

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 509 of 2005

Bidyut Kumar Mahato

-Versus-

The State of West Bengal

For the Appellants : **Mr. Tapan Dutta Gupta,
Mr. Kashiwar Ghosal.**

For the State : **Mr. Joydeep Roy, Ld. Jr. Govt. Adv.
Ms. Sujata Das**

Hearing concluded on : **20.06.2025**

Judgment On : **26.06.2025**

Prasenjit Biswas, J:-

- 1.** The present appeal is directed against the judgment and order of conviction and sentence dated 12.07.2005 passed by the learned Additional Sessions Judge, 2nd Court, Purulia. in Electric G.R. Case No. 22 of 2005.
- 2.** By the aforesaid judgment the Trial Court has found this appellant guilty of the offence punishable under Section 135(1)(b) of the Indian Electricity Act and sentenced him to suffer rigorous imprisonment for one year along with

a fine of Rs. 1000/- and in default of payment of fine to undergo further rigorous imprisonment for one month.

3. The facts leading to the appeal in short are as follows:

“On 23.04.2005 one Sanjay Kumar, Assistant Engineer, Jhalda (O & M) Sub-Division, Purulia lodged the written complaint before the Officer-in-Charge, Arsha Police Station stating, interalia that on 23.04.2005 at 3.30 P.M. he along with Shri Swapan Kumar Chatterjee, AE (C) PRLDC and Sri Priya Ranjan Kar, SM, Arsha GE/S entered into the premises of this appellant and inspected his service connection and WBSEB property being meter no. HH308487 make India meters Ltd. F/R 02314.8 installed at the premises of the said appellant. During inspection theft of electricity was detected under Section 135(1)(b) of Electricity Act, 2003 as theft of electricity was detected during inspection by bypassing of incoming service wire and the meter was uninstalled. A copy of seizure list/ inspection report was handed over to the accused at the site and this appellant was arrested on spot by the police of Arsha Police Station.”

4. On the basis of the said complaint the case was registered by the Arsha Police Station being Case No.12/2005 dated 23.04.2005 under Section 135(1)(b) of the Electricity Act, 2003 and under Section 379 of Indian Penal Code against this appellant.

5. After completion of investigation police submitted charge-sheet against these accused persons under Section 135(1)(b) of the Electricity Act and under Section 379 of the Indian Penal Code against this appellant.
6. The charge was framed by the Trial Court against this appellant under Section 135(1)(b) of the Indian Electricity Act.
7. In this case, prosecution has examined as many as six witnesses and also relied upon some documents which are marked exhibits in this case. Neither any oral nor any documentary evidence was adduced on behalf of the accused person.
8. Mr. Tapan Dutta Gupta, learned Advocate appearing on behalf of the appellant said that the impugned judgment passed by the learned Trial Court is full of surmises and conjectures and based on mere hypothesis. It is said by the learned Advocate that the evidences of the prosecution witnesses were not correctly appreciated by the learned Trial Court and for that reason the impugned order cannot stand under the eye of law. Moreover, this appellant has paid the amount of electricity charges assessed by the authority and in view of the provisions of Section 152 of the Electricity Act, 2003 the Trial Court could not be proceeded with. It is further said by the learned Advocate that only the individual witness who cited in this case as PW6 did not state anything regarding the allegation made by the prosecution against this appellant.
9. Mr. Joydeep Roy, learned Advocate for the State supported the impugned judgment and prays for dismissal of the appeal.

- 10.** I have gone through the ocular/documentary evidence adduced on behalf of the prosecution and considered the submissions advanced by the counsels for the parties.
- 11.** Now question arises whether the Trial Court has committed error in convicting the appellant?
- 12.** PW1, Sanjay Kumar an Assistant Engineer, Jhalda (O & M) Sub-Division, Arsha who is the de-facto complainant in this case deposed supporting the contentions of the written complaint. He said that on the relevant date and time he accompanied by PW2, PW3 and other three police personnel and went to the house of this appellant and found that this appellant committed theft of electricity by bypassing of incoming service wire and the meter was uninstalled. A report was prepared by this witness which is marked as exhibit 1 in this case. On cross-examination, this PW1 stated that he sent notice to the appellant assessing the provisional loss of revenue of Rs 2978/- directing him to deposit the same and this appellant paid the provisional assessment amount and they granted receipt in his favour for such payment. The said receipt is marked as exhibit A in this case.
- 13.** PW2, Swapan Kumar Chatterjee A.E. (C), Purulia Circle Office stated that on 23.04.2004 he accompanied PW1 and went to the house of the appellant. This witness signed on the inspection report prepared by PW1.
- 14.** PW3, Priyaranjan Kar, Station Manager of Arsha Group Electricity Supply and one of the members of the raiding party has stated that he signed on the inspection report. The evidence of PW1 was corroborated by this witness. In his cross-examination he stated that their office assessed

provisional loss of revenue of Rs.2978/- and this appellant accused had deposited the same and their office granted receipt in favour of this appellant. It is said by this witness that thereafter the electricity connection of this appellant was restored and they did not receive any complaint thereafter.

- 15.** PW4, Soumitra Kumar Mondal, Investigating Officer of this case who after completion of investigation submitted charge-sheet against this appellant. It is said by this witness that he prepared the seizure list on seizing the meter produced by S.E.B. authorities.
- 16.** PW5, Srihari Mahato is a police constable who stated in his evidence that on the relevant date he accompanied the S.E.B. personnel and other police personnel and they went to the house of the appellant for raid. This witness has said that he signed on the inspection report prepared by PW1.
- 17.** PW6 is the only individual who cited as a witness of this case stated nothing against this appellant involving the appellant with the offence alleged.
- 18.** After hearing the learned counsel for the parties and on perusal of the record, it is found that PW1 an Assistant Engineer, Jhalda stated that there was theft of electricity. PW2, PW3, PW5 corroborated the statement of PW1. Versions of the witnesses are not rebutted by the appellant. It is admitted position that the appellant has paid the loss of revenue to the S.E.B. Authority on the ground that he consumed electricity energy illegally by bypassing the meter. Considering the evidences available on record I find that the trial Court has not committed any error in holding the appellant guilty under Section 135 (1)(b) of the Electricity Act. Therefore, there is no

reason to disbelieve the testimonies of the witnesses and documents. I find no contradiction in the prosecution's case and conclude that conviction is appropriate.

- 19.** Hence, the conviction of the appellant under Section 135 (1) (b) of the Electricity Act is upheld.
- 20.** Jail sentence is not compulsory for the said offence. So far as the sentence is concerned, looking to the facts and circumstances of the case, as also the fact that the incident is of the year 2005 and appellant is facing trial since then, hence, in the opinion of this Court, the jail sentence of the appellant deserves to be set aside and is accordingly set aside while fine amount imposed by the trial court shall remain intact.
- 21.** Accordingly, appeal stands partly allowed to the extent indicated above.
- 22.** Let a copy of this order along with T.C.R. being sent down to the Trial Court immediately.
- 23.** Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)