

(1986) 03 MAD CK 0022

In the Madras High Court

Case No : Criminal Revision Case No. 792 of 1983 and Criminal Revision
Petition No. 775 of 1981

K. Sundaram

APPELLANT

Vs

S.P. Rajamanickam and Another

RESPONDENT

Date of Decision : 03-03-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 248(1)

Citation : (1986) 03 MAD CK 0022

Hon'ble Judges : Swamikkannu, J

Bench : Single Bench

Advocate : S. Manohar Ponraj, Public Prosecutor, S. Ramalingam, for the
Appellant; S. Sivasubramanian, for the Respondent

Judgement

Swamikkannu, J.—This is a criminal revision case filed by P.W. 1, K. Sundaram, Assistant Divisional Engineer, Tamil Nadu Electricity

Board, Erode, against the judgment dt. 12-8-1983 in C.C. No. 752 of 1982 on the file of the learned Judicial First Class Magistrate, Erode,

acquitting the accused S. P. Rajamanickam, the first respondent herein, under S. 248(1), Cr.P.C. finding that the prosecution has not proved its

case against him beyond all reasonable doubt.

2. The case of the prosecution is that prior to 12-10-1982, the first respondent herein has committed theft of 6136 units of electricity the cost of

which is Rs. 12,272/- from the service connection bearing S.E. No. 361/K which service connection had been given in his favour for running a

powerloom situate at M.G.R. Street, Veerappan Chatram, Erode. The charge-sheet had been filed against the first respondent herein under S. 39

of the Indian Electricity Act, 1910 as well as under S. 379, I.P.C.

3. On behalf of the prosecution, P.W. 1, K. Sundaram, P.W. 2, Shanmugasundaram and P.W. 3 Thangaraju, Sub-Inspector Western Region,

Crime Branch, North Police Station Erode, were examined and Ex. P-1, the report given by P.W. 2, Assistant Divisional Engineer, dt. 13-10-

1982, Ex. P-2, the report of P.W. 1 dt. 16-10-1982, Ex. P-3, the meter card and Ex. P-4, the letter of P.W. 1 dt. 12-10-1982 were filed. M.Os.

the meter and M.O. 2 series (seals) were produced before the lower Court. No witness has been examined on the side of the accused. On a

consideration of the above evidence, both oral and documentary, the lower Court came to the conclusion that the prosecution has not proved its

case against the accused, the first respondent herein, beyond all reasonable doubt and acquitted him. Aggrieved by the above decision of the lower

Court. P.W. 1 has come forward with this Criminal Revision Case.

4. It is inter alia contended on behalf of the petitioner herein that the lower Court has not properly appreciated the evidence, both oral and

documentary and as such, the order of acquittal of the first respondent herein is not correct and in accordance with law.

5. The point for consideration is whether there is any infirmity in the judgment of the lower Court.

6. It is provided under the provisions of the Indian Electricity Act, 1910 by S. 20(3) that in a case of this nature, notice had to be given to the

person against whom it is alleged that he had committed theft of electricity. Section 20 of the Indian Electricity Act, 1910 reads as follows :

20.(1) A licensee or any person duly authorised by a licensee may, at any reasonable time, and on informing the occupier of this intention, enter

any premises to which energy is or has been supplied by him or any premises or land, under, over, along, across, in or upon which the electric

supply-lines or other works have been lawfully placed by him for the purpose of -

(a) inspecting, testing, repairing or altering the electric supply-lines, meters, fittings, works and apparatus for the supply of energy belonging to the

licensee; or

(b) ascertaining the amount of energy supplied or the electrical quantity contained in the supply; or

(c) removing, where a supply of energy is no longer required, or where the licensee is authorised to take away and cut off such supply, any electric

supply-lines, meters fittings, works or apparatus belonging to the licensee.

(2) A licensee or any person authorised as aforesaid may also, in pursuance of a special order in this behalf made by a Magistrate of the first class

or in a presidency-town, by a Presidency Magistrate and after giving not less than twenty-four hours' notice in writing to the occupier -

(a) enter any premises or land referred to in sub-section (1) for any of the purposes mentioned therein;

(b) enter any premises to which energy is to be supplied by him, for the purpose of examining and testing the electric wires, fittings, works and

apparatus for the use of energy, belonging to the consumer).

(3) Where a consumer refused to allow a licensee or any person authorised as aforesaid to enter his premises (of land) in pursuance of the

provisions of sub-section (1) or sub-section (2), or when such licensee or person has so entered, refuses to allow him to perform any act which he

is authorised by those sub-sections to perform or fails to give reasonable facilities for such entry or performance, the licensee may, after the expiry

of twenty-four hours from the service of a notice in writing on the consumer, out of the supply to the consumer for so long as such refusal or failure

continues, but for no longer.

7. It is also provided under S. 26(6) of the Indian Electricity Act, 1910 that if there is any error found in the electrical installation, it is only the

decision arrived at by the Electrical Inspector in this regard is to be taken into consideration. Section 26 of the Indian Electricity Act, 1910 reads

as follows :

26.(1) In the absence of an agreement to the contrary, the amount of energy supplied to a consumer or the electrical quantity contained in the

supply shall be ascertained by means of a correct meter, and the licensee shall, if required by the consumer, cause the consumer to be supplied

with such a meter;

Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof,

unless the consumer elects to purchase a meter.

(2) Where the consumer so enters into an agreement for the hire of a meter, the licensee shall keep the meter correct, and, in default of his doing

so, the consumer shall, for so long as the default continues, cease to be liable to pay for the hire of the meter.

(3) Where the meter is the property of the consumer, he shall keep the meter correct, and, in default of his doing so, the licensee may, after giving him seven days' notice, for so long as the default continues, cease to supply energy through the meter.

(4) The licensee or any person duly authorised by the licensee shall, at any reasonable time and on informing the consumer of his intention, have

access to and be at liberty to inspect and test, and for that purpose, if he thinks fit, take off and remove any meter referred to in sub-section (1) :

and, except where the meter is so hired as aforesaid, all reasonable expenses of, and incidental to, such inspecting, testing, taking off and removing

shall, if the meter is found to be otherwise than correct, be recovered from the consumer; and, where any difference or dispute arises as to the

amount of such reasonable expenses, the matter shall be referred to an Electrical Inspector, and the decision of such Inspector shall be final :

Provided that the licensee shall not be at liberty to take off or remove any such meter if any difference or dispute of the nature described in sub-

section (6) has arisen until the matter has been determined as therein provided.

(5) A consumer shall not connect any meter referred to in sub-section (1) with any electric supply-line through which energy is supplied by a

licensee, or disconnect the same from any such electric supply-line, (but he may by giving not less than forty-eight hours' notice in writing to the

licensee require the licensee to connect or disconnect such meter and on receipt of any such requisition the licensee shall comply with it within the

period of the notice).

(6) Where any difference or dispute arises as to whether any meter referred to in sub-section (1) is or is not correct, the matter shall be decided,

upon the application of either party, by an Electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct,

such Inspector shall estimate the amount of the energy supplied to the consumer or the electrical quantity contained in the supply, during such time,

not exceeding six months, as the meter shall not, in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter

shall, in the absence of fraud, be conclusive proof of such amount or quantity;

Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days' notice of his intention so to do.

(7) In addition to any meter which may be placed upon the premises of a consumer in pursuance of the provisions of sub-section (1), the licensee may place upon such premises such meter, maximum demand indicator or other apparatus as he may think fit for the purpose of ascertaining or regulating either the amount of energy supplied to the consumer, or the number of hours during which the supply is given, or the rate per unit of time at which energy is supplied to the consumer, or any other quantity or time connected with the supply :

8. Provided that the meter, indicator or apparatus shall not, in the absence of an agreement to the contrary, be placed otherwise than between the distributing mains of the licensee and any meter referred to in sub-section (1) :

Provided, also what, where the charges for the supply of energy depend wholly or partly upon the reading or indication of any such meter, indicator or apparatus as aforesaid, the licensee shall, in the absence of an agreement to the contrary, keep the meter, indicator or apparatus correct; and the provisions of sub-sections (4), (5) and (6) shall in that case apply as though the meter, indicator or apparatus were a meter referred to in sub-section (1).

Explanation - A meter shall be deemed to be "correct" if it registers the amount of energy supplied, or the electrical quantity contained in the supply, within the prescribed limits of error and a maximum demand indicator or other apparatus referred to in sub-section (7) shall be deemed to be "correct" if it complies with such conditions as may be prescribed in the case of any such indicator or other apparatus.

9. Rule 46 of the Indian Electricity Rules, 1956 reads as follows :

46. Periodical inspection and testing of consumer's installation, -

(1)(a) Where an installation is already connected to the supply system of the supplier, every such installation shall be periodically inspected and

tested at intervals not exceeding five years either by the Inspector (or any officer appointed to assist the Inspector) or by the supplier as may be

directed by the State Government in this behalf or (in the case of installation belonging to, or under the control of the Central Government, and in

the case of installations in mines, oil fields and railways), by the Central Government.

(b) Where the supplier is directed by the Central or the State Government, as the case may be, to inspect and test the installation he shall report on

the condition of the installation to the consumer concerned in a form approved by the Inspector and shall submit a copy of such report to the

Inspector, (or to any officer appointed to assist the Inspector and authorised under sub-rule (2) of R. 4-A).

(c) Subject to the approval of the Inspector, the forms of inspection report contained in Annexure IX-A may, with such variations as the

circumstances of each case require, be used for the purposes of this sub-rule).

(2)(a) The fees for such inspection and test shall be determined by the Central or the State Government, as the case may be, in the case of each

class of consumers and shall be payable by the consumer in advance.

(b) In the event of the failure of any consumer to pay the fees on or before the date specified in the fee-notice, supply to the installation of such

consumer shall be liable to be disconnected under the direction of the Inspector. Such disconnection, however, shall not be made by the supplier

without giving to the consumer seven clear days" notice in writing of his intention so to do.

(c) In the event of the failure of the owner of any installation to rectify the defects in his installation pointed out by the Inspector or by any officer

appointed to assist him and authorised under sub-rule (2) of R. 4-A in the form set out in Annexure IX and within the time indicated therein, such

installation shall be liable to be disconnected under his direction after serving the owner of such installation with a notice :

10. Provided that the installation shall not be disconnected in case an appeal is made under R. 6 and the appellate authority has stayed the orders

of disconnection :

Provided further that the time indicated in the notice shall not be less than 48 hours in any case :

Provided also that nothing contained in this clause shall have any effect on the application of R. 49.

(3) Notwithstanding the provisions of this rule, the consumer shall at all times be solely responsible for the maintenance of his installation in such

condition as to be free from danger.

11. In the instant case, it is alleged that the occurrence took place on 12-10-1982 and that P.W. 3 gave report in this regard. The said report has

not been filed as a document in this case on behalf of the prosecution. Though even at the very initial stage, all the three witnesses herein had

inspected the meter, yet, they have not prepared any observation mahazar regarding their examination. No photograph of the meter had been

taken in this case. It is also an infirmity in the procedure adopted by them in that they have not explained the infirmities which they had noticed

during the time of their inspection to the accused, the first respondent herein, and obtained his acknowledgment of knowledge regarding the same

by obtaining his signature. Thus on a careful and anxious scrutiny, we find that the lower Court is correct in having held that the prosecution has not

proved its case against the accused, the first respondent herein, beyond all reasonable doubt. Hence, the acquittal of the first respondent under S.

248(1), Cr.P.C. by the lower Court is correct and in accordance with law. There is no infirmity in the judgment under revision. Hence, the criminal

revision case is dismissed.

12. Petition dismissed.