

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 885 OF 2004

The State of Maharashtra
Through Gurulinga Dundappa
Nagamoti Jr. Engineer,
M.S.E.B. Jath, District Sangli

..... Appellant

Vs.

- 1) Dattatraya Ramchandar Patil
- 2) Parasharam Mallappa Male (**abated**)
- 3) Nigappa Mallappa Nilajagi
- 4) Paragonda Mallappa Nilajagi
- 5) Aba Laxman Pawar (**abated**)
- 6) Shivappa Bhimu Mane (**abated**)
- 7) Pandurang Bhau More
- 8) Narayan Bhau More
- 9) Mahavir Hanmant Bogar
- 10) Krishna Nivrutti Mane (**abated**)

All r/o. Amrutwadi, Tal. Jath,
District : Sangli

..... Respondents

Ms. R.S. Tendulkar, APP for the Appellant – State.

Mr. Satyavrat Joshi, appointed by Court a/w. Ms. Shivani Kondekar,
for Respondent Nos.1 and 2.

CORAM : SHYAM C. CHANDAK, J.

DATED : 08th MAY, 2025

JUDGMENT :-

. Present Appeal filed by the Appellant-State questioned the Judgment and Order dated 19/04/2004, in Regular Criminal Case No.77/2002, passed by the Court of learned Judicial Magistrate First Class, *Jath*, District – Sangli thereby the Respondents were acquitted of the charge of the offences punishable under Sections 39 and 44 of the Electricity Act, 1910. (*Hereinafter the Respondents are being referred to as per their status before the trial Court*).

2) Heard Ms. Tendulkar, the learned APP for the Appellant and Mr. Satyavrat Joshi, the learned Appointed Advocate for the Respondent Nos.1 and 2. Perused the record.

3) The facts in brief are that on 28/06/2002, first informant Mr. Gurulinga Dundappa Nagmoti, Junior Engineer, MSEB Branch Office, at *Jath* and Sub-Vigilance Officers of the MSEB from its *Jath* Sub-Division, Vigilance Department at Sangli, namely- B.P. Khot, S.R. Sawant, L.D. Devkar, K.N. Fadatare alongwith D.H. Padalkar, Asstt. Engineer, *Jath*, Panchas and police visited at *More Vasti, Amurutwadi*. At that time, said officers and others with them found that, Accused Nos.1 to 10 have committed theft of electricity by hooking a live electricity cable with the help of 40 foot long cable and starter kit, etc. The team members carried out an inspection there, assessed the theft of the electricity and seized the aforesaid material

objects. The inspection revealed that the accused persons committed the theft of the electricity as under :-

Sr.No.	Name	Stolen ele. in Rs.	Sr.No.	Name	Stolen ele. in Rs.
1.	Dattatraya Patil	Rs.7315/-	6.	Nana Mane	Rs.8815/-
2.	Parasu Mali	Rs.1500/-	7.	Pandurang More	Rs.8815/-
3.	Ningappa Nilgaje	Rs.1500/-	8.	Narayan More	Rs.7315/-
4.	Pargonda Niljage	Rs.7315/-	9.	Mahavir Bogar	Rs.7315/-
5.	Aba Pawar	Rs.1500/-	10.	Krishna Mane	Rs.8815/-

Accordingly, the team recorded a Joint Inspection Report Exh.70). The first informant seized the material objects which were used to commit the theft of the energy and recorded the Seizure Panchanama (Exh.69). Thereafter, the first informant Gurulinga Nagmoti filed a Report therein he narrated the incident as stated above. The Report was registered at FIR No.25/2002 under Sections 39 and 44 of the Electricity Act against all the accused persons. During investigation, PW2-Popat Chavan, ASI recorded the Spot Panchanama (Exh.74) and the statement of witnesses. Investigation revealed that the accused persons committed the said offences. Hence, chargesheet was filed before the Court of the learned JMFC Court at *Jath*.

4) On appearance of the accused, the trial Court framed the charge (Exh.52) and recorded the plea of the accused persons (Exh.53 to 61). The accused pleaded not guilty and claimed to be tried. To

bring home the charge, the prosecution examined 02 witnesses, i.e., PW1-Gurulinga Nagmoti, the first informant and PW2-Mr. Popat Chavan, Investigation Officer.

5) Evidence of PW1 is that on the relevant date and at time, he alongwith other officers of the flying squad visited *Amrutwadi*. Mr. B.P. Khot was head of the flying squad. One Police Constable was with them. Accused No.7-Pandurang More and Accused No.8-Narayan More committed theft of the energy by hooking the live line of electricity, with the help of starter, to lift water and for domestic use. The other accused persons also used the same method and committed the theft of electricity. PW1 deposed that cable, electric motor, starter, switch, control box and hook were seized from the possession of the accused persons and he recorded the Seizure Panchanama (Exh.69) thereof. He deposed that a Joint Inspection Report (Exh.70) was prepared in respect of the inspection at the spot and the theft of the electricity. He deposed that on the next date, he filed the Report (Exh.71). The police recorded the Spot Panchanama in his presence on 01/07/2002. He identified the accused persons.

5.1) In the cross-examination on behalf of the accused, PW1 admitted that *Talathi* was not in their team. He cannot tell the *Gat* numbers of the lands of the accused. He cannot tell the exact pole number from which the accused had stolen the electricity. He has not

inquired about the ownership of the landlord. He has mentioned the names of the accused persons in the Report (Exh.71) as disclosed by the villagers. He has admitted that two months prior to the incident, the villagers of *Amrutwadi* had blocked the road on account of changing burnt transformers. He has denied that no raid was carried out, as above, and nothing was seized from the possession of the accused persons. He has denied that he has lodged a false report against the accused persons.

6) PW2 deposed that he has investigated the crime. He recorded the Spot Panchanama (Exh.74) and statement of witnesses. He stated that, on completion of investigation, he submitted the charge-sheet. In the cross-examination, PW2 denied that he has not seized any material object from the possession of the accused.

7) Ms. Tendulkar, the learned APP submitted that the aforesaid testimonies of the witnesses was corroborated with the FIR, Joint Inspection Report, Seizure Panchanama and Spot Panchanama. However, the trial Court rejected that evidence for unjustifiable reasons and acquitted the accused. Therefore, the impugned Judgment and Order is erroneous.

8) In contrast, Mr. Joshi submitted that the Seizure Panchanama of the material objects is not proved. Consequently, it is not proved that the alleged material objects were used to commit the

theft of electricity. There is no evidence as to how the officers of the inspection team measured the stolen energy to ascertain its charges. As such, the charge of the offences of Sections 39 and 44 cannot be held against the accused persons.

9) The Sections 39 and 44 of the Electricity Act reads :-

“ 39. Theft of energy. - Whoever dishonestly abstracts, consumes or uses any energy shall be punishable with imprisonment for a term which may extend to three years, or with fine which shall not be less than one thousand rupees, or with both; and if it is proved that any artificial means or means not authorised by the licensee exist for the abstraction, consumption or use of energy by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of energy has been dishonestly caused by such consumer.

44. Penalty for interference with meters or licensee's works and for improper use of energy .-Whoever-

(a) connects any meter referred to in section 26, sub-section (1), or any meter, indicator or apparatus referred to in section 26, sub-section (7), with any electric supply-line through which energy is supplied by a licensee, or disconnects the same from any such electric supply-line [* *]; or*

(aa) unauthorisedly re-connects any meter referred to in sub-section (1) of section 26, or any meter, indicator or apparatus referred to in sub-section (7) of section 26, with any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, when the said electric supply-line or other works has or have been cut or disconnected under sub-section (1) of section 24; or

(b) lays, or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee [*]; or*

(c) maliciously injures any meter referred to in section 26, sub-section (1), or any meter, indicator or apparatus referred to in section 26, sub-section (7), or wilfully or fraudulently alters the index of any

such meter, indicator, or apparatus, or prevents any such meter, indicator or apparatus from duly registering; or

(d) improperly uses the energy of a licensee;

[shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both] and, in the case of a continuing offence, with a daily fine which may extend to [fifty] and [if it is proved that any artificial means exist] for making such connection as is referred to in clause (a), [or such re-connection, as is referred to in clause (aa),] or such communication as is referred to in clause (b), or for causing such alteration or prevention as is referred to in clause (c), or for facilitating such improper use as is referred to in clause (d), [and that] the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, [it shall be presumed, until the contrary is proved,] [that such connection, re-connection, communication,] alteration, prevention or improper use, as the case may be, has been knowingly and wilfully caused by such consumer. ”

10) The evidence of PW1 is that the accused persons were found while actually committing the theft of the electricity with intent to use the same for lifting water for their lands and at residence. However, there is no evidence exactly when the accused persons put the hook on the live cable of the MSEB to commit the theft. The Joint Inspection Report claimed that the accused persons committed the theft of electricity for one year, but how the said period was calculated and how the stolen electricity units of that period were measured to ascertain its costs, is not discernible from the evidence. There is no evidence that the hook, cable and other material objects allegedly used by the accused to commit the theft, were capable to transfer the

electricity for the desired purpose. Details of the electric cable from which the electricity was stolen, were neither stated in the documents produced in the evidence nor deposed by the witnesses. No document is produced in the evidence to show that the lands and the house in question were owned by the accused persons. Therefore, it is difficult to hold that some live cable line of electricity was passing from the spot and from that very line the accused committed the theft of electricity for their agricultural and domestic use. As such, even if the evidence of PW1 and PW2 is accepted, still it is difficult to hold the charge of said Sections 39 and 44 of the Electricity Act against the accused.

11) Conspectus of the above discussion is that there is no sufficient evidence by the prosecution to establish the charge of the offences of Sections 39 and 44 of the Electricity Act, 1910. Therefore, the impugned acquittal of the accused by trial Court cannot be held as unlawful or erroneous. Thus, there is no substance in the Appeal. As a result, the Appeal is liable to be dismissed and is dismissed, accordingly.

(SHYAM C. CHANDAK, J.)

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