

Crl.A(MD)No.164 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 12.06.2025

CORAM:

THE HON'BLE MS.JUSTICE R.N.MANJULA

Crl.A(MD)No.164 of 2017

Saravanan

... Appellant

Vs

The Inspector of Police,,
Thathiengarpettai Circle,
Tiruchy District.

... Respondent

Prayer: This Criminal Appeal Case filed under Section 374 of Cr.P.C to set aside the order of the Principal Sessions Court, Tiruchirappalli, dated 18.05.2017 and the sentence of simple imprisonment for a period of 02 years and fine to an extent of Rs.1,000/- by reversing the same and release the appellant from the charges as innocent and acquit the appellant.

For Appellant : Mr.B.Moorthi Kannan

For Respondent : Mr.K.Gnanasekaran
Government Advocate (Crl.Side)



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JUDGMENT

The present appeal has been filed challenging the Judgment of the learned Principal Sessions Judge, Trichirappalli, dated 18.05.2017 made in S.C.No.1 of 2015.

2. The appellant is the sole accused, in whose name the service connection in SC No.26/TF-IV is given for getting free electricity connection for agricultural purposes.

3. As per the case of the prosecution, on 18.06.2014 at about 04.00 p.m., the Assistant Executive Engineer of Thathiengarpettai North Division inspected the field of accused and found that the accused has utilized the free electricity meant for agricultural purpose for constructing his new house and consumed 24,636 units of electricity, thus, caused a loss to the Electricity Board to the value of Rs.5,08,765/-. For the above allegation, the accused has been charged for the offence under Section 135 of the Electricity Act, 2007.

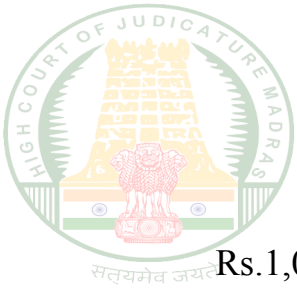


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4. After completing the investigation, charge sheet has been filed against the accused under Section 135 of the Electricity Act. After taking cognizance of the charge sheet, the accused was given with copies of relevant documents and charges were framed against the accused under Section 135 of the Electricity Act and questioned him. As the accused denied the involvement and claimed to be tried, trial was conducted.

5. On the side of the prosecution, 9 witnesses were examined as PW1 to PW9 and 14 documents were marked as Ex.P.1 to Ex.P.14 besides M.O.1 to M.O.4. On the side of defence, D.W.1 was examined. When the accused was questioned with regard to the circumstances appearing in evidence against him under Section 313(1)(b) of the Code of Criminal Procedure, for which the accused prayed for mercy.

6. After observing the legal mandates consequent to the completion of trial and hearing both sides and appreciating the evidence on record, the trial Court has found the accused guilty for the offence under Section 135 of the Electricity Act and convicted and sentenced him to undergo simple imprisonment for a period of 2 years and to pay a fine of



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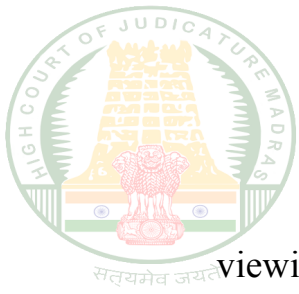
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Rs.1,000/- in default to undergo simple imprisonment for a period of 3 months.

7. Aggrieved over that, the appellant/accused has preferred this appeal.

8. The learned counsel appearing on behalf of the appellant submitted that only when the accused is charged for the repeated offence, the punishment of sentence can be imposed under 135 of the Electricity Act, but for the first offence, only fine amount should be imposed. The accused was found to have misused only 6.5kw and hence, he is entitled to the benefit of *proviso* (i) of Section 135 (1) of the Electricity Act. The accused had misused only below the load of 10kw and hence, he should be punished only with fine.

9. Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent police submitted that the appellant has already been imposed with the punishment for earlier occurrence and now he has been punished for an another similar offence. The trial Judge, after



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viewing the oral and documentary evidence in a right perspective, convicted the accused and therefore, no interference is warranted by this Court.

10. I have given my anxious consideration to the submissions made on either side and carefully perused the records.

11. The whole argument of the learned counsel for the appellant is fallacious, for the reason that from the working sheet, Ex.P.3., it is seen that the electricity misused by the accused from the free service connection has been arrived at by applying a formula. For the purpose of the same, a figure 6.5954 has been shown representing the connected load (CL).

12. Firstly, as per the formula applied by the prosecution, 23635.51 watts were deprived to be misused by the appellant through the free electricity service connection. If 23635.51 watts are converted into kilowatts, it is 23.635kw. So the charge against the appellant is not that he has consumed any load below 10 kw.



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13. However, the appellant has misused 23635 watts equivalent to 23.636kw. There is no leverage given under Section 135 of the Electricity Act and nowhere, it is stated that the first offender, who is found to have misused electricity below 10kw was to be given with a punishment of fine only. As per Section 135(1)(e) of the Electricity Act irrespective of the unit consumption it is stated that a person is found guilty for the above charge, shall be punished with an imprisonment, which may be extended upto 3 years or with fine or with both. So there is no basis for the claim that the accused has to be imposed with fine only and there should not be any sentencing.

14. The appellant was served with assessment for the wrongful consumption, he made through the agricultural connection and that was challenged by the appellant before this Court by filing a writ petition in WP(MD) No.17480 of 2014. It is settled that the appellant is liable to pay a sum of Rs.3,73,095/- for the illegal consumption made by him. The appellant did not show any satisfactory records except some peace meal receipts to show that he had paid the entire sum of Rs.3,73,095/- as directed by this Court in WP(MD) No.17480 of 2014.



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15. In a writ appeal filed in WA(MD) No.312 of 2023, the writ appellate Court did not interfere with the findings of the writ Court. But the appellant was allowed to pay the said amount in instalments.

16. Any order passed in the writ petition can be well understood only in terms of assessment and not as fine. It is for the very reason only a criminal Court can impose fine, at the conclusion of trial for the charges made against the accused.

17. The learned Government Advocate (Crl.Side) submitted that on an earlier occasion, the appellant has been imposed with the punishment and now he has been punished for another offence of similar nature. No records have been produced to show that the appellant has already been charged for the same kind of offence.

18. Even in the charges made against the appellant, there is no mention about the *proviso* (i) of Section 135 (1) of the Electricity Act. It might be true that the prosecution has not proved that earlier similar action



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has been done in the service connection standing in the name of the petitioner.

19. As far as the petitioner is concerned, he is the first offender against whom, no previous case is pending. So without looking into *proviso* (i) of Section 135 (1) of the Electricity Act, it is possible to invoke section 135(1)(e) of the Electricity Act, for the purpose of granting any lenient punishment. Since the petitioner has been rightly charged as per the formula that he had misused 23.6351kw, there is no confusion about the amount calculated for the consumption made by the appellant. So in all probabilities and possibilities, records would show that the appellant had consumed 23.6351kw and the said allegation and the resultant charges are proved. So it is not right on the part of appellant that there was some misconstruction of charges while framing charges.

20. As per the contention of the learned Government Advocate (Crl.Side), earlier, when the alleged service connection was in the name of father-in-law of the appellant also similar kind of offence was committed.



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21. Section 135 (1) of the Electricity Act reads as '*whoever dishonestly*' and not 'wherever dishonestly'. Hence, the comparison can be made only to the person not to the place. As per the contention of the learned counsel for the appellant, his father-in-law was the earlier owner of the service connection and now it has been changed to the name of the appellant. The right interpretation is that the appellant has got service connection after it was transferred from his father-in-law.

22. Whatever may be the case, now the appellant alone is the consumer of SC No.26/TF-IV and hence, any allegation of theft will be punishable under Section 135(1)(e) of the Electricity Act.

23. As the appellant is the first offender, I feel some indulgence be shown in the matter of punishment by restricting the punishment to fine only.



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24. In fine, this Criminal Appeal is partly allowed to the effect

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that

- *the sentence already imposed on the appellant by the learned Principal Sessions Judge, Trichirappalli, dated 18.05.2017 made in S.C.No.1 of 2015 is set aside;*
- *the appellant is convicted for the offence under Section 135(1)(e) of the Electricity Act and sentenced him to pay a fine of Rs.50,000/- (Fifty Thousand only) in default to undergo simple imprisonment for a period of 3 months and*
- *the Trial Court is directed to recover the aforesaid fine amount from the appellant in the manner known to law.*

12.06.2025

NCC :Yes/No
Index :Yes/No
Internet:Yes/No
PNM

To

1.The Principal Sessions Judge,
Tiruchidrapalli

2. The Inspector of Police,
Thathiengarpettai Circle, Tirchy District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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R.N.MANJULA,J.

PNM

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