



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 860 OF 2005

Dinesh Bhatusingh Rajput (Jadhav)
Age: 36 years, Occu.: Agri.,
R/o Sangavi, Tq. Shirpur, Dist. Dhule

..APPELLANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. P.B. Patil, Advocate for appellant
Ms. V.S. Chaudhari, A.P.P. for the respondent - State
....

CORAM : ABHAY J. MANTRI, J.
DATE : 04th OCTOBER, 2025

ORAL JUDGMENT :

1. The appellant/accused, being aggrieved by the judgment and order dated 08th December, 2005 passed by the 1st Ad-hoc Additional Sessions Judge and Special Judge, Dhule (for Short- the '*learned judge*') in Special Case No. 121 of 2004 convicted him for the offence punishable under Section 135 of the Electricity Act, 2003 and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 5,000/-, in default to suffer rigorous imprisonment for three months, has preferred this appeal.

FACTUAL MATRIX:

2. On 25th August, 2003, the informant/complainant – Ketan Shirgaonkar, Deputy Executive Engineer, has lodged the report against the

appellant alleging that when he alongwith the flying squad, Thane, visited and inspected the shop of the appellant, found him to have not a regular consumer of the Maharashtra State Electricity Board (for short, '**MSEB**'). Still, the electric supply was taken to his shop. He has unauthorisedly taken the electric supply by attaching hooks to the LT line at the back side of his shop with the help of a yellow colour wire. He also found that one fridge, two tubes, two bulbs, one fan, and an STD machine were in operation on the said electricity supply. Accordingly, he had prepared the joint inspection report on the spot. They found that the accused had committed theft of 8,035 units worth Rs. 60,262/-. Accordingly, he filed the complaint against the accused at Shirpur Police Station, Dist. Dhule. Based on the complaint above, the police registered an offence against the appellant, vide Crime No. 70 of 2003, for offences punishable under Sections 135 and 138 of the Electricity Act, 2003 (hereinafter referred to as '**the Act**').

3. After registration of the offence, the investigation was handed over to Mr. Pawar, and then the same was handed over to PW 3 – Chavan, ASI, for further investigation. He went to the spot of the incident and prepared the spot panchanama. He recorded the statements of the witnesses and arrested the accused. During the investigation, it became apparent to him that the accused had committed theft of electricity. Therefore, after the investigation was completed, he filed a charge sheet against him in the Court of J.M.F.C., Shirpur.

4. As the offence punishable under Sections 135 and 138 of the Act is exclusively triable by the Special Court, the matter was committed to the Special Court at Dhule. On commitment of the case, it was registered as Special Case No. 121 of 2004.

5. The Special Court recorded the plea of the accused. He pleaded not guilty and claimed to be tried. His defence was one of total denial. The prosecution, to prove the charge against the accused, has examined four witnesses, produced documents, and closed its evidence. Thereafter, the statement of the accused was recorded under Section 313 of the Code of Criminal Procedure (for short, the '*Cr.PC.*'). Although his defence was one of total denial, he has not adduced any evidence in support of his defence.

6. The learned Judge, after considering the evidence on record, held that on the day of the incident, the accused has committed theft of electricity by putting a yellow colour wire with hook on the electric pole of MSEB and unauthorisedly took the electric supply to run his STD machine and other electric equipments, and thereby held him guilty for the offence punishable under Section 135 of the Act and sentenced as stated above. Being aggrieved by the same, the accused has preferred this appeal.

7. Heard learned counsel for the appellant and learned A.P.P. for the respondent – State. Perused the impugned judgment and record. I have also gone through the judgments relied upon by learned counsel for the appellant and learned A.P.P.

8. Learned counsel for the appellant, Mr. P. B. Patil, vehemently contended that the complainant was not authorised to file the complaint as per the provisions of the Act. However, the learned trial Court has not considered the evidence in its proper perspective and erred in discarding the appellant's contentions in that regard. He drew my attention to Section 151 of the Act and contended that as per the said section, the Court can take cognisance of an offence punishable under the Act only upon receipt of a complaint in writing made by the Appropriate Government or Appropriate Commissioner or any of their officer authorised by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company as the case may be, and therefore, submitted that the prosecution failed to demonstrate that the complaint was lodged by the authorised officer of the company i.e. *MSEB*. He further argued that the words “*complaint in writing*” are contemplated under Section 151 of the Act, and therefore, he has pointed out the definition of complaint from Section 2(d) of the Cr. P. C., and emphasised that the prosecution failed to show that the authorised officer lodged the complaint with the Magistrate, and therefore, on that ground alone, the proceeding is liable to be vitiated against the appellant.

9. The second limb of his argument was that the prosecution failed to prove the spot panchanama and recovery of the alleged yellow colour wire from the possession of the appellant. He has taken me through the testimony of the panch witnesses, PW 1 and 2, and submitted that neither of these

witnesses supported the prosecution. Therefore, the prosecution failed to prove the panchanama and, consequently, failed to prove the recovery of the yellow-coloured wire from the appellant's possession.

10. He also propounded that the prosecution failed to produce the joint inspection report on record. The said document was material, but the complainant only deposed that the said report was torn by an unknown person who gathered there. However, he has not lodged a police complaint against the said person; therefore, he submits that it raises doubts about the preparation of the joint inspection report. The said inspection report was material to the prosecution, but it failed to produce the same on record; therefore, it leads to drawing an adverse inference about its preparation.

11. He additionally canvassed that the punishment provided under Section 135 of the Act is less than three years, and therefore, as per the Schedule of the Cr. P. C., no police officer shall take cognisance of the complaint as the offence is punishable for less than three years. However, the learned trial Court has not taken into consideration the said position of the law and erred in passing the impugned judgment.

12. Lastly, he submitted that the learned Judge erred in relying on the answer to Question No.8 put to him while recording his statement under Section 313 of Cr. P. C. In fact, the prosecution must prove the case on its own merits, rather than relying on the accused's statement recorded under Section 313 of the Cr. P. C. The learned trial Court has given much weightage to the

said answer and observed that the accused admitted he was not a customer of the MSEB and was operating an STD machine with the assistance of a battery. Therefore, the findings recorded by the learned Judge are contrary to the evidence on record. In support of his contention, learned counsel has relied on the judgments of this Court in *Shakambari Industries, Akola and Anr. Vs. State of Maharashtra and Anr., 2006 (2) Mh.L.J. 170* and *Prabhakar Pandurang Sanzgiri Vs. State of Maharashtra, 1986 (1) Bom. C.R. 272*. As such, he urged for acquitting the appellant by setting aside the impugned judgment and order.

13. On the other hand, learned A.P.P. Ms. Choudhari strenuously argued that the prosecution examined four witnesses and proved its case beyond a reasonable doubt. The trial Court has rightly considered the evidence on record and accordingly passed the impugned judgment and order; therefore, no interference is required in this matter. She further submitted that, although the panch witnesses have not supported the prosecution, the investigation officer has proved the panchanama; therefore, it can be relied upon while considering the charges against the appellant. To address her submissions, she relied on the judgment of the Hon'ble Apex Court in *Assistant Electrical Engineer Vs. Satyendra Rai and Anr. (2014) 4 SCC 513* and pointed out paragraph no. 8 and canvassed that in view of the law laid down in the above judgment, the police officer can take cognisance of the offence. As the amendment brought in 2007 has a retrospective effect, it is urged to confirm the impugned judgment and order.

14. Having heard the rival contentions of the parties and perusal of the record, at the outset, it appears that the complainant, PW 4 – Shirgaonkar, has lodged the complaint with the police station. Upon perusal of the F.I.R., it is revealed that he reported the incident to the police station at 12:00 noon on August 25, 2003. However, the written complaint was submitted at 18:45 hours. In the complaint, he nowhere categorically stated that he was authorised to lodge the complaint. However, he stated that he was in charge of inspecting electricity connections and meters within the limits of the Municipal Corporation of Thane and initiating legal proceedings against individuals involved in electricity theft. He further stated that, as per the order of the Deputy Director of Vigilance and Security, Mumbai, he was authorised to inspect the electricity connections throughout Maharashtra. Therefore, as per the order dated 22nd April 2003 of the Deputy Director, Mumbai, he, along with other officers, visited the appellant's shop at Sangvi, Tq. Shirpur, Dist. Dhule, undisputedly, is located beyond his jurisdiction.

15. It is pertinent to note that the complainant has not produced both the orders along with the complaint or charge-sheet in support of his complaint to demonstrate that, as per the directions of the Deputy Director, he has conducted the inspection of the shop of the appellant at Sangvi. Furthermore, he has not produced the same on record to show that he was authorised to lodge the complaint.

16. It is worth noting that, as per Section 151 of the Act, no

cognisance of the offence shall be taken except upon a complaint in writing by the authorised officer of the Electricity Department; therefore, I would like to reproduce Section 151 of the Act as under :-

“151. Cognizance of offences.--No court shall take cognizance of an offence punishable under this Act except,--
(a) upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorised by them or a Chief Electrical Inspector or an Electrical Inspector or a licensee or the generating company, as the case may be, for this purpose; or
(b) upon a police report of facts which constitute an offence:
Provided that, such a police report is based on the First Information Report filed by a person who is authorised to file a complaint under clause (a).”

17. On bare perusal of the said provision, it is apparent that the Appropriate Government or the Appropriate Commission or any of their officer authorised by them or a Chief Electrical Inspector or an Electrical Inspector or a licensee or the generating company, as the case may be, can only lodge the complaint in writing. Undisputedly, the complainant – PW 4 - Shirgaonkar was not the officer as contemplated under Section 151 of the Act. Still, he was a Deputy Executive Engineer. Therefore, it was incumbent on the prosecution to demonstrate that he was authorised by the officers as contemplated under Section 151 of the Act. However, the prosecution failed to prove that the complainant was authorised to lodge the complaint.

18. Apart from that, I would like to reproduce Section 2(d) of the Cr.P.C., i.e. the definition of the complaint as under :-

(d) “complaint” means any allegation made orally or in writing to a

Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

A Plain reading of this definition indicates that the complaint means any allegation made orally or in writing to a Magistrate. Indisputably, in the case at hand, the complaint was not lodged with the Magistrate, but rather with the police station. Besides, on perusal of Section 151 of the Act, it is evident that the punishment prescribed for the theft of electricity or unauthorised use of electricity is for a term which may extend to three years or a fine or both. Similarly, the Act does not specify whether the offences punishable under it are cognizable or non-cognizable. In the absence of the same, it would be proper to see the First Schedule of the Cr.P.C., i.e. II. Classification of the Offences Against Other Laws, wherein it is prescribed that if the offence is punishable with imprisonment for less than three years or with fine only, the offences are non-cognisable, bailable and triable by the Magistrate. Though the Act has a special statute, it does not describe whether the nature of the offence is cognisable or non-cognisable, and therefore, as per the First Schedule of the Cr.P.C., the said offence appears to be non-cognisable.

19. Considering the above discussion and evidence on record, it is apparent that the prosecution failed to show that the authorised officer, as contemplated under Section 151 of the Act, lodged the complaint with the Magistrate or PW 4 – Shirgaonkar was authorised to lodge the complaint.

Thus, it emerges that the prosecution failed to follow the mandate under Section 151 of the Act while lodging the complaint. Therefore, I find substance in the argument advanced by learned counsel for the appellant that, in the absence of authorisation or proper permission, the said complaint vitiates.

20. The second limb of the argument was that the prosecution failed to prove the panchanama. On perusal of the record, it appears that the prosecution examined both the panchas of the panchanama; however, neither of them supported the prosecution. On the contrary, they deposed that the MSEB officials did not call them, but their signatures were obtained on the panchanama at Sangavi Out Post. No panchanama was conducted in their presence. They were declared hostile, and through their cross-examination, no evidence was brought to record to support the prosecution's case; therefore, their testimony is not helpful to the prosecution in support of its case.

21. The third witness examined by the prosecution is the Investigation Officer, Mr. Chavan, A.S.I., who deposed that after receiving the F.I.R., he went to the spot along with the complainant. In the presence of panchas, he prepared the panchanama on the spot. However, he deposed that “*he had not seized the wire, but the same was seized by the complainant from the spot.*” During his cross-examination, he admitted that “*he nowhere mentioned that he deposited the said muddemal and obtained the receipt.*” Similarly, he

admitted that no signatures of the panch witnesses were found on the said muddemal. He does not know the length of the wire. He further deposed that *“prior to registration of the complaint, a spot panchanama was prepared.”* However, during his chief examination, he deposed that *“he received the F.I.R. and then went to the spot.”* The testimony appears to be contradictory, which may raise doubts about conducting the spot panchanama.

22. On perusal of the spot panchanama, it appears that the same was prepared by PW 3 – Mr. Chavan on 25th August, 2003, between 13:00 and 13:30 hrs. In the said panchanama, it is mentioned that *“PW 4 – Shirgaonkar seized the yellow colour wire in the presence of the panchas and kept it in his possession.”*

23. It is pertinent to note that PW 4 – Shirgaonkar, during his chief examination, has not deposed that *“he has carried out the spot panchanama or that he seized the yellow colour wire from the spot, but deposed that he has handed over the said wire to the police.”* During his cross-examination, he categorically admitted that *“while preparing the spot panchanama by the police, he was not present there.”* Similarly, he admitted that *“while preparing the spot panchanama, the police did not seize the wire in his presence.”*

24. On careful scrutiny of the testimony of PW 1 to 4, along with the spot panchanama and the complaint, it is evident that the prosecution failed to establish who seized the yellow colour wire or from whom it was seized.

According to the testimony of PW 3 – Chavan, the yellow-coloured wire was seized by the complainant from the spot. However, as per the admission of PW 4 – Shirgaonkar during his cross-examination, he was not present while preparing the spot panchanama, and the police did not seize the wire in his presence. He nowhere deposed that he had seized the said yellow-coloured wire. Similarly, PW 3 – Chavan, in his cross-examination, categorically admitted that the seized wire does not bear the label of the signature of the panchas. Therefore, it raises a doubt about the seizure of the yellow-coloured wire in the presence of the panchas, as alleged by the prosecution. Likewise, the discrepancy arises whether the panchnama was prepared prior to lodging the F.I.R. or the F.I.R. was lodged prior to carrying out the panchanama. As PW 3 – Shirgaonkar, during his chief examination, deposed that he received the F.I.R.; however, during his cross-examination, he deposed that it is true that prior to registration of the complaint, the spot panchanama was prepared, and therefore, it creates doubt about the preparation of the spot panchanama by the police officer on the spot.

25. It is pertinent to note that in the complaint, nowhere did the complainant state that he had prepared the joint inspection report, but along with the complaint, he has annexed a copy of the joint inspection report. During his chief examination, he deposed that they had prepared a joint inspection report, but the person had torn up the report they had gathered. However, he has not lodged the complaint against the said person. During his

cross-examination, he categorically admitted that “*the incident of the tearing of a joint inspection report had occurred before he lodged the complaint.*” He further disclosed that “*while lodging the report, he did not mention that some person tore the inspection report at the spot.*” On the contrary, he admitted that the joint inspection report was attached to the complaint. Had it been the fact that prior to lodging the complaint, if the joint inspection report was torn, then how was the said joint inspection report annexed with the complaint as stated in the complaint? Moreover, the prosecution failed to produce the joint inspection report on record. Also, it failed to produce a copy of the complaint or any document regarding the initiation of action against the person who had torn the complaint. All this evidence raises doubts about the preparation of the joint inspection report. In fact, the report was material to the prosecution in proving the theft of electricity case against the accused.

26. In the complaint, though it was stated that the appellant had committed theft of electricity of 8035 units worth Rs. 60,263/-, similarly, the complainant deposed in his testimony the same. However, no document is produced on record to demonstrate that the appellant has committed theft of electricity. In fact, it was incumbent on the prosecution to produce the document on record to demonstrate that the appellant had committed theft of electricity of 8035 units. Non-production of any document in support of its case leads to the drawing of an adverse inference that the prosecution failed to prove that the accused had committed theft of electricity. In fact, it was

incumbent on them to produce the meter reading from the electric pole on record to demonstrate that the appellant had stolen electricity from the said pole. Non-production of the same leads to an adverse inference about theft of electricity by the appellant.

27. The next crucial point is that the prosecution failed to produce any document on record to show that the appellant was the owner of the said shop or that the licence to run the said shop was in his name. In fact, it was incumbent on the prosecution to produce the document on record to show that the appellant owned the said shop or that he had obtained the licence to run the said STD booth at the said shop. However, the prosecution failed to produce any document and thereby failed to show that the appellant owned the said shop or that the licence was in his name to run the said STD booth. Merely, the appellant has not made any suggestion in that regard, nor did he dispute during the recording of his statement under Section 313 of the Cr. P.C. is not sufficient to say that the prosecution has proved that the appellant owned the said shop or that the licence of the STD booth was in his name. Apart from this, the prosecution failed to seize the STD machine or the electric equipment from the shop.

28. Perusal of the impugned judgment indicates that the learned Judge has given undue importance to the answers given by the accused during his statement recorded under Section 313 of the Cr. P. C. that he is not a regular consumer of the MSEB, and according to him, he runs his STD

booth, and therefore, draws the inference that the accused was running his STD booth by putting a hook on the electric line of MSEB. Similarly, it was observed that the accused had not denied conducting the spot panchanama. In fact, it was incumbent on the prosecution to prove the spot panchanama, and the suggestion was not put to PW 3 – Chavan, Investigation Officer - that he had not prepared the spot panchanama. He denied the same. Therefore, it cannot be said that the accused did not deny the preparation of the spot panchanama. The rest of the witnesses did not depose that the spot panchanama was prepared in their presence. Therefore, the findings recorded by the learned Judge appear to be contrary to the evidence on record about the non-denial of the spot panchanama by the accused.

29. The learned Judge has erred in holding that the evidence of PW 4 -Shirgaonkar shows that the accused has committed theft of electricity of 8035 units worth of Rs. 60,263/- when, admittedly, the prosecution failed to produce any document on record to show that the accused has committed theft of electricity from the electric pole. It is very difficult to understand on what basis PW 4 – Shirgaonkar came to the conclusion that the appellant has committed theft of 8035 units of electricity in the absence of the production of any document before the Court. When the suggestion was made to the complainant that the owner of the STD booth did not obtain electricity from the backside pole, that suggestion itself is sufficient to show that the accused denied having committed theft of electricity. Therefore, it was incumbent on

the prosecution to show that he had committed theft of electricity. Still, no document has been produced on record to demonstrate that the accused has committed theft of 8,035 units worth of Rs. 60,263/-. Therefore, the findings of the learned Judge appear to be contrary to the evidence on record.

30. In paragraph 13 of the judgment, the learned Judge observed that the evidence of PW 3 – Chavan and PW 4 – Shirgaonkar clearly shows that the appellant has illegally and unauthorisedly taken the electricity supply to his STD booth. However, as discussed above, the prosecution failed to adduce any evidence to show that the accused had committed theft of electricity or unauthorisedly taken the electricity supply to his shop, and therefore, the findings recorded by the learned Judge appear to be contrary to the evidence on record. The learned Judge has erred in relying on the evidence of PW 3 and PW 4 in the absence of any other cogent evidence. On the contrary, it appears that the discrepancy exists in the testimony of both PW 3 and 4 regarding the seizure of the yellow-coloured wire, the preparation of the joint inspection report, and who conducted the spot panchanama. Therefore, the said findings cannot be sustained in the eyes of the law.

31. In paragraph 15 of the impugned judgment, the learned Judge erred in relying on the evidence of the complainant, i.e. who has deposed that he was empowered/authorised to take action, including initiation of criminal proceedings. In the absence of any order or resolution of the MSEB produced by the complainant, the said finding itself indicates that the

complainant was not empowered or authorised to lodge the complaint. Similarly, a mere statement by the complainant is not sufficient to prove that the competent authority has empowered or authorised him to take action against the appellant or file a complaint of theft of electricity, when it is indisputably clear that he did not have jurisdiction in the Dhule district to inspect electricity connections and meters. Had it been the case that the Director or Deputy Director of Vigilance and Security, Mumbai, had authorised him to inspect the electricity connections throughout Maharashtra and initiate action if anyone was found guilty, then certainly it was incumbent on the prosecution/complainant to have produced the same on record. Non-production of the said document, communication, or authorisation letter leads to drawing an adverse inference about the authorisation given to him or that he was empowered to inspect the electricity connections throughout Maharashtra and initiate action. Therefore, the findings recorded by the learned Judge appear contrary to the evidence on record and provisions of Section 151 of the Act and Section 2(d) of the Cr. P. C. Therefore, the impugned judgment cannot be sustained in the eyes of the law, and the same is liable to be set aside.

32. Perused the decision in *Assistant Electrical Engineer* (supra) wherein the facts are distinct from the case at hand. In the present case, the incident occurred in 2003, and the trial concluded on 8th December 2005, i.e., prior to the amendment inserted in the Act of 2003, which took effect on 15th June

2007. Also as discussed above, the prosecution failed to show that the complainant was authorised to lodge the complaint or likewise failed to produce the joint inspection report on record or document of ownership of the shop and the same was run by the appellant, and therefore, in my view, what has been observed in the above judgment is hardly of any assistance to the prosecution in support of its contention. On the contrary, the observations made in *Shakambari Industries (supra)* and *Prabhakar Pandurang Sanzgiri (supra)* that no Court can take cognisance of an offence punishable under the Act except upon a complaint made by an officer authorised, are applicable.

33. Upshot of the above discussion is that it is evident that the prosecution failed to prove that on the day of the incident, the accused was the owner of the shop or ran the said shop as a licensee. Similarly, the prosecution failed to prove the spot panchanama and failed to produce the joint inspection report on record. The prosecution further failed to demonstrate that the complainant was authorised to lodge the complaint as contemplated under Section 151 of the Act, and also failed to prove that the accused had committed theft of electricity of 3,085 units. On the contrary, it seems that the learned Judge erred in scrutinising the evidence on record in its proper perspective. Therefore, the judgment and order passed by the learned Additional Sessions Judge cannot be sustained in the eyes of the law, and the same is liable to be set aside. As such, interference is required in the impugned judgment and order.

34. Consequently, a criminal appeal is allowed. Impugned judgment and order dated 08th December, 2005, passed by the 1st Ad-hoc Additional Sessions Judge and Special Judge, Dhule, in Special Case No. 121 of 2004, is hereby set aside. The appellant is acquitted of the offence punishable under Section 135 of the Electricity Act, 2003. The fine amount deposited by the appellant is liable to be refunded to the appellant; however, at this stage, the learned counsel for the appellant submitted that the fine amount be transmitted to the Legal Services Authority. As such, the fine amount will be transmitted to the Legal Services Authority once the appeal period has expired, rather than being refunded to the appellant. Muddemal has already returned to the MSEB office, and therefore, the same should be kept with them and destroyed after the appeal period is over. Criminal appeal is disposed of.

(ABHAY J. MANTRI, J.)

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