

(2010) 11 KAR CK 0112
In the Karnataka High Court
Case No : Criminal Appeal No. 232 of 2007

Khaleel Sab

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 19-11-2010

Acts Referred:

Electricity Act, 2003 — Section 135

Citation : (2010) 11 KAR CK 0112

Hon'ble Judges : Huluvadi G. Ramesh, J

Bench : Single Bench

Advocate : B.Pramod, for the Appellant; Karunakar, HCGP, for the Respondent

Judgement

Huluvadi G. Ramesh, J.—This appeal is by the accused challenging the order of the incharge Addl. Sessions Judge, Chitradurga in Special Case (I.E.) No. 46/2004 dated 2.4.2007.

2. According to the prosecution, on 2.12.2003 at 12.00 Noon, the Assistant Executive Engineer along with the Vigilance squad of BESCO, inspected the Cycle shop of the accused and found that unauthorised power connection was taken to the welding transformer directly from the LT line. By drawing mahazar in the presence of panch witnesses, PW-1 seized the wire illegally connected to the LT line to draw power to the welding transformer and lodged a case in Crime No. 651/2003 for the offence punishable u/s 135 of the Electricity Act, 2003. The Police Inspector of BESCO, after investigation filed the charge sheet. The accused pleaded not guilty and claimed to be tried. The prosecution in all, examined six witnesses and marked three documents and one Material Object namely eight meter wire. After hearing both sides, the Special Court held that the accused is guilty of the offence punishable u/s 135 of the Electricity Act 2003 and sentenced to undergo imprisonment for three months and to pay fine of Rs. 5,000/- and in default, to undergo SI for a period of three months. Hence, this appeal by the accused.

3. Heard.

4. The counsel appearing for the complainant has contended that only for statistical purpose, false case has been registered against the accused, Neither mahazar was conducted nor the accused has committed any theft of electricity, Hence, he prayed for allowing this appeal.

5. The learned Government Pleader has submitted that the officials of the BESCOM department, have inspected the shop of the accused, and found unauthorised power connection to the welding transformer illegally and the accused had committed the theft of electricity and the wire used was seized under mahazar. There is a prima facie case against the accused and accordingly he has sought for dismissal of the appeal.

6. The witnesses, PW-1 complainant - Asst. Executive Engineer and PW-3 - Assistant Engineer have spoken about the theft of electricity and connection taken by the accused from the LT line to the welding transformer on 2.12.2003 at 12.00 Noon. But the accused had not taken power connection to run the welding transformer. During inspection, when PW-1 asked the accused to switch on the welding transformer, it started running. Although, suggestion was made to the witnesses, nothing is elicited to discard their evidence of committing theft of electricity from the LT line to run the welding transformer. PW-2 is an independent witness for the seizure mahazar. Since, he turned hostile, there is nothing to disbelieve the version of P Ws.1 & 3. Earlier to the lodging of the complaint, it is said that the officials have warned the accused and given him an opportunity. In spite of it, it appears, the accused continued to use it on the date of the alleged seizure. Further, when it was checked, it was found in a running condition. The accused was running a cycle shop at Rangenahalli of Chitradurga District, where he has installed and kept the welding transformer by tapping the electricity illegally to the welding transformer. Use prosecution was able to prove the guilt of the accused beyond reasonable doubt as is noted in the evidence and as is held by the Trial Court. The impugned order of conviction rendered against the accused for the offence punishable u/s 135 of the the Electricity Act, 2003 does not call for interference.

7. However, it appears that the Appellant does not know the consequence of conviction. Accordingly, I am of the view that instead of sentencing the accused to suffer imprisonment, if the order is modified and sentenced by imposing only fine, it would meet the ends of justice. It is submitted by the counsel for the Appellant that he has already deposited the fine amount of Rs. 5,000/-

In view of the above, the appeal is allowed in part. The accused is sentenced to pay a fine of Rs. 4,000/- payable within three months from the date of receipt of this order, In default, the Appellant shall undergo SI for one month. Office to send back the records forthwith.