

(1998) 09 MAD CK 0154
In the Madras High Court
Case No : S.A. No. 105 of 1985

Sriramulu

APPELLANT

Vs

Tamil Nadu Electricity Board

RESPONDENT

Date of Decision : 04-09-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 22, Order 41 Rule 33
Electricity Act, 1910 — Section 24, 39, 44(c), 5
Penal Code, 1860 (IPC) — Section 379
Probation of Offenders Act, 1958 — Section 3, 4, 6

Citation : (1998) 09 MAD CK 0154

Hon'ble Judges : K. Sampath, J

Bench : Single Bench

Advocate : R. Subramaniam, for the Appellant; V. Rengabashyam, for the Respondent

Judgement

K. Sampath, J.—The plaintiff, who succeeded before the trial court and lost before the lower Appellate Court, is the appellant. He filed suit O.S. No. 285/80 before the District Munsif, Cheyyar, for recovery of Rs. 2050/- from the respondents on the following averments. He was an agriculturist and a consumer of electricity energy under the respondent, Tamil Nadu Electricity Board, his service connection being No. 53 at Poonthandalam Village. On 15-10-1976, the then North Assistant Engineer, Cheyyar, North Arcot District, inspected the meter installed in the appellant's service connection and alleged that the connection to the said service had been tampered with and the meter was therefore recording only 1/3rd of the actual consumption of energy. On an erroneous conclusion that the appellant had indulged in theft of electrical energy by tampering the meter, the service was disconnected on 16.10.1976. On the same day the then Junior Engineer and the Assistant Divisional Engineer along with some Police Officials called on the appellant and threatened him that he would face dire consequences and no reconnection of supply and service connection would be given unless he parted with Rs. 2050/- as due compensation for the theft of electrical energy as

demanded by them. The appellant got frightened and on the same day he paid Rs. 1000/- under receipt No. 214646 and the balance of Rs. 1050/- on 2-11-1976 under receipt No. 214717. The respondents had no right to disconnect without issuing proper notice to the appellant regarding the assessed amount. Notwithstanding the absence of a notice, the plaintiff paid Rs. 2050/- as orally demanded. The disconnection was illegal. A case was filed in C.C. No. 504/77 before the Judicial Second Class Magistrate's Court, Cheyyar, under Sections 5 and 44-C of the Indian Electricity Act. The trial court found the appellant guilty. However, on appeal in C.A. No. 143/77 on the file of the Chief Judicial Magistrate at Vellore in the then North Arcot District, the appellant was acquitted. Thereafter, the appellant caused a notice to be issued to the respondents through his Advocate on 3-2-1977 for the reconnection of supply to his service connection. The Board neither made the final assessment of the compensation nor gave reconnection of supply of service. However, ultimately on petition to the Divisional Engineer, Cheyyar, reconnection was given to Service Connection No. 53. The amount demanded from the appellant and received by the Board was neither due nor payable by the appellant "to the Board. The suit was therefore filed for the recovery of the amount. The suit was originally filed on 8.10.1979. It was returned for certain defects to be rectified. However, the papers got mixed up with the other bundles in the Office of the appellant's Counsel necessitating the appellant filing a fresh suit.

2. The first respondent resisted the suit inter alia contending as follows:

The then Assistant Engineer along with his staff made a surprise inspection of the appellant's service connection. He found that the meter had been tempered with and it was tested with a kit. It was found that the meter was running in the reverse direction in one phase. There was no terminal seal in the meter. It was a clear case of theft of electrical energy. Then the appellant was informed that the Board had sustained a loss of Rs. 2050/- due to the above theft by the appellant. He promptly paid Rs. 1000/- as first instalment assuring to pay the balance in two instalments. He had also given a statement voluntarily on 16-10-1976. It was false to say that the Board people threatened the appellant with police help. The damages were calculated and the appellant was informed about it. The payment by the appellant was voluntary. The assessment was perfectly legal and it was the final assessment. The appellant never objected to the same. The disconnection was according to law. The appellant had been duly informed about it. The appellant was convicted by the lower court, but on appeal on a technical ground, the appellate Judge reduced the punishment of the lower court and released the appellant under the Probation of Offenders Act. The appellant had been acquitted only u/s 39 of the Indian Electricity Act read with 379 I.P.C. His conviction u/s 44(c) of the Indian Electricity Act had been confirmed even in appeal. It was therefore not correct to say that the appellant was acquitted in toto by the appellate Court. The reconnection was given at the earliest opportunity. There was no willful default on the part of the respondents. The appellant had not suffered any loss. Even if he had suffered any loss, the Board

was not liable for the same. The appellant was not entitled to get refund of the amount. The suit was barred by limitation and liable to be dismissed with exemplary costs.

3. The learned District Munsif framed the necessary issues and on a consideration of the oral and documentary evidence, found that the appellant had not committed any theft of energy. The appellant was not liable to pay any amount for alleged theft of energy and the appellant was entitled to be repaid the amount paid by him.

4. On appeal by the respondents in O.S. No. 285/80, the lower Appellate Court reversed the decision of the trial court holding that the suit was barred by limitation, though on merits it held in favour of the appellant.

5. The substantial question of law raised at the time of admission in the Second Appeal is as follows:

When the plaint had been filed originally on 8-10-1979, will not the suit, as filed, be on time?

6. Mr. R. Subramaniam, learned Counsel for the appellant submitted that having found that the respondent. Board had not proved theft of electrical energy, the trial court erred in holding that the suit was barred by limitation. The criminal proceedings came to a close on 31-12-1977. The decision of the criminal court being the basis for the present suit, the suit was well within time. When the suit amount has been collected towards damages for illegal consumption of electrical energy and when the criminal court had found that there was no theft, the limitation for recovery of the amount paid as damages had to be reckoned only from the date when the final decision was given that there was no theft of energy and consequently there was no damage caused to the respondents.

7. Mr. Rengabashyam, learned Counsel appearing for the Electricity Board, submitted that the finding of the lower Appellate Court that there was no theft of energy was not supported by any material. On the contrary, the criminal court itself did not find the appellant innocent, but found him guilty u/s 44(c) of the Indian Electricity Act, 1910: To the point that the respondents not having filed any independent appeal or cross-objections questioning the finding of the lower Appellate Court that the appellant had not committed theft of energy. the learned Counsel relied on a number of decisions under Order 41 Rule 22 and Rule 33 of the Code of Civil Procedure. The learned Counsel further submitted that the suit having been filed on 21-7-1980 was clearly out of time. The appellant did not object to the final assessment and voluntarily paid the amount demanded.

8. It is to be immediately noted that there is no assessment order in the instant case produced in respect of the respondent's case of theft of energy. This court directed the respondents to produce the relevant file to satisfy itself as to the propriety of the demand made and the proceedings initiated against the appellant. The Board was not able to produce the records.

9. As regards the decision relating to limitation, there can be absolutely no doubt that the right to claim refund of the amount of Rs. 2050/- paid by the appellant arose only after the decision by the criminal court. The suit having been filed within three years thereafter, it is in time. This Court directed the respondents to pay the amount of Rs. 2050/- collected from the appellant and pursuant to the direction the amount was also paid to the appellant. The learned Counsel for the respondents sought to support the ultimate decision of the lower Appellate Court on the following grounds:

The finding by the criminal court was not in favour of the appellant. He was acquitted of the offences u/s 39 of the Indian Electricity Act read with Section 379 I.P.C., but his conviction u/s 44(c) of the Act had been confirmed in appeal. He was released only under Probation of Offenders Act.

10. The learned Counsel relied on a Judgment of the Supreme Court in *The Divisional Personnel Officer, Southern Railway and Another Vs. T.R. Chellappan and Others*, and in particular, the learned Counsel relied on paragraph 11 of the said judgment.

Under Sections 3, 4 or 6 of the Probation of Offenders Act, 1958, the stigma continues and the finding of the misconduct resulting in conviction must be treated to be conclusive proof. The factum of guilt on the criminal charge is not swept away merely by passing the order releasing the offender on probation.

The learned Counsel also relied on another judgment of the Supreme Court in *M.P. Electricity Board, Jabalpur and others Vs. Harsh Wood Products and another*,) for the proposition that if a consumer was found prima facie to have committed theft of electricity, hearing before disconnection was not necessary in view of agreed conditions of supply and prima facie conclusion of theft and that Section 24 of the Indian Electricity Act, 1910 stipulating notice is not applicable to case of pilferage of electricity.

11. The question therefore is whether there has been conclusive proof of theft by the appellant in the instant case. The lower Appellate Court as a question of fact has found as follows:

Thus, the lower Appellate Court having found as a question of fact that theft of energy has not been established and the finding of the lower Appellate Court that the suit was barred by limitation having been found to be erroneous, the appellant is entitled to succeed.

12. The learned Counsel for the respondents referred to the following decisions for his contention that even without filing a separate appeal or cross-objections under Order 41, Rule 22 of the Code of Civil Procedure, he could sustain the ultimate decision of the lower Appellate Court on any other ground. The learned Counsel relied on the following passage from Mulla's C.P.C, 15th Edition p.1997:

If in a suit brought by A against B, B sets up two defences and the Court of first instance decides both in B's favour and A appeals, there is no scope for cross-

objections, for cross-objections cannot be filed as criticisms of a judgment (Sahdeo v. Kusum - (1992) I Patna 258); but, if the Court decides in B's favour as to one and against him as to the other then, if A appeals, B may support the decree at the hearing of the appeal not only on the ground decided in his favour, but also on the ground decided against him without finding any cross-objections (Lala Gouri Sankar v. Janaki Pershad - (1890) 17 Cal. 809 etc.).

13. The other decisions relied on by the learned Counsel are as follows:

- (1) Pannalal Vs. State Bombay and Others,
- (2) Koksingh Vs. Smt. Deokabai,
- (3) M. Manohara Chetty and Others Vs. C. Coomaraswamy Naidu and Sons,
- (4) Jatani Dei Vs. Udayanath Behera, and
- (5) M/s, Shelat Brothers v. Lodd Narendradas (1988-2 L.W. 8 J.S.)

There is absolutely no quarrel over the proposition advanced by the learned Counsel; for the appellant. However, factually the lower Appellate Court has found that the respondents had not established theft of energy by the appellant. In view of the discussion above, the appellant is entitled to succeed. The substantial question of law is answered in favour of the appellant and the Second Appeal will stand allowed. The judgment and the decree of the lower Appellate Court are set aside and those of the trial court restored. There will be no order as to costs.