



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 334 OF 2007

Mohd. Shaban Abdul Hafiz,
Age : 50 years, Occu. : Power Loom,
R/o. Firdosnagar, Lane No.7,
Dhule.

... Appellant
(Orig. Accused)

Versus

The State of Maharashtra

... Respondent

.....
Mr. Suniket Anil Kulkarni, Advocate for Appellant.
Mr. K. K. Naik, APP for Respondent - State.
.....

CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 03 DECEMBER, 2024
PRONOUNCED ON : 03 JANUARY, 2025

JUDGMENT :

1. In this appeal, there is challenge to judgment and order dated 16.08.2007 passed by learned IInd Ad-hoc Additional Sessions Judge, Dhule in Special Case No. 37 of 2006 recording guilt of the appellant for offence punishable under section 138 of Electricity Act.

2. In nutshell, prosecution was launched against appellant for commission of offence under sections 135 and 138 of Electricity Act, 2003 on report of Deputy Executive Engineer, M.S.E.B., who headed flying squad comprising of PW2 Gajanan and PW3 Suresh. The said flying squad conducted raid to the premises of accused. The

power-loom was standing in the name of deceased brother of accused namely Mohinoddin. It was noticed that, terminal cover of the meter was broken and meter reading was showing less consumption due to missing of voltage indicator of R phase and Y phase. Thus, spot inspection report was drawn and complaint was lodged by Dinesh Sabu, Deputy Executive Engineer, which was made basis of crime No.54 of 2005 for above offences.

Trial was conducted by Special Judge, who conducted Special Case No. 37 of 2006 and passed impugned judgment and order, which is now challenged.

3. Heard both the sides. Case of prosecution seems to be on the evidence of in all five witnesses i.e. PW1 Dinesh Sabu, Dy. Executive Engineer, i.e. informant; PW2 Gajanan, Junior Engineer; PW3 Suresh, Junior Engineer; PW4 Momin Mustafa, Pancha and PW5 Lotan Mali, Police Head Constable.

ANALYSIS AND CONCLUSION

PW1 Dinesh, who is examined at Exh.11 narrated about the visit to the premises of power-loom in Firdosnagar, Dhule on 10.08.2005 and during inspection, apart from theft, tampering to the electricity meter was allegedly revealed.

However, while under cross, he admitted that, electricity

meter was not checked for more than two years prior to its inspection. He admitted that, there was no complaint in respect of said meter. He admitted that he did not enquire when number of seal of meter box were given and by whom, nor he enquired who sealed terminal cover of the said meter.

PW2 Gajanan, Junior Engineer, in his evidence at Exh.19 deposed about he to be party to the flying squad on 10.08.2005 while visit was paid to Firdosnagar, Dhule to check electric installation of Mohinoddin Abdul Hafiz. In his evidence, he stated that, during their visit accused told that, Mohinoddin Abdul Hafiz was dead and he was therefore running the power-loom. Even according to him, during checking and inspection, they noticed voltage of R Phase and Y Phase was not displaying on meter screen and such phases were removed from the terminal and therefore theft of electricity was revealed and PW1 Dinesh prepared spot inspection report, he too signed over it and complaint being lodged against Shahban.

While under cross, he admitted that, no enquiry was made who affixed seal on the meter box. He admitted that, two seals of meter body were not tampered. He admitted that, on 30.07.2005, reading was recorded. He admitted that spot inspection report (Exh.13) was drawn by Haldankar. Rest is all denial.

PW3 Suresh, Junior Engineer, also stated that, during

visit of flying squad at power loom of Mohinoddin Abdul Hafij, voltage wires of R phase and Y phase were found to be removed and spot inspection report being drawn on detection of theft of electricity by accused Shahban i.e. of 79539 unites worth of Rs.4,50,323/-. He identified his signature over inspection report.

While under cross, he admitted that, he personally took reading of said meter every month for the last one and three fourth years. He even took reading of said meter eight days prior to the visit of flying squad and he again corrected that he took reading in the month of July 2005. He admitted that, as meter reading was increasing, he did not suspect anything about the meter. He admitted that, in the month of July 2005 when he took meter reading, seal of the meter box was not tampered. He admitted that time is not reflecting in the spot inspection report.

PW4 Momin Mustafa, pancha, deposed about panchanama Exh.25 being drawn.

PW5 Lotan Mali is the Police Head Constable, who drew spot panchanama of meter box, recorded statement of witnesses and charge-sheeted accused.

4. On appreciation of above evidence, learned trial court in paragraph nos.37 noted that accused has paid Rs.2,25,000/- and the

same is accepted by electricity department as compounding charges. Therefore, apparently, charge under section 135 of Electricity Act did not survive as the statute itself provides for compounding. As regards to offence under section 138 of Electricity Act is concerned, it deals with tampering with the meter. However, striking features which are emerging on complete appreciation are that, firstly meter in question stood in the name of brother of accused/present appellant and not himself. Said brother is no more. PW3 Suresh, a Junior Engineer, who regularly paid visits, admitted that, during his visit in July 2005, he did not notice any tampering. However, PW1 Dinesh informant claims that theft of electricity committed by tampering the meter since two years.

5. Therefore, prosecution witnesses are not consistent. Answers given by PW3 Suresh, Junior Engineer, in cross raises serious doubt of allegations of tampering and theft. Even otherwise, electricity board has accepted amount of Rs.2,25,000/- after it was revised. There is no convincing evidence that it is the appellant who tampered meter. Apparently, meter is in the name of deceased brother.

In view of above discussion, the following order is passed :-

ORDER

- I) Criminal Appeal stands allowed.
- II) The conviction awarded to Mohd. Shaban Abdul Hafiz in Special Case No.37 of 2006 by the IInd Ad-hoc Additional Sessions Judge, Dhule on 16.08.2007 for the offence punishable under Section 138 of the Electricity Act, 2003, stands quashed and set aside.
- III) The appellant stands acquitted of the offence punishable under Section 138 of the Electricity Act, 2003.
- IV) The bail bonds of the appellant stand cancelled.
- V) The fine amount deposited, if any, be refunded to the appellant after the statutory period.
- VI) It is clarified that there is no change as regards the order in respect of disposal of *muddemal*.

(ABHAY S. WAGHWASE, J.)