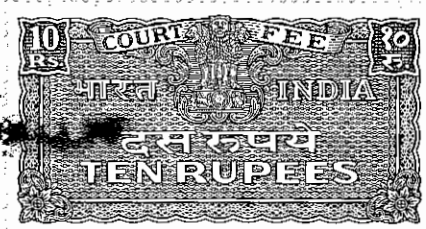


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Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

CR.M.P. NO. 146 OF 2010

AggA 20/10

APPELLANT :
COMPLAINANT

Chhattisgarh Rajya Vidyuta
Mandal Bilaspur through N. K.
Rai, ^{Aged - about 50 yrs.} Assistant Engineer,
Chhattisgarh Rajya Vidyuta
Mandal Eastern Zone, City Division
Torwa, Tahsil and District Bilaspur
(C.G.).

P.S. No. 1196/10
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VERSUS

RESPONDENT :
ACCUSED PERSON

Sunderlal Makhija, aged 53
years Son of Jhammarlal, resident
of Gurunanak Chowk, Torba,
Police Station Torwa, Tahsil and
District Bilaspur (C.G.).

APPLICATION
APPEAL FOR GRANT OF SPECIAL LEAVE UNDER SECTION 378
(3) OF THE CODE OF CRIMINAL PROCEDURE, 1973

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQUITTAL APPEAL NO. 201 OF 2010

APPELLANT
(Complainant)

Chhattisgarh Rajya
Vidyuta Mandal, Bilaspur

VERSUS

RESPONDENT
(Accused)

Sunderlal Makhija

Present: Mr. M.D. Sharma, Advocate, for the Appellant.
Mr. Ravindra Agrawal, Advocate, for the Respondent.

(Single Bench : Hon'ble Mr. P. Sam Koshy, J.)

JUDGEMENT

(30 -01-2015)

(1) The present Acquittal Appeal has been preferred by the Appellant against the judgement dated 22.10.2009 passed by the Special Judge (Electricity Act), Bilaspur, in Electricity Criminal Case No.110/2008, whereby the Respondent has been acquitted of the charge under Section 135 of the Electricity Act, 2003.

(2) Brief facts giving rise to the filing of the instant Acquittal Appeal as per the complaint are that on 1.7.2008 an inspection of the premises of the Respondent was made by the vigilance team of the Electricity Board consisting of Shri A.K. Shrivastava, Executive Engineer and Shri R.K. Patel, Assistant Engineer along with Shri I.P. Chandra, Security Personnel and Shri J.D. Manikpuri, Lineman. On inspection, it was found by the officers of the vigilance team that at his fruit shop the Respondent was using the electricity connection (bearing Service No.001/06778-50-01-77-02-030536) which was provided in the name of Smt. Anubala Tiwari and that in the said electricity connection by connecting the phase wire, prior to the meter terminal, with the outgoing wire of the meter with the aid of PVC copper flexible multi-strand wire, the Respondent was consuming the electricity illegally. Thus, the Respondent was found to be committing the theft of electricity by bypassing the service meter. In this connection, spot inspection report and panchnama

were prepared and seizure of about 1^{1/2} meter of the said PVC copper flexible multi-strand wire which was used by the Respondent in the alleged theft of electricity was also done. Thereafter, assessment was made in respect of the illegal consumption of the electricity by the Respondent and after that the matter was reported to the Police on 26.7.2008. Thereafter, a complaint case (registered as 'Electricity Criminal Case No.110/2008') was filed before the Special Judge (Electricity Act), Bilaspur, against the Respondent for having committed the offence under Section 135 of the Electricity Act, 2003, and the matter was put to trial.

(3) During the course of trial, four witnesses i.e. Narendra Kumar Rai, Assistant Engineer (Revenue), R.K. Patel, Assistant Engineer, A.K. Shrivastava, Executive Engineer and Ishwar Prasad Chandra, Security Personnel, were examined as PW-1, PW-2, PW-3 and PW-4, respectively, on behalf of the prosecution in support of its case. Statement of the accused Respondent was recorded under Section 313 of CrPC in which he denied the circumstances appearing against him in the prosecution case and pleaded innocence and false implication.

(4) After completion of the trial, the Court below, i.e., the Special Court constituted under the Electricity Act, vide its judgement dated 22.10.2009 reached to the conclusion that the prosecution has not been able to prove its case beyond reasonable doubt against the Respondent and, therefore, giving the benefit of doubt the Respondent was acquitted of the charge leveled against him under Section 135 of the Electricity Act.

(5) It is this judgement of acquittal dated 22.10.2009 which is under challenge in the instant Acquittal Appeal.

(6) Learned Counsel for the Appellant, Shri M.D. Sharma, has submitted that in fact the Court below has too technically not accepting the case of the prosecution acquitted the Respondent. Learned Counsel for the Appellant also submits that the Court

below has not properly appreciated the oral and documentary evidence adduced by the prosecution and has discarded the admissible evidence and, in the course, the Court below has decided the matter contrary to law. It was also contended by the learned Counsel for the Appellant that the third proviso to Section 135 of Electricity Act, 2003 clearly gives a benefit of presumption to be made and the Court below has totally ignored the said third proviso to Section 135 of the Electricity Act, 2003 that unless the contrary is proved it has to be presumed that the accused/Respondent was dishonestly using the electricity of the Appellant/Electricity Board. Thus, the Counsel for the Appellant submits that the instant Acquittal Appeal deserves to be allowed and by setting aside the impugned judgement passed by the Court below, the Respondent be convicted for the offence under Section 135 of the Electricity Act, 2003.

(7) Per contra, Shri Ravindra Agrawal, learned Counsel for the Respondent, opposing the submissions put forth by the learned Counsel for the Appellant, has vehemently argued that a plain perusal of the finding arrived at by the Court below itself would reveal that the entire prosecution case is done in a half hearted manner and no efforts have been made by the prosecution to prove the case beyond all reasonable doubt. Learned Counsel for the Respondent also submitted that even if we peruse the records to assess the manner in which the investigation was conducted it would reflect that the prosecution has not made any serious efforts for proving the charge levelled against the Respondent in a manner as is required under the provisions of law. It was also contended by the learned Counsel for the Respondent that if we peruse the evidences which have come on record it would show that there are a lot of discrepancies, contradictions and omissions in the evidence of the prosecution witnesses and, therefore, the benefit of doubt should be given to the Respondent. Learned Counsel for the Respondent, therefore, prayed that the instant Appeal being devoid of merits is liable to be rejected.

(8) Considering the rival contentions put forth by learned Counsel appearing for either side and on perusal of the materials available on record including the impugned judgement, if we see the evidences that have been lead on behalf of the prosecution it reflects that the prosecution has failed to prove its case beyond reasonable doubt and that there are many lacunas on the part of the prosecution in establishing its case inasmuch as from the cross-examination of PW-3 A.K. Shrivastava itself it is clear that prior to the inspection, the inspecting team had not given any written notice in respect of the search and also in respect of the entry to the alleged premises of the Respondent, as is required under Section 135 (3) of the Electricity Act. Further, neither the prosecution has been able to produce any document to ascertain the fact that the Respondent was in-fact a tenant of Smt. Anubala Tiwari in whose name the said service meter was provided nor any statement of the said consumer i.e. Smt. Anubala Tiwari has been recorded in this regard. Similarly, in the entire case of the prosecution, there was no independent witness to support the case of the prosecution, which also is a procedure contrary to the provisions of law. Likewise, as far as tampering of meter is concerned there is a material contradiction in the evidence of PW-3 A.K. Shrivastava when compared to the evidence of PW-2 R.K. Patel. Further, from the perusal of Column 12 of the spot inspection report (Ex.P-2) which is said to have been prepared by PW-2 R.K. Patel on the instructions/directions of PW-3 A.K. Shrivastava it is revealed that the meter was found to be working, however when we see the billing details (Ex.P-4) prepared by PW-3 A.K. Shrivastava it has been mentioned therein that the meter was found to be not working and it required to be changed immediately, whereas the said witness PW-3 A.K. Shrivastava in his cross-examination has stated that there was no tampering with the meter and therefore the meter was not seized. Thus, for the said reasons there is a great element of doubt in the prosecution story.

Another element of doubt in the prosecution story is in respect of the fact that if the Respondent could have put his signature on the spot inspection report (Ex.P-2), there appears to be no reason whatsoever for the Respondent for not putting his signature on the Panchnama (Ex.P-3). Thus, there is an element of doubt as regards the preparation of the Panchnama in the presence of the Respondent and it also gives a strong inference that the said Panchnama perhaps has been prepared subsequently by the concerned officer at his office. In addition, as regards the assessment made that the Respondent had put the Electricity Board to a loss of Rs.46,069/- by committing the alleged theft of electricity, the same was not properly done as there was no electrical equipments, as has been mentioned in the spot inspection report (Ex.P-2), were seized. This act on the part of the officers of the Electricity Board also gives an element of doubt in the alleged story of theft of electricity by the Respondent. Thus, firstly the prosecution has failed to comply with the mandatory requirements of the provisions of the Electricity Act, 2003 and secondly the prosecution has miserably failed to establish its case. Therefore, it cannot be said that the prosecution has been able to establish or prove its case in respect of committing the offence of theft of electricity by the Respondent, beyond all reasonable doubts. Under these circumstances, this Court is of the opinion that no strong case is made out by the Appellant calling for an interference with the judgement of acquittal passed by the Court below.

(9) It is settled position of law that in an appeal against an order of acquittal only in exceptional cases where there are compelling circumstances and the judgment under appeal is found to be perverse can the Appellate Court interfere with the order of acquittal. Recently, Hon'ble the Supreme Court in the case of Phula Singh Vs. State of Himachal Pradesh, AIR 2014 SC 1256, in Para-10, has in very categorical term held that: "*The appellate Court should bear in mind the presumption of innocence*

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of the accused and further that the trial Court's acquittal bolsters the presumption of his innocence. Interference in a routine manner where the other view is possible should be avoided, unless there are good reasons for interference."

(10) Once there is an order of acquittal in favour of the alleged accused person, the same should not be interfered with very lightly unless there is a prima facie strong case with cogent, sufficient and substantial proof in favour of the prosecution brought before the Court below and which has not been considered or has been overlooked by the Court below, only then can the order of acquittal have a scope of interference.

The law in this regard is by now well settled in a series of judgement of the Hon'ble Supreme Court wherein the Supreme Court has in very categorical terms held that whenever there is an order of acquittal, the higher Courts not to upset the holding without there being very convincing reasons and comprehensive considerations.

That while reappreciating and reconsidering the evidence upon which the order of acquittal is based, certain other principles pertaining to other facets are to be borne in mind.

An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by trial Court.

If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court. The High Court is also required to see that unless there are substantial and compelling circumstances, the order of acquittal is not required to be reversed in appeal.

It is trite here to refer to a few decisions in this regard by the Hon'ble Supreme Court:

- 2007 (4) SCC 415 – Chandrappa v. State of Karnataka.
- 2012 (1) SCC 602 – State of Rajasthan v. Shera Ram.
- 2013 (5) SCC 705 – Shivasharanappa v. State of Karnataka.
- AIR 2009 SC 1542 (Para 12) – State of Punjab v. Sukhchain Singh & Anr.
- 2012 (6) SCC 589 (Para-27) – Rohtash v. State of Haryana.

(11) For the foregoing reasons, this Court is of the considered view that the finding arrived at by the Court below is purely in accordance with law and the Court below has not committed any error of law in reaching to the said conclusion of acquitting the Respondent of the charge leveled against him under Section 135 of the Electricity Act, 2003.

(12) The Appeal thus fails and is accordingly dismissed being totally devoid of merits.

/sky/

Sd/-
P. Sam Koshy
Judge