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

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The Assistant Executive Engineer,
TANGEDCO Distribution,
Thiruchendur.

... Appellant

Vs.

1. G. Jeyaprakash S/o. S.J. Gayas.
2. The State represented by:
The Inspector of Police,
Kulasekarapattinam Police Station,
Udankudi Taluk, Tuticorin.

... Respondents

PRAYER: Criminal Appeal has been filed under Section 372 of Criminal Procedure Code, praying to call for records and set aside the Judgment and acquittal passed in Special C.C. No.9 of 2011 on the file of the learned Principal Sessions Judge, Tuticorin dated 26.06.2015 by allowing this Criminal Appeal.



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For Appellant : Mr. B. Ramanathan, Standing Counsel for
[Tamil Nadu Electricity Board]

For Respondents : Mr. A. Robinson [for R1]
Mr. M. Senthil Kumar, Government
Advocate (Criminal Side) [for R2].

ORDER

This Criminal appeal in Crl. A(MD) No.337 of 2016 has been preferred by the appellant as against the Judgment and acquittal passed in Special C.C. No.9 of 2011 by the learned Principal Sessions Judge, Tuticorin dated 26.06.2015, wherein before the Trial Court, the 1st respondent / accused has been charged for the offence under Section 135(1)(b) of Indian Electricity Act.

2. The schema of the prosecution case is as under:

2.1. The accused got electricity connection for the Service Connection No.81 at Tiruchendur Main Road, Kallamozhi Village in the name of S.J. Gayas on 21.08.2002. When the officials of the Electricity Board inspected the said service connection at about 5.00 p.m. in presence of the witnesses Mr. Shanmuga Rangasamy, Mr. Ravindran and



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Mr. Muthukutty, it was found that the seals affixed in the meter were damaged and MRT seals were removed and the numbers in the meter readings were reduced and then again it was sealed with different type of seals. Thereby, the accused caused theft of 3,55,158 units of electricity and the damages were calculated at Rs.29,54,418/-. Therefore, the accused has committed offences punishable under Sections 39(1) and 44(1)(c) of Indian Electricity Act.

2.2. In fact, initially the case was taken on file and pending on the file of the learned Judicial Magistrate, Tiruchendur, thereafter, the learned Judicial Magistrate has transferred the case to the Principal Sessions Court, Tuticorin as per the order passed in CrI.O.P.(MD) No.5633 of 2007 dated 13.07.2007. Thereafter, the Principal Sessions Court, Tuticorin has taken the case on file in Special C.C. No.9 of 2011 and conducted the case. After hearing both sides and perusing the case records, the Trial Court has framed charge under Section 135(1)(b) of Indian Electricity Act as against the accused.

2.3. The charge was read over and explained to the accused, which he



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denied and hence, the prosecution, in order to prove the case against the accused, had examined PW1 to PW8 and marked Ex.P.1 to Ex.P.10 and material objects M.O.1 to M.O.4 were also marked. On the side of accused, DW1 was examined and Ex.D1 to Ex.D.3 were marked. After completion of prosecution side evidences, the trial Court had examined the 1st respondent herein / accused u/S.313(1)(b) of Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence adduced by the prosecution witnesses, during the course of trial and the same was also denied by the accused as false.

2.4. After analysing the entire evidence adduced and upon hearing both sides, the trial Court has acquitted the 1st respondent / accused as not found guilty of offence under Section 135(1)(b) of Indian Electricity Act.

3. Aggrieved upon the above said Judgment and acquittal, the present appeal has been filed by the defacto complainant / appellant on the following grounds:-

3(i) The Judgment of the Trial Court is contrary to facts, law



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and probabilities of the case.

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3(ii) The trial court ought to have seen that the offence has been committed under Section 44(1)(c) r/w Section 39 of Indian Electricity Act.

3(iii) Test report was taken on 15.03.2002 and the theft was committed on 21.03.2002 i.e., the theft has been committed after the test report which does not mean that theft has not been committed. The Trial Court has failed to analyse the same.

3(iv) The Trial Court has erred in holding that the usage of electricity is fluctuating and therefore there is no possibility of any theft. The logic applied is irrelevant.

3(v) The Trial Court has erred in holding that the meter seals and other seals were intact at the time of test report and therefore the theft would not have been committed. The intermediate period of 5 days was available to the accused to



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commit theft and therefore, the trial court, due to non-application of mind, has acquitted the accused.

3(vi) The Trial Court has erred in taking up the date and fact of test report, since test report has nothing to do with checking up the meter and its seals. Seals will be checked once in a year by an expert body namely “Meter Relay Test” (MRT) and it is a separate wing. Since MRT is an expert body, the other officials are not duty bound to check the meter seals and meter. Therefore mixing up of two different issues is an error.

3(vii) The Trial Court has failed to appreciate that the procedure has been followed and erred in holding that the procedure has not been followed.

3(viii) The trial court erred in holding that there was no model seal available at the time of inspection. The expert body would have a Register for each division and with the help of that Register, the meter seal can be carried out. Therefore the



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reasoning of the lower court is on an erroneous ground.

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4. Heard Mr.B. Ramanathan, learned counsel appearing for the appellant / Standing Counsel for [Tamil Nadu Electricity Board] and Mr. A. Robinson, learned counsel appearing for the 1st Respondent and Mr. M. Senthil Kumar, learned Government Advocate (Criminal Side) appearing for 2nd Respondent – State.

5. The learned counsel appearing for the appellant would contend that the accused has committed electricity theft for a huge amount of around Rs.30 lakhs and he has broken the seal and has altered the seals affixed in the meter and has also tampered by reducing the meter reading numbers. When the Electricity Board Officials inspected the property, the same was noticed by them. The accused has got Electricity Service Connection Nos. 163 and 81 for the address at No.34, Kanniyakumari Road, Kallamozhi Village, Tiruchendur. In that premises, the accused was running an Ice Factory in the name & style of “Joyce Ice Factory”. The Service Connection No.81 was in the name of the accused G. Jeyaprakash and Service Connection No.163 was in the name of the father of the accused



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namely S.J. Gayas. When the officials inspected the meter, they found that the seals were mismatched and then the complaint was given before the Kulasekarapattinam Police Station and thereafter the meter readings were calculated and as per the calculation, the accused has committed theft of electricity to the tune of 3,55,158 units worth about Rs.29,54,418/-. Thereafter the Inspector of Police, Kulasekarapattinam Police Station had investigated the case and prepared Observation Mahazar and Rough Sketch and then seized the meter for Service Connection No.81 in presence of the witnesses. The said meter was produced before the learned Judicial Magistrate, Tiruchendur and thereafter, the said meter was sent to the Forensic Laboratory for analysis. As per the report of the Forensic Lab, the seals affixed in the meter are not tallied with the original seals. Therefore, breaking of seals itself is an offence and thereby, the accused has committed the offence punishable under Section 135(1)(b) of Indian Electricity Act.

5.1. In order to prove the charge levelled against the accused, the prosecution has examined PW1 to PW8, marked Ex.P.1 to Ex.P.10 and M.O.1 to M.O.4. On the side of defence, DW1 was examined and Ex.D1 to Ex.D.3 were marked.



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5.2. The prosecution witnesses have categorically deposed about the tampering of seals and also about the theft committed by the accused, but the trial court has failed to consider the evidence adduced on the side of prosecution and wrongly held that the charge under Section 135(1)(b) of Indian Electricity Act has not been proved as against the accused. Therefore, the judgment and acquittal passed by the trial court are liable to be set aside by allowing this appeal and the accused is entitled for punishment in accordance with law.

6. The learned counsel appearing for the respondents would contend that, the father of the accused was running an Ice Factory in the name of “Joyce Ice Factory” and he filed an application dated 15.03.2002 to transfer the Electricity Service Connection in favour of his son and on the said application, the Assistant Executive Engineer [Distribution], Electricity Board, Tiruchendur along with his team came to the spot examined the meter. Thereafter on 20.03.2002, the officials attached to Anti Power Theft Squad, Virudhunagar, collected the particulars from the workers of Ice Factory and on the next day ie., 21.03.2002, they came to the Ice Factory



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and removed the seals without any intimation. When the same was questioned by the accused, they demanded Rs.50,000/-. Thereafter on 21.03.2002, they inspected the Factory and there was no complaint. But on the next day, ie., on 22.03.2002, they have registered an electricity theft case before the Kulasekarapattinam Police Station. In this regard, the father of the accused gave a complaint before the Additional Director General of Police [Vigilance]. Further they also summoned the accused to appear before the Superintending Engineer, Tuticorin Electricity Distribution Circle, Tuticorin on 09.12.2009. After completion of enquiry, they came to the conclusion that there was no electricity theft. But in spite of that, the investigating officer without conducting proper investigation filed a final report as against the accused. The trial court after examining and analysing all the facts, has correctly acquitted the accused, further the prosecution side witnesses also admitted that there was no electricity theft committed by the accused and thereby the trial court has acquitted the accused and therefore, the present appeal is liable to be dismissed.

7. Heard both sides and perused the entire materials available on record, the Judgment passed by the Trial Court and the grounds of appeal.

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8. Upon hearing both sides and perusing the entire available records, now the point for determination in this appeal is:

whether the prosecution has proved the charges levelled against the accused for the offence punishable u/S.135(1)(b) of Indian Electricity Act beyond all reasonable doubts.

9. **Points:-** It is the case of the prosecution that the accused broken the seal affixed in the meter for the electricity connection No.81. When the officials inspected the premises on 21.03.2002 at about 5 p.m., it was found that the above said meter seals were broken and the numbers in the meter were also reduced and thereby the accused has committed theft of 3,35,158 units of electricity worth about Rs.25,54,418/- and thereby the accused has committed an offence punishable under Section 135(1)(b) of Indian Electricity Act.

10. In order to prove its case, the prosecution has examined PW1 to PW8 and Ex.P.1-Ex.P.10 and M.O.1-M.O.4 were marked. In order to



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defend the case of the prosecution, the accused had examined DW1 in his side and marked Ex.D.1 to Ex.D.3.

11. In this case, PW1 is the defacto complainant. He has deposed before the trial court that *“on 21.03.2002, at about 4.30 p.m., one Ravindran, Assistant Executive Engineer, Anti Power Theft Squad [APTS], called over phone and said that in Service Connection Nos.163 and 81, there were electricity theft. Thereafter, PW1 went to the place of occurrence ie., Joyce Ice Factory situated at No.34, Kanniyakumari Road, Kallamozhi. The said Ice Factory belongs to one S.J. Gayas. When he reached the spot, one Ravindran, Assistant Executive Engineer, Anti Power Theft Squad [APTS], police personnel, Gayas and one Arputharaj were all present there. Immediately, he prepared an inspection report. At that time, the Assistant Executive Engineer, APTS told that the seals affixed in the meter were broken. Immediately, he called the ADE MRT and he also came there at about 6.00 p.m.. Both of them gave an inspection report. While comparing the seals, it was found that the broken seals were bogus. The said Gayas and Arputharaj had refused to sign in the mahazar. Thereafter the Village Administrative Officer was called and then went to*



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Kulasekarapattinam Police Station. Due to absence of Sub-Inspector of Police, they went again to Police Station on the next day at about 7.00 a.m. and then they gave a complaint. The said Inspection report given by the Assistant Executive Engineer, APTS was marked as Ex.P.1., the inspection report given by the Assistant Executive Engineer, MRT was marked as Ex.P.2 and the complaint given by PW1 is marked as Ex.P.3.. Immediately they also prepared a calculation for the theft of energy and the same was also handed over to the Police. The said calculation report has been marked as Ex.P.4. The meter and the bogus seals affixed in the Ice Factory were also seized. The meter box is M.O.1, Sample seals are M.O.2 series, Service Meter is M.O.3, Impression Seal is M.O.4 and the sample seals-2 are M.O.5 series”.

12. PW2 also, in his evidence, has stated that “he was working as Assistant Executive Engineer in the MRT Section, Electricity Board, Tuticorin, on 21.03.2002 at about 6.00 p.m., the Assistant Executive Engineer [Distribution] called over phone stating that in the Service Connection No.81, there was an energy theft and thereby, he along with Assistant Executive Engineer, APTS Mr. Ravindran, had inspected the



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property. In that meter, seals affixed were not tallied with the sample seals brought by him. Therefore they gave a complaint on suspicious that energy theft would have been committed using the bogus seals”.

13. PW3, who was working as the Executive Engineer, Anti Power Theft Squad [APTS] at the time of occurrence, has also deposed that on 21.03.2002 at about 4.00 p.m., he along with his team went to the Joyce Ice Factory, Kallamozhi and the staff of the said Ice Factory Arputharaj was present there and when they gave notice to him, he refused to receive the same. Thereafter, they inspected the meter and at that time, they found that the seals affixed in the meter appears to be bogus. Also they found that, the said seals were not tallied with the original seals. Thereafter, they prepared an Inspection report and sent to the Assistant Executive Engineer, Tiruchendur.

14. The above said evidences reveal that on the date of occurrence ie., on 21.03.2002, PW3 along with his team, had inspected the Ice Factory of one S.J. Gayas and at that time, they came to know that the seals affixed in the meter were bogus and thereby the accused has committed the offence



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punishable under Section 135(1)(b) of Indian Electricity Act. Whereas the accused has denied the substance of accusation against him. Therefore, now we have to analyse the evidences adduced by the prosecution witnesses.

15. PW1, Mr. Shanmuga Rangasamy, the Assistant Executive Engineer [Distribution], Tamilnadu Electricity Board, Tiruchendur has deposed in his chief examination that he inspected the property. But, during his cross examination, he has stated that *on 15.03.2002, he had inspected the same meter and gave his test report* and further when PW1 was questioned that as per their manual, whether they have to issue notice to the consumer, prior to the inspection, PW1 has replied that *yes, notice to be given to the consumer. But in this case, Mr. Ravindran, Assistant Executive Engineer, Anti Power Theft Squad, without causing any notice to the consumer, has inspected the meter by removing the seals and he intimated the same to PW1, only after the inspection was conducted.* Therefore, from the evidence of PW1, it is clear that already the same meter was inspected by PW1 on 15.03.2002 i.e., one week prior to the date of alleged occurrence. Further, PW3 without following the procedures and without the presence of other officials, had broken the seals and inspected the meter.



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Further PW1 has admitted that the meter was in running condition and there was no any equipments affixed in the meter and further on the particular date of occurrence, the Seal Register was not seen. Therefore the evidence of PW1 reveals that PW3 has not followed the due procedures at the time of inspection.

16. PW2 also in his cross examination stated that *on 15.03.2002, the same Service Connection meter was inspected and test report was also given by the Superintending Engineer. As per the report dated 15.03.2002, the meter was functioning and no fault was found in the meter and further in the said report, it was stated that there is no chance for electricity theft* Further he stated that *he does not know who was the custodian of the seals for the security box on the date of inspection.* Further he admitted that *there was a check meter fixed by the Electricity Board outside the premises. Through that check meter, they can compare the meter reading with the meter affixed inside the premises ie., the disputed meter and also he admitted that on the date of inspection, both the readings are one and the same and there is no difference in the meter readings and also admitted that in the check meter, the seal was intact and further he admitted that on the date of inspection, the meter was functioning and there was no symptom*



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for energy theft". Therefore, the evidence of PW2 reveals that the meter was functioning on the date of occurrence and there is no chance for committing theft of energy.

17. PW3, also in his cross examination, has stated that *only after cutting the meter seals, he informed about the inspection to the Executive Engineer [Distribution]. At the time of cutting the seals, he had sample seals and he got the said sample seals, one month prior to the date of occurrence from the Assistant Executive Engineer [Distribution], Electricity Board, Tiruchendur. But PW2 has admitted that there was no any endorsement in the Register with regard to the obtain of the said seals, one month prior to the date of occurrence.* In this context, PW1, who was the Executive Engineer, Electricity Board, Tiruchendur has not stated anything about the obtaining of sample seal by PW3 one month prior to the date of inspection. Therefore, the evidence of PW3 is highly doubtful and further it is an admitted fact that already the father of the accused had given a complaint as against this PW3 with regard to the demand of bribe. In this context, PW3 has admitted that there was a Vigilance enquiry conducted as against him based on the complaint given by the father of the accused.



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Therefore, the conduct of PW3 by cutting the seals without any intimation to the local authorities and that too, without the presence of other officials and obtaining the sample seals one month prior to the date of occurrence, creates a serious doubt over the evidence of PW3.

18. Further PW3, himself has also admitted that the meter was functioning on the date of occurrence and there was no any other materials affixed in the meter and further he has perused the Consumption Register, but he has not noticed any difference there. Further, PW5, who was the wireman, has also stated in his evidence that *on 21.06.1999, as per the direction of the Assistant Executive Engineer, he went to the place of occurrence and inspected the meter. At that time, he replaced the old meter and fixed the new meter.* Further he has stated in his evidence that *in the above said Ice Factory, a check meter was also installed outside the company and the check meter was under the custody of the Electricity Board and another meter was under the custody of the consumer. If any malpractice made in the meter affixed inside the company, the same would be seen from the check meter which was affixed outside the company.* Therefore, from the evidence of prosecution witnesses, it is crystal clear that



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PW3, without any prior intimation to the local authorities, went to the place of occurrence and in the absence of his other officials, broken the seal, thereby the conduct of PW3 creates a serious doubt over the prosecution case.

19. Further already there was a dispute between the accused and PW3 with regard to the demand of bribe and other prosecution witnesses also categorically stated that there was no chance for committing theft of energy since the meter was inspected one week prior to the date of occurrence. Further the Superintending Engineer, Tuticorin Electricity Distribution Circle, Tuticorin also gave an Inspection Report, which is marked as Ex.D.3 and in that report also, it is clearly observed that there is no chance for electricity theft. Further there is no evidence that how the authorities arrived the units of that as alleged by the prosecution. As per the evidence of prosecution, check meter was fixed outside the Ice Factory. The very purpose of installing the check meter is to find out differences, but no variation between the check meter and the meter fixed in the Factory. While so, for what purpose the seals were broken and without any variations in the meter readings, how the prosecution arrived the calculation, has to be



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explained by the prosecution, but no any explanation to that regard. Further the Ex.P.1 report reveals that after breaking the seals, the meter readings were reduced, if so how the report was prepared without any materials to show that the meter was tampered. The Ex.P.1 report is contra to the prosecution evidence. Therefore the prosecution has failed to prove the charge levelled as against the accused beyond all reasonable doubts and the trial court has also, in its judgment, elaborately discussed about the evidence of prosecution witnesses and the documents produced on both sides and correctly held that the prosecution has failed to prove the charge levelled as against the accused under Section 135(1)(b) of Indian Electricity Act and thereby, there is no infirmity in the judgment of the Trial Court warranting interference.

20. In view of the above discussion, this Court is of the opinion that this appeal has no merits and liable to be dismissed. Accordingly, the Judgment and acquittal passed in Special C.C. No.9 of 2011 on the file of the learned Principal Sessions Judge, Tuticorin dated 26.06.2015 stands confirmed. .



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21. In the result, this Criminal appeal is dismissed. Connected

miscellaneous petition, if any, is closed.

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Index : Yes / No

Internet : Yes / No

Neutral Citation Case :Yes/No

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To

The Inspector of Police,
Kulasekarapattinam Police Station,
Udankudi Taluk, Tuticorin.



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