(2003) 07 P&H CK 0077

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 489 of 1993

Rajnish Kumar and others APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 09-07-2003

Acts Referred:

Citation : (2004) 1 CCJ 12 : (2004) 1 RCR(Criminal) 739

Hon'ble Judges : Nirmal Singh, J

Advocate : Mr. H.S. Gill, Senior Advocate with Mr. R.K. Dhiman, Advocate. Mr. K.S. Chauhan, DAG, Haryana., Advocates for appearing Parties

Judgement

Nirmal Singh, J.

1. M/s Bansal Rice Mill was the consumer of Haryana State Electricity Board and was doing the business of rice shelling. The electricity connection of this Mill remained suspended from 24.4.1991 to 3.10.1991. It requested for the restoration of electricity supply and also paid reconnection charges and some amount towards additional security etc. Thereafter, electric supply was restored from 4.10.1991. M/s Bansal Rice Mill entered into a contract with the partners of M/s Luxmi Rice Mill for giving the Mill on lease to it and ultimately, a lease deed ws executed between the parties on 5.10.1991. On 10.10.1991, during the inspection of metering equipment of M/s Bansal Rice Mills, Maniyana Road, Tohana by A.E.E.M. & P. Division H.S.E.B. Hisar, the following acts of theft of energy were noticed:

"One seal of C.T. Chamber found broken through lash wire and second seal of C.T. Chamber found tampered and found duplicate seal on MCB."

2. A complaint was made by the S.D.O., H.S.E.B. to Police Station Tohana on 12.10.1991 FIR No. 414 dated 14.10.1991 was lodged against M/s Bansal Rice Mills. Subsequently petitioners were arrayed as accused as they have taken the rice mill on lease. After investigation, challan was presented before the Illaqa Magistrate. After hearing the accused were discharged by Judicial Magistrate Ist

Class, Tohana vide order dated 15.10.1992. Aggrieved by that order, State filed a revision before the Sessions Judge, Hisar, which was accepted and orders dated 15.10.1992 were set aside and case was remanded back to the Judicial Magistrate Ist Class for decision on merit. Aggrieved by that order, present revision has been preferred by the petitioners.

3. Mr. H.S. Gill, Senior Advocate appearing for the petitioners submitted that petitioners have been wrongly arrayed as accused. He contended that petitioners have taken the Mill on lease from M/s Bansal Rice Mill on 5.10.1991 whereas raid was conducted on 10.10.1991. He further submitted that petitioners have not yet started their work and the meter was functioning as it was taken from M/s Bansal Rice Mills. He also submitted that M/s Bansal Rice Mills have been imposed penalty of Rs. 91663.77 for the theft of energy. He further contends that the prosecution cannot sail in two boats. He states that on the one hand they have imposed penalty upon M/s Bansal Rice Mills and on the other hand they have started prosecution against the petitioner who have taken the Mill on lease on 5.10.1001. Mr. Gill also raised the contention that even if the allegations made in the FIR and evidence collected during investigation, is taken as it is, even then no offence is made out against the petitioner under Section 379 IPC read with Section 39 of the Indian Electricity Act, 1910. He submitted that it is not sufficient for the prosecution to show that the meter has been tampered with without proving that petitioners were using artificial means to extract the energy. In support of his submissions, he placed reliance on Pawan Kumar & Others v. The State of Haryana, 2003(1) RCR 105.

4. Mr. K.S. Chauhan, learned DAG submits that one seal of C.T. Chamber was found broken through lash wire and second seal was found tampered and there was a duplicate seal on MCB. He further submits that when this act has been done by the petitioners, then it was a pure cases of extracting the energy for consumption by the petitioners, and this act has been done by the petitioners.

5. I have given my thoughtful consideration to the submissions made by learned counsel for the parties and perused the record.

6. In Pawan Kumar''s case (supra), it has been held by the Apex Court as under :

7. "A bare perusal of the aforesaid section shows that before an offence can be committed under section 39 of the Indian Electricity Act, it would be necessary to prove dishonest intention and that some artificial means or means not authorised by the licensee exists for the abstraction, consumption or use of energy by the consumer. A perusal of the complaint as also the FIR shows that there are no averments to the effect that the petitioners had used artificial means for the abstraction of the electricity. Therefore, on the basis of the same, no offence has been made out against the petitioners under Section 39 of the Indian Electricity Act, 1910."

8. The ratio of this authority is fully applicable to the facts of the present case. The prosecution has not able to collect any evidence to prove that the petitioners

have used artificial means for extracting the energy for their use. As it has been noticed above, M/s Bansal Rice Mills were using the energy and they have been imposed a penally of Rs. 91663.77 for stealing the energy. From the perusal of FIR and evidence collected, there is no evidence that petitioners have used any artificial means for extracting the energy. Present petitioners are the partners of M/s Luxmi Rice Mills. The prosecution has failed to show that all the partners were in any way responsible for the conduct of the business of the firm. Therefore, the petitioners could not be charged as it has been laid down in Vidya Wati and ors. v. State, 1988 CC Cases 589 (HC) : 1988(2) RCR(Cr.) 471 (Delhi).

9. The learned Magistrate while discharging the accused has observed as under:

"As observed above, the Mill was taken on lease by the accused on 5.10.1991, and in my opinion this consumer is not dishonest in using the energy but it is the previous consumer, which is registered with the HSEB, who had made dishonest abstraction of energy. Electricity Department moved against M/s Bansal Rice Mills despite the fact that they were knowing that the Mills was taken on lease by the present accused but it is police, which changed the direction of investigation towards accused for the reasons best known to them. The circumstances that the consumer took the Mill on lease on 5.10.1991 and started abstraction of energy, does not give rise to an inference that he would start using electricity by artificial means. M/s Bansal Rice Mills is the registered firm. It was using electricity prior to accused. This artificial abstraction of energy was done during their period and, therefore, in my opinion, there is no prima facie case for dishonest abstraction of energy against the accused and they are discharged but there is prima facie case for theft and dishonest abstraction and consumption of energy by the partners of M/s Bansal Rice Mills and therefore, they be summoned for commission of an offence punishable under section 379 IPC and 39 of the Indian Electricity Act, 1910."

10. The learned Sessions Judge has overlooked the observations made by the learned Judicial Magistration Ist Class. From the facts and circumstances of the case, it is apparent that M/s Bansal Rice Mills were the previous consumer and the abstraction of energy has been done during their period. Admittedly petitioners entered into agreement with M/s Bansal Rice Mills on 5.10.1991 and the raid was conducted on 10.10.1991, just after 5 days of taking possession of the premises. Therefore, the learned Magistrate has rightly summoned the partners of M/s Bansal Rice Mills under section 379 IPC and 39 of the Indian Electricity Act and discharged the petitioners.

11. For the reasons recorded above, this revision is accepted. The order dated 26.7.1993 passed by the Sessions Judge, Hissar is set aside and the order dated 15.10.1992 passed by the Judicial Magistrate Ist Class, Tohana is restored.

Revision allowed.