



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Order: 30th March, 2022**

+ **CRL.A. 813/2007 & CRL. M. A. 14310/2007**

N.D.P.L.

..... Appellant

Through: **Mr. Abhay Kumar, Mr. Kumar
Milind and Mr. Shagun Ruhil,
Advocates**

versus

AMAN NASHA MUKTI KENDRA & ANR Respondents

Through: **Appearance not given**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present Criminal Appeal under Section 156 of the Electricity Act, 2003 has been filed against the final order/judgment of acquittal dated 1st August, 2007 passed by Learned Additional Sessions Judge (Electricity, Wazirpur Industrial Area, Delhi) (hereinafter "Learned Trial Court") in Criminal Case No. 321/2006.

2. The brief facts of the case are that the appellant is a Limited Company duly incorporated under the Companies Act, 1956 having its registered office at- 33 KV Grid Substation Building, Hudson Lines,



Kingsway Camp, Delhi-110009 and also having its enforcement assessment Cell, opposite C-2 Block, Keshavpuram, Lawrence Road, Delhi-110035. The appellant company is engaged in the business of distribution of electricity in the North and North-West Delhi.

3. On 18th June, 2005, a joint inspection team of the appellant company had inspected the premises of respondent no. 1/ accused. The said inspection was done under the direct supervision of Manager (ENF) NW, in exercise of the powers vested in it under Section 135 of the Electricity Act, 2003 and in accordance with Section 25 of the DERC (Performance Standards-Metering and Billing) Regulations, 2002. The premises of the respondent no. 1/ accused were using and consuming the electricity being distributed and supplied by the Appellant-Company. The aforesaid inspection was conducted in presence of the accused/representative/employees of the accused and the joint inspection team was comprised of Sh. Virender Kumar-Manager and Sh. Imran Khan - Officer ENF-NW. During the course of investigation of the aforesaid premises of the respondent no. 1/accused, the inspection team observed the following irregularities :-

"Consumer/user found indulged in direct theft of electricity by taking supply directly deliberately and illegally from N D P L LV main through 3 x 10 and 4 x 25 sq. mm. PVC cables.

Illegal wires / cables were removed from the site and bandied over to zonal staff vide Seizure Memo/ Paper Seal No. 51274 dated 18.6.05. Establishment type – Farm House".

4. The inspection team further found a connected total load of



14.313 KW against the sanctioned load of NIL KW. The members of the above said inspection team prepared, at site, an Inspection Report dated 18th June, 2005 bearing Serial Number 108062, the same was duly signed by all the members comprising the joint inspection team.

5. The joint inspection team had, thereafter, prepared a joint inspection report and recorded the following observations: -

"As per the observation made at site, user found indulged in direct theft of electricity by taking supply directly deliberately & illegally from N D P L LV mains through 3 x 10 sq. mm & 4 X 25 sq. mm PVC cables. Total connected load found 14.313 KW. Illegal wires/cables removed from site and handed over to zonal staff vide Seizure memo no. 51274 dt.18.6.2005.

Necessary photographs taken by M/s Navani Photo Studio."

6. In view of the aforesaid facts and on the basis of the inspection report dated 18th June, 2005, the appellant Company had raised a Final Assessment Bill dated 22nd June, 2005 for a sum of Rs. 4,12,201/- (Rs. Four Lakhs Twelve Thousand Two hundred and One only) against the respondent no. 1/accused to be deposited on or before 29th June, 2005. It was further stipulated in the said bill that if the respondent no. 1/accused fails to make the aforesaid payment in time, a late payment sur-charge (LPSC) shall be charged @ 1.5 % per month. The said final assessment bill dated 12th January, 2005 was tried to be served on the respondent no. 1/accused but he refused to receive the same and despite being aware of the said bill the respondent no. 1/accused continued to neglect to pay the same for a substantial period of time.



The appellant had filed the Criminal Complaint No. 321/2006 under Section 135 read with 138 of the Electricity Act, 2003.

7. Thereafter, pre-summoning evidence of the appellant's witnesses (CW-1 and CW-2) were recorded and accordingly based on the entire material, the order dated 21st July, 2006 was passed by the learned Trial Court whereby the respondent no. 1/accused was summoned and accordingly charges were framed under Section 135 of Electricity Act, 2003 on 21st November, 2006. After examining the witnesses and perusing the evidence on the record, the Learned Trial Court, has acquitted the respondent no. 1/accused vide order dated 1st August, 2007.

8. Hence, the instant appeal has been filed against the order dated 1st August, 2007 passed by the Learned Trial Court.

9. The learned counsel appearing on behalf of appellant submitted that the learned Trial Court has completely failed to appreciate the fact that not only a raid was conducted on 18th June, 2005 by the officials of the appellant but also that the respondent no. 1/accused was found to have been indulged/involved in the illegal act of intentional abstraction of electrical energy without there being any meter at the site in question and hence the learned Trial Court was not justified in law and completely ignored the facts/records shown during the raid on the premises in question on 18th June, 2005.

10. It is further submitted that the learned Trial Court has erroneously over-looked the contents of observations given by the joint inspection team on 18th June, 2005. It is also submitted that once the application under Section 311 Cr.P.C. was allowed vide order



dated 13th July, 2007 and the matter was put up for the completion of the appellant's evidence, it was necessary for the Trial Court to allow the appellant to complete its witness. From the records, it is clear that on 1st August, 2007, PW-2 was present for examination-in-chief also but his evidence could not be concluded, on the issue of case material, as the case property was not available before the Court. However, from the statement of PW-2 recorded by the Trial Court on 1st August, 2007, the following facts became clear:

- i. that a raiding party was duly constituted in which PW-2 had also participated,
- ii. that a raid was also conducted,
- iii. that the facts regarding the ongoing theft of the electricity was clearly stated by the said witness PW-2 with material particulars of all the items and wires etc.,
- iv. the facts regarding the photographs having been taken was also stated by the said witness,
- v. that the inspection report, joint inspection report and seizure memo were duly exhibited by the said witness as PW-2/1 to PW-2/3 respectively.

11. It is also submitted by the learned counsel for the appellant that the Trial Court has completely failed to appreciate the fact that all the ingredients of the offences under Section 135/138 of the Electricity Act was established by the appellant as against the respondent no. 1/accused.



12. Learned counsel appearing on behalf of the appellant submitted that in view of the above stated facts and circumstances, the order passed by the learned Additional Sessions Judge (Electricity, Wazirpur Industrial Area, Delhi) dated 1st August, 2007 is bad in law and facts. It is submitted that therefore the instant appeal may be allowed and impugned order dated 1st August 2007 is to be set aside.

13. *Per contra*, the learned counsel appearing on behalf of respondent no. 1/accused vehemently opposed the instant appeal and submitted that there is no illegality in the impugned order dated 1st August, 2007 passed by the Learned Trial Court. It is submitted that the order/judgment passed by the Learned Additional Sessions Judge, after assigning the detailed reasons, has acquitted the respondent no. 1/accused from the offence punishable under Section 135 of the Electricity Act.

14. Learned counsel submitted that the statement of PW-1 did not disclose, that he has any personal knowledge about the direct involvement of the appellant in theft of the electricity. It is further submitted that the examination-in-chief of PW-2 has also not been completed. Since the examination-in-chief of PW-2 was not completed, therefore, the said statement cannot undergo the test of cross-examination and be read as evidence.

15. Learned counsel submitted that the Court below has not found any evidence on record to examine the respondent no.1/ accused under Section 313 of the Cr.P.C. It is further submitted that the alleged incident took place in the year 2005 i.e. 17 years ago. The Court below, after examining the entire facts and circumstances found that



no case is made out against the respondent no. 1/ accused as alleged in the complaint for offence punishable under Section 135 of the Electricity Act. The appellant has failed to prove its case beyond reasonable doubt and therefore, the respondent no.1/ accused has been rightly acquitted by the Court below. Hence, the instant appeal is devoid by any merit and is to be dismissed.

16. Heard learned counsel for the parties and perused the record.

17. The learned counsel for the appellant submitted that the Court below was erred in acquitting the respondent no. 1/ accused and drew the attention of this Court to the evidence PW-1 and PW-2 and contended that both witnesses have clearly supported the case of the appellant and established the guilt of the respondent no. 1/ accused. It is also submitted by the learned counsel for the appellant that as per the joint inspection report, the electricity theft was going on from the premises in question resulting into the wrongful loss to the appellant/Company. The respondent no. 1/ accused was summoned by the Court below vide order dated 21st July, 2006 and he has been charged for offence punishable under Section 135 of the Electricity Act, to which he has been pleaded not guilty. The complainant was directed to lead evidence. Sh. Ashok Kumar Gupta, who is authorized representative of the complainant, was examined as PW-1. In his cross-examination, he has admitted that he does not have any personal knowledge about the facts of the case. The complainant did not examine any other witnesses, despite the opportunities given. Since, the complainant has failed to examine other witnesses, the Court below has closed prosecution evidence vide order dated 6th July, 2007.



18. On 13th July, 2007 an application under Section 311 of the Cr.P.C was filed on behalf of the complainant, which was allowed by the Court below subject to deposition of Rs. 5,000/- (Rupees Five Thousand Only) as cost in the office of DSLA. The cross-examination of PW-2 has admittedly not been completed as the complainant failed to deposit the cost in the office of DSLA as per the order of the Court below.

19. It is an admitted fact that PW-1 has not supported the case of the prosecution as he has no personal knowledge and also the examination-in-chief of PW-2 has not been completed, therefore, there is no witness on the record to support the case of the prosecution.

20. In view of the aforesaid facts, the Trial Court has acquitted the respondent no. 1/ accused vide order dated 1st August, 2007 from the offence punishable under Section 135 of the Electricity Act and also directed the amount of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only) paid by the respondent no. 1/ accused, be refunded to him alongwith interest @ 9% per annum within one month from the date of the pronouncement of the order/judgment by the Trial Court i.e. on 1st August, 2007. This appeal is filed against the aforesaid acquittal order before this Court. The Hon'ble Supreme Court is several cases held that in case of acquittal, there is double presumption in favour of the accused

21. In the case of ***Shiv Swaroop vs. R. Emperor***, AIR 1934, PC 227 (2), it is observed as under:-

“It cannot, however, be forgotten, 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 even person should be presumed to be innocent unless he is proved to be guilty by the competent Court of law. Secondly, the accused having secured an acquittal, the presumption of his innocence is certainly not weakened, but reinforced, reaffirmed and strengthened by the Trial Court. But, in exercise of the power conferred by the Court and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration of such matters

- i) as the view of the Trial Court Judge as to the credibility of the witness;*
- ii) the presumption of innocence in favour of the accused, the presumption certainly not weakened by the fact that he has been acquitted at his trial;*
- iii) The right of the accused to the benefit of any doubt; and*
- iv) The slowness of an Appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witness.*

The State, thus, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well-known and recognized in the administration of justice.”

22. In the case of **M.G. Aggarwal vs. State of Maharashtra AIR 1963 SC 200**, the Constitution Bench of the Hon'ble Supreme Court of India, held that the approach of the High Court (Appellate Court) in



dealing with an appeal against acquittal ought to be cautious because the presumption of innocence is in favour of the accused “*is not certainly weakened by the fact that he has been acquitted of his trial.*”

23. After perusal of the impugned order passed by the Court below and aforesaid discussions, this Court finds that while acquitting the respondent no.1/accused, the learned Trial Court has assigned reasonable reasons and rightly acquitted the respondent no. 1 for offence punishable under Section 135 of the Electricity Act. This Court does not find any reasonable ground or cogent reason to interfere in the acquittal order dated 1st August, 2007 passed by the Learned Trial Court.

24. Accordingly, the appeal is dismissed.

25. Pending application also stands disposed of.

CHANDRA DHARI SINGH, J

MARCH 30, 2022

Dy/ct