

(2006) 02 MAD CK 0308

In the Madras High Court

Case No : Criminal Appeal No. 986 of 1998 and Criminal R.C. No. 1220 of 1998

State

APPELLANT

Vs

Kali
Tamilnadu Electricity Board Vs Kali and State

RESPONDENT

Date of Decision : 11-02-2006

Acts Referred:

Citation : (2006) 1 LW(Cri) 210

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

Bench : Single Bench

Advocate : V. Arul, Govt. Advocate Criminal side and V. Radhakrishnan for TNEB, for the Appellant; G. Rangarajan for R1 in Crl. R.C. No. 1220 of 1998 and Mr. A. Arul, Govt. Advocate (Crl. side), for the Respondent

Final Decision : Dismissed

Judgement

K.N. Basha, J. 1. The appeal against acquittal has been filed by the State, challenging the acquittal of the second accused in this case for the offences under Sections 39(1), 44(1)(c) of the Indian Electricity Act 1910 passed by the learned Judicial Magistrate. Arcot, made in C.C. No. 76/91 dated 16.6.1998

2. Challenging the very same order of acquittal, the defacto complainant namely, the Assistant Executive Engineer, Tamilnadu Electricity Board has also come forward with the criminal revision case against the order of acquittal passed by the learned Judicial Magistrate as stated above in Criminal Revision Case No. 1220 of 1998.

3. Both the matters have been taken together for disposal.

4. The first accused in this case died prior to the trial in this case. Therefore, only the second accused namely Kali faced the trial for the offences stated above.

5. The allegation against the accused in this case is that the first accused has leased out the Rice Mill to the second accused and the second accused was in possession of the Rice Mill and was running the business. On 4.10.1990 at 4.00

p.m., when the Electricity Board officials inspected the service connection of the Rice Mill which was under the possession of the second accused, they said to have found that the original seals were removed and substituted by bogus seals and thereby, the accused have abstracted energy to the tune of Rs. 58,850/- as they have committed theft of 12, 268 units of electricity thereby, they have committed offences under Sections 39(1), 44(1)(c) of Electricity Board Act and also u/s 484 r/w 34 of I.P.C.

6. The prosecution case in brief is as follows:

(a) P.W.2 is the Assistant Executive Engineer of Tamil Nadu Electricity Board (Anti Theft Squad) and he was working at the Head Quarters Office at Vellore.

P.W.2 stated that he has been authorised to inspect the service connection in that District. On 4.10.1990 at 4.00 p.m., P.W.2 inspected the service connection bearing No.3915 which was installed at the Rice Mill premises of the first accused and the first accused has also leased out the Rice Mill to the second accused. P.W.2 has stated that at the time of inspection, the second accused was present and he has intimated about his proposal to inspect the service connection orally. P.W.2 has stated that the service connection was given in the name of the first accused. P.W.2 further stated that the second accused informed P.W.2 that on a written lease agreement, he was running the Rice Mill. Thereafter, P.W.2 inspected the seals of the service connection provided to the Rice Mill. It is stated by P.W.2 that there is no clarity on the seals found on the service connection of the first accused and the same was looking different and thereafter, he enquired the second accused. P.W.2, recorded the statement of the second accused under Ex.P5. Thereafter, P.W.2 has given a written intimation to P.W.1, Assistant Executive Engineer and P.W.3, another Assistant Executive Engineer, Vellore, in respect of his inspection at the Rice Mill premises which was in possession of the second accused. P.W.2 requested P.W.1 and P.W.3 to inspect the service connection which was in possession of the second accused. Ex.P6 is the requisition given by P.W.2 to P.W.1 and P.W.3. Thereafter, P.W.1 and P.W.3 inspected the premises of the Rice Mill which was in possession of the second accused and they have given the report stating that the seals found at the service connection were of bogus seals and they have given the written report, namely Ex.P2. P.W.1 further stated that he has also verified the Electricity payment bill, Ex.P3 series and thereafter, he has come to the conclusion that the seals found at the place of occurrence are bogus seals.

(b) Thereafter, P.W. 1 gave a report to P.W.6, Sub-Inspector of Police, Arcot Town Police station on 4.10.1990 at 5.15 p.m. On receipt of the report Ex.P4, P.W.6, the Sub-Inspector of Police registered a case against the accused in Crime No.808/90 under Sections 39(1), 44(1)(c) of Tamil Nadu Electricity Act and also u/s 484 of I.P.C. Ex.P.11 is the printed F.I.R. P.W.6 went to the scene of occurrence and prepared the observation mahazar, Ex.P8. He also prepared a rough sketch Ex.P12. He made arrangements to take the photographs through P.W.5. As per the request of P.W.5, the Sub-Inspector of Police has taken the

negatives, M.O.6 series and the photograph prints, M.O.7 series. Thereafter, P.W.6 also stated to have taken the photographs of the meter before the meter, M.O.1 was recovered under Ex.P9 in the presence of the witnesses, P.W.4 and another. Ex.P10 is the certificate for the scene of occurrence. Thereafter, P.W.6 sent the seized meter to the Magistrate Court and also sent the seals along with the sample seals for examination of the Analyst. P.W.6 also received the report Ex.P.13 from the Forensic Science Department. After examining the witnesses in this case, P.W.6 completed the investigation and filed the charge sheet against the accused.

7. During the course of trial the prosecution in order to prove its case examined P.W.1 to 6, filed Exs.P.1 to P. 13 and marked M.Os. 1 to 7.

8. During the course of trial, it was informed to the Court that the first accused died on 5.12.1991 at Chennai Stanley Hospital and also produced the death certificate. Therefore, the learned trial Judge closed the case in respect of the first accused as the same is abated in view of his death.

9. When the accused was questioned u/s 313 of Cr.P.C. in respect of the incriminating materials appearing against him, he denied his complicity and he has not chosen to examine any witnesses on his side.

10. Learned Trial Judge, on consideration of the entire evidence adduced by the prosecution, has come to the conclusion that the prosecution has not proved its case beyond reasonable doubt against the accused and therefore, the learned Trial Judge, acquitted the accused of all the charges framed against him.

11. Aggrieved against the judgment of acquittal, the appellant/State has preferred the appeal and the petitioner/Assistant Executive Officer, Tamil Nadu Electricity Board, has preferred the criminal revision case.

12. Learned Trial Judge has acquitted the accused on the following grounds.

(a) The prosecution has not proved its case that the accused was responsible for tampering the meter by substituting the original seals with the bogus seals.

(b) P.W.1 has admitted in his cross examination that the electricity meter installed at the place of Rice Mill premises which was in possession of A2 was functioning normally and correctly.

(c) P.W.1 further stated that the running of the meter was not at all abstracted as per his inspection and the seal found at the meter was normal and it was not found with any other connection of artificial instruments or any materials.

(d) P.W.3 has admitted in his cross-examination that one Pugalendhi was the official of the Electricity Board and it is only he, who has fixed the seals to the disputed electricity meter at the Rice Mill. But the prosecution has failed to examine that witness and therefore, the non-examination of Pugalendhi, the official who has fixed the seal, is fatal to the prosecution case.

(e) A perusal of Ex.P3, the electricity meter consumption payment card also clearly shows that right from the year 1988, there was increase in the electricity charges and there is absolutely no decrease in the consumption of units also. Learned Trial Judge also placed reliance on the decision reported in 1998 CLJ 579 (Ramesh Chander V. State of Delhi) for the proposition that "Mere existence of tampered seals in absence of dishonest abstraction is not sufficient to attract the provision of Section 39 of the Indian Electricity Act".

(f) P.W.1 has categorically admitted in his deposition that there is absolutely no document produced by the prosecution to substantiate the allegation that A2 was in possession of the Rice Mill as a lessee.

13. Lastly, the learned Trial Judge placed reliance on the decision reported in 1967 CLJ 409 : 1967 L.W. (Crl.) 167 (Ramachandra Vs. State of Bihar), for the proposition that "before raising presumption u/s 39 of the I.E. Act that there is dishonest abstraction of energy the presence of perfected artificial means which will render abstraction of energy possible has to be established by the prosecution. It is further necessary to show that there was a dishonest abstraction, consumption or use of electrical energy by the accused person."

14. The learned Magistrate has held that "there is no evidence in this case that the accused had used any artificial means for abstracting electricity dishonestly" and therefore the ratio of the Judgment referred to the above equally applied to the facts of the present case.

15. I have carefully perused the entire records available in this case. I have also given my careful and anxious consideration to the submission made by the learned Government Advocate (Crl. side) and also the learned counsel appearing for the respondent.

16. At the outset, I must state that there is absolutely no infirmity or illegality found in the Judgment of acquittal passed by the learned Trial Judge. As a matter of fact, the learned Trial Judge has given clear and cogent reasons for the acquittal and it is very curious to note in this case that the prosecution has come forward with the allegation that the electricity meter of the first accused was found to be tampered as the seals found at the time of inspection were of bogus one and the accused must have substituted the bogus seals in the place of the original seals.

17. In order to substantiate this allegation, the prosecution has miserably failed to place any sufficient materials before the Court. The only piece of evidence which was placed reliance by the learned Government Advocate (Crl.side) is that the evidence of the Officials namely P.Ws 1 to 3. As stated by the learned Trial Judge, the prosecution has miserably failed to produce the very important witness in this case, namely, Pugalendhi, the official who is said to have fixed the seals on the meter installed at the premises of the Rice Mill of AI. The Prosecution has not chosen to examine such an important witness, whose evidence is vital one to prove the case of the prosecution. Therefore, I am of the

considered view that the non-examination of the above said official, Pugalendhi, is definitely fatal to the prosecution case.

18. Yet another infirmity as pointed out by the learned Trial Judge is that except the oral evidence given by P.Ws 1 to 3, there is absolutely no materials available on record to show that A2 was the lessee of the Rice Mill of A1 and he is running the Rice Mill. A very disturbing feature in this case is that the prosecution has come forward with a very vague allegation of finding bogus seals on the meter installed at the Rice Mill of A1, without any basis, whatsoever. No doubt, the fact remains as categorically admitted by P.Ws 1 to 3, the officials of the Electricity Board that they have not found any change in the meter and also they have not found any tampering on the face of the seals and it is the admitted version of the officials, P.Ws 1 to 3 that everything was found in tact. But unfortunately, they have come forward with a version that the meter was found with bogus seals. It is also further relevant to be noted that as admitted by P.W.1 and P.W.2, the meter was functioning normally and it was not at all abstracted by any means to slow down the running of the meter and therefore, the allegation of the prosecution is baseless.

19. It is also pertinent to be noted that it is not possible by any layman to prepare or manufacture the bogus electricity meter seal. In this case, the prosecution also miserably failed to place any materials before the court to establish as to how the accused prepared or manufactured the bogus seals.

20. It is pertinent to be noted that the electricity payment card, Ex.P.3 series for the last three years clearly shows that every year there is increase in the payment of charges and there is also simultaneous increase in the consumption of units by the Rice Mill.

21. Learned Trial Judge also rightly placed reliance on the very important decision reported in 1998 CLJ 579 (Ramesh Chander V. State of Delhi) for the proposition that "the mere existence of tampered seals in the absence of dishonest is not sufficient to attract the provision u/s 39".

22. Learned Trial Judge also placed reliance on the very important decision rendered by the Hon"ble Supreme Court of India in 1967 CLJ 409 (Ramachandra Vs. State of Bihar) wherein the Hon"ble Supreme Court has held as follows:

There their Lordships of the S.C. held that before raising presumption u/s 39 of the I.E. Act that there is dishonest abstraction of energy the presence of perfected artificial means which will render abstraction of energy possible has to be established by the prosecution. It is further necessary to show that there was a dishonest abstraction, consumption or use of electrical energy by the accused person. There is no evidence in this case that the accused had used any artificial means for abstracting electricity dishonestly and therefore the ratio of the Judgment referred to the above equally applied to the facts of the present case.

23. In this case, it is relevant to be noted that P.W.2, the Assistant Executive

Engineer, Tamil Nadu Electricity Board, has categorically stated in his cross-examination that there is absolutely no symptom of tampering found on the electricity meter at the time of inspection. He has further stated in his cross-examination that during his inspection, he has not found any signs of use of artificial means to abstract the electricity by tampering the meter seal. Added to this admission of P.W.2, it is also disclosed from the materials available on record that one Pugalendhi, the official, who has fixed the seals on the electricity meter at the premises of A1 was not at all examined by the prosecution to prove its case. Therefore, the above said decision of the Apex Court is squarely applicable to the facts of this case.

24. It is also rightly pointed out by the learned trial Judge that the prosecution has not placed any materials before the court to substantiate its allegation that A2 who is the accused in this case was in possession of the Rice Mill of A1 as a lessee. Therefore, the learned Trial Judge has held that A2 cannot be fastened with the liability of the alleged abstraction of electricity in this case. It is to be stated, even assuming that A2 was occupying the Rice Mill premises as a lessee and was running the Rice Mill, he cannot be held liable for the alleged abstraction of energy without sufficient materials. Therefore, the prosecution has miserably failed to discharge its burden of establishing the dishonest abstraction of energy on the part of the accused and the prosecution has not produced any materials to show that perfect artificial means which would render abstraction of energy possible where found at the time of inspection.

25. For the reasons stated above, there is absolutely no infirmity or any materials overlooked by the trial Court and therefore, this Court is left with no other alternative except to confirm the judgment of acquittal and nothing is pointed out by the learned Government Advocate (Crl. side) warranting the interference of this court in the Judgement of acquittal. Accordingly, the appeal is dismissed and consequently, Criminal Revision Case is also dismissed.