

IN THE COURT OF THE JUDGE SPECIAL COURT UNDER ELECTRICITY
ACT CUM ADDITIONAL SESSIONS JUDGE, 4th COURT, HOWRAH.

Present : Shri Mihir Kumar Mondal,
Judge, Special Court,
under The Electricity Act,
Howrah.

Electricity Case No. 226 of 2013

State

Vs.

- 1) Samsuddin Sk
- 2) Sk Julkaran
- 3) Sk Jul HaqueAccused persons.

Charge u/s. 135 (1) (a) of The Electricity Act.

Date of Delivery of Judgment : 03.05.2018.

J U D G M E N T

This is a case u/s. 135 (1) (a) of The Indian Electricity Act, 2003. The fact of the prosecution case, in brief, is as follows:

One Shamik Sarkar, Sr. engineer, LCC of CESC Ltd lodged a written complaint with the O.C. Manickpur I.C. under Sankrail P.S. to the effect that on 19.11.2013 in between 1.15 p.m. to 2.00 p.m. he along with Mr Bhabani Sankar Ghosh and Kalyan Maitra both of CESC Ltd held inspection at the premises of Samsuddin Sk, Sk Jul Karan and Sk Jul Haque of village Manickpur, Garmunia and found that those persons had been indulging in pilferage of electricity by means of making direct connection from the CESC service cut out and taking the wires directly to run the connected load of the premises and thus bypassing the actual registration of meter nos. 3514193, 4426832 & 4407888 at the said address which was an offence punishable under the provision of Electricity Act. They found that by means of such unauthorized connection electricity was being abstracted and used unauthorizedly to the tune of approximate 6500 units per year causing loss of Rs.1,00,000/- per year to the company as well as proportional part to the Govt exchequer. In view of such illegal consumption of electricity two bulbs with holders, two PVC coated wires each approximate 1 meter at length were seized by preparing seizure list. Accordingly he prayed for investigation.

On receiving the written complaint, formal FIR was drawn up against three accused persons namely Samsuddin Sk, Sk Julkaran and Sk Jul Haque u/s 135(1)(a) of the Electricity Act and investigation was started. The I.O after conclusion of the investigation submitted charge sheet against three accused persons u/s 135(1)(a) of the Electricity Act.

On submission of the C.S. by the I.O., the then Ld. P.O of this Court on 20.02.2014

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took cognizance upon the same and after complying all the legal formalities framed charge against three accused person u/s 135(1)(a) of the Electricity Act. The contents of the charge so framed had been read over and explained to the accused persons to which they each pleaded not guilty and claimed to be tried. To prove the case the State prosecution examined all total five witnesses. The evidence for prosecution was closed and the accused persons were examined u/s 313 Cr.P.C. In the examination of accused persons u/s 313 of the Cr.P.C., they each pleaded innocence but refused to adduce any witness as D.W. Heard argument of both sides.

POINTS FOR DETERMINATION

1. Whether the accused persons on 19.11.2013 and before the said date committed pilferage of electricity by means of making direct connection from the CESC service cut out of meter nos 3514193, 4426832 & 4407888 illegally bypassing the actual registration of the meters?

DECISION WITH REASONS

At the time of argument Ld. P.P. in charge has submitted that in this case the State prosecution has examined all total five witness including the I.O. He has contended that in this case according to the prosecution case PVC coated cooper wire had been seized and those seized articles were materially exhibited. He has contended that the state prosecution has been able to prove so many documents. He submits that the witnesses so far examined in this case have supported the prosecution case in their respective oral evidence. He has contended that the witnesses such as PW-1 & PW-4 had been able to stand on their feet being cross examined by the defence. He has prayed for passing necessary order.

Ld. Defence Counsel has argued that the accused persons had been falsely implicated in this case. He has argued that the State prosecution has adduced five witness but none of the witness has been able to deliver cogent and reliable evidences. He has argued that the state prosecution during trial has produced the seized alamats before the court for its identification by the seizure witnesses and those were materially exhibited although the PW-4 has deposed that they did not enquire about the ownership of the premises where they held inspection. He has argued that the I.O. has admitted that during inspection he did not ascertain name of the owner of the premises where the inspection held and also the I.O. has admitted that when he re-seized the articles those were without any stamp. He has argued that in this case no independent witness has been examined by the state prosecution. He has contended that PW-1 and PW-4 are interested witnesses since they are the men of CESC and PW-2 is a stock witness of CESC Ltd. He has contended that the defence by cross examining the PW-1, PW-2 and PW-4 has been able to demolish their evidence and has also been able to discredit them. He has contended that the state prosecution has been

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failed to bring home the charge beyond the all reasonable doubt by adducing cogent and reliable evidences. He has prayed for acquittal of the accused persons.

Now, we have to scan the evidence on record to find out whether the State prosecution has been able to prove the charge levelled against the accused persons.

PW-1 Shamik Sarkar is the de facto complainant of this case. He has proved the written complainant and the same has been marked as ext.-3. He has deposed that on 19.11.13 at he along with other staffs of the CESC had been to the village Manickpur Garmunia and held inspection in the premises of Samsuddin Sk and found that electric energy was being consumed from three service meters of CESC which were installed at the premises of the said Samsuddin Sk. He has also disclosed that they found that the electric energy was illegally being consumed by means of making a direct connection from service cut out of CESC Ltd. and after detection of such theft of energy they took some photographs, disconnected the service line, removed the wire and seized the same by preparing seizure list. During his deposition he has identified two sets of PVC wires, two bulbs with holders and those have been marked as Mat Exbt-I collectively. During cross examination he has disclosed that he cannot say the details of the P.O. He has admitted that seized PVC wire and bulbs are easily available in open market.

PW-2 Dipak Mondal is a professional photographer. He has disclosed that on 19.11.13 he accompanied the raid party of CESC and had been to Manickpur and he under the instruction of Shamik Sarkar took some snaps of the service meters of CESC. During cross examination he has disclosed that he has no document to show that he was present at the time of cross examination.

PW-3 Tanaya Dinda has disclosed that on 19.11.13 she was posted at Sankrail PS as SI of police and she on that date started Sankrail PS case no.-745/13 dated 19.11.2013. She is the recording officer of this case and during cross examination she has denied her knowledge about the incident of this case.

PW-4 Bhabani Sankar Ghosh is the retired employee of CESC. He has disclosed that on 19.11.2013 he along with other employees of CESC had been to the premises of Samsuddin Sk and during inspection it was found that the accused had been consuming electricity directly from CESC service cut out illegally bypassing electric meter. He has disclosed that after detection of such theft of energy they disconnected the service line and seized the PVC wire about 1 meter at length, two holders and two bulbs by preparing seizure list. He has identified Mat Exbt.-I. He has identified his signature on the seizure list. During cross examination he has admitted that they did not enquire about ownership of the premises where they held inspection.

PW-5 SI Swapan Chakraborty is the I.O. of this case. He has disclosed that he being entrusted with the investigation of this case held investigation and during investigation he re-seized the seized articles produced by the CESC personnel. He prepared rough sketch map of the P.O. He has disclosed that he has submitted charge sheet against the accused

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persons. During cross examination he has disclosed that during investigation he did not ascertain the name of owner of the premises where they held inspection. He has disclosed that when he re-seized the articles those were without stamp.

In this case we have found that charge against the accused persons was framed u/s 135(1)(a) of the Electricity Act and with a view to prove the charge against the accused persons, the State Prosecution has been able to examine five witnesses. It is found that the PW-1 & PW-4 are from the CESC authority and it has been transpired from the evidence on record that they conjointly held the alleged raid in the village Manckpur Garmunia and they conjointly inspected the house of the accused persons. PW-1 is the de facto complainant and he is the senior engineer of CESC. He has proved the written complaint as well as the seizure list. It is transpired from the evidence of PW-1 that he seized two numbers of PVC wires approximate 1 meter at length which was used for making direct connection. We have seen from the evidence of PW-1 that such seized PVC wire approximate 1 meter at length in two sets were produced before the court during the evidence of PW-1. Admittedly the PW-1 did not ascertain the ownership of the premises where they held inspection. The PW-2 is found as stock witness of the CESC as he failed to show any document that he was present at the time of inspection. PW-3 is the recording officer and she has denied her knowledge about the incident of this case. PW-4 is a retired employee of CESC and he accompanied the P.W.-1 at the time of such inspection. Admittedly he did not enquire about the ownership of the premises where they held inspection. PW-5 is the I.O. of this case and he has admitted that he did not ascertain the name of the owner of the premises where the CESC personnel held inspection. It is seen that the defence did not make any cross examination of the prosecution witnesses on the point of conductive condition of the seized two sets of PVC wires. It is seen that the state prosecution has failed to examine any witness from the locality of the P.O. i.e. the state prosecution did not examine any independent witness in support of the prosecution case. It is seen that the defence has cross examined the witnesses on the point of ownership of the P.O. It seems to me that the defence tried to bring before the court that the CESC raid team did not hold inspection in the premises of the accused persons but they held inspection in the premises of some other persons. The witnesses have admitted that they did not ascertain the ownership of the P.O. The accused persons during their examination u/s 313 Cr.P.C. did not put any claim about the seized articles and they denied the allegation against them in such examination. Although the defence has denied the ownership of the premises where the inspection held by the CESC personnel, the state prosecution did not opt to bring before the court the documentary evidence regarding the energy meters which were installed at the said premises.

So we have found that there are so many inconsistent statements in between the evidences of the witnesses. The I.O. has left serious lacunae in the investigation of this case and the state prosecution has failed to fill up all such lacunae by adducing cogent, reliable and clinching evidences.

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After travelling through the evidence on record, it is found that there is no such evidence from the prosecution witnesses to attract the ingredients of the offence punishable U/s 135(1)(a) of the Electricity Act. It is found that there is no strong evidence from the prosecution witnesses regarding alleged offence.

Thus, from the above discussion of evidence on record, it is found that the State prosecution has failed to adduce any cogent and reliable evidence to attract the ingredients of the offence punishable u/s 135(1)(a) of the Electricity Act. So, I have no hesitation to hold that the State prosecution has been miserably failed to bring home the charge beyond the shadow of all reasonable doubts.

In the result, the case fails.

Hence, it is,

ORDERED

that the accused persons namely Samsuddin Sk, Sk Jul Karan and Sk Jul Haque are found not guilty of the offences punishable u/s 135(1)(a) of the Electricity Act and they are acquitted of this case u/s 235(1) Cr.P.C. They be discharged from their respective bail bonds and set at liberty.

Seized articles, if any, be destroyed after the expiry of appeal period in accordance with law.

Dictd. & Corrcd by me.

ASJ

(Mihir Kumar Mondal),
Judge, Special Court,
under The Electricity Act, Howrah.
03.05.2018.