

Received on : 10/10/2022
Registered on: 10/10/2022
Decided on : 28/06/2023
Duration : YY MM DD
00 08 18

Special Case (Electricity) No.21 of 2022

Complainant:

The State of Gujarat

V E R S U S

Accused:

Dharnantbhai Vejanandbhai Karmur,
Age: 51 years,
R/o.Dolatpara, Indreshvar Society,
Opp,. Bansidhar High School,
Junagadh.

Offence punishable u/s.135 of the Indian Electricity Act, 2003

Appearance:

Ld.Ad.P.P. Shri **V. G. Donga** for the complainant.
Ld.Advocate Shri **A. L. Karmur** for the accused.

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

1. The brief facts of the prosecution case is that on 03/02/2022, the accused, though being not a consumer of P.G.V.C.L., was found consuming electricity for commercial purpose at his shop by connecting 15 meter yellow coloured twin core aluminium wire hooked with the LT line of electricity pole of P.G.V.C.L. and thereby, he was consuming unauthorized electricity. It is stated that accused has committed theft of electricity worth Rs.57,925.57 Ps. and has thus committed the offence punishable u/s.135 of the Electricity Act, 2003.
2. With a view to above incident, the complainant has lodged the complaint

(Hemantkumar Arvindray Dave)
Special Judge (Electricity)
Junagadh

which was registered with G.U.V.N.L. Police Station, Junagadh vide C.R. No.II-337/2022 and sent to the Investigating Officer for proper investigation. Investigating Officer has recorded the statements of the witnesses and also made panchnama and collected other relevant documents. After completion of the investigation, the accused was charge-sheeted to the Ld.4th J.M.F.C., Junagadh for the offence punishable u/s.135 of the Indian Electricity Act, 2003. Copies of the police papers were supplied to the accused under section 207 of the Cr.P.C. and then case was committed to the Court of Sessions under Section 209 of Code of Criminal Procedure (in short “Cr.P.C.”) as the Ld.4th J.M.F.C., Junagadh has no jurisdiction to try said offence as it is triable by Sessions Court.

3. That the Ld.Advocate Shri A. L. Karmur has appeared on behalf of the accused to defend the case. That the charge was framed against the accused vide Exh.-6 under section 228 of the Cr.P.C., it was read over to the accused. The accused has not pleaded guilty to the charge as per his statement vide Exh.-7 and the case was fixed for the evidence of prosecution. The evidences were recorded under section 231 of the Cr.P.C.
4. The prosecution has examined following witnesses:

Sr. No.	Name of Witness	Exh.
1	Nitinbhai Chunibhai Vaghasiya	9
2	Nalinbhai Bhimjibhai Pujara	11
3	Nitinkumar Premjibhai Gohil	12
4	Jayeshkumar Ramniklal Maradiya	18
5	Yogeshbhai Govindbhai Kachhot	23
6	Harishbhai Kanabhai Pithiya	27

(Hemantkumar Arvindray Dave)
Special Judge (Electricity)
Junagadh

5. The prosecution has produced the following document evidence:

Sr. No.	Document	Exh.
1	Spot Panchnama	10
2	Complaint	13
3	Letter for late registration of the FIR	14
4	Annexure-C	15
5	Supplementary bill	16
6	Notice for supplementary theft bill	17
7	Checking report	19
8	Rojkam	20
9	Seizure memo	21
10	Gate pass	22
11	Extraction of station diary	24
12	FIR	25
13	Yadi for handing over investigation	26
14	Notice to secure presence of accused	28
15	Aadhar Card of the accused	29
16	Ration Card of the accused	30
17	Letter seeking permission to carry checking in other districts	31
18	Letter granting permission to carry checking in other districts	32

6. Further statement of the accused was recorded under section 313 of the Cr.P.C. after closing of the prosecution evidence. The accused has denied to have committed any offence and has further stated that he is innocent and has been falsely implicated in this offence. He has also stated that false case has been registered against him by the employees of P.G.V.C.L. to show their work.

7. Ld.Ad.P.P. Shri V.G.Donga has submitted that as per the prosecution case, the complainant who was the Deputy Engineer of the P.G.V.C.C.L., Junagadh has visited for checking at the shop of the accused whereby

(Hemantkumar Arvindray Dave)
Special Judge (Electricity)
Junagadh

the accused has taken the illegal electricity connection from the electricity pole of P.G.V.C.L. directly by committing theft of electricity and has gained Rs.57,925.57 Ps. illegally. To prove the case against the accused, the prosecution has examined the Panch Witnesses – Nitinbhai Chunibhai Vaghasiya vide Exh.-9 and Nalinbhai Bhimjibhai Pujara vide Exh.-11 and in their depositions, they have produced the panchnama vide Exh.-10 but the said witnesses have turned hostile. But as per the settled principle of law, even if the panch witnesses turn hostile then the evidence of the prosecution cannot be discarded. Moreover, the prosecution has also examined the complainant Nitinkumar Premjibhai Gohil, Deputy Engineer of the P.G.V.C.L. vide Exh.-12 and in his deposition, the complaint was produced vide Exh.-13. The complainant has also produced the notice for supplementary theft bill vide Exh.-17, supplementary theft bill vide Exh.-16. The complainant has, very categorically, supported the case of the prosecution and has also deposed as per the complaint. Ld.Advocate for the accused has, at length, cross examined him wherein nothing could be brought on record which could raise suspicion in the case of the prosecution. The prosecution has also examined Checking Officer – Mr. Jayeshkumar Ramniklal Maradiya vide Exh.-189. The checking officer, in his deposition, has produced checking sheet, departmental rojkam and seizure memo vide Exh.-19 to Exh.-21. The checking officer has also produced the gate pass vide Exh.-22. The checking officer has also, very categorically, supported the case of the prosecution and has also deposed as per the complaint. Ld.Advocate for the accused has, at length, cross examined him wherein nothing could be brought on record which could raise suspicion in the case of the prosecution. The prosecution has also examined P.S.O. of P.G.V.C.L. Police Station Mr. Yogeshbhai Govindbhai Kachhot vide

(Hemantkumar Arvindray Dave)
Special Judge (Electricity)
Junagadh

Exh.-23 who has registered the offence against the accused and has made entry in the station dairy and handed over the investigation to A.S.I. Mr. H.K.Pithiya. The prosecution has also examined the Investigation Officer Harishbhai Kanabhai Pithiya vide Exh.-27. He has also stated that he has made panchnama of scene of offence vide Exh.-10 and also recorded the statement of the witnesses and as there was sufficient evidence against the accused, he has submitted the charge-sheet against the accused to the Hon'ble Court. The Ld.Advocate for the accused has, at length, cross examined him but nothing fruitful could be there. Therefore, the prosecution has proved the case against the accused beyond reasonable doubt and therefore prayed to convict the accused.

8. The Ld.Advocate Shri A.L.Karmur for the accused has strongly resisted the arguments advanced by Ld.Ad.P.P. and has also filed his written arguments vide Exh.-36. The crux of his arguments is that the prosecution could not prove that the place where, as per the story of the prosecution, the checking officer has visited and checked the shop, was of the ownership of the accused or the said premises was in possession of the accused. Even the prosecution has not produced any revenue record for proving the ownership or possession of the accused over the said so called premises. He has also argued that the complainant had not accompanied the checking party and was not aware of the facts of checking. He has also submitted that the complainant was not authorized to file the complaint. He has also submitted that the wire seized was 15 meter whereas the distances upto the shop from where the connection was obtained was 80 meter and thus, both are contradictory to each other. The checking officer was no authorized to carry the checking. Therefore the prosecution has miserably failed to prove the case against the accused. Therefore, prayed to acquit the accused.

(Hemantkumar Arvindray Dave)
Special Judge (Electricity)
Junagadh

9. In view of the above facts and circumstances, following points have arisen for my determination:

(1) Whether the prosecution proves beyond reasonable doubt that the accused- Dharnantbhai Vejanandbhai Karmur, though not being the consumer of the P.G.V.C.L., was found to have been consuming electricity for commercial purpose illegally during the checking which was performed on 03/02/2022 by directly connecting the 15 meter twin core aluminium wire hooked with the L.T. lines passing nearby his shop of the electricity pole and had committed theft of electricity of Rs.57,925.57 Ps. and thereby, had committed the offence punishable u/s.135 of the Indian Electricity Act, 2003?

(2) What Order?

10. My answers to the above points are:

(1) In Negative.

(2) As per final order.

-:: REASONS ::-

Point Nos.1 and 2:

11. Here it is the case of the prosecution that at the time of checking by the checking officer, the Deputy Engineer of P.G.V.C.L., Junagadh, it was found that the accused has taken direct illegal connection from the electricity pole situated nearby his shop though he was not the consumer of the P.G.V.C.L. and has committed theft of electricity of Rs.57,925.57 Ps.

12. The prosecution, in order to prove that the accused has committed the theft of electricity from electricity pole of P.G.V.C.L. in his shop, first of all, the prosecution has to prove that the property in which the electricity

(Hemantkumar Arvindray Dave)
Special Judge (Electricity)
Junagadh

connection was connected was of the ownership of the accused or the accused was in possession of the said property. The prosecution, in order to prove the case against the accused, has examined the complainant – Nitinkumar Premjibhai Gohil vide Exh.-12 who was the Deputy Engineer of P.G.V.C.L. at the relevant time and he has lodged the complaint. The complainant has tried to support the case of the prosecution and has also tried to depose as per his complaint and checking but in his deposition he is not speaking anything about the ownership of the shop by the accused. He has, in his deposition, produced the complaint vide Exh.-13, letter for late registration of the offence vide exh.-14, Annexure-C vide Exh.-15, notice for supplementary theft bill vide Exh.-17 and supplementary theft bill vide Exh.-16. The prosecution, in order to prove the case against the accused has examined the checking officer – Jayeshkumar Ramniklal Maradiya at Exh.-18 who was the Deputy Engineer of P.G.V.C.L. at the relevant time and he has carried out the checking. The checking officer has tried to support the case of the prosecution and has also tried to depose as per his report but in the deposition, he too is not speaking anything about the ownership of the place of checking i.e. shop by the accused. The checking officer has prepared the report and also made Rojkam and seizure memo which were produced by the prosecution vide Exh.-19 to Exh.-21 respectively and has also produced the gate pass vide Exh.-22. He has submitted that at that time, 15 meter long twin core service wire was also seized and was deposited in their sub-divisional office.

13. The prosecution has also examined Investigating Officer Harishbhai Kanabhai Pithiya vide Exh.-27. In his deposition, he has deposed the procedure which was carried by him while investigation. In the cross examination by Ld.Advocate for the accused, he has admitted that he has not inquired as to the place where the checking was carried and

(Hemantkumar Arvindray Dave)
Special Judge (Electricity)
Junagadh

panchnama was drawn was of the ownership of the accused or not.

14. Therefore, when the prosecution has miserably failed to prove that the place where the complainant has checked the shop was of the ownership of the accused or in possession of the accused then the prosecution cannot prove that the accused has committed theft of electricity illegally. Even the investigating officer has not recorded the statements of any nearby persons to prove that the accused is the owner or possessor of the said premises. Therefore, simply by bare statement of either the complainant, checking officer or the investigating officer, the prosecution cannot prove that the accused was the owner or possessor of the said property.
15. Even the prosecution has examined the panch witnesses of the panchnama which was made by the investigating officer, Nitinbhai Chunibhai Vaghasiya vide Exh.-9 and Nalinbhai Bhimjibhai Pujara vide Exh.-11. The said panch witnesses have turned hostile and even after declaring hostile, the prosecution could not bring on record any fruitful fact which could support the case of the prosecution.
16. Even as per the case of the prosecution 15 meter long wire which was used by the accused to take illegal electricity from the pole of P.G.V.C.L. to his shop was seized by the checking officer. The said wire was not produced by the Investigating Officer to the Court. Even it is the case of the prosecution that the complainant that checking officer has seized the said wire and has deposited in their office.
17. Even it is important to note that the checking officer has made Rojkam vide Exh.-19 but the said Rojkam was not signed by any independent witness and simply on the statement of the complainant, how it can believe the story of the prosecution.

(Hemantkumar Arvindray Dave)
Special Judge (Electricity)
Junagadh

18. Therefore, considering the above discussion, I hold that the prosecution has miserably failed to prove the allegation and case against the accused. Therefore, my reply to the issue No.1 is in negative and pass the following final order towards Issue No.2.

-:: ORDER ::-

1. The accused – **Dharnantbhai Vejanandbhai Karmur** is hereby acquitted under Section 235(1) of the Code of Criminal Procedure against the charge levelled against him of offence punishable under Section 135 of the Indian Electricity Act, 2003 registered vide Cr.Reg. No.II-337/2022 with G.U.V.N.L. Police Station, Junagadh.
2. Accused is directed to furnish bail bond with surety of sum of **Rs.10,000/- (Rupees Ten Thousand Only)** for the period of six months under Section 437(A) of the Code of Criminal Procedure, before the Registrar of District Court, Junagadh.
3. Muddamal, if any, be disposed of, after the expiry of appeal period.

Pronounced in the open Court today
on this 28th day of June, 2023.

Date:28/06/2023
Place:Junagadh

(Hemantkumar Arvindray Dave)
Sessions Judge &
Special Judge (Electricity)
Junagadh
[GJ00385]

(Hemantkumar Arvindray Dave)
Special Judge (Electricity)
Junagadh