



**IN THE COURT OF THE I ADDITIONAL DISTRICT AND
SESSIONS JUDGE, TUMAKURU.**

Present:

Sri. Mohamed Ashraf Aris, B.A., LL.M.,
I Addl. District & Sessions Judge,
Tumakuru.

Dated this the 10th day August, 2026

Spl.C.No.384/2018

Complainant:

State by BESCO Vigilance
Police Station ,
Tumakuru.

(By learned Public Prosecutor, Tumakuru)

-VS-

Accused :

1. Sathish S/o Late Shivananjappa,
Aged about 44 years.
2. Kempananjamma
W/o late Shivananjappa,
Aged about 85 years.

Both are r/o Rangapura
Grama Panchayath,
Keregodu village,
Tiptur taluk, Tumakuru District.

(By Sri N.B., Advocate for A.1)

(By Sri H.S.G., Advocate for A.2)

- | | | |
|----------------------------------|---|------------|
| 1. Date of Commission of Offence | : | 02.03.2017 |
| 2. Date of Report of offence | : | 02.03.2017 |
| 3. Release of A. 1 | : | 03.12.2018 |



4. Release of A. 2 : 16.01.2019
5. Name of the complainant : S.K.Girish
6. Date of commencement of Evidence : 14.09.2021
7. Date of closing evidence : 23.09.2022
8. Offence complained of : Sec.135(1)(e) of Electricity Act , 2003.
9. Opinion of the Judge : Accused Nos.1 and 2 are acquitted for the offence punishable U/sec.135(1)(e) of Electricity Act, 2003.

J U D G M E N T

The charge sheet is filed against the accused No.1 and 2 by the BESCO Vigilance police alleging that they have been found selling 50% of the water from the borewell in Sy.No.268 by using the electric connection which was given for agriculture purpose and thereby used the electricity for commercial purpose i.e., for the purpose other than for which the usage of electricity was authorised and thereby, committed the offence punishable U/Sec.135(1)(e) of the Electricity Act, 2003.

2. The case of the prosecution in brief is as follows:



On 02.03.2017, when CW.1 to 4 and 8 inspected the land situated in Sy.No.268 belonging to accused No.2 who is the mother of accused No.1, it was found that the accused were pumping out water from the borewell which was dug for agriculture purpose and they were supplying water for commercial purpose through tankers and they had not installed any meter to the borewell and by using a electric motor of 7.5 HP power were committing theft of electricity and the unit of electricity which has been committed theft was 3021 and the same is worth Rs.48,739/-. The accused No.1 and 2 is alleged to have caused loss to the BESCO department to the tune of Rs.92,739/- and thereby, it is alleged that the accused No.1 and 2 have committed the offence punishable U/Sec.135(1)(e) of the Electricity Act, 2003.

3. The accused No.1 and 2 are on bail. They are represented by their counsels.

4. Charge was framed against the accused No.1 and 2 for the offence punishable U/Sec.135(1)(e) of the Electricity Act, 2003. The accused No.1 and 2 have pleaded not guilty and claimed to be tried.



5. The prosecution has examined 08 witnesses and got marked 13 documents.

6. After completion of the prosecution evidence, the statement of the accused No.1 and 2 as required U/Sec.313 of Cr.P.C., were recorded. The accused have denied the incriminating evidence. They have not led any defence evidence.

7. The points that arise for determination are as follows:

1. Whether the prosecution proves beyond all reasonable doubt that the accused No.1 and 2 have used the borewell dug for agriculture purpose and were supplying water by using electric motor without installing proper meter and was selling the water for commercial purpose and thereby committed an offence punishable U/Sec.135(e) Electricity Act 2003?

2. Whether the prosecution proves beyond all reasonable doubt that the accused No.1 and 2 have committed theft of electricity amounting to 3021 units worth Rs.48,739/- and that they have caused a total loss of Rs.92,739/- to the department?

3. What Order?

8. Heard arguments on both sides.

9. The answer to the aforesaid points are as follows:



Point No.1: In the **Negative**

Point No.2 : In the **Negative**

Point No.3 : As per final order, for the following:

REASONS

10. **Point No.1:** According to the prosecution, CW.1 along with the CW.2, CW.3, CW.4 and CW.8 went to the land belonging to accused No.2 bearing Sy.No.,268 and found the accused No.1 taking out water from the borewell and getting it filled to tankers in the tractors. CW.1 is the Assistant Executive Engineer of BESCOM Vigilance squad, he has been examined as PW.1. He has stated that he was working in the BESCOM Vigilance squad from 05.10.2016 to 31.05.2017 and that on 02.03.2017, he found the accused No.1 was selling water by unauthorisedly connecting electricity to the borewell at Keregodu village, Tiptur taluk and found that he was filling water from the borewell to the tankers of the tractors. He has stated that he found that he was using a motor of 7.5 HP power to take water from the borewell and that there was no meter fixed to the borewell. He has stated that when he questioned the accused No.1, the accused No.1 told that he is supplying water to other villages for the purpose of drinking. PW.1 has deposed that since, meter was not installed to the said



borewell, he prepared a mahazar at the spot as per Ex.P1. Ex.P1 is signed by CW.1 to 4, CW.8 and the accused No.1. It is mentioned in Ex.P1 that on receiving credible information of the BESCOM vigilance Police Station, regarding theft of electricity, CW.1-Girish (AEE) and police officials went to that place on 02.03.2017 and found that water was being pumped from the Agricultural borewell and was being sold for commercial purpose. In order to conduct investigation and inspect the report, the local persons were called to the spot and they were informed about the incident and they agreed to be panch witnesses. During investigation it was revealed that Sy.No.268 belonged to Sathish i.e., accused No.1 and that he was using the agricultural borewell by connecting electric supply directly without installing any meter from the BESCOM department and was using it illegally with the help of a 3 meter wire to the BESCOM electric pole, which was at 15 feet away and connected it to a starter box of 7.5 HP capacity; and that a cable wire was connecting from the starter box to the motor which was installed inside the borewell and was drawing water from the borewell and filling it to the water tanker bearing No.KA-06-T-3882 and that two other tankers were standing in the queue. It was confirmed that



the consumers were using the agricultural borewell water for commercial purpose i.e., by selling the water (to the public). Further, it was revealed during investigation that 50% of the water from the said borewell was used for agricultural purpose and the other 50% was used for commercial purpose. Accused No.1 - Sathish was present at the spot and co-operated during panchanama. He has signed the panchanama-(Ex.P1). The inspection report is marked as Ex.P2. The inspection was conducted between 5 p.m., to 5.30 p.m. on 02.03.2017. Ex.P2 is also signed by CW.1 to 4.

11. Two independent local witnesses who have attested Ex.P1 and P2 are examined as PW.5 and PW.6. But, both of them have turned hostile. They have stated that they have signed the documents Ex.P1 and P2 when they were in their village and that they have not given any statements. They were treated as hostile and cross-examined. Their 161 statements are marked as Ex.P11 and 12. They have denied having given any statements to police. PW.1 has further deposed that after conducting the mahazar and inspection report, he lodged a complaint as per Ex.P3. Ex.P3 is lodged on 03.03.2017. The same facts are mentioned in Ex.P3.



12. On the basis of the complaint Ex.P3, the Head Constable of BESCOM Police Station i.e., PW.8 has registered the FIR as per Ex.P13 for the offence punishable U/Sec.135 of Indian Electricity Act, 2003. Thereafter, the investigation was taken up by CW.10 who is examined as PW.3 who was the Head Constable of the said station. CW.10 has deposed that he wrote a letter to the AEE, BESCOM, Tiptur Sub-division to prepare the back bill. The letter dated 04.03.2017 written to AEE, BESCOM is marked as Ex.P5. He has further deposed that the back bill was prepared and notice dated 25.04.2017 was issued to the accused No.1 as per Ex.P6. Notice- Ex.P6 shows following calculation:-

RR No.	DC
CON.KW	7.5 HP
Assessed Consumption	7.5 HPx0.746 x 360U x50% x1M=1007 Units
Fixed Charges	6KW x 40RS x 1M x2T =480
Energy Charges	150U x 6.65 RS x2T =1995.00 857U x 7.65 RS x2T =13112.
Tax (6%)	=453.00
Total BBC	=15560.00
Compounding Amt	=44000.00
Total	=59560.00

13. The investigating officer has collected a certificate from the PDO of Thadasur Grama Panchayath, which is marked as Ex.P7,



wherein it is stated that during the year 2017-18 no water was taken from accused No.1 and that no order has been made or any cheque amount given.

14. The PDO-Shivakumar has been examined as PW.2. He was the PDO of Rangapura Grama Panchayath. He has given the letter Ex.P4 stating that no permission was given to accused No.1 to supply water.

15. The aforesaid borewell is situated in Sy.No.268. PW.4 who was the Revenue Inspector of kasaba hobli has visited the spot and inspected the place. He has given the report Ex.P10. He has stated that the said land belongs to accused No.2-Kempananjamma.

16. The Village Accountant of Keregodi village circle has been examined as PW.7. He has stated that Sy.No.268 belongs to accused No.2-Kempananjamma and the accused No.1 is in possession and enjoyment of the same. He has stated that there are no documents in the name of accused No.1-Sathish. He has deposed about the existence of a borewell in the said land. His report is marked as Ex.P8. The RTC extract of Sy.No.268 is marked as Ex.P9. It totally measures 4 acres 38 guntas.



17. The offence alleged against the accused is under Section 135(1) (e) of the Electricity Act, 2003. It states that whoever dishonestly uses electricity for the purpose other than for which the usage of electricity was authorized, so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to 3 years or with fine or with both. There is a proviso for this section which says about the Quantum of punishment to be imposed depending on the kilowatt load and depending on whether he is the first offender or repeater.

18. Section 135 deals with the offence of and penalty for theft of electricity. It falls within the criminal jurisprudence and mens rea is a constituent of the said offence. This principle is reiterated by the Hon'ble Apex Court in the case of ***Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill, (2012) 2 SCC 108***, wherein it has been held that Section 135 deals with offence of and penalty for theft of electricity and it falls within criminal jurisprudence and mens rea is a constituent of the said offence.

19. The accused No.1 does not deny that he was drawing water from the borewell with the help of the motor by using



electricity and he was filling the tankers for the purpose of supplying drinking water. His defence is that during that time there was drought and there was a government order for Supplying drinking water from private borewells to the drinking water units, in order to solve the drinking water problem for human beings and animals, during the relevant period. In the further cross examination, the accused has got marked a letter of the additional District Commissioner, Tumkur dated 16.12.2017 bearing number CAL (2) CR. 77/2017-18, addressed to the Executive Engineer of BESCO, Tumkur. The said letter is marked as Ex.D1. It is issued on the requisition of the accused No.1. In the letter, it is stated that the accused No.1 has informed that the Assistant Executive Engineer of the Sub-Division, Tiptur has given notice to him asking him to pay the fine amount in respect of drinking water supplied through tankers to the drinking water unit by drawing water from the borewell situated in his land. The Additional D. C. has referred to two government orders which are dated 06.10.2016 and 24.01.2017 respectively and has mentioned that as per those orders, 10 taluks in Tumkur District were declared as drought hit taluks until further orders. Further, the



Additional DC has referred to a letter dated 02.03.2017 of the Deputy Secretary to Govt. Panchayath Raj and Rural Development Department and has stated that there is liberty to supply drinking water from private borewells to the drinking water units through the borewell in order to solve the drinking water problem for human beings and animals. Further, a direction is given by the ADC as per Ex.D1 to the CEO of the Zilla Panchayath, Executive Officers of the Taluk Panchayath, Assistant Commissioners and Tahsildars to take steps to solve the drought situated on. Further, it has been requested to consider the request of the accused No.1 and to cancel the imposition of fine on him.

20. The accused No.2 is the mother of the accused No.1. The land belongs to accused No.2, but it is being looked after by her son - the accused No.1. The document Ex.D1 shows that there was drought during that period and there was a direction from the government to Supply drinking water from the private borewells. The learned Public Prosecutor contended that even if there was any such direction the accused should have installed a meter to the bore well. It was argued that the accused have not installed any



meter and thereby the accused No.1 cannot take benefit of the said order. The Government order does not say that the water should be supplied only from metered borewells. When the department has allowed the accused to draw water for agricultural purpose without meter then the department cannot say that meter should have been installed while supplying order for drinking purpose during the drought.

21. Moreover, there is no further investigation done by the Investigating Officer to see whether any water has been sold for commercial purpose and what is the quantity of water that has been sold by accused and how much money he has charged from the alleged purchasers. There is no evidence of any such purchasers. No investigation has been done on these aspects. Therefore, when government order is in force, permitting the private borewell owners to supply drinking water to the water units for drinking purpose for the human beings and the animals, the prosecution cannot contend that the accused has committed theft. The accused No.1 might have supplied water to the drinking water units. These circumstances indicate that the accused did not



have the intention to make money by selling the drinking water. His intention was to see that the human beings and the animals do not suffer. Therefore the benefit of the said order has to be given to the accused. Hence, it cannot be said that the accused has committed the offence punishable under Section 135.

22. For the aforesaid reasons, this Court is of the opinion that the prosecution has failed to prove that the accused No.1 and 2 have used the electricity for the purpose other than for which the usage of electricity was authorized and thereby, committed an offence punishable under Section 135(1)(e) of the Electricity Act. Hence, point No.1 is answered in the **Negative**.

23. **Point No.2:** When the prosecution has failed to prove that the accused No.1 and 2 have committed theft of electricity, the question of causing loss does not arise. When there is a government circular and order for supplying water for public drinking purpose during drought, it cannot be said that there is loss for the BESCOM department, which is also an unit coming under the government sector. Hence point No.2 is also answered in the **Negative**.



24. **Point No.3:** In the result, the following order is passed:

ORDER

Acting under Sec.235(1) of Cr.P.C., the accused
No. 1 and 2 are acquitted of the offence alleged
under Section 135(1)(e) of the Electricity Act, 2003.

Bail bonds executed by the accused No.1 and 2
during the course of trial stand cancelled.

The bail bonds executed by the accused No.1 and
2 under Sec.437-A of Cr.P.C., shall be in force for six
months.

(Dictated to the Stenographer after transcribed, typed and corrected and
then pronounced by me in open Court on this the 10th day of August,
2026.)

(Mohamed Ashraf Aris)

I Addl. Dist. & Sessions Judge,
Tumakuru.

ANNEXURE

Witnesses examined on behalf of prosecution:

PW.1 :	Girish S.T.
PW.2 :	Shivakumar
PW.3 :	Narasimhamurthy
PW.4 :	R.T.Swamy
PW.5 :	Mohan
PW.6 :	Shashi
PW.7 :	Deepak C. Bhodhihal



PW.8 : Purushothama

Witnesses examined on behalf of defence:

- NIL -

Documents exhibited on behalf of prosecution:

Ex.P1	:	Mahazar
Ex.P1(a)	:	Signature of PW.1
Ex.P2	:	Inspection report
Ex.P2(a)	:	Signature of PW.1
Ex.P3	:	Complaint
Ex.P4	:	Letter submitted by PDO to Vigilance police
Ex.P5	:	Letter submitted by Vigilance police to AEE, BESCO.
Ex.P5(a)	:	Signature of PW.3
Ex.P6	:	Back bill
Ex.P7	:	Letter submitted by PDO to Police inspector, BESCO, Vigilance.
Ex.P8	:	Report submitted by Village Accountant
Ex.P9	:	RTC extracts
Ex.P10	:	Report submitted by Revenue inspector to BESCO, Vigilance
Ex.P11	:	Statement of PW.5
Ex.P12	:	Statement of PW.6
Ex.P13	:	FIR

Documents exhibited on behalf of defence :

Ex.D1 : Direction given by ADC to BESCO

Material objects exhibited on behalf of prosecution :

- NIL -

I Addl. Dist. & Sessions Judge,
Tumakuru.