



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.385 OF 2005

Ganpat Lakadu Deore,
Age : 48 years, Occu. : Service,
R/o. Plot No. 54/55, Indraprastha
Colony, Deopur, Dhule,
District Dhule.

... Appellant

Versus

State of Maharashtra

... Respondent

.....
Shri Joydeep Chatterji, Advocate for Appellant
Smt. Ashlesha S. Deshmukh, APP for Respondent - State
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 11 NOVEMBER 2024

PRONOUNCED ON : 13 NOVEMBER 2024

JUDGMENT :

1. In this appeal, there is challenge to judgment and order of conviction passed by learned 1st Ad-hoc Additional Sessions Judge, Dhule recording guilt of the appellant for offence punishable under section 135 as well as section 138 of the Electricity Act, 2003 and is also made to pay fine.

2. In brief case of prosecution is that, accused no.1 Ganpat resided with his wife on plot No.55. Accused no.1 and his wife were consumers of M.S.E.B. and they had obtained connection

of electricity meter. Meter stood in the name of wife of accused no.1.

On 05.12.2003, Assistant Engineer and staff visited premises of accused no.1. However, electricity meter showed less reading and therefore inquiry was conducted by accused no.1. During the inquiry, it was revealed that accused no.2 tampered with the meter to show less reading, as a result of which, complaint came to be lodged, on the strength of which, crime was registered.

After investigation, both accused were charge-sheeted and tried by 1st Ad-hoc Additional Sessions Judge, Dhule vide Special Case No. 11 of 2004 and on appreciating the evidence, by judgment and order dated 26.05.2005 both accused came to be convicted for offence punishable under sections 135 and 138 of the Electricity Act, respectively. Hence the instant appeal.

SUBMISSIONS

On behalf of Appellant :

3. Learned counsel pointed out that, case has not been proved beyond reasonable doubt. That, in fact meter stood in the name of wife of accused no.1 and not accused no.1 himself. Secondly, it is pointed out that there is no evidence to show that the meter was tampered by accused no.2 as nothing is revealed by what mode there was tampering. He pointed out that, there was no

theft of electricity and there is no convincing evidence. It is pointed out that information given during inquiry by accused no.1 cannot be applied directly against accused no.2. Therefore, charges are not proved. However, learned counsel hastened to add that appellants have paid compounding charges and the same are accepted and for said reason also, as nothing remains, he prays to set aside the impugned judgment as well as treat the matter as compounded. He placed on record original receipts of payment of compounding charges.

On behalf of Respondent - State :

4. Learned APP strongly opposed on the ground that, flying squad during their visit, noticed that, meter was running slow. There was tampering to the same. Accused no.1 during inquiry named accused no.2 for tampering the meter. After complete investigation, charges have proved and hence she prays to dismiss the appeal for want of merits.

EVIDENCE ON RECORD

5. After hearing the submissions and on appreciating the evidence, it transpires that, vide Exh.1 both appellants were charge-sheeted for offence punishable under sections 135 and 138 of Electricity Act, respectively, on complaint of one Rajendra Chitodkar, Sub Engineer, MSEB (PW1). His evidence at Exh.16

shows that on 05.12.2003, flying squad visited premises of accused no.1 and during inspection, they noticed that electricity meter was tampered and original seal was removed and duplicate seal was affixed and therefore, after drawing panchanama, he lodged report.

While under cross at hands of accused no.1, he admitted that, electricity meter stood in the name of Leelabai and accused Ganpat is not consumer. He admitted that, in the FIR there is no mention that electricity meter was checked by accused and he also admitted that, complaint is in the handwriting of Shri A. S. Borse, Junior Engineer. He also admitted that, sometime intact electric meter also shows running slow or excessive reading than average. He admitted that, electricity meter is required to be referred to the laboraty for testing and he candidly admitted that seized electricity meter was not sent to the testing lab of M.S.E.B. He further admitted that, as proposal forwarded by their office, electricity bill was reduced to Rs.60,000/- and appellate authority had considered the application made by accused.

While under cross at the hands of accused no.2, complainant has admitted that, statement of Leelabai was not recorded and that only on say of accused no.1, crime was registered against accused no.2.

6. **PW2** Sanjay, Assistant Engineer, also a staff member of M.S.E.B., deposed about visit to the house of accused no.1 on 05.12.2003, inspecting electric meter and noticing theft and thereafter drawing panchanama at Exh.18.

While under cross he admitted that, at the time of inspection, accused no.1 was alone present. He admitted about stating portion marked 'A' and also admitted about not recording statement of Leelabai. He also answered and admitted that, he did not inform police that the seal of the electric meter was broken. He also admitted that, meter being electronic one, there may be a production defect and either meter may run slow or excessive speed. He admitted that, panchanama at Exh.18 does not bear his signature. He further admitted that, there is no distinct evidence to show that meter was tampered and duplicate seal was affixed.

7. **PW3** P.S.I. Kashinath is the Investigating Officer, who carried out investigation and charge-sheeted accused.

Above is the only evidence.

ANALYSIS

8. On carefully appreciation the distinct features of evidence, it is emerged that, *firstly*, electricity meter standing in the name of wife of accused no.1 and not accused no.1. *Secondly*, accused no.2 is named by accused no.1 for tampering the

electricity meter and on his statement, accused no.2 is impleaded and charge-sheeted. The answers given by PW1 Rajendra and PW2 Sanjay in the cross have given severe dent to the prosecution.

9. Complainant himself, while under cross seems to have admitted that, accused no.1 is not himself a consumer of M.S.E.B. Secondly, he himself though claims to be informant, complaint was admitted penned down by Junior Engineer A. S. Borse and he is not examined. Complainant himself has admitted that, sometimes electric meters run slow or show excessive reading. There is vital admission that, electric meter was not sent to laboratory for testing. Similarly, PW2 Sanjay, in cross examination, has also given very crucial admissions that, during visit and inspection, accused no.1 alone was present, statement of wife of accused no.1 in whose name meter stood, is not recorded. He admitted that he did not state before police that seal of the electric meter was broken and he further admitted that there is no distinct evidence regarding meter being tampered or seal being broken. Therefore, with such quality and nature of answers given by PW1 Rajendra and PW2 Sanjay while facing cross, case of prosecution regarding commission of theft of electricity or tampering with the electric meter comes under shadow of doubt.

10. Further original receipts placed on record show that, M.S.E.B. authority have accepted amount of Rs.1,40,266/- towards theft of electricity. Therefore, in view of section 152 of Electricity Act, once amount being accepted, matter is admittedly settled. Statute itself by way of above provision under section 152 of Electricity Act provides for compounding. Therefore, on both counts, it is on merits as well as compounding to be permissible, appellant succeeds. Hence, the following order is passed :-

ORDER

- I) Criminal Appeal stands allowed.
- II) The conviction awarded to Ganpat Lakadu Deore in Special Case No.11 of 2004 by the 1st Ad-hoc Additional Sessions Judge, Dhule on 26.05.2005 for the offence punishable under Sections 135 and 138 of the Electricity Act, 2003, stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under Sections 135 and 138 of the Electricity Act, 2003.
- IV) The bail bonds of the appellant stand cancelled.
- V) The fine amount deposited, if any, be refunded to the appellant after the statutory period.

VI) It is clarified that there is no change as regards the order in respect of disposal of *muddemal*.

(ABHAY S. WAGHWASE, J.)