

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 388 OF 2013

PRASENJIT DUTTA

VS

THE STATE OF WEST BENGAL

For the Appellant : Mr. Jayanta Narayan Chatterjee, Adv.
Mr. Supreem Naskar, Adv.
Mr. Jayashree Patra, Adv.
Mr. Pritha Sinha, Adv.

For the State : Mr. Adil Badr, Adv.
Ms. Debolina Das, Adv.

For the respondent
no. 2 : Mr. Mrinunjay Chatterjee, Adv.
Mr. Suchismita Chakraborty, Adv.
Mr. Arindam Poali, Adv.
Mr. Arka Roy, Adv.
Ms. Nazia Parvin, Adv.

Last heard on : 13.11.2025

Judgement on : 01.12.2025

Uploaded on : 01.12.2025

CHAITALI CHATTERJEE DAS, J. :-

1. This is an appeal filed against judgement and order dated 31st of January, 2014 passed by the Learned Additional District Judge Special Court Electricity Act, Arambagh in Electricity case no. 123 on 2012 arising out of Khanakul P.S. case No. 179/2012 dated May, 28th, 2012 whereby the Learned Additional District Judge Special Court has acquitted the respondent .

Brief Fact of the Case

2. It is the case of the present appellant being West Bengal State Electricity Distribution Company Limited that on the basis of a written complaint lodged by this appellant , then working in the capacity of Station Manager in charge of Rajhati C.C.J. a criminal case being Khanakul Police Station Case no. 179 of 2012 dated May 28, 2012 was registered for investigation into the offence under Section 135 (1) (a) of the Electricity Act, 2003. After working in the capacity of Station Manager in charge the appellant following the due procedure and on inspection found that there is unauthorised and dishonest hooking from LTOH of the West Bengal State Electricity Distribution company related as a result of which he made seizure of materials and furnished written information to the P.S. After that a provisional assessment was raised against the respondent no. 2 whereby an amount was assessed to be paid by the respondent no. 2 on May 28, 2012. Pursuant to such on June 11, 2012 the respondent no. 2 paid towards authority an amount of Rs. 1,32,556 towards the part payment of the provisional assessment bill as has been raised.
3. The Respondent no. 2 filed a writ petition before this Court challenging the entire procedure as was adopted and the direction was given that the case

should settle first before the said Court. After which the charge-sheet was submitted against the respondent no. 2 for alleged commission of offence under Section 135(1)(a) of the Electricity Act, 2003. The Learned Special Judge framed the charge under the aforesaid Section and the contents was read over explained to the respondent no. 2 who pleaded to be not guilty “and claimed to be tried”. Hence the trial commenced.

4. In course of trial prosecution examined only two witnesses and the defence did not adduce any evidence and on conclusion of trial by virtue of the impugned judgement and order dated January 31, 2014, the Learned Special Court passed the order of acquittal with further direction to return Rs. 1, 32,556 which was paid by respondent no. 2 towards the part payment of the provisional assessment bill as raised by West Bengal State Electricity Distribution Company Limited. Being aggrieved thereby this appeal has been filed.

Submissions

5. Mr. Jayanta Narayan Chatterjee the Learned Senior Advocate representing the authority argued that the Learned Court failed to appreciate that the Learned Special Judge failed to appreciate the fact that a Court of law must remain alive to the issue which have been determined by it. Any decision or finding to be arrived at should be backed by reason and must be borne out from materials available. It was strenuously argued that there was mistrial and the judgement recorded can be described only be a perverse judgement. Despite all the ingredients of Section 135 (1) (a) of the Electricity Act, 2003 are present and other circumstances clearly pointed to the guilt of the respondent the order of acquittal was passed on erroneous finding which is evident on the face of the

record. It is argued that there is no such provision in the Electricity Act to return the amount already deposited by the consumer on the basis of an order of assessment.

6. The Learned Advocate representing the respondent No. 2 on the other hand argued that the Learned Special Court considering the evidences adduced on behalf of the prosecution passed such order of acquittal since the prosecution failed to prove the case beyond the shadow of all reasonable doubt. The Learned Advocate appearing on behalf of State on the other hand submits that prosecution witnesses proved the document exhibited and accordingly discharge their responsibility however the Learned Court did not consider and passed such order of acquittal.

Analysis

7. Heard the submission of the Learned Advocates. After going through the facts and circumstances of the case and considering the submissions advanced on behalf of the Learned Counsels representing the respective parties the point falls for consideration whether the prosecution was able to prove the case beyond reasonable doubt and also whether the Learned Special Court has authority to pass an order to refund the amount paid by way of provisional assessment bill by a consumer after the order of acquittal is passed.

8. In this case the evidence adduced by the P.W. 1, the de-facto complainant it transpires that he lodged the complaint of theft of electricity against the present respondent No. 2 as on May 28, 2012. He inquired on the spot and the house of the accused at Madhrarnga village under P.S. Kahanakool and found the accused using electricity from their existing electric pool by direct hooking. He seized the hooking materials and prepared the seizure list. He obtained the

signatures of two local witnesses on the seizure list namely Amal Mula and Prabir Mula. After that he lodged the FIR and he also seized wiring device 15 to 20 ft. length. This alamats were seized by police from his custody. During cross-examination he deposed that on that day he went to check the transformer load and admitted that the accused is their consumer. During transformer load inspection he came to know from local people that there was hooking in the house of accused and he did not enter into the residential house of the accused but cut off the hooking device from outside of his residential house. He did not find any member of the family though he called. He prepared the inquiry report filed by the consumer. He further deposed that immediately on being apprised about the hooking by the accused consumer he cut off his consumer line. After that provisional pilferage bill was prepared on the basis of Electricity Act 2003 but he did not prepare any officially seized bill. In course of cross-examination the Learned Advocate for the accused person filed electric bills and payment receipts which were admitted by witness and those documents were also exhibited. This witness was re-examined and then he identified his document of written FIR to the police.

9. P.W. 2 Rohit Chandra Mondal, A.S.I. of Police who was attached to Khanakul P.S. at the time received the FIR from the Station Manager of Rajhati C.C.C regarding theft of electricity and started a case No. 179 dated 28.05.12 under Section 135(1) (a) of the Electricity Act, 2003. He was entrusted to investigate the case and he visited the house of respondent No. 2 examined three staff of WSEDCL and one local witness namely Prabir and recorded their statement after that he submitted charge-sheet under Section 135A of the Electricity Act. He had no knowledge whether accused is a genuine consumer or not and

as per inspection report submitted that there was no service connection in the house of accused person. The accused replied negative on asking by the Court that whether the Sketch map indicated the place of hooking from electric line and to other place at the residents .He further negated when he was asked of having any knowledge about the distance from the place of hooking to the connection at his house. Specific question was put to him that whether any local witness stated him to witness the accused hooking when but his reply was in negative. In this case on behalf of accused no one adduced evidence.

10. In the examination of accused person under Section 313 of Cr.Pc he denied the incriminating evidence place before him. The Learned Court after considering the evidence adduced and the materials available and the submission made on behalf of the respective counsels found that as per evidence of the Station Manager he had no actual knowledge about as the culprit or about the person or person who used such electricity in residence. That apart Station Manager prepared the seizure violating Section 100 Cr.Pc. and also Learned Court was also of the opinion that the investigation of Police Officer as mechanical and not proper and therefore accused cannot be held guilty for investigation of theft of electricity.

11. In a series of judgments the Hon'ble Apex Court has enunciated the principles while exercising jurisdiction under Section 378 against acquittal, the power of the Appellate Court and how far can re-appreciate the evidence, review or re-consider the evidence and if there is any illegality or any irregularity in the judgment then in that case only, the Court has power to entertain the appeal and interfere with the order of acquittal. In the case of

M.G. Agarwal v State of Maharashtra AIR¹ The constitution Bench observed that the approach of the High Court in dealing with an appeal against acquittal ought be cautious because presumption of innocence in favour of the accused is not certainly weakened by the fact that he has been acquitted at his trial.

12. In this case the prosecution case stands crippled not only with paucity of evidence, but have been crumbled by total dearth of evidence necessary to prove the offence since no independent witnesses has been examined. It is strenuously assailed by the learned senior advocate that the prosecution is entirely responsible since the two independent witnesses were examined and are charge sheeted witness but not cited as witnesses. This court is unable to accept the contention since being the charge sheeted witnesses they must have been summoned but they did not turn up. The P.W 1 in his evidence said on the basis of the specific complaint he enquired into the spot but no such complaint was produced. He did not record the statement of the said local witnesses .He did not give the name of the father of the accused in the F.I.R which prima facie manifest he was not aware of the identification of the person. That apart he did not try to ascertain the accused was the owner of that house on the contrary there is a existing meter in the name of one Raghu Nath Bhowmik and the Exhibit A were filed during cross examination of P.W. 2 by the learned defence counsel which shows that till 2013 the meter was checked by the authority and the payment receipts were admitted by the witness. The I.O P.W 2 did not ascertain whether the accused is a genuine consumer or not. In the seizure list whereby a cable wire was seized shows the

¹ 1963 SC 200

name of the father of the accused person as Milan Dutta. The court specifically asked the questions to the witness who said no sketch map of the place of hooking was prepared, He could not say the distance of the house of the accused from the place of hooking, he did not bring the station manager or any electrical staff at the time he visited the spot for investigation and he did not record any evidence of local witnesses. The accused was not found in the house neither the I.O tried to ascertain from the local person as to whether the accused is the power of that house or not. Therefore from the above nature of evidence this court do not find any reason to interfere with the judgement whereby an order of acquittal has been passed.

13. While passing such order of acquittal the Learned Court directed that the collected money for Rs. 1, 32,556 paid by the accused on June 11, 2012 at Rajhati Group Electricity Supply in connection with this case during pendency of the case shall be returned to the hand of the accused within 3 months from the date of the order.

14. The Learned Advocate representing the authority raised the issue as to the power of the Learned Special Court to pass such an order to return the amount assessed by the Authority since it was a separate proceeding. On bare perusal of Section 155 of the Electricity Act shows that the Special Court shall be deemed to be a Court of Session and shall have all the powers of the Court of Session. The Special Court constituted under the act cannot be said to be a Civil Court to determine the civil right to the parties. No decree can be passed by this Court of Session in favour of any consumer. It was argued on behalf of the respondent no. 2 that pursuant to Section 154(5) of the Act a power has been given to the Special Court to determine "Civil Liability" against a

consumer or a person; in terms of money for the theft of energy therefore the provision of Section 145 of the Act to be read as excluding the jurisdiction of the Civil Court.

15. It goes without saying that the Special Court constituted under Section 153 of the act are meant only to try the offences mentioned under Section 135 to 140 and Section 150 of the Act. Once it is noticed by the department that an offence of theft has been committed the proceeding for theft under Section 135 of the Act is to be initiated. In this case a provisional assessment was raised against the respondent no 2 whereby an amount was to be paid by respondent no 2 was assessed to be Rs. 2,65,112 on May 28,2012 pursuant to which he paid Rs. 1,32,556 towards part payment of such provisional bill.

16. In the case of ***Executive Engineer Southern Electric Supply Company of Orissa Limited (SouthCo) vs Sri Seetaram Rice Mill²*** it was held that Section 126 of the Act specially provides the method of computation of the amount that a consumer would be liable to pay for excessive consumption of the electricity and for the manner of conducting assessment proceeding .In paragraph 26 it was held that

“26. In contradistinction to these provisions section 126 of the Act 2003 would be applicable to the Cases where there is no theft of electricity but electricity is consumed in violation of the terms and conditions of supply leading to malpractices which may squarely fall within the expression Unauthorised use of electricity “.

17. It was further observed *“that section 135 of Act of 2003 deals with an offence of theft of electricity and the penalty that can be imposed for such theft .This*

² (2012) 2 SCC 108

squarely falls within the dimension of criminal jurisprudence. Sub-section (6) of Section 154 of the Act, 2003 provides that in case the civil liability so determined finally by the Special Court is less than the amount deposited by the consumer or the person, the excess amount so deposited by the consumer or the person, to the Board or licensee or the concerned person, as the case may be, shall be refunded by the Board or licensee or the concerned person, as the case may be, within a fortnight from the date of communication of the order of the Special Court together with interest”.

18. Therefore it is clear that the Special Court is empowered to pass the order to refund the amount, when the provisional assessment was made due to pilferage and the order of acquittal is passed the question of final assessment does not arise .The special court could have assessed the civil liability for theft if there was an order of conviction since this is not a case coming within the domain of section 126 of the Act of 2003. Similarly while passing the order of acquittal the learned court rightly passed the order to refund such amount paid by the appellant toward provisional assessment due to theft of electricity. This Court does not find any force in the submission of the Learned Senior Advocate that the Authority has no mechanism to refund the amount.

19. In this case⁴ the P.W 1 deposed that provisional pilferage bill was prepared on the basis of the Electricity Act 2003 .However since the primary allegation of theft is not proved question of making payment on account of such pilferage does not arise and any amount assessed on that basis definitely merged with the allegation which is the germane to assess such in terms of money.

Conclusion

- 20.** Hence in view of the order of acquittal the appropriate authority must take early step to dispose of the procedure after hearing the petitioner.
- 21.** Accordingly this CRA stand dismissed.
- 22.** The judgement passed by the learned Court is hereby affirmed.
- 23.** Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)

