

(2024) 07 GUJ CK 0049
In the Gujarat High Court
Case No : Criminal Appeal No. 1079 of 2007

Limjibhai Devaliya Vasava Versus

APPELLANT

Vs

State Of Gujarat Through & Anr.

RESPONDENT

Date of Decision : 23-07-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 300, 374
Electricity Act, 2003 — Section 135, 135(1)(B), 152

Citation : (2024) 07 GUJ CK 0049

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : M M Saiyed, Jyoti Bhatt

Final Decision : Allowed

Judgement

Divyesh A. Joshi, J

1. By way of present appeal under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC" for short), the appellant has challenged the judgment and order of conviction dated 15.06.2007 passed by the learned Additional Sessions Judge, Fast Track Court No.1, Narmada at Rajpipla in Special Sessions Case No.4/2007, whereby the appellant has been convicted for the offence under Section 135(1)(B) of the Electricity Act and sentenced him to undergo 1 years simple imprisonment and fine of Rs.14,584/-, in default, to undergo 1 month simple imprisonment.

2. The brief facts leading to filing of the present appeal are as under,

2.1 On the day of incident i.e. on 08.04.2005, when the inspection was carried out at the premises of the appellant – accused, it was found that by tampering with the meter, the accused have committed theft of energy to the tune of Rs.8,657.78 with the help of co-accused.

2.2 Accordingly, FIR has been lodged and, investigation was carried out. On

conclusion of the same, the chargesheet was filed and case was committed to the court of Sessions, where it has been registered as Special Sessions Case No.4/2007.

2.3 Thereafter, the trial has proceeded further, Both the sides have led oral as well as documentary evidence.

2.4 On conclusion of the trial, the learned Judge has passed an order of conviction as stated in Paragraph No.1 of the order.

3. Heard learned advocate, Mr. M.M. Saiyed for the appellant and learned APP Ms. Jyoti Bhatt for the responded – State of Gujarat.

4. Learned advocate, Mr. Saiyed for the appellant-accused submitted that it is an admitted position of fact that the appellant has been convicted by the learned Court below after full-fledge trial, against which, the present appeal is preferred. Learned advocate, however, submitted that this is the first offence registered against the appellant and prior to registration of the offence, not a single offence has been registered against him. Learned advocate submitted that in fact, the learned Court below has not properly appreciated the fact that the offence, under which the present appellant was convicted, was the first offence for the present appellant under the provisions of Section 135 of the Electricity Act. Learned advocate submitted that the offence under Section 135 of the Electricity Act is compoundable under Section 152 of the Electricity Act as this is the first offence committed by the appellant and, hence, the said provision is applicable to the present case. Learned advocate has put reliance upon Section 152 of the Electricity Act, which reads as under,

"152 Compounding of offences:

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Appropriate Government or any officer authorised by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of the theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table below :

Nature of Service Rate at which the sum of money for compounding to be collected per Kilowatt (KW)/Horse Power (HP) or part thereof for Low Low Tension (LT) supply and per Kilo Volt Ampere(KVA) of contracted demand for High Tension (HT)

(1)

(2)

1. Industrial Service twenty thousand rupees;

2. Commercial Service ten thousand rupees;
3. Agricultural Service two thousand rupees;
4. Other Services four thousand rupees:

Provided that the Appropriate Government may, by notification in the Official Gazette, amend the rates specified in the Table above.

(2) On payment of the sum of money in accordance with sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal Court.

(3) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 the Code of Criminal Procedure, 1973.

(4) The compounding of an offence under sub-section (1) shall be allowed only once for any person or consumer."

5. After referring to the aforesaid provision, learned advocate submitted that the benefit as provided under the Act is required to be given by the appellant – accused. Learned advocate submitted that in fact, the appellant has already deposited the outstanding dues of the Electricity Company in two different installments and in support of this submission, learned advocate has drawn attention of this Court to the order dated 17.09.2007 passed by the Coordinate Bench of this Court. Learned advocate submitted that in view of the above facts, the question of outstanding dues of the Electricity Company would not survive. Learned advocate has tendered affidavit filed by the appellant, wherein the appellant has stated in a categorical terms that the offence registered against him, for which, an order of conviction has been passed, is the first offence. Learned advocate, therefore, urged that since this is the first offence committed by the appellant and as outstanding dues have already been deposited before the Electricity Company, which is recorded in the order dated 17.09.2007 passed by the Coordinate Bench of this Court, the present appeal may be allowed and the impugned judgment and order of conviction and sentence may set aside and the appellant may be acquitted from the charges levelled against him.

6. Learned APP Ms. Jyoti Bhatt appearing for the respondent-State submitted that the above factual aspect regarding letter/decision of the State Government is not disputed by her, but the factual aspect as to whether the offence committed by the present appellant is the first offence or not, is required to be ascertained from the Electricity Company.

7. Regard being had to the above submissions and considering the oral as well as documentary evidence on record and also considering the fact that insofar as the

present appellant is concerned, this is the first offence, and therefore, in view of the scheme floated by the State Government and also considering the fact that the offence under Section 135 of the Electricity Act is compoundable under Section 152 of the Electricity Act, this Court is of the view that the judgment and order of conviction and sentence passed by the learned Sessions Judge deserves to be quashed and set aside and the fine amount is required to be refunded to the appellant.

8. Accordingly, the present appeal is allowed. The judgment and order of conviction dated 15.06.2007 passed by the learned Additional Sessions Judge, Fast Track Court No.1, Narmada at Rajpipla in Special Sessions Case No.4/2007 is hereby quashed and set aside. The appellant is ordered to be acquitted of the charges levelled against him. The bail and bail bond stand cancelled. Surety, if any, shall stand discharged. The fine amount paid by the appellant be refunded to the appellant. Record and Proceedings be sent back to the Trial Court concerned forthwith.