



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPEAL NO. 450 OF 2011

Salam Shah s/o Farid Shah,
Aged about 40 years, Occ. - Business,
R/o Ramdara, Talegaon (SP), Tahsil Ashti,
District Wardha.

... Appellant.

// VERSUS //

State of Maharashtra,
through P.S.O. Arvi, Tahsil – Arvi,
District Wardha.

... Respondent

Mr. Shyam R. Jaiswal, Counsel (appointed) for the Petitioner,
Mrs. H.N. Prabhu, Addl.P.P. for the Respondent.

CORAM : NIVEDITA P. MEHTA, J.

Reserved on : 14th November, 2025.

Pronounced on : 19th November, 2025.

JUDGMENT

The present appeal is directed against the judgment and order of conviction passed by the learned Additional Sessions Judge-2, Wardha in Spl. (MSEB) Case No. 17 of 2006, whereby the appellant was held guilty of an offence punishable under Section 135 of the Electricity Act, 2003 for alleged theft of electrical energy said to have been committed at a roadside establishment known as “Milan Dhaba,” situated near Village Talegaon (Shamjipant) and sentenced to suffer simple imprisonment for three months and to pay a fine of Rs.18,000/- (Rupees Eighteen Thousand), in default to suffer simple

imprisonment for 1 1/2 months. The appellant challenges the conviction primarily on the grounds of lack of proof of ownership or occupation of the premises, absence of reliable evidence of meter tampering, non-examination of independent witnesses, and foundational deficiencies in the prosecution case.

2. The prosecution case, in brief, was that on 07.12.2005 PW-1, Ms. Raut, Junior Engineer of MSEDCL, along with her staff members including PW-2 Sahebrao Chawre, visited the said Milan Dhaba for inspection of the electricity meter installed there. According to her, the meter seal was found broken, the neutral wire was allegedly disconnected and connected to earth, and the incoming supply was diverted directly to the consumer's load without passing through the meter, thereby allegedly preventing any recording of consumption. PW-1 claimed to have prepared a panchnama and subsequently sent a bill for Rs. 23,930/- to the appellant, asserting that the meter was in his name.

3. Following the complaint lodged by PW-1, PW-3, the Investigating Officer, visited the site, prepared another panchnama and recorded statements of the witnesses. The appellant was later arrested and charge-sheeted. Charge was framed for offence punishable u/s. 138 of Indian Electricity Act against the accused. The appellant accused pleaded not guilty

and claimed to be tried. The trial Court, relying on the testimony of these three witnesses, held that meter tampering and dishonest use of electricity stood proved and convicted the appellant.

4. The learned Counsel for the appellant, Shri Shyam R. Jaiswal, argued that the prosecution had failed to establish the fundamental fact that the appellant was either the owner or occupant of the Milan Dhaba. He submitted that the meter inspection was irregular, as admitted by PW-1 and PW-2, because panchas were not present when the meter board was opened, and photographs purportedly taken at the scene were never produced in evidence. Shri Jaiswal further pointed out that no technical or expert verification of the meter tampering was tendered, and that the claim regarding the consumer number belonging to the appellant was unsubstantiated by any document from MSEDCL. Learned Counsel submitted that in the absence of proof linking the accused to the premises or the electricity supply, the conviction rested purely on suspicion, which is insufficient to sustain criminal liability under Section 135 of the Electricity Act. The learned Counsel for the appellant placed reliance on the following judgments in support of his submissions:

- (i) Pandit s/o Muktaji Pokharkar and Others vs. The State of Maharashtra, 2019 (2) Bom. C.R.;

- (ii) Santosh Datta Chitalkar and Others vs. Maharashtra State Electricity Board and Another, 2011 (1) Crimes 702;
- (iii) Yuvraj Pundalik Gadhave vs. Maharashtra State Electricity Board, 2011 (4) Bom. C.R. (Cri) 777; and
- (iv) Ramesh Balwant Patil vs. Maharashtra State Electricity Board, 2011 (3) Crimes 802.

It was submitted that these decisions lay down that the spot panchanama must be duly proved by the prosecution and that independent witnesses must be examined to establish ownership or control of the premises in question. In the present case, no independent witness was examined to ascertain that the appellant was the owner or in control of the Milan Dhaba, nor was any documentary evidence in support of ownership placed on record. The three witnesses examined by the prosecution were all employees of the MSEDCL and, therefore, clearly interested witnesses. Reliance solely upon the testimony of such departmental witnesses, without independent corroboration or documentary proof, is insufficient to establish criminal liability. The learned Counsel contended that the trial Court erred in relying on this evidence to conclude that the appellant was involved in the alleged theft of electricity.

5. In response, the learned Additional Public Prosecutor for the State, Mrs. Prabhu, contended that the inspection of the electricity meter revealed clear and indisputable signs of tampering, including a broken seal, a disconnected neutral, and bypassing of the incoming supply. She submitted that these facts, duly recorded in the panchnama, directly pointed to theft by the consumer in whose name the meter was registered. The learned Addl.P.P further emphasized that the meter record, bearing consumer number 402060003697, was in the name of the appellant. She submitted that even if panchas were not physically present at the time of opening the meter board, the subsequent preparation of the panchnama and the recording of spot verification by the police satisfied the evidentiary requirements under law. She contended that the ownership of the dhaba itself was immaterial for the purpose of establishing criminal liability; what was crucial was that electricity supplied to the consumer had been diverted, and the consumer named in the meter record was responsible for its use. Mrs. Prabhu argued that the totality of the evidence, including the oral testimony of the MSEDCL officials and the police, established *prima facie* criminal liability for theft of electricity. Finally, she submitted that the judgments relied upon by the learned Counsel for the appellant were distinguishable, as those cases dealt with theft by connecting wires to the LT line, whereas in the present case,

there was direct tampering with a meter installed in the name of the accused, making those precedents inapplicable.

6. Before proceeding to consider the rival contentions of the parties, it is necessary to examine and analyze the evidence adduced by the prosecution witnesses in detail.

7. PW-1, who was serving as a Junior Engineer with MSEDCL, Talegaon (Shamjipant) on 07.12.2005, deposed that she had visited *Milan Dhaba* on National Highway No. 6 along with her staff Sahebrao Chawre, Gaiki, Gulhane, Ingle, and Dadmal for the purpose of meter inspection. According to her, the accused was the consumer of the electricity meter installed at the said dhaba. On inspection, she found that the meter seal was broken and the outgoing neutral wire was cut and connected to earth. Upon opening the meter board she allegedly discovered that the incoming supply from the service line was directly connected to the load, thereby bypassing the meter and preventing any recording of consumption. She further stated that several electrical appliances including a halogen lamp, four tube lights, a 1.14 HP water pump, a puncture press, bulbs, a television set, and a refrigerator were being operated at the dhaba. PW-1 stated that she disconnected the supply and prepared a panchnama in the presence of two panch witnesses. She assessed the loss on the basis of calculations received from the Assistant Engineer and issued a bill of Rs. 23,930/- to the accused, who acknowledged

receipt but failed to pay. She thereafter lodged a written complaint on 15.12.2005 (Exh. 42).

In cross-examination, PW-1 admitted that she had not informed the police of the name “Milan Dhaba,” nor had she verified the ownership of the premises. She conceded that no panch witnesses were present when she opened the meter board, contrary to her earlier testimony. She further admitted that she had not recorded the statements of persons present at the site and that the photographs she claimed to have taken were not produced. She denied the suggestion that the accused was neither the owner nor involved in theft of electricity.

8. PW-2, a member of the inspection team, corroborated PW-1 to the extent that the inspection was carried out in December 2005 at the dhaba allegedly belonging to the accused. He stated that the meter seal was found broken and that upon opening the meter board, the supply was seen to have been diverted to bypass the meter. He asserted that the meter stood in the name of the accused.

In cross-examination, PW-2 admitted that he had not verified the ownership of the dhaba and conceded that no outsiders or panch witnesses were present when the meter board was opened. He denied the defence suggestion disputing the accused’s status as consumer.

9. PW-3, the Investigating Officer, stated that he took over investigation on 19.12.2005. On 20.12.2005 he visited the spot with lineman Chaware, who allegedly identified the premises. He prepared the spot panchnama (Exh. 51), recorded statements of witnesses, arrested the accused on 29.12.2005, and filed the charge-sheet.

In cross-examination, PW-3 admitted that Chaware had not removed any wire in his presence. He further admitted that although he made inquiries about the ownership of the dhaba, he obtained no documentary proof thereof. He did not verify the ownership either from the local Grampanchayat or from revenue records. Though he stated that the police register contained names of dhaba owners, he conceded that no certified copy was produced. He also admitted that no inquiry was conducted regarding the ownership of the land on which the dhaba was situated.

10. PW-4, the Assistant Engineer of MSEDCL, deposed that the electricity consumer records of Ashti taluka were maintained in their office and that *Milan Dhaba*, Talegaon, fell within that jurisdiction. He stated that the meter installed at *Milan Dhaba* bore Consumer No. 402060003697 and stood in the name of the accused. He further stated that the consumer ledger was regularly maintained and that the accused had been given the said electric connection on 14.02.1993. The computerised consumer ledger extract (Exh.

83) bearing his signature was produced. According to PW-4, although the meter reflected consumption of 240 units for the period October to December 2005, this was only an average bill, as no actual consumption was being recorded. He also stated that the meter reading in July 2005 was 6933, in October 2005 was 6934, and in January 2006 was 6934.

In cross-examination, he admitted that for commercial connections, a deed showing ownership of the premises is usually obtained at the time of application, though he had not personally verified any such document in respect of the accused. He stated that except for the consumer ledger, he had seen no document establishing that the accused was the owner of *Milan Dhaba*. He confirmed that if no electricity is consumed, the meter reading will not increase. He denied the suggestion that the meter was not in the accused's name.

11. Having heard learned Counsel for both sides and upon re-appreciation of the evidence, this Court finds that the prosecution has failed to establish the most basic and indispensable fact, namely that the appellant was the owner, occupier or person in control of the premises in question.

12. I have carefully examined the evidence of all prosecution witnesses as well as the documentary material placed on record. The central issue for consideration is whether the prosecution has established, beyond reasonable

doubt, that the appellant committed theft of electricity by deliberately bypassing the meter installed at *Milan Dhaba* and whether the evidence satisfactorily establishes the nexus of the accused with the said premises.

13. The prosecution primarily relies upon the testimony of PW-1, the Junior Engineer, and PW-2, who accompanied her during the inspection. Their evidence attempts to show that during the inspection conducted on 07.12.2005, the meter seal was broken, the neutral wire was cut, and the supply was directly connected to the load bypassing the meter. PW-1 also claimed to have disconnected the supply and prepared a panchnama in the presence of two panch witnesses.

14. However, PW-1's credibility is substantially eroded during cross-examination. She admitted that when she opened the meter board, no panch witnesses were present. This admission directly contradicts her examination-in-chief and raises serious doubts about the genuineness of the alleged panchnama. The very purpose of having panch witnesses is to ensure the authenticity of inspection proceedings, particularly in cases of alleged theft, where manipulation of the site cannot be ruled out. The absence of panch witnesses at the crucial moment of opening the meter destroys an essential safeguard of fairness.

15. The further admission of PW-1 that she neither ascertained the ownership of *Milan Dhaba* nor recorded statements of persons present at the site weakens the prosecution case significantly. The failure to produce the photographs she allegedly took, without any explanation, amounts to withholding of best evidence. These deficiencies materially affect the reliability of her version.

16. PW-2, though corroborating PW-1 to some extent, also conceded that he made no inquiry regarding the ownership of the hotel, and that no panch witnesses or outsiders were present at the time the meter board was opened. Thus, PW-2's evidence does not cure the infirmities in PW-1's testimony but instead reinforces them.

17. The testimony of PW-3, the Investigating Officer, further exposes gaps in the prosecution case. His evidence shows that his entire conclusion about the accused being responsible for theft was based upon the version of PW-1 and PW-2. PW-3 candidly admitted that although he made inquiries into ownership of *Milan Dhaba*, he secured no documentary proof. He did not verify ownership from the Grampanchayat, nor did he produce any certified copy of the so-called police register that allegedly contained the names of dhaba owners.

18. Equally critical is the fact that PW-3 admitted that no inquiry was conducted regarding the ownership of the land on which the dhaba stood. The prosecution, therefore, failed to establish either ownership or possession of the premises by the accused. In offences under Section 135 of the Electricity Act, proof of nexus between the accused and the place of alleged electricity abstraction is essential. Mere presence of an electricity meter standing in someone's name is not conclusive unless supported by independent evidence of possession and control over the premises.

19. PW-4, the Assistant Engineer, stated that the electricity meter installed at *Milan Dhaba* stood in the name of the accused and produced the computerised consumer ledger (Exh. 83). While this shows that a meter connection was issued in the name of the accused, PW-4's cross-examination reveals that he had not personally verified any document of ownership and relied solely on the consumer ledger.

20. The evidence of PW-4 further reflects that while an average consumption of 240 units was billed for the period October to December 2005, the actual meter readings show minimal variation (from 6933 in July 2005 to 6943 in January 2006). This itself is indicative of no substantial consumption, but the absence of consumption does not automatically

establish theft. The prosecution must independently prove tampering or bypassing of the meter at the instance of the accused.

21. PW-4's admission that he had not examined any ownership documents except the ledger, and that he was not personally acquainted with the accused, weakens the prosecution's attempt to establish that the appellant was indeed the person in control of the dhaba at the material time.

22. The cumulative effect of the admissions of PW-1, PW-2, PW-3, and PW-4 is that the prosecution has failed to establish the foundational fact that the accused was the owner, occupier, or person in control of *Milan Dhaba*. Without proving this crucial link, the prosecution cannot attribute liability for the alleged act of bypassing the meter. Criminal liability cannot rest on mere assumptions or presumptions, particularly when documentary proof of ownership or occupancy could have been easily obtained but was not.

23. The inspection suffers from serious procedural lapses. The absence of independent panch witnesses at the time of opening the meter board, non-production of photographs, failure to record statements of persons present, and failure to ascertain ownership or control of the premises all constitute grave deficiencies. Such lapses create sufficient doubt about the authenticity of the inspection and the fairness of the investigation.

24. In criminal jurisprudence, the prosecution must establish guilt beyond reasonable doubt. Where the evidence is marred by inconsistencies, procedural lapses, and lack of foundational proof, the benefit must inevitably go to the accused. The prosecution's failure to prove that the accused was responsible for the alleged diversion of electricity supply, or that he was even in possession of the premises, is fatal to the case.

25. In view of the foregoing analysis, this Court is of the considered view that the prosecution has failed to prove the charge of theft of electricity against the appellant beyond reasonable doubt. The evidence is insufficient to establish that the appellant committed the alleged act or that he had control over the premises where the tampering was allegedly detected. The material contradictions and investigative lapses create a reasonable doubt, which must enure to the benefit of the accused.

Accordingly, the appeal is allowed. The judgment and order of conviction passed by the learned Additional Sessions Judge-2, Wardha in Special (MSEB) Case No. 17 of 2006 are hereby quashed and set aside. The appellant, Salam Shaha s/o Farid Shaha, is acquitted of the charge under Section 135 of the Electricity Act, 2003. His bail bonds stand cancelled and sureties discharged. Any fine amount deposited shall be refunded to him forthwith. The appellant is set at liberty, if not required in any other case.

The fees of the learned Counsel Mr. Shyam R. Jaiswal appointed for the appellant be quantified and paid as per the rules.

[NIVEDITA P. MEHTA, J.]

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