

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

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.R.A. 822 of 2005

Sadananda Kumar

-Versus-

The State of West Bengal

For the Appellant : **Mr. Chitta Ranjan Chakraborty,
Mr. Kaseshwar Ghosal,
Mr. Sumit Banerjee,
Mr. Puspa Rani Jaiswara.**

For the State : **Mr. Ranabir Roy Chowdhury.**

Hearing concluded on : **21.04.2025**

Judgment On : **24.04.2025**

Prasenjit Biswas, J:-

1. The present appeal is directed against the judgment and order of conviction and sentence dated 16th December, 2005 passed by the learned Additional Sessions Judge, 2nd Court, Purulia, in connection with Electric G.R. Case No. 17 of 2005. By the aforesaid judgment, the Trial Court has

found the appellant guilty of the offence punishable under Section 135(i)(a) of the Indian Electricity Act, 2003 and sentenced the appellant to suffer rigorous imprisonment for two years and to pay fine of Rs. 2000/- with default clause.

2. The facts leading to this appeal in short are as follows:

“On 09.02.2005, the S.E.B. personnel being accompanied with police personnel went to village Palpal, P.S. Arsha. On arrival at the spot, they entered into industrial place of this appellant/convict where husking machine was running and it was noticed that this appellant was consuming the electricity bypassing the meter. They inspected the meter installed therein and one inspection report was prepared by the staff who was present therein as per dictation of the officials of the S.E.B. The Assistant Engineer, S & LP Unit, Purulia Circle, West Bengal S.E.B. lodged a written complaint before the Officer-in-Charge of Arsha P.S. narrating the entire incident.”

- 3.** On receipt of the said written complaint, the case was started by the concerned police station being Arsha P.S. Case No. 6/05 dated 09.02.2005 under Section 135(i)(a) of the Electricity Act, 2003 and Section 379 of the Indian Penal Code against the convict-appellant. Police investigated the case and after completion of investigation submitted charge-sheet against this appellant under Section 135(i)(a) of the Electricity Act, 2003 and Section 379 of the Indian Penal Code.
- 4.** The charge was framed by the Trial Court under Section 135(i)(a) of the Indian Electricity Act, 2003 against this appellant. This appellant pleaded not guilty and claimed to be tried.
- 5.** In order to prove the case, the prosecution has examined as many as seven witnesses and documents were marked as exhibit on behalf of the prosecution. Defence did not adduce any oral or documentary evidence.
- 6.** Mr. Chitta Ranjan Chakraborty, learned Advocate for the appellant said that the prosecution has hopelessly failed to prove the charge against the appellant for the offence as alleged against him. It is said that the order of

conviction and sentence has been made solely on the evidence of the authority concerned and the independent witness did not state anything which may support the case of the prosecution. The materials alleged to have been seized from the place of occurrence was not placed before the learned Trial Court at the time of trial and no explanation was given on behalf of the prosecution in this regard.

7. It is further said by the learned Advocate that none of the witnesses have been able to prove the ownership of the house of the accused persons. The evidences adduced by the witnesses cited on behalf of the prosecutions are not convincing and satisfactory by which it can be said that the accused is guilty for the offence as alleged against him. There are contradictory statements made by the witnesses regarding preparation of seizure list. It is said that in examination in chief PW6 stated that he prepared the seizure list but in cross-examination this witness stated that he had not prepared the seizure list. PW7 stated that the seizure list was prepared by him. The learned Advocate further said that there are contradictory statements made by the witnesses in respect of place of seizure. PW3 stated the seizure list was prepared in the police station, whereas PW1 stated in his deposition at about 4:05 to 4:15 the seizure list was prepared.
8. It is further assailed by the learned Advocate that the ownership of the house is not proved in this case. Moreover, there were contradictory statements by the witnesses in regard to the lodging of FIR. From Exhibit 5 it would appear that the FIR was lodged at 17-05 hrs. whereas PW1 stated that FIR was lodged at 5 PM. PW7 stated that the FIR was lodged at about 15.30 hrs. and PW2 stated in his deposition that he submitted the FIR at around 4.30 p.m. So, as per submission of the learned Advocate that there are apparent contradictions in the statement of the witnesses regarding time of lodging of FIR in respect of the alleged offence. The learned Advocate for the appellant said that it would be evident from the deposition of PW1 wherein this witness stated in his examination-in-chief

that after opening the door, the appellant fled away. Whereas PW3 and PW4 stated that this appellant was present when they inspected the premises. As there are apparent contradictions in respect of the statements made by the witnesses as cited by the prosecution, therefore, no reliance should be given upon their statements.

9. Reliance has been placed by the learned Advocate upon a decision rendered by the Hon'ble Apex Court in case of **Surinder -vs- State of Haryana** reported in **(1994) 4 SCC 365**. In the said report the articles produced were not sealed and it was supported by the statement of the Investigating Officer who in his cross-examination admitted the same. The Hon'ble Apex Court said that in absence of sealing of seized materials serious doubt is casted on the case of the prosecution. Relying on the said report learned Advocate for the appellant said that articles in connection with this case were not sealed and the seized articles were not produced before the Court during trial. Moreover, these seized articles are available in the open market. As per submission of the learned Advocate that no reliance can be placed upon the seizure list as produced by the prosecution. So, it is said by the learned Advocate that the impugned judgment and order passed by the learned Trial Court may be set aside and the appeal filed by the appellant may be allowed.
10. Mr. Ranabir Roy Chowdhury, learned Advocate appearing on behalf of the State submitted that the prosecution has been able to prove the case against the appellant. It would be evident from the record that this appellant was consuming electricity illegally for the purpose of running his husking machine in his industrial place. All the witnesses as cited by the prosecution stated in the same line that this appellant was consumed electricity by tapping the meter in question taking direct line from the L.T. Line bypassing the meter installed by the S.E.B. in the house of the appellant. All the witnesses have corroborated the case of the prosecution. The seizure in respect of articles which were used by the appellant for the purpose of tapping the meter in order to run his husking machine illegally

taking direct line from the L.T. line of the S.E.B. has been well proved. As per submission of the learned Advocate that the ingredients of Section 135(i)(a) of the Indian Electricity Act have well been proved by the prosecution.

- 11.** It is further said by the learned Advocate for the State that it would be evident from the depositions of the witnesses that the accused was present at the time of raiding on behalf of the State Electricity Board. As per submission of the learned Advocate that when all the witnesses to the prosecution stated in the same line about running of the husking machine by the appellant by taking electric connection bypassing the meter then in that situation if one witness i.e. PW5 did not corroborate the prosecution story it cannot be said that they are the interested witnesses and for that reason the depositions of those witnesses can be thrown away. There is no doubt in respect of the offence as allegedly committed by the appellant and as such, it can be said that there is illegality and material irregularity in the impugned judgment and order of conviction passed by the Trial Court.
- 12.** I have considered the rival submissions advanced by both the parties and have gone through all the materials in the record.
- 13.** PW1, Ashis Kumar Mondal, the Assistant Engineer W.B.S.E.B., S & L.P. Unit Purulia Circle stated in cross-examination that he lodged the FIR at about 5 PM. PW7, Sub-Inspector of Police and one of the members of the raiding team stated in cross-examination that FIR was lodged at about 15.30 hrs. Whereas PW2 stated that he submitted the FIR at around 4.30 PM. From Exhibit 5 it would appear that FIR was lodged 17.05 hrs. So, there are apparent contradictions in the depositions of PW1, PW2 and PW7 in respect of time of lodging FIR.
- 14.** PW1 stated in cross-examination that at about 4.05 to 4.15 the seizure list was prepared. Whereas PW3 stated that the seizure list was prepared in the police station in respect of the seized articles like meter etc. So, there are contradictions in the statements of PW3 and PW1 in respect of preparation of seizure list. PW2 further stated in cross-examination that

they called local people namely, Dwijapada and Haladhar. The said Dwijapada was cited as PW5 in this case but Haladhar was not cited as witness by the prosecution. PW5, Dwijapada Kumar stated that he was not present at the relevant point of time. Virtually, this PW5 stated nothing which may support the case of the prosecution.

15. PW1 stated in his evidence that after opening the door this appellant fled away. PW3 stated in his deposition that this appellant was present when they inspected the premises. PW4 echoed the same voice of PW3 and stated that the appellant Sadananda was present when the inspection was held in his house. So, there are contradictions in the statements of PW1, PW3 and PW4. It would appear from the depositions of the witnesses that there are contradictions in the statement of witnesses in respect of the person who prepared the seizure list. PW3 stated that one seizure list was prepared in the police station in respect of the seized articles like meter etc. which they have taken from the premises of the accused and this witness proved his signature on the seizure list which was marked as Exhibit 4 in the case. PW6 firstly stated in his examination in chief that he prepared the seizure list but in cross-examination he deviated from his statement and stated that he had not prepared the seizure list. PW7 stated in his deposition that the seizure list was prepared by him. So, as per deposition of PW7 the seizure list was not prepared on the spot.
16. PW1 stated that he had not perused any paper in order to ascertain the ownership of the house and in the same line of statement of PW1, PW2 also stated in cross-examination that he had not perused any paper relating to the ownership of the house. So, it appears from the statement of these PWs that the prosecution has failed to prove the ownership of the house. PW1 stated that they reached at the spot at about 3.30 PM which was contradicted by PW3 stating that at about 2.00 to 2.30 PM they reached the house of the appellant at Palpal village.
17. I have already stated that there are contradictory statements made by the witnesses regarding the time of lodging the FIR. PW1 stated that he lodged

the FIR at about 5 p.m, whereas PW7 stated that FIR was lodged at about 15.30 hrs. PW2 stated that he submitted the FIR at around 4.30 PM. The seized articles were not produced before the Court during the trial and no explanation has been given by the side of the prosecution for non-production of the seized articles before the Court. The impugned judgment and order of conviction of was passed solely upon the evidences of the authority concern and the independent witness PW6 did not corroborate the factum of seizure as stated by the prosecution. PW6 said that he was not present at the relevant point of time. No other independent witnesses were cited by the prosecution to support its case. Moreover, as per statements of PW3 the seizure list was prepared in the police station in respect of the seized articles. So, there is apparent doubt about the seizure made by the authority concerned and the commission of the alleged offence by this appellant. The learned Trial Court passed the judgment and order of conviction without appreciating the material fact and held that this appellant has committed an offence punishable under Section 135 of the Electricity Act. Although, it is the case of the prosecution that they have seized the incriminating materials and seizure list was prepared and signed by the witnesses but none of the seized articles was produced before the Trial Court to prove the alleged seizure and to probablise the alleged illegal connection. So, the allegation against this appellant is not proved beyond all shadow of doubts.

18. So, from what has been discussed and decided above, it is clear that the judgment and the order of conviction passed by the Trial Court is not sustainable in the eye of law.
19. The appeal is, therefore, **allowed**.
20. The appellant is found not guilty of the charge under Section 135(i)(a) of the Electricity Act and he is accordingly acquitted.
21. The bail bonds furnished by them stand discharged.
22. Return the TCR along with a copy of this judgment to the Trial Court.

- 23.** Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)