

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-625-SB-2017

Date Reserved: May 19, 2023

Date of Decision: June 08, 2023

Sukhwinder SinghAppellant

Versus

State of Punjab & AnotherRespondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Rajat Mor , Advocate for the appellant

Mr. Amit Shukla, AAG Punjab

Mr. Amrit S. Kang, Advocate for respondent No. 2 - PSPCL

HARKESH MANUJA, J

CRM-22855-2020 in CRA-S-625-SB-2017

This is an application under Section 482 Cr.P.C. for placing on record the true translated copies of Annexure A-1 to A-4 and A-6 as additional evidence and A-5 and A-7 for placing on record as both the documents are already exhibited before the Court below..

For the reasons mentioned in the application, which is supported by an affidavit, the same is allowed specifically in relation to A-6 and A-7. Annexure A-7 was already on record as Ex. D-27 and A-6 is translated copy of diary entry of the complaint filed by applicant/appellant. As A-6 has been taken from the record of respondent itself, no prejudice will be caused to them and despite of many opportunities being given to them no reply to counter the same has even been filed either to doubt its existence or the evidentiary value thereof.

MAIN CASE:

1. The present appeal has been filed against the judgment and order dated 24.01.2017 passed by the learned Judge, Special Court, Sri Muktsar Sahib convicting the appellant under Section 135 of the Electricity Act and sentencing him to undergo rigorous imprisonment for 2 years.

2. The allegations in brief are that a case was registered against the appellant on the basis of letter bearing memo no. 190 dated 01.03.2013 issued by Er. Barinder Pal Singh, Addl.A.E. as per which Er. Kulwant Singh Sandhu along-with his staff checked the meter bearing No. CK46/503 installed in the name of appellant in a box on pillar outside his house wherein it was found that meter was neither locked; nor having MTC seal; UID No. PB0045 LED of meter was not flickering; Terminal block of the meter was burnt and the incoming wire was connected directly after bypassing the meter and the theft of electricity was being committed. On checking the load of the house, it was found that accused was using the cutter/ press machine after making a joint with the four core cable of the department. Checking report was prepared and on the basis of same, a notice was issued to appellant calling upon him to deposit a sum of Rs.2,62,566/- as compensation and 50,000/- as compounding fee. In addition, FIR was registered against the appellant who was subjected to trial and subsequently vide judgment and order dated 24.01.2017 passed by the learned Judge, Special Court, Sri Muktsar Sahib, he was convicted under Section 135 of the Electricity Act and sentenced to undergo rigorous imprisonment for 2 years.

3. By way of present appeal, challenge has been laid to this order of conviction dated 24.01.2017 passed by learned Judge, Special Court, Muktsar Sahib under Section 135 of the Electricity Act.

4. Learned Counsel for the appellant contends that it is an admitted fact in disposition by Kulwant Singh who appeared as PW-1 that neither the raiding officials took the meter in question in their possession; nor any cable wire or other machinery and admittedly, nothing was sent to any forensic lab for its examination. He further submits that no photography of the raid was conducted although prosecution produced a CD with regard to videography of the alleged place of occurrence during the course of trial but as there was no reference of any videography in the checking report, Ld. Court did not rely upon it. Learned counsel also places reliance upon instruction No.21.2(c) of Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related Matters) Regulations, 2007 (hereinafter referred as Supply Code-2007) further amended vide notification dated 21.06.2023, to contend that Electric Meter which was checked by raiding party was installed in a box on pillar outside the house and in such a situation appellant cannot be held liable for theft of electricity.

5. Per contra, learned State counsel submits that the appellant has been rightly convicted by the Ld. Special Court on the basis of the complaint which was duly corroborated with the statements given by the official witnesses and hence, there is no reason to interfere with the judgment passed by the Ld. Special Court.

6. I have heard learned counsel for both the sides and gone through the paper book as well as record of the case. I find force in the

arguments raised by learned counsel for the appellant. Firstly, let us have a look at regulation 21.2(c) of the Supply Code 2007, which before amendment is reproduced below:-

“(c) The licensee may require a meter to be installed outside the premises of a consumer and in such an event, the entire cost of installing the meter outside the premises and providing a display unit within the premises will be borne by the Licensee. However, the cost of display unit will be treated as part of the meter cost while determining meter rentals. In a case where the meter metering equipment is installed by the Licensee outside the premises of a consumer, the consumer will not be responsible for the protection of the meter from the theft or damage.”

After notification dated 21.06.2013, it stood amended as below:-

“The licensee may require a meter to be installed outside the premises of a consumer and in such an event, the entire cost of installing the meter outside the premises and providing a display unit within the premises will be borne by the Licensee. However, the cost of display unit will be treated as part of the meter cost while determining meter rentals. The display unit may not be installed by the Licensee if the consumer so opts. In such a event, monthly rentals on this account will not be levied. In a case where the meter/ metering equipment is installed by the Licensee outside the premises of a consumer, the consumer will not be responsible for the protection of the meter from the theft or damage to the seals/ meter or tempering of the seals/ meter.”

7. In view of the amendment if the meter is installed outside the premises of the consumer he will not be responsible for the protection of the meter not only from the theft or damage to the seals/ meter, but also in case of tempering of the seals/ meter, however, the benefit of the extended

scope of this regulation was not given to the appellant as this notification came into force on 21.06.2013, whereas, in the present case, inspection was carried out on 01.03.2013. It was held by Hon'ble Apex Court in "**T. Barai v. Henry Ah Hoe and Another**" reported as 1983 (1) SCC 177 that:

"22. It is only retroactive criminal legislation that is prohibited under Article 20(1). The prohibition contained in Article 20(1) is that no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence prohibits nor shall he be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. It is quite clear that insofar as the Central Amendment Act creates new offences or enhances punishment for a particular type of offence no person can be convicted by such ex post facto law nor can the enhanced punishment prescribed by the amendment be applicable. But insofar as the Central Amendment Act reduces the punishment for an offence punishable under Section 16(1)(a) of the Act, there is no reason why the accused should not have the benefit of such reduced punishment. The rule of beneficial construction requires that even ex post facto law of such a type should be applied to mitigate the rigour of the law. The principle is based both on sound reason and common sense."

8. The above stated preposition of law was also subsequently followed by Hon'ble Apex Court in "**Nemi Chand vs State Of Rajasthan**", Criminal Appeal No. 214 of 2016 decided on 10.03.2016. Therefore, in the present case also even if the amendment is subsequent to the date of incident, appellant should have been granted the benefit of amended provision as the liability in present case also are of criminal nature only.

9. Another reason, why in the present case appellant was not granted the benefit of aforementioned provision, was that he was found drawing electricity by bypassing the meter and connecting the cable. It was further observed that no doubt, PSPCL in emergency can directly connect the wires to restore the supply to the consumer; but in the present case, there was no such complaint made by accused and there is no evidence on record that direct supply was made by the officials of PSPCL by connecting the wires directly by bypassing the meter. However, there exist two reasons for not agreeing with this observation by the Special Court.

10. Firstly, vide Annexure A-6 appellant has brought on record the diary entry record of the complaint given with respect to meter CK46/503 and despite of many opportunities being given to them no reply to counter the same has been filed. Perusal of this document reveals that a complaint of meter burnt was given by the appellant to the respondent department on 18.02.2013 with Sr. No 119. His case is further supported from Annexure A-7, vide which it has come on record that entire material in this regard has been washed out and is not available. In this circumstance, the case of the respondent department becomes doubtful that whether wire was connected by the appellant or by the respondent Department and therefore, appellant is liable to get the benefit of the extended scope of Regulation 21.2(c) of the Supply Code 2007.

11. Secondly, on record this is an admitted fact that procedure regarding seizure of equipments used for the purpose of theft or tampering was not followed by the raiding team. Regulation 37.2 (a)(ii) of Supply Code – 2007 which laid down the procedure in this regard is as under:-

“(ii) In case where a consumer is suspected to have indulged/indulging in electricity by tampering theft with of the meter/metering equipment and/or its seals or otherwise then such equipment shall be sealed by the Authorized Officer so as to keep it as 'in found condition'. The consumer or his representative will also be permitted to affix his seal at that time.”

12. However, in cross examination of *PW1-Kulwant Singh*, non compliance of this procedure has been categorically admitted and relevant part of which is reproduced below:-

“...The two core wire was not packed and sealed at the spot. Rather it was handed over to the JE for safe possession. It is correct that as per the rules and regulations of our department pertaining to checking of electricity connection the artificial means found used for theft of electricity are to be seized, packed and sealed. As per the rules the meter is also required to be packed and sealed in case the theft is through the meter. As per the rules and regulations of our department to ascertain the genuineness of the seals of meter and to check the internal mechanism of the meter, meters are required to be sent to ME lab for checking, whereas the reason of burning can be ascertained at the spot. It is wrong to suggest that the later portion of my abovesaid. reply is wrong and against the rules and regulations of our department. The meter was not checked at the spot with ERS meter. Volunteered it was not warranted. I had not ascertained the reason for burning of the meter terminal block. The rules and regulations of our department provides that in case meter terminal block burnt, the wires can be diectly connected to restore the supply of the consumer. Volunteered it can be done so if the consumer makes a complaint or deposits the cost of the meter.”

This is also an admitted fact that meter was not taken into the possession. No photography or videography of the incident was conducted. Though, a CD regarding videography was produced by PW1 - Kulwant Singh during his testimony; but it was rightly rejected by the learned Court as no mention of any such videography was made in the checking report while admittedly, it was procedurally mandated to record any such activity in the checking report.

12. In view of the discussion made above and on the basis of conjoint consideration of all the aspects, in my considered opinion, prosecution has failed to prove its case beyond reasonable doubts, therefore, the present appeal is allowed and appellant is acquitted of the charges in the present case.

13. Pending miscellaneous application(s), if any, shall also stand disposed of.

June 08, 2023
sanjay

[HARKESH MANUJA]
JUDGE

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no