

(2019) 03 CHH CK 0152

In the Chhattisgarh High Court

Case No : Criminal Appeal (CRA) No. 397 Of 2009

Kulomani Gupta

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:

Electricity Act, 2003 — Section 138, 154(5)

Citation : (2019) 03 CHH CK 0152

Hon'ble Judges : Ram Prasanna Sharma, J

Bench : Single Bench

Advocate : Manoj Kumar Sinha, Sudha Shrivasta

Final Decision : Partly Allowed

Judgement

Ram Prasanna Sharma, J

1. This appeal is preferred against judgment dated 24 th April, 2009 passed by Special Judge (Electricity Act 2003), Bemetara, District- Raigarh (C.G.) in Special Case (Electricity Act, 2003) No. 18/2008 wherein the said court convicted the respondent for commission of offence under Section 138 of the Electricity Act, 2003 and sentenced him to undergoes RI for 1 year and fine of 10,000/- and again imposed Civil Liability of Rs. 13,428/- as per section 154 (5) of the Act, 2003.

2. As per the version of complainant earlier electric connection was given to the appellant for 10 horsepower for agricultural purpose by the electricity board and it was disconnected on 25th May, 2008 because complete balance amount had not been paid by the appellant on 8th September, 2008. The Team of Electricity Board went for inspection and found that appellant illegally connected the electric current again, which was earlier disconnected and pump was used for irrigation of field and as such he committed the offence as mentioned above. The matter was reported and the appellant was charge-sheeted as mentioned above.

3. Learned counsel for the appellant submits that reconnection by appellant is

not established by evidence of complainant side and trial court has not examined the entire evidence in its right perspective. There is no independent witness to establish the charge as to when appellant illegally took electric connection. Therefore, it is not a case of dishonest intension. The findings recorded by the trial court is liable to be set aside.

4. On the other hand learned counsel for the State submits that the finding of the trial court is based on proper marshaling of evidence and same is not liable to be interfered with jurisdiction while invoking the appeal.

5. I have heard learned counsel for the parties and persued the record of the trial court in which Judgment is passed.

6. From the evidence, of Engineer of Power Distribution Company R. Dayasi (PW-1), B. B. Meshram Excecutive Engineer (PW-2), Assistant Line Man Anantram (PW-3) Surendra Gupta (PW-4), S.K. Dubey (PW-5), it is established that earlier the electric line of appellant was disconnected but he reconnected the same without proper authority and due to act of the appellant the Board sustained financial loss. All the witnesses have been subjected to searching cross examination but they are unshaken during cross examination, therefore, it is established from the evidence that appellant unauthorisedly connected the wire without permission by the authorities, therefore, the act of the appellant falls within mischief under Section 138 of the Act, 2003 for which the trial court convicted him and there is no reason to say that the appellant has been falsely roped with the said charge, therefore, finding of the trial court regarding conviction of the said offence is hereby affirmed. The trial court fixed civil liability for Rs. 13428/- which is within the power of the said court and this court has no reason to reverse the finding recorded by the trial court.

7. Jail sentence is not compulsory for commission of offence under Section 138 of the Act, 2003. As per the report, it is first offence of the appellant, therefore, it would not be useful to send the appellant in jail. Accordingly, the sentence of one year awarded by the trial court for the said offence is set- aside. Further, fine amount imposed by the said court shall remain intact.

8. With these modifications, the appeal is partly allowed.