

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL NO. 1530 of 2017**

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PANCHAL MANSUKHBHAI CHATURBHAI**Versus****STATE OF GUJARAT**

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Appearance:**MR PRATIK B BAROT(3711) for the PETITIONER(s) No. 1****MR LR PUJARI, ADDL.PUBLIC PROSECUTOR(2) for the RESPONDENT(s)
No. 1**

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CORAM: HONOURABLE MS JUSTICE SONIA GOKANI**Date : 19/12/2017****ORAL ORDER**

1.This Court has at an admission stage finally heard the learned counsel appearing for both the sides.

2.This is an appeal preferred by the appellant challenging the judgment and order of conviction and sentence dated September 27, 2017, rendered by the learned Special Judge (Electricity), Mehsana, while dealing with Special Electricity Case No.2 of 2017, whereby the learned Special Judge has convicted the appellant for the offence punishable under section 135(1)(b) of the Indian Electricity Act, 2003 (hereinafter

referred to as 'the Act') and sentenced him to undergo simple imprisonment for a period of six months and to pay three times the bill amount of Rs.3146.78 ps. towards fine i.e. Rs.9440/-.

3.The facts of the case bereft of details are as follows :

3.1 The case of the prosecution is that the appellant was the customer of the Uttar Gujarat Vij Company Ltd. (hereinafter referred to as 'the UGVCL'). A raid was carried out on October 14, 2016 at 10-35 a.m. at the premises of the appellant at Varkhadiya, Taluka Kadi, District Mehsana. The tampering in the electricity meter was found by the UGVCL authority, whereby applying the flexible wires upon a service wire of the UGVCL, as also attaching the same with the direct meter load, ensuring that the meter reading is not affected, which was a sort of permanent arrangement and thereby, the theft of Rs.3146.78 ps. was committed by the appellant at his residential premises.

3.2 It is further the case of the prosecution that on the earlier occasion also i.e. on September 18, 2014, the appellant was found with the tampered meter and electricity theft of Rs.874.73 ps. was committed by him and even an offence was registered against him bearing II-C.R. No.5904 of 2014.

3.3 This was the second time the appellant was caught by the UGVCL authority and Shri Hitesh Dahnjibhai Prajapati, Deputy Engineer of the UGVCL had registered the first information report with Gujarat Urja Vikas Nigam Limited Police Station, Sabarmati, Ahmedabad, bearing II-C.R. No.5721 of 2016. After due investigation, the chargesheet came to be filed against the appellant. However, as the offence under the Electricity Act is specifically triable by the Special Court constituted under the Act, the case was then committed to the Special Court at Mehsana and it was registered as Special Electricity Case No.2 of 2017.

3.4 The charge came to be framed against the appellant for the offence punishable under section 135(1)(b) of the Act and the appellant pleaded not guilty to the charge and, therefore, the prosecution has examined in all eight witnesses and after recording further statement of the appellant under section 313 of the Code of Criminal Procedure, as also after hearing both the sides extensively, the trial Court vide impugned judgment and order convicted and sentenced the appellant under section 135(1)(b) of the Act. Hence, the present appeal.

4. The main thrust on the part of the appellant is that the details of alleged tampered meter were never established and there were many households in the neighbourhood, however, no independent witness has been examined. There was also no clear instruction with regard to the checking at his residence.

5. Shri Pratik Barot, learned counsel appearing for the appellant, has fervently urged that the

earlier offence registered against the appellant has resulted into his acquittal as compounding under section 152 of the Act has been made possible statutorily. His having paid the amount of fine would statutorily give him the status of an acquitted person. Moreover, there is no cogent evidence by which the prosecution established pointing out the guilt of the appellant. It is further his say that he has paid the amount of fine i.e. three times the bill amount, as per the impugned order and there is nothing to indicate any seriousness in the offence, where the punishment could also be only with the fine. On inquiry, it is submitted to this Court that not for a single day, the appellant has been sent to the prison in the present case.

6. Shri L.R. Pujari, learned Additional Public Prosecutor, has strongly urged that this is the second offence of the appellant and, therefore, the same be viewed very strictly. Again, according to the learned Additional Public Prosecutor, the appellant has not mended his

ways. There is no requirement for this Court to be lenient.

6.1 According to the learned Additional Public Prosecutor, there is a voluminous evidence through which the prosecution has proved the guilt of the appellant beyond reasonable doubt. Merely because this Court could reach to other conclusion other than the one arrived at by the trial Court, that itself may not be a ground for reversing the order of conviction and sentence.

7. This Court has called for the Record and Proceedings (R&P) of the matter from the trial Court and it has perused the same with the help of the learned counsel appearing for the both the sides and it could be noticed that the PW-1-Hitesh Dhanjibhai Prajapati, who was a senior member of the raiding party and who is also the first informant, has given the entire details as to how the electricity theft in the case of the present appellant had been committed. He has categorically stated that the amount of bill has

been duly paid by the appellant. He had also proved through his oral evidence and substantiated the same with the documentary evidence that on the earlier occasion also, the appellant had committed an offence, wherein the appellant had urged the Court to compound the offence under section 152 of the Act, which was since permitted by the Court, he had not to undergo any imprisonment, however, that aspect cannot be lost sight off by the trial Court.

8. The panchnama which has been carried out in presence of two panchas i.e. Govindbhai Dhanabhai Bharvad and Prahladbhai Amubhai Thakor, indicates as to how the tampering had been done at the residence of the appellant. Although one of the panchas i.e. Prahladbhai Thakor, did not support the case of the prosecution, except his signature below the panchnama.

9. PW-4 Anand Vijaykumar Joshi, was also discharging his duty with the UGVCL when he was instructed by his office at Mehsana to go on a

raid and as per the instructions of his Deputy Engineer, he had gone to Kadi and had checked the electricity line at Varkhadiya. A pole was installed at the residence of the appellant. On checking the electricity line, it was found that the service wire from the pole to meter, when was examined, there was some puncture in the wire and it was from there that they realised that another device was worked out to stop the meter. The wife of the appellant was present at the site. They also realised that the use of electricity and they had to check the meter by calling the earlier electricity bill of the appellant. She had been explained that such use of electricity is illegal and unauthorised. Her signature was also taken on the report. This witness was Junior Engineer when he went for raid with his team. His superior officers had directed them for the raid. There were 10 to 15 persons, who had gathered, to ensure that they do not remove the meter. The report of inquiry and raid carried out at the residential premises

of the appellant is forming a part of the record.

10. Likewise, PW-5 Vishvasbhai Sojaji Damor, who was serving with the then GEB and was a part of the raiding team, has stated along the line of the evidence of PW-1. He has also been categorical that on checking the pole and meter, it was realised that wire was tampered and the wire was joined in the outcoming wire so that the meter was stopped reading.

11. PW-7 Bhikhabhai Madhabhai Raval, Investigating Officer, who was posted at GUVNL Police Station, Sabarmati, Ahmedabad, who had investigated the offence punishable under section 135(1)(b) of the Act registered vide II-C.R. No.5721 of 2016. This witness had investigated the offence and had also identified the appellant. All the documents have been duly proved through him. This witness has agreed in the cross-examination that the complaint had been given belatedly by five days. He did not agree that there was no statement recorded of

any neutral witness. There is no much cross-examination of the Investigating Officer.

12. PW-8 Satishbhai Govindbhai Parmar, who is an Electrical Assistant, who had accompanied the complainant in the raid. Shri A.V. Joshi, who was in-charge had instructed them orally to carry out the raid. They could not seize the meter as many people had gathered at the place. In the further statement recorded of the appellant, except the same, they have not stated anything.

13. The trial Court after considering and appreciating the entire evidence convicted the appellant for the offence punishable under section 135(1)(b) of the Act and sentenced as aforesaid.

14. Independently examining the entire material on record, it appears that the raid was carried out on the scheduled date at the instructions of the superiors and PW-4 Shri Anand Vijaykumar Joshi, was in-charge of the raiding party. The other members of the raiding party, who were the

employees of the Electricity Company, have elaborately stated before the Court concerned and this has been proved in the oral version and in the examination-in-chief as also in the cross-examination as to how the tampering was done. The detailed discussion as to how there was tampering from the pole to the meter at the residence of the appellant, when substantiated by the documentary evidence, viz. report which has been made at the time of raid, report prepared and submitted to the superior officers, previous electricity bill, matching of the meter number, coupled with the details of the first offence registered against the present appellant, which resulted into compounding of the same and only payment of charges, cumulatively go to prove that the trial Court has committed no error in holding the present appellant guilty of the offence.

15. At this stage, it would be apt to regurgitate the provisions of section 135 of the Act, which read as under :

"135. Theft of electricity :

(1) Whoever, dishonestly,-

(a) taps, makes or causes to be made any connection with overhead, under- ground or under water lines or cables, or service wires, or service facilities of a licensee; or supplier, as the case may be; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity, or

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorised, so as to abstract or consume or use electricity shall be punishable with

imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use-

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second or subsequent conviction of a person whose the load abstracted, consumed, or

used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

Provided also that if it is proved that any artificial means or means not authorised by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(1-A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, upon detection of such theft of electricity, immediately disconnect the supply of electricity: Provided that only such officer of the licensee or supplier, as authorised for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be,

of the rank higher than the rank so authorised shall disconnect the supply of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hours from the time of such disconnection:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.

(2) Any officer of the licensee or supplier as the case may be, authorised in this behalf by the State Government may-

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been or is being used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been or is being used for unauthorised use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act."

16. The proviso to section 135(1) provides that when the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use (i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity, otherwise the imprisonment prescribed is to an extent of three years or with fine or with both.

17. It is not in dispute that the appellant had yet another first information report registered against him for which he was tried, however, he had compounded the offence under section 152 of the Act.

18. At this stage it would be apt to reproduce the provisions of section 152 of the Act, which read as under :

"152. Compounding of offences :

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Appropriate Government or any officer authorised by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of the theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table below :

TABLE

<i>Nature of Service</i>	<i>Rate at which the sum of money for compounding to be collected per Kilowatt (KW)/Horse Power (HP) or part thereof for Low Low Tension (LT) supply and per Kilo Volt Ampere(KVA) of contracted demand for High Tension (HT)</i>
<i>(1)</i>	<i>(2)</i>
<i>1. Industrial Service</i>	<i>Twenty Thousand Rupees</i>
<i>2. Commercial Service</i>	<i>Ten Thousand Rupees</i>

<i>3. Agricultural Service</i>	<i>Two Thousand Rupees</i>
<i>4. Other services</i>	<i>Four Thousand Rupees</i>

Provided that the Appropriate Government may, by notification in the Official Gazette, amend the rates specified in the Table above.

(2) On payment of the sum of money in accordance with sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal Court.

(3) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973.

(4) The compounding of an offence under sub-section (1) shall be allowed only once for any person or consumer."

19. It is, thus, clear that on payment of the amount as indicated in section 152 of the Act, the appellant who must have been in custody, could be set free and on acceptance of such money on compounding the offence, would be deemed to be amounting to acquittal as per the provision of section 300 of the Code of Criminal Procedure.

20. In the present case, the compounding of offence having been made, such acceptance of the money for compounding the offence in accordance with sub-section (3) of section 152 of the Act shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure. In such eventuality, although this is the second offence, however, the first conviction and since the load did not exceed 10 kilowatt, as per the provisions of section 135(1) of the Act, the fine imposed shall not be less than three times the amount of gain. In view of the aforesaid discussion, this Court is of the opinion that no interference is desired in the judgment and order of conviction

passed by the trial Court as also the substantiating reasonings for arriving at such conclusion.

21. Considering the amount of fine, which has already been paid by the appellant to the State, the only aspect which deserves consideration in this appeal is the period of punishment prescribed by the trial Court concerned. According to the learned counsel appearing for the appellant Shri Pratik Barot, the appellant is a small time vendor at village level and he also has his entire family to sustain and, therefore, this Court may not impose punishment of imprisonment, which has been resisted by the otherside on the ground of his repeated conduct.

22. Bearing in mind the fact that the attempt on the part of the appellant is to use the electricity unauthorisedly and by tampering the meter, he has attempted to dishonestly use the electricity through a tampered meter and thereby, causing financial loss to the UGVCL, it would be in the fitness of things if the the

appellant-convict is directed to pay additional fine in lieu of sentence of imprisonment.

23. For the foregoing reasons, the present appeal partly succeeds and the same is, accordingly, partly allowed. The impugned judgment and order of conviction is confirmed. However, the order of sentence is modified and instead of undergoing imprisonment, now the appellant-convict shall pay the amount of fine to the tune of 15 times of the bill i.e. Rs.45,000/-, over and above the amount of fine already paid by him.

It is clarified that the appellant-convict shall pay such amount of fine within a period of 15 (fifteen) days from the date of receipt of a copy of this order, failing which he shall undergo simple imprisonment for a period of six months being the in default punishment.

Disposed of accordingly.

Direct Service is permitted.

(SONIA GOKANI, J)

Aakar