

(2011) 04 BOM CK 0031

In the Bombay High Court

Case No : Criminal Appeal No. 350 of 2007

Anandrao Madhavrao Shinde

APPELLANT

Vs

The Maharashtra State Electricity Distribution Company
Limited

RESPONDENT

Date of Decision : 27-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357

Citation : (2011) 113 BOMLR 1541 : (2011) 3 Crimes 34

Hon'ble Judges : Shrihari P. Davare, J

Bench : Single Bench

Advocate : A.N. Irpatgire, for the Appellant; S.M. Godsay, for the Respondent

Final Decision : Dismissed

Judgement

Shrihari P. Davare, J.—Heard learned Counsel for the parties.

2. Present appeal is directed against the judgment and order dated 5.6.2007, rendered by learned Adhoc Additional Sessions Judge¹, Dhule, in Special Case No. 126 of 2006, thereby convicting the Appellant herein (original accused) for the offence punishable u/s 135 of the Electricity Act and sentencing him to suffer simple imprisonment for three months and pay fine of Rs. 500, with default condition that on nonpayment of fine, to suffer further simple imprisonment for fifteen days, and also convicting him for offence punishable u/s 138 of the Electricity Act, 2003, and sentencing him to suffer simple imprisonment for three months and to pay fine of Rs. 1000/=, in default of payment of fine, to suffer further simple imprisonment for one month, and both the sentences were directed to run concurrently, as well as amount Rs. 3,888/deposited by the accused towards theft of electricity, was directed to be paid to the Respondent company as compensation u/s 357 of the Code of Criminal Procedure.

3. The factual matrix, which gave rise to the present appeal, is as mentioned below.

4. It is the case of the Respondent original complainant that on 22.2.2006, PW1 complainant Chintaman Gendaji Marathe, working as Junior Engineer with M.S.E.D.C. Ltd. at Pimpalner City, Taluka Sakri, District Dhule, along with his staff member Bhatu Sitaram Suryawanshi (PW2) and Shashikant Bhikan Saner, in order to detect theft of electricity, visited the house of the Appellant accused, and on inspection of the electric meter installed in his house, they found that there was no seal to its terminal cover and its" body seal was also found broken and the meter was found stopped running. However, they found that there were five tubes, two bulbs, four fans, fridge, electric motor, heater, T.V. and a Shegadi in use in the house of the accused, which consumed 4.73 KW load, in excess of the connection given to him. Thereafter, assessment was carried out and it was found that the accused had committed theft of electricity of 810 units, worth Rs. 3,888/=, by tampering with the electric meter. Thereafter, a bill dated 24.2.2006 was issued to the accused, as well as notice under Sections 126, 135(2) and 150(2) of the Electricity Act, was given to him, on 10.3.2006. However, in spite of that, the accused failed to deposit the amount of theft of electricity and compounding charges, and hence, after disconnecting electricity supply of the accused on 16.3.2006, the complainant filed complaint in the court of learned J.M.F.C., Sakri, on 13.6.2006.

5. Learned Magistrate issued process against the accused for the aforesaid offences on 14.8.2006, and the accused was released on bail on 29.9.2006, and since the offences were triable by the Court of Sessions, the case was committed by learned Magistrate to the Court of Sessions, Dhule vide order dated 21.9.2006 and the Appellant accused was directed to remain present before the said Court, on 20.10.2006. Accordingly, learned Special Judge recorded plea of the accused for offences punishable under Sections 135 and 138 of the Electricity Act, 2003. The accused pleaded not guilty.

6. To substantiate the case of the Respondent, it examined in all two witnesses, namely, PW1 complainant Chintaman Gendaji Marathe and PW2 Bhatu Sitaram Suryawanshi. The Respondent also tendered documentary evidence, such as, spot panchanama (Exh.9), assessment sheet (Exh.10) and electricity bill dated 24.2.2006 (Exh.11). Copy of notice dated 10.3.2006 is at Exh.12. The accused did not examine himself on oath nor any witness, but his defence was of total denial and he pleaded that he has been implicated in the case, falsely, and claimed to be innocent.

7. Considering the oral and documentary evidence adduced and produced by the prosecution and also considering the rival submissions advanced by the learned Counsel for the parties, the learned trial court convicted and sentenced the Appellant accused by judgment and order dated 5.6.2007 as stated hereinabove. Being aggrieved and dissatisfied by the said judgment of conviction and sentence, the Appellant accused has preferred present appeal, challenging the same, and prayed for quashment thereof.

8. Before adverting to the submissions advanced by learned Counsel for the

parties, it is necessary to examine evidence adduced and produced by the Respondent, and in the said context, coming to the testimony of PW1 Chintaman Gendaji Marathe, he stated that on 22.2.2006, he was attached to M.S.E.D.C. Ltd., Pimpalner City and PW2 Bhatu Suryawanshi was Upper Division Clerk, whereas Shamkant Saner was Lower Division Clerk working with him and they had gone to Patil Nagar area of Pimpalner, to take search of theft of electricity, and accordingly, they visited the house of the accused and inspected the electric meter installed in his house and found that there was no seal on the terminal cover of the said meter and it was stopped and was not running.. They also found that there were five tubes, two bulbs, four fans, fridge, T.V. set, water pump, heater and shegdi in use and thus there was excess consumption of electricity to the tune of 4.73 KW, and hence, they demanded current bill from the accused. PW1 also stated that he drew spot panchanama of the condition of the meter which is produced at Exhibit 9. According to him, per day consumption would be 9 units and energy charges would have been Rs. 3,888/and compounding charges/fees would be Rs. 20,000/. Accordingly, assessment sheet was prepared by billing unit in Sub Division Office, by Mr. Vardhane, Assistant Engineer, which is produced at Exh.10. PW1 also stated the accused had committed theft of electricity to the tune of 810 units, worth Rs. 3,888/= and hence, bill was given to the accused for theft of electricity, and the office copy of the bill is produced at Exh.11. Thereafter, notice was given to him for paying compounding charges, which is produced at Exhibit 12, but he failed to comply with the same. Hence, the electricity supply of accused was disconnected on 16.3.2006. Thereafter, on 13.6.2006, PW1 Chintaman filed complaint against the accused, as stated above.

9. During cross examination, PW1 stated that no meter inspector, lineman or helper accompanied them, nor maximum demand indicator was taken with them, nor they had any instrument for checking the meter. He also stated that no register was maintained in his office for effecting outgoing entry to check the theft of electricity, as well as no independent witnesses were taken along with them. He further stated that no independent person was present at the time of testing of meter of the accused. However, he stated that wife and son of the accused were present in his house, but their signatures were not demanded on panchanama (Exh.9) and that he did not seize anything from the spot. He further stated that the accused deposited the bill amount, and reconnection charges of Rs. 25/, under protest. PW1 Chintaman also admitted that bill of faulty meter was given to the accused for the period 20.2.2006 to 20.3.2006, and on 16.3.2006 meter was disconnected. PW1 Chintaman further stated that bill for the period 20.3.2006 to 20.4.2006 was given to the accused, of consumption of zero units.

10. Considering the testimony of PW1 complainant Chintaman, it is apparently clear that nothing could be elicited from his cross examination to discard his version in respect of material incident of visit of PW1 complainant, along with his staff members, to the house of the accused, on 22.2.2006, at the relevant time,

as mentioned earlier, and the very aspects of inspection of electric meter and finding the same to have been tampered and removal of seal thereon, have not been demolished in the cross examination. The witness fairly conceded in the cross examination that no lineman, inspector or helper had accompanied them at the time of said inspection and even no independent witness was taken along with them at the time of said visit. He also conceded that he did not seize anything from the spot.

11. Coming to the testimony of PW2 Bhatu Sitaram Suryawashi, he stated that on 22.2.2006, he was in service with M.S.E.D.C. Ltd. and was attached to Pimpalner city office, and PW1 Chintaman was serving as Junior Engineer. He stated that on 22.2.2006, he, LDC Mr. Saner and PW1 Chintaman, who was the head of the squad, went for inspection of theft of electricity at Pimpalner town, and more particularly at the house of the accused, and when the complainant inspected the electric meter of the accused, its" seal was found broken and it was not running properly, and hence, electric load in the house of the accused was checked and it was found that five tubes, two bulbs, one heater, Shgedi, fridge, T.V. set and water pump were being used and total load of 4.73 KW was found. He stated that, accordingly, PW1 Chintamn prepared panchanama, which is produced at Exh.9.

12. In the cross examination, suggestion was given to PW2 that they had not gone to the house of the accused and that the panchanama was prepared in the office, but same was denied by him. He fairly admitted that he has no knowledge of technicality of the electric meter.

13. On the background of the aforesaid evidence, learned Counsel for the Appellant canvassed that there is no inspection report produced on record and although the wife and son of the Appellant accused were present at the time of alleged inspection and drawing of panchanama, their signatures were not obtained thereon. It is also submitted that no independent person was taken as panch at the time of drawing of the said panchanama, and therefore, the said panchanama cannot be construed as authentic and independent document. It is further submitted that the prosecution has neither examined the Assessing Officer, who prepared the assessment sheet, nor assessment report was served upon the Appellant accused, nor the electric meter of the accused was seized under the spot panchanama. As regards assessment sheet (Exh.10), it is submitted that it does not bear name and designation of the officer who assessed the alleged theft of electricity. It is further submitted that no provisional, as well as final, assessment was given to the accused, nor the method, which was adopted for the said assessment, was disclosed. According to the learned Counsel for the Appellant, there is no evidence on record to show dishonesty on the part of the Appellant and the Appellant has deposited the bill amount and reconnection charges, under protest. It is further canvassed that the Respondent has not followed the procedure in respect of the assessment, as contemplated u/s 126 of the Electricity Act.

14. Learned Counsel for the Appellant also argued that Section 135(2) of the Electricity Act, contemplates that any officer authorized by the State Government may inspect the premises, but there is no evidence on record to prove and establish that the complainant was competent and authorized officer on behalf of the State Government, to inspect the premises of the accused. It is also submitted by learned Counsel for the Appellant that the Respondent has failed to comply with the provisions of Section 135(3) of the Electricity Act, and even the list of the things seized during the search, was not prepared and delivered to the wife or son of the Appellant accused, although they were present at the time of inspection of the electric meter. It is also submitted that no testing report has been produced by the Respondent on record, in respect of alleged tampering of electric meter, by the Appellant,

15. To substantiate his argument, learned Counsel for the Appellant relied upon the judicial pronouncement in the case of Harvinder Motors v. B.S.E.S. Rajdhani Power Ltd. AIR 2007 (Del) 085 and more particularly on paragraph 11 thereof which reads as under;

11. A joint, and harmonious reading of all the provisions would indicate that an inspection should precede assessment that the consumer has indulged in DAE. The licensee is obliged to follow principles of natural justice, and grant reasonable hearing (S.126(3) and Regulation 25(viii)). Mere irregularity in meter seals, or breakage of glass, etc. do not authorise the licensee to issue show cause notice; the assessing officer has to observe the consumption pattern, before the personal hearing is granted to the consumer (Regulation 25(iv) read with Regulation 26(ii)). If the observations about consumption pattern, as per the parameters of Regulation 26(ii) warrant further action, then the further steps indicated in Regulation 26(iii) and 26(iv) can be taken; if the parameters are not satisfied, no action can be taken.

16. In substance, learned Counsel for the Appellant submitted that the Respondent failed to prove and establish beyond reasonable doubt that the Appellant has committed offences as alleged by the Respondent, and urged that the convictions and sentences inflicted upon him, by impugned judgment and order dated 5.6.2007, be quashed and set aside, by allowing the present appeal.

17. Mr. S.M. Godsay, learned Counsel for the Respondent, countered the arguments advanced by learned Counsel for the Appellant, vehemently, and submitted that there is presumption against the accused under second proviso to Section 135 of the Electricity Act, which reads:

Provided further that if it is proved that any artificial means or means not authorised by the Board or licensee exist for the abstraction, consumption or use of electricity by the 13 criapl-350.07 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.

18. As regards the objection raised by the Appellant in respect of the alleged

authorization and competence of the complainant, learned Counsel for the Respondent canvassed that paragraph 13 of the complaint dated 13.6.2006 clarifies the position, as it discloses that the complainant was duly authorized by the Executive Engineer (Rural Division) for filing said complaint, and hence, it is submitted that there is no substance in the argument advanced by the learned Counsel for the Appellant, in that respect. According to the learned Counsel for the Respondent, there was no enmity between the complainant and officers of the Respondent with the accused, and therefore, there is no question of filing any false complaint by complainant against the accused. As regards electric meter of the accused, it is submitted that the meter recording was stopped as no recording was reflected on the said meter.

19. As regards the objection of the Appellant in respect of spot panchanama and not obtaining signatures of the wife and son of the accused thereon, learned Counsel for the Respondent submitted that nothing was seized under the said panchanama, and therefore, there was no question of obtaining signatures of the wife and son of the accused thereon, and consequently, there was no question of handing over list of the seized articles to them. Moreover, it is submitted that since there was no seizure, there was no question of production of logbook and movement register. In the said context, it is canvassed that, in fact, wife and son of the Appellant accused, who were occupants of the house, were present at the time of inspection and in their presence, it was noticed that there was no seal on the terminal cover of the electric meter of the accused and its body seal was broken and the meter was found stopped, and still there were five tubes, two bulbs, four fans, fridge, electric motor, water pump, heater, T.V. and a Shegadi in use in the house of the accused, which consumed 4.73 KW load in excess of permissible load, and therefore, assessment (Exh.10) was drawn in respect of theft of electricity committed by the accused and bill (Exh.11) in respect thereof, along with compounding charges, was given to the accused, as well as notice (Exh.12) in that respect was also issued to him, on 10.3.2006, but the accused failed to comply with the requisitions contained in the said notice, and hence, complainant was constrained to file present complaint.

20. It was further canvassed by the learned Counsel for the Respondent that, the Respondent has followed due procedure as contemplated u/s 135 of the Electricity Act, and that the provision of Section 126 of the said Act pertains to civil liability, and as such, there is no question of application thereof in the instant case. Accordingly, learned Counsel for the Respondent urged that the learned trial judge has considered the evidence adduced and produced before him in proper perspective and convicted and sentenced the Appellant accused, rightly, and accordingly, learned Counsel for the Respondent supported the impugned judgment, and submitted that no interference therein is called for, in the present appeal, and further urged that the present appeal bears no substance, and same is devoid of any merits, and hence, same be dismissed.

21. I have considered the oral and documentary evidence adduced and produced

by the Respondent, as well as perused the impugned judgment and order dated 5.6.2007 and heard the submissions advanced by the learned Counsel for the parties, anxiously, as well as perused the contents of the judicial pronouncement cited by learned Counsel for the Appellant accused, carefully, and at the outset, I am of the view that there is no substance in the argument advanced by the learned Counsel for the Appellant that the complainant was not authorized to file the complaint, since it is specifically averred in paragraph 13 thereof that the complainant was duly authorized to file the said complaint by the Executive Engineer (Rural Division), as well as by M.S.E.D.C. Ltd., and it is also averred in para 3 of the complaint that the same was filed by the complainant in accordance with the provisions of Sections 135 and 138 of the Electricity Act as "Kaksh Pramukh".

22. Moreover, PW1 Chintaman Marathe and PW2 Bhatu Suryawanashi, have corroborated with each other and categorically stated in their respective depositions that when they visited the house of the accused and inspected the electric meter for detection of theft of electricity, they found that seal of the meter was broken. PW1 Chintaman also stated that there was no seal on the terminal cover of the said meter, and both of them have deposed that the meter was not running properly, and PW1 Chintamani categorically stated that the meter was found stopped. Both the witnesses specifically stated in their respective depositions that five 17 criapl-350.07 tubes, two bulbs, four fanz, fridge, electric motor, heater, water pump, T.V. and a Shegadi were in use which consumed 4.73 KW connected load, which was in excess of permissible load, and the spot panchanama thereof was prepared in presence of occupants, namely, wife and son of the accused who were present at that time, and the said panchanama is produced at Exh. 9. Thus, the testimonies of PW1 Chintaman and PW2 Bhatu corroborate with each other in respect of theft of electricity in the house of the accused, in the aforesaid manner, and PW1 Chintaman stated that assessment of the said theft of electricity was done by billing unit in the sub divisional office and same bears signature of Assistant Engineer Shri Wardhane, which is produced at Exh.10. According to the said assessment sheet, the accused committed theft of electricity of 810 units amounting to Rs. 3,888/= and bill (Exh.11) in respect thereof, along with compounding charges of Rs. 20,000, was given to the accused on 24.2.2006, On 10.3.2006 notice (Exh.12) was given to the accused, calling upon him to pay the bill (Exh.11) of for theft of electricity, along with compounding charges, totalling to Rs. 23,888/=, but he deposited charges only in respect of bill for theft of electricity and Rs. 25/= towards reconnection charges, under protest, and thus failed to comply with requisitions contained in the said notice, and hence, after disconnecting the meter of the accused, on 16.3.2006, Respondent filed complaint on 13.6.2006.

23. As regards the objection raised in respect of the assessment that it does not bear the name of the assessing officer, it may be noted that PW1 Chintaman categorically stated that it was prepared by the billing unit in the sub divisional office and it bears signature of Assistant Engineer Shri Wardhane. Moreover, the

said assessment has been done as per Sub-section (5) of Section 126 of the Electricity Act, and pertinently, the accused has not challenged the said assessment before the proper forum. Thus, the assessment was done as per the actual use of the electric equipments in the house of the accused, and testimonies of both the witnesses of the Respondent, have categorically and consistently disclosed the electric gadgets/equipments used by the accused in his house, and merely because the Respondent has not examined the concerned assessing officer, the said failure by itself will not vitiate the assessment done, since PW1 Chintaman categorically proved the said assessment sheet before the court and since the same has also not been challenged by the Appellant accused before appropriate forum.

24. In substance, both the witnesses of the Respondent have categorically deposed that on inspection of the electric meter at the house of the accused, they found that its" seal was broken and it was not running properly, and PW1 Chintaman has further deposed that on meter terminal cover, there was no seal, and both of them have specifically stated that the electric equipments found in the house of the accused, were in use and carrying 4.73 KW load in excess, and both the said testimonies have not been demolished in the cross examination, in respect of the said vital aspect, and hence, there is no reason to disbelieve the same.

25. In the said context, it is necessary to mention that merely because no independent person was present at the time of inspection of the meter, it does not mean that evidence of both the witnesses of the Respondent should be discarded, mechanically, and on close and careful scrutiny of their respective testimonies on the aforesaid aspect of tampering the electric meter, I am of the view that there is no deformity, fatal to the case of the Respondent in respect of the said vital aspect, and the observations made by the learned trial judge in that respect, cannot be faulted with.

26. Moreover, as rightly canvassed by learned Counsel for the Respondent, since nothing was seized under the spot panchanama, there is no question of preparing and handing over of list of seized articles, to the occupants of the house, namely, wife and son of the accused, after preparing the panchanama, and hence, apparently, there is no substance in the argument canvassed by learned Counsel for the Appellant, in that respect.

27. As regards reliance placed by learned Counsel for the Appellant accused on observations in the judicial pronouncement in the case of Harvinder Motors (supra), it is amply clear that the facts and circumstances of the said case and the facts and circumstances of the present case differ from each other, and in the said context, learned Counsel for the Respondent canvassed that, in fact, Section 126 of Electricity Act contemplates civil liability and it has no role to play in the instant case.

28. Besides, considering the contents of the complaint, as well as testimonies of

PW1 Chintaman and PW2 Bhatu, as well as considering the panchanama (Exh.9), assessment sheet (Exh.10), bill dated 24.2.2006 (Exh.11) and notice dated 10.3.2006 (Exh.12), it is amply clear that the Respondent has observed the procedure as contemplated u/s 135 of the Electricity Act.

29. In the circumstances, I am not inclined to accept the submissions advanced by learned Counsel for the Appellant. Moreover, the view adopted by the trial court, after assessing and analyzing the evidence before it, while convicting and sentencing the Appellant accused for the offences punishable under Sections 135 and 136 of Electricity Act, is based upon proper reasoning, and apparently, there is no glaring defect therein, warranting reversal thereof, and therefore, present appeal bears no substance, and same is devoid of any merits, and hence, same deserves to be dismissed, by confirming the conviction and sentence inflicted upon the Appellant accused for offences punishable under Sections 135 and 138 of the Electricity Act, by learned Adhoc Additional Sessions Judge1, Dhule, by judgment and order dated 5.6.2007, in Special Case No. 126 of 2006.

30. In the result, present appeal, which is sans merits, stands dismissed, and the conviction and sentence inflicted upon the Appellant accused, by judgment and order dated 5.6.2007 in Special Case No. 126 of 2006, rendered by the learned Adhoc Additional Sessions Judge1, Dhule, stands confirmed and the said Appellant viz. Anandrao Madhavrao Shinde to surrender himself before the trial court within the period of three weeks to undergo the imprisonment as directed in the aforesaid judgment, failing which the learned Adhoc Additional Sessions Judge1, Dhule, to take suitable steps/action against the Appellant accused, in accordance with law. Office to communicate the aforesaid order to the learned Adhoc Additional Sessions Judge1, Dhule, forthwith.

Present appeal stands disposed of, accordingly.