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Crl.A.No.782 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.782 of 2017

Prakash

... Appellant / Accused

vs.

The State Rep. by
the Sub Inspector of Police,
Arakkonam Town Police Station,
Vellore District.

... Respondent / Complainant

PRAYER: Criminal Appeal filed under Section 374 (2) of Criminal Procedure Code, 1973, against the judgment and orders dated 17.11.2017 passed in Spl.S.C.No.11/2016 by the Principal Sessions Judge, Vellore.

For Appellant : Mrs.S.Sridevi
Legal Aid Counsel

For Respondent : Mr.S.Raja kumar
Additional Public Prosecutor

JUDGMENT

Challenging the Judgment and Orders, dated 17.11.2017, passed by the learned Principal Sessions Judge, Vellore in Spl.S.C.No.11/2016, the present Criminal Appeal is filed by the appellant / accused no.3.



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2. The appellant is A3 in Spl.S.C.No.11/2016 and is convicted and

sentenced as detailed hereunder:

<i>Accused</i>	<i>Conviction</i>	<i>Sentence</i>
Prakash (A3)	Section 138 (d) of the Indian Electricity Act	Rigorous Imprisonment for a period of one year and a fine of Rs.1000/-, in default to undergo Simple Imprisonment for two months.
	Section 135 (b) of the Indian Electricity Act	Rigorous Imprisonment for one year and a fine of Rs.5000/-, in default to undergo Simple Imprisonment for two months.
The aforesaid sentences shall run concurrently. The period of sentences already undergone shall be set off under Section 428 Cr.P.C.		

3. The case of the prosecution in a condensed form is as follows:

3.1. On 21.07.2004 at about 2.50 p.m, Ruthiran (P.W.1), Assistant Executive Engineer, Tamil Nadu Electricity Board (in short TNEB) went to a shop for surprise inspection of the electricity meter near Arakkonam old bus stand in which A1 and A2 were running a cool drink shop, with electricity service connection No.3/11213-H. Thiru.Lokeswaran (P.W.2) and Thiru.Selvamani (not examined), Junior Engineers, TNEB, accompanied P.W.1. An Inspection was conducted in the shop in the presence of Thiru.Nandagopal, (P.W.3) Village Administrative Officer of



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Arakkonam Village and it was found that the meter was not running even though the lights and other appliances were switched on. On further inspection, it was found that a yellow colour PVC wire was connected to the incoming wire of the meter and thus the meter was tampered thereby committing theft of electricity.

3.2. A spot Observation Mahazar (Ex.P4) was prepared in which the second accused (since deceased) signed. Thereafter a complaint (Ex.P1) dated 21.07.2004 was lodged by P.W.1 with Thiru.Vadivel (P.W.5), the then Sub Inspector of Police, Arakkonam Town Police Station who registered an FIR in crime No.789/2004 for the offences punishable under Sections 135(a)(b) and 138 (a) of the Tamilnadu Indian Electricity Act, against the following persons:

1. Senguttuvan S/o. Tamilselvan (A1)
2. M.Sudhakar (died), S/o. Madhana Neelan (A2)

3.3. P.W.5 took up investigation in Crime No.789/2004, went to the scene of occurrence and prepared a Rough Sketch (Ex.P7). During the course of investigation, it came to light that the shop was actually



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allotted to the present Appellant and therefore he was indicated as an accused in the present case at the time of filing final report before the Judicial Magistrate, Arakkonam in P.R.C.No.07/2016.

3.4. The Judicial Magistrate after furnishing copies of records to the accused under Section 207 Cr.P.C., committed the case to the Court of Sessions. The learned Principal Sessions Judge, Vellore took up the case in Spl.S.C.No.11/2016 and framed charges against the accused 1 to 3 for the offences punishable under Sections 135 (b) and 138 (d) of the Indian Electricity Act, for which they pleaded not guilty.

3.5. In order to bring home the guilt of the accused, the prosecution examined 5 Witnesses and marked 8 documents and 6 Material Objects.

3.6. When the accused including the present appellant were questioned with regard to the incriminating circumstances appearing in evidence against them under Section 313 of Cr.PC, they denied of having committed any offence. However, they did not examine any witness on their side.



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3.7. The learned Principal Sessions Judge, after analysing the oral and documentary evidence on record, convicted and sentenced the present appellant (A3) as stated in paragraph No.2 vide her Judgment and orders dated 17.11.2017. The accused No.1 was acquitted as the prosecution did not file any document to show that he was in possession of the shop as a lessee. During the course of trial, A2 died and therefore, charges framed against him got abated.

3.8. Aggrieved over the conviction and sentence passed against the present appellant / A3, the appeal is preferred by him.

4. Heard Mrs.S.Sridevi, learned legal aid counsel appearing for the appellant and Mr.S.Rajakumar, learned Additional Public Prosecutor for the respondent/state.

5. Mrs.S.Sridevi, learned legal aid counsel appearing for the appellant contended that though the prosecution had stated that A1 and A2 were running a cool drink shop in the premises, the trial Court had wrongly convicted the present appellant. She also drew the attention of



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this Court to the cross examination of the Investigation Officer where it is deposed that the present appellant was a press reporter and he was not in possession of the shop. According to the counsel, the conviction and sentence passed by the trial Court Judge against the present appellant is therefore erroneous.

6. Per contra, Mr.S.Rajakumar, learned Additional Public Prosecutor would contend that since the appellant / A3 is the owner of the shop, he has been rightly convicted by the trial Court Judge and hence, there is absolutely no reason for this Court to interfere with the same.

7. The evidence of P.W1 and P.W.2 clearly shows that there was a theft of energy in the shop bearing electricity service connection No.3/11213-H by tampering the meter. The shop is situated near Arakkonam bus stand. The manner of theft of electricity has been clearly demonstrated by both P.W.1 and P.W.2 and photos (Ex.P5) also substantiate the same. P.W.1 prepared a working sheet (Ex.P3) showing the actual loss incurred by the Tamilnadu Electricity Board.



8. It is to be pointed out that the case of the prosecution is that on the date of inspection, A1 and A2 were running the shop. It is appropriate to extract Sections 135 (b) and 138 (d) of Indian Electricity Act which read thus:

135. Theft of electricity

(1) *Whoever, dishonestly:*

.....

(b) *tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted;*

138. Interference with meters or works of licensee

(1) *Whoever,*

.....

(d) *maliciously injures any meter, indicator or apparatus belonging to a licensee or willfully or fraudulently alters the index of any such meter, indicator or apparatus or prevents any such meter, indicator or apparatus from duly registering.*

9. A bare reading of both Sections clearly would show that whoever commits theft of electricity by tampering a meter or use of tampered meter, is liable to be punished.



10. In the instant case, initially FIR was registered against the persons (A1 & A2) who were in actual possession of the shop. The spot Mahazar (Ex.P4) was prepared by P.W.1 which also indicates that A1 and A2 were in possession of the shop on the date of inspection. The appellant (A3) was the owner of the shop and at the time of filing the final report, his name was included as an accused. Nowhere it is stated that A3 had committed the theft of energy. Hence, the trial Court had gone wrong in convicting A3, especially when there is absolutely no record to show that he actually tampered the meter. It is not also the case of A1 and A2 that they were not running the 'cool drink shop'. Therefore the conviction and sentence passed against the present appellant by the trial Court is totally erroneous.

11. In the result,

- i. This Criminal Appeal is allowed.
- ii. The Judgment and Orders dated 17.09.2017 in Spl.S.C.No.11/2016 passed by the Principal Sessions Judge, Vellore are set aside.
- iii. The appellant / A3 is acquitted of the offence punishable under Sections 135 (b) and 138 (d) of the Indian Electricity Act. Bail



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bonds, if any executed by him, shall stand cancelled. Fine amount, if already paid, shall be refunded to him.

iv. This Court places on record its appreciation to Mrs.S.Sridevi, learned Legal Aid counsel, for her valuable assistance in deciding this case. The High Court Legal Services Committee shall pay a sum of Rs.15,000/- (Rupees Fifteen Thousand only) to the said counsel towards her fee.

19.06.2024

vum

Index : yes/no

Speaking /Non speaking Order

Neutral Citation : Yes / No

To

1. The Sub Inspector of Police,
Arakkonam Town Police Station,
Vellore District.
2. The Principal Sessions Judge, Vellore,
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras.

Copy to

The Secretary, High Court Legal Services Committee,
High Court Campus, Chennai - 104.



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R.HEMALATHA, J.

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