BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 15.07.2025

CORAM :

THE HONOURABLE Dr. JUSTICE R.N.MANJULA

Crl.A(MD)No.354 of 2017

S.Pandian Umapathy ... Appellant/Complainant

Vs.

1.D.Thillairaj
2.D.Mathavi
3.K.Sabitha
4.P.Selvam ... 1st Respondent/Accused

PRAYER: Criminal Appeal filed under Section 378 of Criminal Procedure Code, to call for the records in order dated 21.03.2017 passed in C.C.No.01 of 2009 on the file of the Special Judge/Principal Sessions Judge, Madurai and set aside the same.

For Appellant : Mr.B.Ramanathan
For Respondents : Mr.B.Saravanan
Senior Counsel

JUDGMENT

This Criminal Appeal has been preferred challenging the judgment of the learned Special Judge/Principal Sessions Judge, Madurai, dated 21.03.2017 in C.C.No.1 of 2009.

2. The appellant is the complainant, who has filed a private complaint under Sections 135(1)(a)(b)(c) and 138 of the Electricity Act against the accused 1 to 3 and one P.Selvam, who is the fourth accused on the allegation of electricity theft. As the trial court has acquitted the accused 1 to 3, the complainant has preferred this appeal.

3.It is alleged by the complainant that the accused 1 to 3 were the partners of M/s.Vaibhav Corporation The fourth respondent is the lessee under them. The Vaibhav Corporation has got high power service connection in the year 2003 in Service No. H.T.SC.No.168 with demand of Rs.3600 KVA for industrial utility.

4. On 24.07.2006 at 11.15 a.m, after issuance of proper notice to the accused, the complainant went to the industry for inspection. A representative of the fourth respondent was present at the time of inspection and there was an extraordinary technical modus which mislead the inspection authority. Whenever the accused wanted to stop the recording of the meter for the use of energy, the accused adapted the technique of removig its test block view glass, approaching the test terminal block fixing plate, tilting the board short circuiting the C.T.Secondary leads of the test terminal block by a copper strip made as a template exactly suited to the test terminal block. By doing so, most of the energy will get bypassed through the shorted copper strip thereby stopping the recording of the meter. By doing this act, the accused had committed heavy volume of power theft and caused a loss of revenue to TNEB. So, it is alleged that the accused had stolen the electricity thereby the accused the loss of Rs.5,59,28,416/- and the offence was committed under Sections 135(1)(a)(b)(c) and 138 of the Electricity Act.

5. Since the fourth respondent absconded for a long time, Non Bailable Warrant has been issued against him was pending and the case against Selvam was split up and new number has been assigned in C.C.No.1 of 2015 on 13.02.2015. After complying the mandates and furnishing the copies, the accused were questioned. The accused claimed to be tried by denying their guilt. Hence, the trial court conducted the trial.

6. After completing the trial and after hearing both sides, the Special Judge/Principal Sessions Judge, Madurai, acquitted the respondents 1 to 3/A1 to A3. Against the order of acquittal, the complainant has filed this criminal appeal.

7. The learned counsel for the appellant submitted that the alleged lease agreement has not been produced as evidence and without even perusing the lease agreement, the trial court has found the accused 1 to 3 not guilty though they had dishonestly stolen the energy with copper wire cables. When energy theft is proved, the burden would lay on the respondents/accused to prove their innocence.

7.1. As the initial presumption is in favour of the appellant/ department, the accused have to rebut the same. The accused 1 to 3 did not discharge their rebuttal. But the trial court has proceeded to find the accused 1 to 3 not guilty. The accused had criminal antecedents of energy theft and till date total loss caused is estimated at Rs.10 Crores to the Corporation.

8. The learned counsel for the respondents/accused 1 to 3 submitted that it is the fourth respondent who runs the factory in the name of M/s.Vaibav Corporation by taking the factory premises and machineries on lease from the accused 1 to 3. The above fact has been admitted by the complainant himself and the loss of energy shall be quantified and recovered only from the occupier of the property, who committed theft of energy and no other person can be held liable to make the loss.

9. I gave my anxious consideration to the submissions made on either side and carefully perused the materials available on record.

10. No doubt, the recovery of charges and other charges due to the licensee even beyond the date of sale or lease, if the consumer fails to give advance intimation to the Corporation to sell or lease out, the said liability is only with respect to charges and not the theft of energy.

11. There is no dispute that premises and the factory run by the fourth respondent belong to the accused 1 to 3. The fourth respondent is their lessee and the said fact was not denied by the complainant when he was examined as P.W.1. Even while inspecting the premises notice was given to the representative of the fourth respondent and the accused 1 to 3 were not in occupation of the premises. The fact that the fourth respondent has taken the factory on lease from its owners has been admitted by P.W.1 in his cross-examination. When the complainant himself admitted the fact pleaded by the respondents 1 to 3, there is no necessity for the respondents 1 to 3 to produce the lease deed. In other words, production of the lease deed would be only superfluous when the complainant himself admitted the lease arrangement between the accused 1 to 3 and the complainant.

12. When the respondents 1 to 3 were not occupying the premises, they did not commit any energy theft and no criminal liability can be fastened against them. As per Rule 22A of Regulation 23AA of the Supply Code, it is only the person who was in occupation of the premises and committed the offence alone would be held responsible for the energy theft.

13. For a better understanding, the definition of the accused person as found in Rule 22A of Regulation 23AA chapter-IV of the Supply Code is extracted herein under:

> "Accused person" shall mean and include the owner or occupier of the premises or his authorized agent or representative or any other person who is in occupation or possession or in charge of the premises at the relevant time of detection of theft of electricity or any other person show has been benefited by the theft of electricity."

14. When the accused 1 to 3 were not in occupation of the premises during the relevant point of time when the energy theft was found out by inspection of the factory, it is not right to claim that the offence have been committed by the accused 1 to 3.

15. So far as the owners of the premises are concerned, they are liable to pay the legal charges and charges towards consumption of energy usage even after occupier of the premises vacated but defaulted to pay the same. But, the same analogy cannot be extended to dues or loss arose out of energy theft by tampering the service connection metre box. As the overt act of energy theft by adapting modus of tampering the equipment can be done only by a person, who is in occupation of the premises, no liability can be fixed upon the persons, who are not in possession of the property and against whom there can be any overt act.

16. References have been made to the earlier judgment of this Court in **W.P.No.11580 of 2021 dated 28.10.2021**. The relevant paragraph is extracted herein under:

"6.It is clear from the above that insofar as the payment of penalty towards current consumption by theft of energy, the same can only be imposed against the occupier of the property who committed such theft of energy and the liability cannot be shifted to any other person. The compounding fee or the penalty as the case may be is collected more by way of a punishment against the offender who committed theft of energy. It is trite law that insofar as commission of offences are concerned, the consequences of the same can never be shifted to any other person from the offender. The concept of vicarious liability is unknown to criminal law since the commission of a crime involves mens rea and the same can be attributed only to the person who commits the crime and it cannot be shifted to anyone else. Therefore, this Court is in complete agreement with the reasoning of the learned Judge in the above judgment".

17. The contention of the appellant is that the accused 1 to 3 cannot prove the rebuttal when the initial presumption lies in favour of the complainant. There is an energy theft made in the electricity connection given to the fourth respondent. The rebuttal proof can be available to the respondents 1 to 3 only when it is established that they were in possession of the property in order to effect such tampering for tapping energy illegally.

18. Under such circumstances, it is unreasonable to fix any criminal liability upon the accused 1 to 3. The learned trial Judge has rightly appreciated the position of law and found the accused 1 to 3 not guilty for any criminal offence and acquitted them as the complainant has not made out any valid ground that would warrant interference of the judgment of the trial court.

19. In view of the same, this appeal is dismissed.

15.07.2025

Index : Yes/No
Internet : Yes/No
CM

To,

1.The Special Judge/Principal Sessions Judge,
Madurai

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

R.N.MANJULA, J

CM

Judgment made in
Crl.A(MD)No.354 of 2017

15.07.2025