

(2010) 04 AP CK 0042
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 528 of 2010

The State of A.P.	Vs	APPELLANT
Shalini Steels Private Limited and Others		RESPONDENT

Date of Decision : 16-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 193
Electricity Act, 1910 — Section 39, 44
Electricity Act, 2003 — Section 135, 136, 137, 138, 139

Citation : (2011) CriLJ 67

Hon'ble Judges : Gopala Krishna Tamada, J

Bench : Single Bench

Advocate : Addl. Public Prosecutor, for the Appellant; D.V. Nagarjuna Babu, for the Respondent

Final Decision : Dismissed

Judgement

Gopala Krishna Tamada, J.—The State is the appellant herein. This appeal is directed against the judgment, dated 10.10.2008, passed by the learned I Additional Sessions Judge, Medak at Sangareddy, in C.C. No. 6 of 2004, whereby the respondents herein-Accused 1 to 7, were acquitted of the charges punishable under Sections 135 and 138 of the Indian Electricity Act, 2003 (for short "the Act").

2. For the purpose of convenience and to avoid ambiguity in the discussion, the parties are referred to hereinafter as they arrayed in the C.C.

3. The case of the prosecution, in brief, is that basing on information of high-energy losses on Sowbhagya feeder emanating from 33/11 KV IDA Bollaram SS, thorough inspection of all services on the feeder were programmed in the month of April, 2003. In that context, the meter data was logged into CMRI to study the performance, load pattern, and tamper data in the meter. On review and study of the data available in the meter of A.1 company, certain tampers indicating the missing of voltage in Y-phase at times were registered in the meter. The billing

meter of A.1 company with Meter No. APEO 1853 recorded 100 tamper events indicating the Y-phase potential missing from 02-10-2002, and as the meter is not having the provision of recording any further tamper events, a check meter with a separate CIPT set outside the premises was installed, in addition to the series check meter to the billing meter, and the service was kept under observation. After installation of the above check meters, the consumption of the services of A.1 company considerably increased by more than 1.4 lakh units for the month of May 2003 resulting in simultaneous reduction in feeder losses to around 11% from 25%.

4. On 10.06.2003 P.W.1 and others inspected the H.T. S.C. No. MDK-604 Cat-H-1 of A.1 company and found that A.1 company is pilfering energy, and thereby causing loss to APCPDCL. They assessed the loss sustained by the APCPDCL, on account of pilferage of energy, at Rs. 4,91,63,552/-. Thereafter, P.W.1 lodged a complaint with A.P.T.S. P.S., Sangareddy, against A.1 company and A.2 to A.7, who are the directors of A.1 company. On receipt of the complaint, P.W.12, the then Inspector of Police, Vigilance APTS, Sangareddy, registered a case in Crime No. 2086 of 2003 under Sections 39 and 44 of the I.E. Act, 1910 and took up investigation. After completion of investigation, he filed charge sheet against the accused for the offences punishable under Sections 135 and 138 of the Act. The plea of the accused is one of total denial.

5. During the course of trial, on behalf of the prosecution, P.Ws.1 to 12 were examined and Exs.P.1 to P.23 and M.Os.1 to 6 were marked. No oral or documentary evidence was adduced on behalf of the defence.

6. On a careful consideration of both oral and documentary evidence and after hearing both sides, the court below came to the conclusion that the prosecution has failed to prove the guilt of the accused beyond all reasonable doubt, and accordingly, acquitted them of the charges leveled against them, by judgment dated 10.10.2008. Challenging the said judgment, the State preferred this appeal.

7. Heard both sides.

8. It is mainly contended by the learned Public Prosecutor that the prosecution has let in cogent evidence and satisfied the ingredients, which constitute the offences punishable under Sections 135 and 138 of the Act, but however, the court below rejected the said evidence on flimsy grounds. He further contended that P.W.1 along with P.Ws.2 to 7 inspected A.1 company, and found certain irregularities. But, the court below has extended the benefit of doubt to the accused by giving a different reasoning for the said irregularities.

9. Per contra, Mr. D.V. Nagarjuna Babu, learned Counsel for the respondents-accused, laid emphasis on two aspects. Firstly, the court below ought not to have tried the accused without there being committal, and as such, the trial is vitiated by Section 154 of the Act. The complainant i.e. the Inspector of Police, Vigilance & and APTS APCPDCL, Medak District, is not one of those officers mentioned u/s

151 of the Act, and as such, the case of the prosecution, at the first instance, itself is not maintainable. In support of his contentions, the learned Counsel has drawn the attention of this Court to Sections 151, 153 and 154 of the Act.

10. Section 153 of the Act deals with constitution of Special Courts. The offences falling under Sections 135 - 140 and Section 150 of the Act shall be tried only by Special Courts to be constituted by the Government by a notification and the Special Courts shall consist of a Judge who shall be appointed by the State Government with the consent of the High Court. The procedure that is to be followed by the Special Court was dealt with, in Section 154 of the Act. There is absolutely no difficulty in interpreting the said provision of law. But, the point for consideration is as to whether the said offences, which are tried by the Special Judge, really require committal, as contended by the learned Counsel for the accused.

11. In Section 155 of the Act, it is specifically stated that the Special Court has power of the Court of Session. When once the Special Court is treated as the Court of Session, in my considered view, Section 193 Cr.P.C. automatically comes into operation and Section 193 Cr.P.C. clearly states that no Court of Session shall take cognizance of any offence as a court of original jurisdiction, unless the case has been committed to it by a Magistrate.

12. From a perusal of the impugned judgment, it is clear that the Special Court took cognizance of the offences straight away, on the basis of the charge sheet filed by the complainant i.e. the Inspector of Police, Vigilance APTS, Sangareddy. In fact, the Full Bench of the Kerala High Court has taken the view that committal proceedings are not required and it is rather difficult to hold that the committal proceedings is indispensable as a prelude to the case being tried before the Special Court. The Apex Court did not uphold the said view, and in *Gangula Ashok and Anr. v. State of A.P.* 2000 (1) ALD (Cri.) 519 the Apex Court has taken the view that in view of Section 193 of Cr.P.C., committal order is must and unless it is strictly made clear in the special enactment that committal order is not required, then only the Special Court can take cognizance. Following the said ratio laid down by the Apex Court, this Court in *State of Andhra Pradesh v. Porlakayala Rangaiah* 2009(1) ALD (Cri.) 27 (AP), held as follows:

No doubt, as rightly contended by the learned Additional Public Prosecutor, the said aspect was not argued before the trial Court, but that cannot be a ground for this Court to reject the said argument advanced by the learned Counsel for the appellant. As it is purely a legal point, this Court is of the view that the same can be advanced at any stage of the proceedings. Whether such an argument is advanced before the trial Court or not is immaterial and this Court can definitely look into the said aspect in deciding this appeal.

13. In the light of the above discussion, this Court has no hesitation to hold that the very cognizance taken by the Special Court and the trial etc. are vitiated.

14. Another important aspect is about the charge sheet filed by the complainant.

There is no dispute that the Inspector of Police, Vigilance Cell, APCPDCL, Medak District, has filed the charge sheet. But according to Section 151 of the Act, which deals with cognizance of offences, a court can take cognizance of an offence punishable under the provisions of this Act, only upon a complaint in writing is made by appropriate Government or appropriate commission or any of the officers authorized by them or a Chief Inspector of an electrical inspector or licensee or the generating company as the case may be. As on 10.06.2003 i.e. the date of offence, the said provision alone was in existence and the complainant herein i.e. the Inspector of Police, Vigilance Cell, A.P. Theft Squad, is not one of those officers specified in Section 151 of the Act. Of course, subsequently, Section 151-A was inserted by Act 26 of 2007 and the same has come into force with effect from 15.06.2007 whereby even police officers are conferred with the power to investigate into the said offences. But, as on the crucial date i.e. on 10.6.2003 the complainant i.e. the Inspector of Police, Vigilance Cell, A.P. Theft Squad, is not one of those officers as specified in Section 151 of the Act. In those circumstances, this Court has no option but to hold that the complaint filed by the complainant is not maintainable.

15. In the light of the above discussion, this Court is of the view that the acquittal of the accused recorded by the court below is justified and the findings of the court below cannot be interfered with.

16. Accordingly, the criminal appeal is dismissed.