

(2013) 03 MP CK 0083

In the Madhya Pradesh High Court

Case No : Criminal Revision Nos. 528 and 535 of 2008

Madhya Pradesh Rajya Vidyut Mandal (M.P.P.K.V.V. Co. Ltd.) **APPELLANT**

Vs

Sandeep
 Sandeep Vs Madhya Pradesh Rajya Vidyut Mandal (M.P.P.K.V.V. Co. Ltd.) **RESPONDENT**

Date of Decision : 22-03-2013

Acts Referred:

Citation : (2013) 03 MP CK 0083

Hon'ble Judges : N.K. Gupta, J

Bench : Single Bench

Judgement

N.K. Gupta, J.—These two revision applications were filed against the common judgment dated 21.1.2008 passed by the learned Special Judge under Electricity Act (hereinafter it will be referred to as "The Act"), Sagar in criminal case No. 13/2007 and therefore, decided by a common order. The learned First Special Judge under the Act, Sagar vide judgment dated 21.1.2008, convicted the applicant of Criminal Revision No. 535 of 009 (hereinafter he will be referred to as "applicant/accused") for offence punishable u/s 135 of the Act and a fine of Rs. 3,500/- was imposed upon him. Being aggrieved with conviction as well as the sentence imposed upon him, the applicant/accused has preferred the present revision.

2. The applicant of criminal revision No. 528/2008 (hereinafter he will be referred to as "applicant/complainant") has preferred the present revision against the impugned order dated 21.1.2008 for enhancement of sentence passed by the trial Court.

3. The prosecution's case, in short, is that, on 27.9.2006, at about 3.40 p.m., the junior Engineer Shri B.P. Sen (P.W. 1) went to the village Badona (Police Station Motinagar, District Sagar) for inspection. He inspected the house of the applicant/accused and found that he was running a flour mill having a motor of 3 HP in his house, by taking a direct connection from the live wires of the Madhya Pradesh State Electricity Board (hereinafter it will be referred to as "The Board").

A memo, Ex. P/1 was prepared at the spot. Thereafter, an assessment of theft of electrical energy was prepared as Ex. P/2 and a complaint was filed against the applicant/accused.

4. The applicant/accused abjured his guilt. He took a plea that he was falsely implicated in the matter. Komal Ahirwar (D.W. 1) was examined to show that the spot where the flour mill was found, was not of applicant/accused Sandeep but, it was of Komal.

5. The learned Special Judge, after considering the evidence adduced by the parties, convicted the applicant for the offence punishable u/s 135 of the Act and sentenced as mentioned above.

6. I have heard the learned counsel for the parties.

7. The learned counsel for the applicant/accused has submitted that a false case was prepared against the applicant/accused and the place where the flour mill was found, was not in possession of the applicant/accused. Under such circumstances, it is prayed that the applicant/accused may be acquitted.

8. On the other hand, the learned counsel for the applicant/complainant has submitted that the trial Court did not impose any civil liability upon the applicant/accused and the calculation done of the civil liability was not appropriate, as it was done u/s 126 of the Act, whereas it was to be done u/s 154(5) of the Act and therefore, it is prayed that the sentence may be enhanced.

9. After considering the submissions made by the learned counsel for the parties and looking to the evidence adduced, it is apparent that Shri B.P. Singh (P.W. 1) was examined in support of the complaint. An opportunity of cross-examination was given to the applicant/accused. Shri B.P. Singh has given the entire description of the place and he told that two wires were taken from LT line and thereafter, the applicant was found running a flour mill. It was no where suggested to this witness that it was not the house of the applicant/accused Sandeep or it was the house of Komal Ahirwar. Under such circumstances, where the applicant/accused was present at the spot but, refused to sign on memo, Ex. P/1, prepared by Shri Singh then, it would be apparent that the defence taken by him could not be proved. The testimony of Shri Singh is believable and therefore, it is apparent that the applicant/accused was found running a flour mill with help of a motor of 3 HP, without taking any valid connection and by joining the live wires from the electric line of the Board. Under such circumstances, the learned Special Judge has rightly convicted him for offence punishable u/s 135 of the Act.

10. So far as the sentence is concerned, it is apparent that prior to the modification in the provision of section 154(5) of the Act, it was the discretion of the trial Court to determine the civil liability. The provision became mandatory w.e.f. 15.6.2007, whereas the present incident took place on 27.9.2008 and therefore, it was not required for the trial Court to fix the civil liability. The applicant was the first offender and therefore, it was not required for the trial

Court to impose a jail sentence upon the applicant. So far as the fine is concerned, the learned Special Judge has tried to calculate the actual loss committed of the electrical energy to the Board and after that calculation a fine was imposed. If fine was imposed on the basis of the calculation required to be done u/s 126 of the Act then, it cannot be said that it was a wrong calculation. The trial Court did not calculate the civil liability of the applicant. The Act does not provide any mandatory provision relating to the minimum limitation of fine upon the accused and it was the discretion of the learned Special Judge to calculate the fine, which could be imposed upon the accused. According to the provision of section 126 of the Act, the Board has still the authority to recover the loss of electrical energy from the accused and therefore, it makes no difference to the Board. Under such circumstances, the discretionary power of the Special Judge cannot be interfered, by way of a revision because if any discretion was used then, it cannot be said that any illegality or perversity has been done in using that discretion. Under such circumstances, looking to the facts and circumstances of the case, where the applicant/complainant has still an opportunity to recover the loss of electrical energy from the applicant/accused, there is no need to enhance the fine amount imposed upon the applicant/accused and therefore, the revision filed by the complainant cannot be accepted.

11. Under such circumstances, where it is apparent that the conviction directed by the trial Court is appropriate and sentence is also appropriate therefore, neither the revision filed by the applicant/accused, nor the revision filed by the applicant/complainant can be accepted. Consequently, both the revision applications filed by the applicant/accused as well as the applicant/complainant are hereby dismissed. A copy of the order be sent to the trial Court along with its records for information.