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Exh.	41

FORM-A

IN THE COURT OF 4TH ADDITIONAL DISTRICT & SESSIONS JUDGE, PATAN AT RADHANPUR Present: S.V.Mansuri Special Judge(Electricity), Patan @ Radhanpur Date of Judgment: 28.04.2025 SPECIAL ELECTRICITY CASE No.6 of 2022 II C.R.No.2061/2020 Mehsana GUVNL POLICE STATION	
Complainant	The State of Gujarat
Represented by	Ld.APP Mr.S.K.Patel
Accused	Hayatkhan @ Hiyatkhan Surakhan Malek
Represented by	Shri H.J.Raval

FORM - B

Date of offence	29/09/2020
Date of FIR	03/10/2020
Date of Charge-sheet	27/09/2022
Date of Framing of Charges	26/07/2023
Date of commencement of evidence	14/11/2024
Date on which judgment is reserved	
Date of judgment	28/04/25
Date of the Sentencing Order, if any	

Rank of the accused	Name of Accused	Date of Arrest	Date of Release on bail	Offence charged with	Whether acquitted or convicted	Sentence imposed	Period of detention undergone during trial for purpose of section 428, Cr.P.C.

1	Hayatkhan @ Hiyatkhan Surakhan Malek	27/09/ 2022	27/09/ 2022	135(1) (a) of Indian Electri city Act, 2003	Acquitted		
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FORM - C

List Of Prosecution/Defence/Court Witnesses

A. Prosecution

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
PW-1 Exh.16	Mitalkumar Haribhai Shah	Complainant
PW-2 Exh.20	Mustufakhan Kamalkhan Malek	Place of offence Panch
PW-3 Exh.22	Sahebkhani Alikhan Malek	Place of offence Panch
PW-4 Exh.23	Bharatbhai Kantibhai Rathod	Muddamal Panch
PW-5 Exh.26	Rajubhai Karmabhai Thakor	Muddamal Panch
PW-6 Exh.27	Himanshu Rameshbhai Katara	Checking Officer
PW-7 Exh.29	Hasmukhlal Jivandas Shrimali	Panch Witness
PW-8 Exh.30	Jasvantbhai Somabhai Parmar	PSO
PW-9 Exh.32	Vinubhai Virabhai Parmar	IO

B. Defence witnesses, if any:

Rank	Name	Nature of Evidence (Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness)
DW1	-	-

C. Court witnesses, if any:

Rank	Name	Nature of Evidence(Eye Witness, Police Witness, Expert Witness, Medical Witness, Panch Witness, Other Witness
CW1	-	-

List of prosecution/defence/court exhibits**A. Prosecution:**

Sr.No	Description	Exhi.
1	Original complaint	17
2	Supplimentary bill	18
3	Annexure-C	19
4	Panchnama of offence place	21
5	Muddamal Panchnama	24
6	Panch slip	25
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8	Yadi to Talati Cum Mantri of Radhanpur Gram Panchayat to provide details	30
9	Depute Order	31
10	Notice to accused	33
11	Notice to accused u/s 41(1)	34
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B. Defence:

Sr.No.	Exhibit Number	Description

C. Court Exhibits:

Sr.No.	Exhibit	Description
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	Number	

D. Material Objects:

Sr.No.	Exhibit Number	Description

-: J U D G M E N T :-

1. The accused has been booked for the offence punishable u/s 135(1)(a) of Indian Electricity Act, 2003, registered with Mehsana GUVNL Police Station vide II C.R.2061/2020.

2. Facts of the prosecution case:

It is the case of the prosecution that on 29/09/2020, the accused, who was found consuming electricity for residential purpose by hooked wire on electric line and thereby, she was consuming unauthorized electricity. It is stated that accused has committed theft of electricity worth Rs.1962.37ps. and has thus committed the offence punishable u/s 135(1)(1) of the Electricity Act, 2003.

Therefore, original complainant-Mr.Mitalkumar Haribhai Shah, Dy.Engineer, UGVCL, Varahi Sub Division forwarded a complaint on the letter pad of the U.G.V.C.L. dated 03/10/2020 to GUVNL, Police Station, Mehsana, in which stated that during the checking of electricity on 29/09/2020, at village Unrot, Ta.Santalpur, District Patan, Hayatkhan Surakhan Malek i.e. present accused, who was found to have been consuming electricity and thereby he was consuming the electricity illegally. It is also stated therein that the accused was non-consumer of UGVCL. It is further stated that the electricity theft bill sent to the

accused and the accused caught second time for stealing electricity by the personnel of UGVCL. In view of the said fact, complaint for the offence punishable u/s 135(1) (a) of the Indian Electricity Act, 2003 has been lodged. The complaint after being lodged by the complainant-Mr.Mitalkumar Haribhai Shah, Dy.Engineer, UGVCL, Varahi Sub Division was registered by the GUVNL, Mehsana, Police Station vide II C.R.No.2061/2020 on dated 03/10/2020 at 11.00 hrs and the wheels of investigation were thus, set into motion.

- 3.** Upon completion of the investigation, charge-sheet was filed against the accused and offence being in nature triable by the Special Court, the same was committed to this court. It is pertinent to note that the checking sheet at Exh.28, original complaint shows that the alleged offence was made out for the offence punishable u/s 135(1)(a) the Indian Electricity Act and after thorough investigation, the Investigating Agency has filed the charge-sheet against the accused for the offence punishable u/s 135(1)(a) of the Indian Electricity Act, 2003. My Id.Predecessor Judge has framed charges against the accused vide Exh.6 for the offence punishable u/s 135(1)(a) of the Indian Electricity Act, 2003 only. Even after framing of the charge, the Ld.Ad.P.P. for the State has not moved any application for addition of charge u/s 138 of the Indian Electricity Act, 2003. He had pleaded not guilty and claimed to be tried and therefore, the prosecution was

asked to lead evidence in order to substantiate the charge.

4. Prosecution in order to bring home the offence has examined in all 9 witnesses, the details of which have been mentioned in Form-C. The prosecution has also produced documentary evidence at Exh.8, the details of which have been given in earlier part of the judgment.
5. Prosecution has after leading evidence submitted closing pursis vide Exh.39. The statement u/s 313 of the Code of Criminal Procedure, 1973, (in short "Cr.PC") of the accused person was recorded wherein she has denied the charges levelled against him and has stated that he is innocent, he has been falsely implicated and false complaint is lodged against him and had been falsely arrested and charge-sheeted.
6. The defence has not examined any witness in this case.
7. Heard, Id.Advocate Mr.S.K.Patel for the State and Mr.B.P.Thakkar, Id.Advocate for the accused.

Arguments advanced by the Prosecution:

8. Ld.APP Mr.S.K.Patel, who has appeared for the State, has vehemently argued that in this case, the prosecution has proved the case against the accused person. He has also submitted that in this case, in all 9 witnesses have been examined by the prosecution including the complainant, checking officer and the Investigating Officer as well. He

has also argued that the accused was committing theft of electricity on 29/09/2020 by illegally connecting the wire with electric line passing nearby at his house at village Unrot, Ta. Santalpur, Dist. Patan. He has also submitted that accused is the consumer of the company. He has also submitted that the accused was found committing theft of electricity of Rs.1962.37ps. He has referred to the depositions of the complainant, checking officer and the investigating officer recorded in this case. He has, however, argued that the prosecution has proved the case beyond reasonable doubt against the accused. He has thus submitted that the accused be convicted.

Argument on behalf of the Defence:

9. Mr.H.J. Raval, Ld.Advocate for the accused person and has submitted that the complaint has been filed by the complainant - Mr. Mittalkumar Haribhai Shah, but he was not present at the time and place of checking. He has thus submitted that the complainant who has filed the complaint is not having personal knowledge as to how the theft was committed and by whom theft was committed. He has also submitted that the complaint is not filed within 24 hours. He has argued that merely based upon the documents, he has filed the complaint and that too without any authority to file the complaint. He has also argued that even the checking officer was not having authority to enter upon the place where the checking was carried out. He has also argued that the prosecution has not proved from which pole the illegal electricity

connection was taken and also not proved the ownership of the place of checking by the accused. He has thus argued that there is no proof about the accused being residing or occupying the premises where the alleged theft of electricity have been found to have been committed. He has also argued that no independent panch witnesses were present at the time when checking was carried out. After referring to the depositions of the complainant, checking officer and the I.O., Id.Advocate has vehemently argued that the prosecution has miserably failed to establish the basic fact that the accused was the person who has committed the theft of electricity at the place where the checking is alleged to have been carried out on 29/09/2020. He has also argued that no muddamal has been produced before the court and the complaint is lodged beyond 24 hours. He has urged that the accused be acquitted as innocent person.

- 10.** Upon giving careful consideration to the rival contentions and the evidence(oral and documentary) on record, the following points arise for my consideration:

-:: Points for Consideration ::-

1. Whether the prosecution proves beyond reasonable doubt that the accused Ahir Jomiben Jivabhai, was found to have been consuming electricity for residential purpose illegally during the checking which was performed on 29/09/2020 by directly connecting the wire with electric line at the place of checking and had committed theft of electricity of

Rs.1962.37ps. and thereby, had committed the offence punishable u/s 135(1)A of the Indian Electricity Act, 2003?

2. What order?

My answers to the above points are :

1. In negative.
2. As per final order.

11. Reasons and Appreciation of Evidence:-

11.1. It is the case of the prosecution that during the checking which was carried out on 29/09/2020, it was found that the said accused - Hayatkhan @ Hiyatkhan Surakhan Malek was illegally consuming the electricity by connecting the wire by hooked with the electric line for residential purpose and he was found to have committed theft of electricity.

11.2. The accused is booked for the offence punishable u/s.135 of the Indian Electricity Act, 2003. The provisions of Section 135 of the Electricity Act, 2003 run as under:

“135. Theft of electricity :-

(1)Whoever, dishonestly, (a)taps, makes or causes to be made any connection with overhead, underground 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 six 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 and subsequent conviction, of a person where 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 provided 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.

(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, 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 line 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 1[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 (2 of 1974) relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

11.3. This Court is quite aware of the Judgment of the Hon'ble High Court of Gujarat passed in the case of **Narendrabhai Revabhai Patel Vs. State of Gujarat reported in 2015 JX(Guj.) 525**, whereupon in para 5 to 7 the Hon'ble High Court of Gujarat has held as under:

"5... Since this is a case of theft of electricity under the Special Act, it requires to be dealt with in the manner as provided under the Act. For the purpose, if we refer to the provisions of Section 135 of the Act, it becomes clear that the definition of theft has been widened by amending the Act in the year 2007 after its enactment in the year 2003 and commencing enforcement in the year 2004. Thereby, now tampering with the meter or its seals, use of electricity, by such tampered meter or usage of electricity for purpose other than sanctioned was authorized an even damage or destruction to any material use for electricity shall be treated as a theft of electricity supply and the prescribed punishment is upto three years or with fine or

with both. So far as fine is concerned, the load abstracted, consumed, or used is to be taken into consideration and there is distinction between the theft below 10 kilowatt and above 10 kilowatt so far as imposing of fine is concerned. So, also, there is strict condition for punishment in case of second and subsequent conviction of the person, wherein, he may be debarred from getting any supply of electricity minimum for three months and which may extend to two years. Irrespective of facts and issue involve in this Appeal, I could not resist to observe that the later part of such proviso which debarred such person from getting supply of electricity from any other source or generation stations seems to be improper even if it is not settled since it has never been challenged before. It cannot be ignored that now a days, electricity is next to basic requirement and, therefore, such condition certainly needs to be reconsidered by appropriate authority.

6... However, at present, we are concerned with the proviso to Section 2(1A), wherein, it is provided that upon detection of theft of electricity, though licensee or supplier may discontinue the supply of electricity, but such discontinuation is permissible only by an authorized officer by the appropriate commission or any other Officer or licensee of the same rank than the rank of so authorized person and similarly, it is further provided that such officer of the licensee shall lodge complaint in writing relating to commencing of such offence in police station

having jurisdiction within twenty-four hours from the time of such disconnection.

7... Therefore, the provision of Section 2(1-A) specifically debarred the filing of complaint by unauthorized Officer and time limit is prescribed for filing such complaint which is only twenty four hours from the time of disconnection. When the word “shall” is used in such proviso for filing a complaint, it becomes clear that it is mandatory provision and, thereby, complaint must be filed within twenty-four hours of disconnection of supply and thereby, it will go in favour of the accused and against the prosecution to proceed further in such a complaint. Similarly, when there is a specific provision regarding disconnection and filing of complaint by authorized officer alone, it is the basic requirement of the prosecution to prove the authorization by the Officer who has ordered to discontinue the power and the Officer who has lodged the complaint. If it is not properly proved on record, then also, the prosecution and thereby, conviction of the appellant would result into nullity and in such situation, in absence of proper evidence regarding authorization, the acquittal is required to be confirmed in favour of the accused.”

- 12.** Thus, what transpires from the Judgment of the Hon’ble High Court of Gujarat passed in the case of **Narendrabhai Revabhai Patel (Supra)**, is that (1) any officer of the Licensee or Supplier as the case may be, authorized by the State Government, may enter or search any place or premises in which he has reason to believe

that the electricity has been or is being used unauthorizedly (2) Upon detection of such theft of electricity, the Licensee or Supplier may immediately disconnect the supply of electricity. (3) Such officer of the Licensee or Supplier, as the case may be, shall lodge the complaint in writing relating to the commission of such an offence in Police Station having jurisdiction within 24 hours from the time of such disconnection and (4) when a specific provision is made regarding the disconnection and filing of the complaint as well as investigation and search of the place or premises is to be done by authorized officer alone, the same shall have to be proved by the prosecution that the officer who has disconnected the power supply, entered and search the premises of the owner or occupier and officer who has lodged the complaint are and/or authorized in accordance with the provisions of Section 135 of the Electricity Act, 2003 to do such acts.

- 13.** It would now be in fitness of things to appreciate evidence on record.
- 14.** As per the prosecution case, there was checking made by the U.G.V.C.L. at Village Unrot, Ta.Santalpur, Dist.Patan. It is also the case of the prosecution that during the checking it was found that the accused - Hayatkhan @ Hiyatkhan Surakhan Malek at his premises and there it was also found that the accused had connected wire by hooked directly with the electric line upto his premises and thereby, the accused was committing theft of

electricity. From the checking sheet produced in this case at Exh.28 which is dated 29/9/2020 and denied to make signature on it.

15. Complaint Lodged Beyond 24 Hours Of Disconnection:

What transpires from the documentary as well as oral evidence led by the prosecution is that for the checking which was carried out at the premises on 29/9/2020 at 11.10 o'clock as revealing from complaint registered on 3/10/2020. Thus, it is quite clear that beyond 24 hours of the disconnection of the power supply, the complaint is filed in this case. In view of the mandatory provision steaming u/s 135 of the Indian Electricity Act, 2003 and in view of the aforesaid Judgment of the Hon'ble High Court of Gujarat passed in the case of **Narendrabhai Revabhai Patel (Supra)** there is a gross violation of the mandatory provision which says that in such a case where theft of electricity is found to have been committed and the electricity supply is disconnected, the complaint is required to be filed within 24 hours of such disconnection.

- 16.** The checking sheet produced at Exh.28 and the complaint reveals that Hayatkhan Surakhan Malek theft the electricity and prior to this also caught in electricity theft. The checking officer who has been examined in this case at Exh.27 has in his examination in chief has stated that Hayatkhan Surakhan Malek was possessing this house at the time of checking and he was present at the time of checking. Now in order to show as to whether the accused

in fact was using the place where the checking was carried out or not is a question of fact which needs to be proved by the prosecution beyond reasonable doubt. Neither the checking officer nor the complainant and the I.O. have found it proper to collect the evidence which would establish that it was the accused only who was at that time and place of checking using the premises either as the owner or occupier and was thereby illegally consuming electricity by tampering with the Lines passing nearby the place of checking. In absence of any cogent evidence regarding the same, it would be absolute difficult to convict the accused. Thus, in the considered opinion of this Court, the foundational facts which would show that the accused was the only person who had committed the theft of electricity is not at all proved by the prosecution. Under the circumstances, the question of raising presumption against the accused does not arise.

- 17.** Even the deposition of the checking officer at Exh.27 does not disclose the fact that the accused had maliciously injured the meter, indicator or apparatus belonging to the UGVCL. The assessment of supplementary bill also does not disclose any charges towards the damages of the wires/apparatus of UGVCL. The prosecution has produced no evidence to show that the offence u/s 138 of the Indian Electricity Act, 2003 is made out and that was the reason why the prosecution did not move any application for addition of charge u/s 138 of the Indian Electricity Act, 2003.

18. Authority: Upon going through the evidence of P.W.6 checking officer - Himanshu Rameshbhai Katara at Exh.27, P.W.8 I.O Jashwantbhai Somabhai Parmar, none of these prosecution witnesses speaks about authority given to the checking officer and the complainant to go at the place of checking and carry out the checking and lodge the complaint. Once Section 135 of the Electricity Act, 2003 mandates authorization, the prosecution has to prove the said fact by cogent evidence. Here in the case on hand, as discussed earlier, none of the prosecution witnesses has proved the fact about any such authorization. Under such circumstances also, the prosecution case fails on this count.

19. Muddamal:

It is also pertinent to note that the muddamal wire was collected and seized by the said officer who made the Checking at the premises and was handed over to the office. It must had been tested in the laboratory. What was it's report? P.W.6 Himanshu Rameshbhai Katara has in his examination in chief at Exh.27 deposed that by hooked the wire with electric line and thereby using the electricity. He has admitted that did not mention house number or electricity pole number in the cheking sheet. Thus, there is no evidence to show as to in which manner theft of electricity was committed.

20. Panch Witnesses:

The Panch witness who have been examined in this case at Exh.20, 22, 23 & 26 have stated that they were called by the Police and no one was present except police personnel and they made signature by saying of police and other than this they don't know anything else. They have not supported the prosecution case. In their cross examinations conducted by the prosecution, they have not supported the prosecution.

21. Witness: The witness who has been examined in this case at Exh.27 he has stated that he was on duty at Thara Sub Division as Junior Engineer of UGVCL. He also stated that his Division Office has ordered to go electricity checking at Varahi Sub Division and after reaching Varahi Sub Division and went to check electricity theft in Unrot village along with Electric Assistant. It is submitted that Hayatkhan Surakhan Malek was illegally consuming electricity.

Ld.Advocate Mr.H.J. Raval on behalf of accused has cross examined. In which he stated that they went to electricity checking. He also stated that he had not got any documentary evidence regarding ownership of house and neither inquired nearby residents about the owner of this house nor recorded statements of nearby residents.

22. Drawing of Spot Panchnama: It is strange to find that for the offence for checking dated 29/9/2020 as revealing from the complaint and the same is registered on 3/10/2020 at 11.00 hours and the Police is drawing the

Panchnama of the place of incident on 23/12/2020. Nothing cogent is explained by the prosecution for this.

- 23. Police Witness:** I have gone through the oral evidence of Police witness whose evidence is recorded as P.W.8 Jashvantbhai Somabhai Parmar had registered the complaint and he had not done anything else except forwarding the investigation.

The investigating officer Vinubhai Virabhai Paramar was IO of the case whose evidence is recorded as P.W.09 at Exh.32 has said that while he was serving his duty at G.U.V.N.L. Police Station, he had received the investigation of this offence. Thus, the entire investigation by the Police appears to have been carried out in a poor manner, because, no care is taken to find out whether the complaint or the checking officer had the authority to do such acts in accordance with Section 135 of the Electricity Act of 2003.

- 24. Independent Panch Witness:** It is pertinent to note that during the checking they had not recorded the statement of the persons residing nearby. The I.O. at Exh.32 is not speaking anything about the same. It is pertinent to note that no independent witnesses have been examined by the prosecution.

- 25. Complainant-No Personal Knowledge:** From the deposition of Himanshu Rameshbhai Katara examined at Exh.27 as PW-6 & Hasmukhlal Jivandas Shrimali at Exh.29 as PW-7, it transpires that they went to electricity checking

and the complaint was lodged by Mittalkumar Haribhai Shah. Therefore, it transpires that the complainant was not gone for the checking. Thus, the complainant who has lodged the complaint is totally unaware of the fact as to where was the alleged checking carried out, in whose presence it was carried out, who was the owner or occupier of the place of checking and in what manner the checking was carried out. The officer who has lodged the complaint is totally unaware of the actual facts and was not having any knowledge about the alleged checking.

- 26. Photography/Videography:** From the deposition of checking officer examined at Exh.27, it transpires that raiding party had neither taken photographs nor mention house number, therefore, it is not proved that the actual premises is that or not where checking was carried out.
- 27.** In light of the oral and documentary evidence adduced, this Court is of the considered view that the prosecution has miserably failed to prove the case against the accused as there is no evidence to connect the accused with the alleged offence. In the absence of any material evidence against the accused and in the absence of compliance of the mandatory provisions streaming u/s.135(1)(a) of the Electricity Act, 2003, the prosecution case falls down. This clearly shows that there is no substance and merits in the allegations levelled against the accused person.
- 28.** I am also constrained to observe that merely by showing any person present at the place of checking would not

dispense off with the burden of proving the material fact that the accused was committing theft of electricity on the date, time and at the place of checking. No efforts are made to show that in fact it was the accused who had committed theft of electricity. It is indeed sad to observe that the officers of U.G.V.C.L. are not taking care of this material fact. They need to prove on record by cogent evidence that the accused had committed theft of electricity. In the absence of any such cogent proof, the prosecution case, in my considered view, fails. They are not even proving on record that they had been authorized in accordance with Sec.135(1)(b) of the Electricity Act, 2003 to file the complaint or to enter upon and search the premises. The meter was removed from the place. It must have been tested in the laboratory. What was its report? There is no evidence to show as to in which manner theft of electricity was committed. The officers of U.G.V.C.L. need to prove the manner in which the alleged theft of electricity was committed by the accused. How did they arrive at the final conclusion that the accused was committing theft of electricity, is not at all proved in this case. Even the I.O. is not investigating on these counts. Any amount of proof in the nature of the inspection report/checking sheet at Exh.28 will not prove the offence against the accused in the absence of the basic proof of the allegation that the accused was the only person who was illegally consuming electricity and that too at the place where the checking was conducted either as the owner or occupier.

- 29.** On the analysis of the entire evidence, this Court is of the humble view that the requirements of Section 135(1)(a) of the Act are not at all satisfied and no liability can be imposed upon the accused. In iota of above evidence, the prosecution has miserably failed to establish that accused has committed theft of electricity and has committed offence punishable u/s 135(1)(a) of the Act. In this kind of evidence, where no independent witnesses are examined, where no muddamal is seized in the presence of independent panchas and is not produced before this Court where no photography or videography of the checking was carried out, the complainant who has lodged the complaint has no personal knowledge about the alleged checking as he was not the party to the checking team and most importantly when the mandatory provisions are not complied with and that the complaint is lodged beyond 24 hours of disconnection of connection, I am constrained to hold that the prosecution has not proved the case beyond reasonable doubt. Hon'ble Apex Court recently held that Special Court to try the offence u/s. 135 to 140 and Section 150 of the Electricity Act and does not arise issue of civil liability and jurisdiction. Hence, Point No.1 is accordingly answered in Negative. As regards Point No.2, following final order is passed:

-:: F I N A L O R D E R ::-

1. The accused person - **Hayatkhan @ Hiyatkhan Surakhan Malek** is hereby acquitted from the offence

punishable u/s 135(1)(a) of Electricity Act, 2003 registered with G.U.V.N.L. Police Station, Mehsana, vide II - CR No.2061 of 2020. Since the aforesaid accused person is already on bail, his bail- bond stands discharged.

2. Under Sec.452 of the Criminal Procedure Code, 1973, it is hereby ordered that the muddamal collected in this case, if any, be destroyed after the expiration of the Appeal period and in case Appeal is preferred, then, as per the decision in the said appeal.
3. Under Sec. 437-A of the Code of Criminal Procedure, 1973 the accused person viz. **Hayatkhan @ Hiyatkhan Surakhan Malek**, is directed to submit, within a week, bail bond of Rs.15,000/- and surety for the like amount for a period of six months from today, to secure his presence if any Appeal or Petition is filed before the Hon'ble High Court of Gujarat against the judgment pronounced in this case today if he is being served with the notice of any such Appeal or Petition.

Singed & pronounced in the open court on 28th April, 2025.

Date: 28/04/2025
Place: Radhanpur

(S. V. Mansuri)
Special Judge(Electricity) &
4th Addl.Sessions Judge,
Patan @ Radhanpur
Code No :GJ00700