

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 254 OF 2005
HARISADHAN PANDEY

VS
THE STATE OF WEST BENGAL

For the Appellant : **Mr. Mani Sankar Chattopadhyay, Adv.**
Mr. Amajit Dey, Adv.
Ms. Shalini Singh, Adv.

For the State : **Ms. Manisha Sharma, Adv.**
Mr. Raju Mondal, Adv.

Last heard on : **12.08.2025**

Judgement on : **18.11.2025**

Uploaded on : **18.11.2025**

CHAITALI CHATTERJEE DAS, J. :-

1. This appeal has been filed against the judgment and order dated February 17, 2005 passed by the Learned Additional Sessions Judge, 2nd Court Purulia in Electricity G.R. case No. 65 of 2004 under Section 39 of the Indian Electricity Act and Section 379 of the Indian Penal Code, convicting the petitioner to suffer R.I. for 2 years and also liable to pay a fine in default of payment of fine of Rs. 1,000/-i.d to suffer further R.I. for 2 months.

Fact of the case

2. A complaint was lodged to the Officer-in-Charge Neturia Police Station, District Purulia on January 20, 2003 by Assistant Engineer, Raghunathpur W.B.S.E.B, Purulia against the present appellant alleging that on that date at about 2 P.M. to 2.30 P.M the said complainant along with two other officials in co-operation with local Police Station held inspection of the house of the present appellant having consumer NO. A-500 278 which was disconnected on 26.11.2002 for outstanding dues of Rs. 2693 for the posted (SIC) 9/0027/02, and found act of consuming and using electric energy dishonestly from the L.T. lines of Neturia village by way of hooking and causing loss of the revenue to the tune of Rs. 4000. It was further alleged that the appellant also caused mischief to the board's property as enunciated in Section 3 (2) (a) of Act III/84 (Prevention to the damage of Public Property). On the basis of such complaint the Neturia P.S. case 4/03 dated January 20, 2003 under Section 31 I.E. Act along with Section 379 IPC started and on completion of the investigation the charge sheet was submitted against the present appellant. The Learned Special Court framed the charges under Section 39 I.E. Act and Section 379 of Indian Penal Code on 3rd day of December, 2003.

Submissions

3. The Learned Advocate representing the appellant argued that the Learned Trial Court failed to consider that there are discrepancies in the evidence adduced by the witnesses and in absence of any satisfactory evidence on record to prove the reasonable doubt but despite that the Learned Trial Court passed such order of conviction. No independent witness was examined by the prosecution and it is evident from the evidence that no attempt was made to identify the

house where the raid was conducted as to whether it belong to the appellant or not. It is further argued that the Learned Judge did not consider that the prosecution failed to prove that the hooking was at all was done by the appellant for his house and further P.W. 3 stated that the house belong to one Bankim Pandey. The seizure list was not prepared at the place of occurrence as alleged but at the Police Station which was also not considered by the Learned Trial Court. Lastly the Learned Judge did not follow any of the established principles relating to examination of the accused person under Section 313 of the Code of Criminal Procedure accordingly prayed for dismissal of the appeal.

4. The Learned prosecution on the other hand raises objection and submits that the prosecution adduced evidence; the raid was conducted on that date and found the illegal hooking is being done by the appellant and therefore the Learned Trial Court considering the evidences rightly passed the order of conviction. Accordingly prayed for dismissal of this appeal.

Analysis

5. The de-facto complainant deposed as P.W. 1 who was posed as Assistant Engineer, S.E.B. Raghunathpur (O and M) Sub-Division on January 20, 2003 when they held the raid in such village. After discovering that the appellant was consuming electricity energy illegally and dishonestly by direct hooking they disconnected the line and also seized one lamp, lamp holder, PVC cable and naked conductor by virtue of a seizure list. It is assailed that they did not ascertain whether the said house belong accused/appellant or not and also did not record the name of the local people from whom they came to know the name of the present appellant. The P.W. 1 did not write the complaint but only

put his signature. It further transpires from the evidence that the appellant had a electric meter connection and there was an outstanding bills but the no. of said meter was not disclosed before the Court.

6. Pareshnath Karmakar deposed as P.W. 2 who on 28th January, 2003 was attached to Saltore Group Electric Supply, W.B. S.E. B. who went on a raid accompanied by A.E., two lines men and O.C. Neturia P.S. and other constables were with them. He admitted that there was a meter connection in the name of the father of Harisadhan Pandey, the appellant who used to consume electricity energy from the said meter but on account of some unpaid outstanding bills they said line was disconnected on 26.11.2002 and since then there was no electric line up to the date of their raid. According to the evidence of the witnesses there was no lawful connection on that date but it was detected that the accused person was consuming electricity energy illegally with the help of hooking direct from the L.T. Line in his house. He did not found the appellant in the house but his mother was present and after disconnecting the said illegal line, police seized some electrical apparatus. This witness is also a seizure list witness and proved his signature on the seizure list. This witness also wrote the complaint but did not put his signature as scribe on the FIR. They did not have definite information or any paper to show that the house belong to accused/appellant.

7. One Subal Chandra Paul deposed as P.W. 3 who was a lines man and posed there on the relevant day when he accompanied his superior Officers for raid in village Neturia. Pursuant to the evidence of this witness on arrival of the village they found electricity energy was illegally or dishonestly consumed by a person of that village. This witness did not disconnect the line personally but

their colleague disconnected the same. This witness further deposed that the electrical apparatus were seized from a house belong to one Bankim Panmdey. Another witness Sadhan Kumar Pathak deposed as P.W. 4 who was then posted at Neturia P.S as S.I. of Police .On that date as per requisition of S.E.B authority he along with other police force accompanied said S.E.B. personnel for the purpose of raiding on such village where the connection of a person was disconnected and they seized some electrical apparatus from the said house. This witness conducted the investigation and then he visited the place of occurrence, examined the available witnesses and recorded their statement under Section 161 Cr.Pc. and then submitted charge-sheet in this case against the accused. It is found from his evidence that he made no effort to ascertain the ownership of the house in question.

8. The appellant /accused was examined under Section 313 of Cr.Pc and all the incriminating materials were placed before him and he only denied those but did not adduce any further evidence or said anything in his defence. The Learned Court after hearing both the parties and after considering the evidences adduced pass the judgement and order of conviction against the present appellant. Being aggrieved thereby the instant criminal appeal has been filed.

9. In this case after hearing the argument of both sides and going through the materials on record the point falls for consideration as to whether the accused person was consuming electricity energy illegally by direct hooking or not. The Learned Trial Court scanned the evidence of the prosecution witnesses was of the view that the FIR was proved and the defence failed to discard the evidence of P.W.s by better evidence. Furthermore the defence has failed to

prove that accused was not consuming electricity energy illegally with the help of hooking direct from the L.T. Line of S.E.B. in his house.

10. It is the established principles of law that in order to prove the criminal case the Court is to ascertain whether the prosecution has been able to prove the case beyond the shadow of reasonable doubt or not, and not considering as to whether the defence has failed to prove his bona fide. In the instant case the raid was conducted by the de-facto complainant but nowhere it was disclosed as to how or on what basis he went to conduct raid in the said house. The bone of contention of the argument advanced on behalf of the appellant that the prosecution never tried to ascertain as to whether the present appellant is the owner of that house or not. Fact remains the P.W.1 deposed that they did not ascertain from any corner whether the said house belong to accused Harisadhan Pandey or not. P.W. 2 also deposed that he did not have definite information or any paper to show the ownership of the said house. P.W. 3 another member of the raiding party only said that the house belong to one Bankim Pandey in this regard no cross-examination can be found. The search list exhibit No. 1 reveals on the relevant day the search was made at the shop of Shri Harisadhan Pandey son of Bankim Pandey. By virtue of that list certain articles were seized from the house of Hari Sankar Pandey son of late Bnakim Pandey and this question was put to the accused person during his examination under Section 313 of Cr.Pc to which he only denied the same. In his examination under Section 313 Cr.Pc the name of father has been mentioned as Bankim Pandey. Therefore it goes without saying that even though the complainant and also the I.O. of the case did not ascertain about

the ownership of the property but the search was done in respect of the house where the name of Harisadhan Pandey son of Bankim Pandey is very well established. In fact, P.W. 2 deposed that there was a meter connection in the name of the father of Harishadhn Pandey and he used to consume electric energy from the said meter. There was an outstanding bill so far the consumption of electricity is concerned and the line was disconnected on 26th of November 2002. Therefore it goes without saying that the concerned authority was well aware at whose house they are going to raid and they made the requisition of the police persons of Neturia Police Station and then only raid was conducted. The authority was also well aware that there was no lawful connection which was stated before the Court by P.W. 2 .It is pertinent that though in the complaint it was mentioned that on inspection it was found that the act of abstracting, consuming and using electricity dishonestly was detected by the inspecting team, the appellant was not found in the house only the mother was present in the house . The nature of evidence and the above facts and circumstances leaves no room for doubt that the house was not of the appellant but of his father who was expired and the son and mother were living in that house .P.W 3 said on arrival he found a man of that village was consuming electricity illegally but nothing said if the man run away after seeing him/them or he was the appellant. The meter stood in the name of the deceased father and it is the version of prosecution witness that the appellant was not found in the house .So whom P.W. 3 found on arrival remains unanswered. The disconnection took place in broad daylight at 2p.m but no single local witness has been cited as witness. The seizure list was not signed by the appellant or any local witness and the seizure list prepared by the

authority was never seized but the I.O .The observation of the Learned trial Court that when the P.W. 3 a Govt. Group-D staff S.E.B. stated before the Court that he is a Line Man of S.E.B and also that the electric apparatus were seized, there lies no connection to disbelieve the evidence of the said witness find no force in view of the cardinal principles of criminal jurisprudence where an order of conviction can never be passed unless the prosecution proved the case beyond the shadow of all reasonable doubt. The entire evidence clearly manifest that the house or shop was not in the name of the appellant, no direct evidence of hooking against him are found, no local witness or the accused signed in the seizure list and no local witness has been cited to establish that the inspection followed by disconnection took place on the relevant day and time. No register was produced to collected or seized by the I.O in this regard .The item seized to be alleged are only P.V.C wire and a bulb holder from the house which are easily available in every house and no seal or label was put therein. Those articles were not placed before the court. All the witnesses who went to inspect as alleged supported the case of the de-facto complainant put their signature in the said list.

Conclusion

11. Therefore in the light of the above discussion this court is of the view that the prosecution case has not been proved beyond all reasonable doubt and hence liable to be set aside.

12. Accordingly the Criminal Appeal is hereby allowed.

13. The Judgement and order of conviction passed by the learned Trial court is hereby set aside. The Appellant be discharged from the bail Bond if any.

14. Urgent certified copy of applied be given at an earliest subject to fulfilment of all other requirements.

(CHAITALI CHATTERJEE DAS,J.)

