IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.168 of 2014

Arising Out of PS. Case No.-158 Year-2011 Thana- BODHGAYA District- Gaya

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Md. Maksood Alam, S/o Md. Sharif Alam @ Md. Sharif Ansari, R/o - Janpur, P.S.- BodhGaya, District- Gaya

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Sumeet Kr. Singh, Adv.
		Mrs. Deepali Singh, Adv.
		Mr. Anmol Kumar, Adv.
		Mr. Kumar Vikram, Adv.
		Mr. Amarendra Kumar, Adv.
For the State	:	Mr. Anand Mohan Prasad Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

Date : 21-01-2026

The present appeal has been preferred against the judgment of conviction and order of sentence dated 15.03.2014 passed by the Court of Special Judge, Electricity, Magadh Area, Gaya, in Trial No. 208/13/189/14 arising out of G.R. No. (E) 49 of 2011. The appellant has been convicted under Section 135(1) of the Electricity Act, 2007, and sentenced to undergo rigorous imprisonment for three years along with a fine of Rs. 5,000/- (Rupees Five Thousand). In default of payment of fine, he has been directed to undergo simple imprisonment for four months. The trial court further directed the appellant to pay a sum of Rs.

43,77,888/- × 3 = Rs. 1,31,33,664/- (Rupees One Crore Thirty-One Lakh Thirty-Three Thousand Six Hundred Sixty-Four) as fine on the ground of loss caused to the Electricity Department owing to the commission of electricity theft by him.

<u>Prosecution Story</u> :-

2. The prosecution story, in brief, as appears from the FIR, is as follows:-

On 24.08.2011, at about 3:30 P.M., the informant, along with other members of the raiding party constituted by the Electricity Board vide Order No. XII, Misc. No. 109/87-682, conducted a raid at village Janpur, which falls under Bodh Gaya Police Station in Gaya District. At that time, the Deputy Executive Magistrate, Sureshwar Kumar Mehta (PW-7), A.S.I. Om Prakash Singh, and other armed forces deputed for assisting in the raid were also present along with the raiding team. It has been further alleged in the FIR that the raiding party found a plastic manufacturing unit being run by the occupant at the alleged premises, where theft of electricity was being committed. While committing the offence, electricity was being consumed from an LT line through illegal means, and in this regard, several articles were seized. As per the FIR, the appellant was alleged to have been running the said plastic manufacturing unit by illegally using electricity at village Janpur, Bodh Gaya, in Gaya District. According to the Electricity Department, the appellant's electricity connection had already been disconnected on account of non-payment of dues, and due to this reason, he started using electricity by fixing a *toka* on the LT line in an illegal manner. His electricity connection pertained to his godown situated at Godam Road, Bodh Gaya Market. In the FIR, the loss caused to the Electricity Department on account of the alleged act of the appellant was assessed to be Rs. 43,77,888/-. The FIR further reveals that at the time of raid, one person, namely Anil Pandey, was found present at the alleged premises. According to the informant, he was the caretaker of the appellant and was apprehended at the spot. The raiding party seized all relevant articles, the details of which are mentioned in the seizure list (Exhibit-2) attached to the FIR. On the basis of a written application filed by Gauri Shankar Prasad, an Executive Engineer of the Electricity Department, a formal FIR bearing Bodh Gaya P.S. Case No. 158 of 2011 was registered under Section 135 of the Electricity Act, 2003 against the apprehended co-accused Anil Pandey and the appellant, Md. Maksood Alam.

2.1. In the seizure list, several articles seized from the spot, such as a starter, four motors of different HP capacities, and PVC wires, were shown as recovered. As per the seizure list, altogether seven persons were members of the raiding party.

3. After completion of the investigation, the police did not chargesheet the co-accused, Anil Pandey, showing him to be innocent, while the appellant was charge-sheeted for the offence under Section 135 of the Electricity Act. The learned Special Court took cognizance of the said offence upon submission of the charge-sheet, and the appellant was summoned to face trial for the said offence vide order dated 13.02.2013, as recorded in the order sheet of the trial court. The order sheet further indicates that the accusation relating to the alleged offence was explained to the appellant. However, no formal charge was framed against the appellant, which has been confirmed by the learned Additional Public Prosecutor after perusing the entire case record of the trial court.

4. During the trial, the prosecution examined altogether the following eight witnesses : -

PW-1	Ravindra Kumar	A member of the raiding party
PW-2	Pankaj Prasad	A member of the raiding party
PW-3	Gauri Shankar Prasad	The informant as well as member of the raiding party
PW-4	Smt. Jyoti Kumari	A member of the raiding party
PW-5	Jitendra Kumar Manjhi	A member of the raiding party
PW-6	Anil Choudhary	A member of the raiding party
PW-7	Sureshwar Kr. Mehta	The then Deputed Executive

		Magistrate-cum-Block Agriculture Officer and also a member of the raiding party
PW-8	Shiv Kumar	A formal witness

5. In addition to the ocular evidence, the prosecution proved and accepted the following documents as documentary evidence :-

Ext –1	Written FIR
Ext –2	Seizure list
Ext -3	Signature of one witness namely Jitendra Kumar Manjhi (PW-5) on the seizure list
Ext-3A	Signature of one witness namely Anil Choudhary (PW-6) on the seizure list
Ext-4	Formal FIR
Ext-5	An Indemnity Bond of Rs. 50,000/- given by the appellant on 12.06.2012

6. After completion of the prosecution evidence, the statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure, affording him an opportunity to explain the material circumstances appearing against him from the prosecution evidences, which were denied by him. While recording his statement, the appellant claimed himself to be innocent but did not take any specific defence.

7. The appellant did not adduce any defence evidence, either ocular or documentary, in support of his case.

8. While convicting the appellant for the alleged offence, the learned trial court placed reliance upon the evidence of the members of the raiding party, including Exhibit-2, which shows recovery of the alleged articles from the alleged premises. The trial court further relied upon the appellant's application filed by him for releasing the seized articles treating it as an his admission to the extent that the seized articles belonged to him. According to the findings of the trial court, the appellant failed to show any cogent reason as to why the prosecution witnesses would falsely implicate him. As regards proof of the alleged premises as to belonging to the appellant, the trial court observed that PW-1 to PW-6, who were employees of the Electricity Department, could not be expected to narrate the exact Khata number and Plot number of the alleged premises. The trial court further held that non-examination of the Investigating Officer was not fatal to the prosecution case, as there were only minor contradictions in the testimony of the prosecution witnesses. The learned trial court also observed that the appellant failed to establish his principal defence that the alleged premises belonged to one Sukhdeo Manjhi.

9. Mr. Sumeet Kumar Singh, assisted by Mrs. Deepali Singh, learned counsels for the appellant, and Mr. Anand Mohan Prasad Mehta, learned Additional Public Prosecutor for the State, are present and heard at length. The impugned judgment and the evidences available on the record of the trial court, including the statement of the appellant, have been perused.

<u>Submission on behalf of the appellant</u> :-

10. Learned counsel appearing for the appellant submits that admittedly the appellant was not found present at the alleged premises at the time of the raid. The liability for illegal use of electricity with the help of the seized equipments was fastened upon the appellant mainly on the basis of the disclosure made by one Anil Pandey, who was apprehended by the raiding party at the alleged place. Such an approach, according to learned counsel, was erroneous. It is further submitted that the prosecution failed to adduce any evidence to establish the appellant's possession, control, or title over the alleged premises. Before the trial court, the prosecution also failed to produce the seized materials without offering any explanation. The provisions of Section 126 of the Electricity Act were not followed by the employees of the Electricity Department, including the informant, who were members of the raiding party, either at the time of inspection or while calculating the alleged loss to the Electricity Department on account of electricity theft.

10.1. Learned counsel further submits that the Investigating Officer was not examined by the prosecution, which seriously prejudiced the appellant in defending himself, particularly in relation to the allegation that the alleged premises were in the possession and control of the appellant at the time of the raid. It is also contended that the raiding party failed to associate any independent witness during the search and seizure proceedings, despite the presence of several independent persons at the spot, none of whom had expressed unwillingness to join the process.

Submission on behalf of learned APP :-

11. On the other hand, learned Additional Public Prosecutor for the State submits that during the trial, the appellant filed an application claiming ownership of the seized electrical equipments and sought release of the same in his favour. Vide order dated 10.04.2012, the said application was allowed, and the seized articles were released in favour of the appellant. This, according to learned APP, is sufficient to establish that the alleged premises, where electricity was being illegally used, were under the possession and control of the appellant for running a plastic manufacturing unit. It is further argued that all the prosecution witnesses, who were members of the raiding party, fully supported the case of the prosecution, particularly with regard to establishing that the alleged premises belonged to the appellant. The learned APP contends that the FIR itself is sufficient to prove that the alleged premises belonged to the appellant and that the disclosure made by Anil Pandey, who was apprehended at the spot, clearly revealed the appellant's possession and control over the alleged plastic manufacturing unit.

11.1. Learned Additional Public Prosecutor further argued that non-examination of the Investigating Officer is not fatal to the prosecution in the present case, as all the material prosecution witnesses, particularly the Executive Magistrate, who was made a member of the raiding party under Letter No. 3474 dated 16.08.2011 issued by the District Magistrate, fully supported the prosecution case. It is further submitted that there is no illegality in the impugned judgment and the present appeal is devoid of merit and is, therefore, liable to be dismissed.

Consideration and analysis :-

12. The first and foremost contention raised by learned counsel for the appellant is that the prosecution failed to establish the appellant's connection with the alleged premises, which was shown to be used for running a plastic manufacturing unit. In support of this contention, it has been argued that, as per the prosecution case, when the raiding party comprising employees of the Electricity Department and the Deputy Executive Magistrate (PW-7) conducted the raid at the alleged premises, several independent persons had gathered at the spot. However, admittedly, none of them was made a witness to the search and seizure proceedings, despite the fact that none of them had expressed any unwillingness to participate in the process. In this regard, the evidence of PW-1 to PW-7 assumes significance.

13. The second contention raised by learned counsel for the appellant is that the Investigating Officer was not examined by the prosecution, and such non-examination has seriously prejudiced the appellant. It is submitted that in the present case relating to theft of electricity at a particular premises, the prosecution was required to establish the appellant's connection with the said premises, especially when it is an admitted position that the appellant was not present at the time when the raid was conducted.

13.1. It has further been argued that, according to the prosecution case, at the time of the raid, one person, namely Anil Pandey, was found at the spot and was shown to be the caretaker of the appellant. He was also named as a co-accused in the FIR, and primarily on the basis of his alleged disclosure, the appellant was made an accused and the premises in question were shown to be in his possession and control for running a plastic manufacturing unit. However, during the course of investigation, Anil Pandey was found to be innocent and was not sent up for trial by the police. It is contended that Anil Pandey was the most material witness to establish the appellant's possession or control over the alleged premises. Despite this, neither the prosecution nor the trial court exercised its power under Section 311 of the Code of Criminal Procedure to summon and examine him as a witness to verify the prosecution's allegations, particularly with regard to the appellant's connection with the alleged premises. In such circumstances, it was incumbent upon the Investigating Officer to examine independent witnesses who had gathered at the time of the raid or the persons residing in the vicinity of the alleged premises in order to establish the appellant's possession and control over the said place. But, no such attempt was made. Therefore, non-examination of the Investigating Officer, who could have clarified the appellant's connection with the alleged premises, proved fatal to the prosecution case and also seriously prejudiced the appellant, as he was deprived of his valuable right to cross-examine the Investigating Officer regarding his alleged possession or control over the premises, the exact location of the premises, and its boundaries.

14. After carefully going through the testimony of the prosecution witnesses (PW-1 to PW-7) and taking into account the contents of the FIR and the seizure list, I find substance in the aforesaid contentions. All the witnesses, who were members of the raiding party, including the Executive Magistrate-cum-Block Agriculture Officer (PW-7), deposed before the trial court that at the time of the raid, one person, namely Anil Pandey, was found present at the alleged premises and was stated to be the caretaker of the appellant. The raiding party fastened the responsibility of illegal use of electricity at the alleged premises upon the appellant primarily on the basis of the disclosure made by the said Anil Pandey. However, during investigation, the police found Anil Pandey to be innocent and, consequently, he was not sent up for trial. The prosecution witnesses PW-1 to PW-7 deposed that at the time of the raid, several independent persons had gathered at the spot, yet none of them was made a witness to the search and seizure proceedings. It is not the prosecution's case that such persons had expressed their unwillingness to participate in the search proceedings. In such circumstances, particularly where criminal liability is sought to be fixed upon a person primarily on the basis of his alleged connection with the place of occurrence, examination of the Investigating Officer as a prosecution witness becomes of great significance, as issues relating to ownership, possession, or control over the land or premises could have been elucidated through his testimony and tested through cross-examination. In the present case, the Investigating Officer was not examined by the prosecution, thereby depriving the appellant of his valuable right to cross-examine him, especially on the crucial aspect of the appellant's alleged connection or possession over the premises as disclosed by Anil Pandey. Hence, non-examination of the Investigating Officer has caused serious prejudice to the appellant. It is also an admitted position that the appellant was not present at the alleged premises at the time of the raid. In such a situation, the Investigating Officer was expected to take effective steps to establish the appellant's connection, possession, or control over the premises where electricity was allegedly being used illegally. However, no such effort is evident from the record.

14.1. Among the raiding party members, PW-7, the

Block Agriculture Officer, who was deputed under the order of the District Magistrate as an Executive Magistrate to accompany the raiding team, is an important witness. He stated in his examination-in-chief that at the time of the raid, one employee, namely Anil Pandey, was found at the premises and he refused to disclose the name of his owner. However, in his cross-examination, PW-7 stated that Pandey Ji later disclosed the name of the appellant. Thus, this witness did not remain consistent in his testimony. PW-7 further admitted in his cross-examination that he did not see the appellant committing theft of electricity and that he named the appellant mainly on the basis of information supplied by Anil Pandey. He also admitted that no document showing the appellant’s title or ownership over the alleged premises was produced at the spot. The other prosecution witnesses deposed in similar terms regarding the source of their knowledge about the appellant’s alleged involvement in the theft of electricity at the premises in question.

14.2. In view of the above, the prosecution has failed to establish the appellant’s connection either in the form of his possession or control, or ownership over the alleged premises where electricity was allegedly being used illegally.

Accordingly, I find substance and merit in the first two contentions raised on behalf of the appellant.

15. The third contention raised by learned counsel for the appellant is that the alleged act was treated as punishable under Section 135(1) of the Electricity Act and, considering the nature of the allegation, the offence would fall under Section 135(1)(a) of the Electricity Act, which is punishable with imprisonment for a term which may extend to three years, or with fine, or with both. It is contended that in view of the nature of punishment prescribed, a formal charge ought to have been framed against the appellant. But the learned trial court merely explained the substance of the accusation without framing a charge, which, according to the appellant, has seriously prejudiced his defence and vitiated the entire trial.

16. Upon perusal of the record, I find no substance in the aforesaid contention. Although the alleged offence under Section 135(1)(a) of the Electricity Act is punishable with imprisonment which may extend to three years, the appellant has failed to demonstrate any specific prejudice which is claimed to have caused to him merely on account of non-framing of a formal charge. From the evidences on record, it appears that the appellant defended himself effectively and was fully aware of the nature of the accusation levelled against him. Therefore, the omission to frame a formal charge has not vitiated the trial.

17. The fourth contention raised by learned counsel for the appellant is that, as per the seizure list appended to the FIR, several electrical equipments, such as wires, motors, and starters, were allegedly seized from the premises, but none of these seized articles was produced before the trial court. It is submitted that the prosecution is not entitled to the benefit of the proviso appended to Section 135(1) of the Electricity Act to draw the adverse presumption that electricity was being consumed or used illegally by the appellant with the aid of the seized articles. It is argued that for drawing such a presumption, the prosecution was required to prove the existence and recovery of the alleged articles, for which the seized equipments constituted the best evidence but the failure of the prosecution to produce the seized articles before the trial court, without any explanation, operates against the prosecution case.

17.1. In support of the aforesaid contention, learned counsel for the appellant has placed reliance upon the judgment of the Hon'ble Supreme Court, passed in ***Mahaveer vs. State of Maharashtra and Another***, reported in **2025 SCC OnLine SC**

2180. The relevant paragraph **No. 13**, upon which reliance has been placed, is reproduced hereinbelow:

> ***"13.*** *A perusal of Section 39 of the Act reveals that any person who dishonestly abstracts, consumes or uses any energy commits theft of energy. The second part of the Section provides that if it is proved that any artificial means or the means that have not been authorised by the licensee, are used in such theft of energy till the contrary is proved, it shall be assumed and presumed that such theft has been committed by the consumer. What is obvious from the above is that for the presumption against the consumer to take effect, it must be proved that an artificial means or a means not authorised by the licensee had been used in committing the theft. In other words, the presumption is not of automatic application, and instead, something is required to be established for it to apply. In the instant case, therefore, it must be established by the MSEB that an artificial means had been employed."*

18. I find force in the aforesaid contention. The seized articles, such as wires, motors, starters, etc., ought to have been produced before the trial court by the prosecution as production of the seized materials is of vital importance in cases of electricity theft, particularly when the alleged offender was admittedly not found present at the place of occurrence at the time of raid and has taken the defence that he had no connection with the alleged premises and that the premises were in the possession of some other person, as in the present case.

18.1. It is settled law that where the commission of an offence is based upon the use of specific equipment or materials which have been seized by the police, the best evidence would be the seized articles themselves, which ought to have been produced during trial and marked as material exhibits. In this regard, I would like to refer to the judgment of the Hon'ble Supreme Court, passed in ***Jitendra and Another vs. State of M.P.***, reported in **(2004) 10 SCC 562**, wherein, in paragraph **No. 6**, it has been held as under:

> ***"6.** In our view,………….. The best evidence would have been the seized materials which ought to have been produced during the trial and marked as material objects. There is no explanation for this failure to produce them. Mere oral evidence as to their features and production of panchnama does not discharge the heavy burden which lies on the prosecution, particularly where the offence is punishable with a stringent sentence as under the NDPS Act. In this case, we notice that panchas have turned hostile so the panchnama is nothing but a document written by the police officer concerned……."*

18.2. During the course of arguments, learned APP could not furnish any plausible explanation for non-production of the seized articles before the trial court. Though it was contended that the appellant had filed an application before the trial court seeking release of the seized articles in his favour, which was allowed, and that such conduct amounts to appellant's admission of ownership over the seized articles as well as the premises.

18.3. The above submission made by learned APP cannot be accepted. From perusal of the trial court's record, it is evident that although such an application was filed, however, the prosecution cannot be absolved of its primary and unshiftable burden to establish the appellant's possession, control, or ownership over the alleged premises where electricity was allegedly being used illegally. Mere filing of such an application does not *ipso facto* establish that only the appellant was responsible for running the alleged plastic manufacturing unit by illegal consumption of electricity, particularly when the prosecution failed to adduce satisfactory ocular or documentary evidence to establish his connection with the premises. Moreover, the said application was neither exhibited during trial nor was the appellant afforded an opportunity to explain the circumstances under which the application was filed. In such circumstances, it would be wholly unsafe and improper to fasten criminal liability upon the appellant merely on the basis of the said application.

19. The fifth contention raised by learned counsel for the appellant is that while calculating the loss allegedly caused to the Electricity Department, the mandatory provisions of Section 126 of the Electricity Act as well as the procedure prescribed under Clause 11.2.3 of the Bihar Electricity Supply Code, 2007, framed under the Electricity Act, 2003, were not followed by the raiding party.

20. I find substance in the aforesaid contention. The FIR and the seizure list do not disclose the method adopted for calculating the alleged loss to the Electricity Department. As per Section 126 of the Electricity Act, upon inspection, if the Assessing Officer comes to the conclusion that a person is indulging in unauthorized use of electricity, he is required to make a provisional assessment to the best of his judgment and serve the same upon the concerned person or the person in charge of the premises, thereby affording an opportunity to file objections.

20.1. In the present case, neither the FIR nor the seizure memo demonstrates compliance with the provisions of Section 126 of the Electricity Act. Nevertheless, the learned trial court, relying mainly on the alleged loss of Rs. 43,77,888/- shown in the FIR, imposed a fine of Rs. 1,31,33,664/- upon the appellant. Such an approach is legally unsustainable. Before fastening such heavy financial liability, the trial court was required to satisfy itself regarding the correctness of the method adopted for calculating the loss and the due compliance of the mandatory statutory provisions, which was not done in the present case.

Conclusion :-

21. In view of the facts and circumstances discussed hereinabove and the evidences adduced by the prosecution, I am constrained to hold that the prosecution has miserably failed to establish the appellant's connection, possession, control, or ownership over the alleged premises where the plastic manufacturing unit was allegedly being run by illegal consumption of electricity. The very foundation upon which liability was sought to be fastened upon the appellant is fragile and unreliable. The non-examination of the Investigating Officer proved fatal to the prosecution, particularly when the alleged disclosure of Anil Pandey, who was subsequently found innocent, formed the basis of implicating the appellant. The prosecution also failed to explain why independent witnesses were not associated with the search and seizure proceedings despite their presence at the spot. Further, the prosecution could not justify compliance with the provisions of Section 126 of the Electricity Act while calculating the alleged loss, which was relied upon by the trial court to impose an exorbitant fine. Accordingly, the impugned judgment of conviction and order of sentence passed against the appellant are not sustainable in the eyes of law and are hereby set aside. The appeal stands allowed.

22. The appellant is on bail, accordingly, he and his sureties are discharged from the liabilities arising out of their respective bail bonds.

23. Let the records of the trial court along with a copy of this judgment be transmitted forthwith to the trial court for necessary compliance.

(Shailendra Singh, J)

annu/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27.01.2026
Transmission Date	27.01.2026