

**(2015) 10 KAR CK 0101**  
**In the Karnataka High Court**  
**Case No : Criminal Appeal No. 2791/2009**

Tulajappa Nagendrasa Jartarghar

APPELLANT

Vs

The State of Karnataka

RESPONDENT

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**Date of Decision :** 14-10-2015

**Acts Referred:**

Electricity Act, 2003 — Section 135(1)(c), 138(1)(d)

**Citation :** (2015) 10 KAR CK 0101

**Hon'ble Judges :** Budihal R.B., J.

**Bench :** Single Bench

**Advocate :** Nagaraj J. Appannanavar for Laxman T. Mantagani, Advocate, for the Appellant; Raju Raghavendra Naik, HCGP, for the Respondent

**Final Decision :** Allowed

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## Judgement

Budihal R.B., J.—The judgment and order of conviction dated 30th day of October, 2009 passed by the II Additional Sessions & Special Judge at Dharwad in Special (KPTCL) C.C. No. 13/2008 is called in question in this appeal by the appellant/accused. By the said the judgment and order of conviction the appellant has been convicted for the offences under Sections 135(1)(c) and 138(1)(d) of the Electricity Act, 2003.

2. The case of the prosecution in brief is that a complaint was lodged as per Ex.P.1 alleging that on 29.09.2007, when the complainant along with another person by name Murigeppa Bevinamara, Assistant Executive Engineer, LTMR Sub-Division, HESCOM, Hubli and S.B. Samba, DSP, HESCOM Vigilance Squad, Hubli, and as per their direction, the complainant along with other staff visited the flour mill of N.D. Jaratarghar, in Hubli city, Islampur road and the installation bearing No. MP.3133. They visited the said place at 13.30 hours. At that time, the owner of the said installation by name Tulajappa Nagendrasa Jartharghar i.e., the appellant/accused was also present and a notice was issued to him. When they verified the meter, it was of DZG Company with the capacity of 10.40 amps bearing Sl. No. 10766331 reading 13670.5. It was a 10 Hp motor which was

installed for beating the rice. When they checked the meter, they noticed that there was slow reading by 9.93 per cent and at that time of rating it was 13.496 kilowatts. When they verified the seals, they were not as fixed earlier, but they were tampered and fabricated. So, on the basis of this, a complaint was lodged against the present appellant/accused for the alleged offences which was registered in Hubli Police Station Crime No. 239/2007.

3. Subsequently, the Investigating Officer, after conducting the investigation of the case collected the material and filed the charge sheet against the appellant/accused for the alleged offences. After considering the materials placed on record by the prosecution i.e., the oral evidence of P.Ws.1 to 6, the documents at Exs.P.1 to P.13 and the material objects M.O. No. 1, the Trial Court came to the conclusion that the prosecution proved its case beyond reasonable doubt so far as the appellant/accused No. 1 is concerned and the Trial Court disbelieved the materials so far as accused No. 2, who is the brother of accused No. 1 and accordingly he was acquitted.

4. As submitted by the learned Government Advocate, the State has not preferred any appeal insofar as acquittal of accused No. 2 is concerned.

5. The accused No. 1, who is the appellant herein, has challenged the legality and correctness of the judgment of the Trial Court by preferring the appeal.

6. The learned counsel appearing for the appellant/accused taken this Court though the entire materials placed on record i.e., the oral and documentary evidence of the prosecution witnesses and so also the judgment passed by the Trial Court. He made the submission that slow reading of the meter to the extent of 9.93 per cent is concerned, the evidence of P.W.1 is relevant. During the course of cross-examination, P.W.1 admitted that slow reading may be because of collection of dust in the meter and this aspect of the matter has not been taken into consideration by the Trial Court while passing the judgment. He also submitted that the appellant has not at all tampered the seals nor he has tampered the meters so as to have the slow reading and hence it is his submission that even according to the evidence of the prosecution witnesses, the offence as alleged against the present appellant is not at all established beyond all reasonable doubt. Hence, he submitted that the Trial Court is not justified in convicting the appellant/accused. It is also his submission that the lower Court wrongly read the evidence both oral and documentary and wrongly convicted the accused.

7. Per contra, the learned High Court Government Pleader, during the course of his arguments, made the submission that the prosecution witnesses have clearly deposed in their evidence that the seals put to the meter were tampered and the mahazar was conducted in their presence, M.O.1-the meter was also seized, which clearly go to show the tampering of the seals. It is also his submission that looking to the evidence of the prosecution witnesses, it was a fact that there was slow reading of the meter and the accused, who is the proper person to speak

about the slow reading of the meter, has not at all offered any satisfactory explanation. Hence, he submitted that the Trial Court is justified in convicting the accused in view of the evidence of the prosecution witnesses. Hence, he submitted to dismiss the appeal.

8. I have perused the oral evidence of the prosecution witnesses, so also the judgment and order of conviction passed by the Trial Court so far as the present appellant is concerned.

9. P.W.1, who is the complainant in this case, in his oral evidence has deposed in detail about himself and his staff visiting the said place and inspecting the meter-M.O.1 and also the said installation and he has also specifically deposed that by opening the main cover of the meter, the recorded digits could be reduced. During the test of the meter there was low consumption of 9.93 per cent. Therefore, he could make out that there was theft of electricity and thereby calculated the illegal extraction of energy at 36642 units worth Rs. 2,67,143/-. Accordingly, he prepared the complaint and filed the said complaint as against the appellant and his brother, who was accused No. 2. During the course of cross-examination, it was suggested by the learned counsel appearing for the accused that there is no tampering of the seals and the meter was as it is with seals. But the witness denied the said suggestion. He has also deposed that he has not seen accused Nos. 1 and 2 reversing the reading of M.O.1. He was not so informed by anybody. Without verifying the register he cannot say that earlier to 29.09.2007, he conducted rating of any other meter in that area. He admitted as true that in Ex.P.3 he has mentioned that there was slow reading by 9.93 percent on account of the dust which was stored. The fake seal number was not found assigned to any other installation. The over-loading may be ratified with penalty. But such ratification is not available in case if it is found that the seal is tampered.

10. P.W.2 deposed in his evidence, in examination-in-chief, that P.W.1 checked the meter. The meter was slowly recording the consumption. The main cover seal and also terminal cover seal were of different sizes therefore, they suspected that the seals were fake. He has also spoken that police inspector seized the meter at M.O.1 under a mahazar and he identified M.O.1 and fake seals are found in M.O.1. During the course of cross-examination, he deposed that prior to the inspection of the above factory they had tested about 3 or 4 meters of different installations. Apart from M.O.1 there were two other meters in that factory and those two meters were not rated on that day. Those two other meters were rated within one year from the date of their inspection of M.O.1. He did not know the previous date of rating of M.O.1. He could not say the date of rating of the remaining two meters.

11. P.W.3 is an independent witness and panch witness for the seizure of M.O.1 under Ex.P.5. But the said witness did not supported the case of the prosecution. During the cross-examination by Public Prosecutor, the said witness was treated as hostile and nothing has been elicited from his mouth to believe that M.O.1 was seized in his presence under Ex.P.5. P.W.4 is another independent witness.

He was also treated as hostile and when cross-examined by the Public Prosecutor, he denied the suggestion that on 29.09.2007, the Vigilance officials detected theft of electricity in that mill and noticed fake main cover seal and terminal cover seal of M.O.1 and therefore M.O.1 was seized in his presence under Ex.P.5.

12. P.W.5, Assistant Accounts Officer, HESCOM, Hubli, in the examination-in-chief, deposed that vigilance officers sought R.R. documents in the month of December, it was sought in respect of R.R. No. MP.3133. The copy of application of A1 is Ex.P.6. The licence issued to A1 by the Hubli-Dharwad Municipal Corporation is Ex.P.7. The copy of the challan touching the renewal of the licence is Ex.P.8. the copy of the letter of sanction issued to A1 is Ex.P.9. the copy of the wiring diagram is Ex.P.10. In the cross-examination by the learned counsel for the accused, he has deposed that he cannot say who approached him seeking the above documents.

13. P.W.6-the Investigating Officer who completed the investigation and filed charge sheet in the matter also deposed that the unit of accused No. 1 was assigned with MP No. 3133 situated at Islampura road of Hubli. They reached there at 1.30 p.m. and the accused No. 1 was found in that premises. P.W.1 checked the meter No. MP 3133. The main cover seal and the terminal cover seal were not in order. P.W.1 noticed fake seals. In the cross-examination, he has deposed that he has not verified the concerned register to ascertain whether the seal is fake or not. Three machineries manufacturing beaten rice were connected to meter No. MP 3133. There were two other meters also in that premises. The numbers of those meters are MP No. 3134 and MP No. 163. Except the manufacture of beaten rice, no other process was seen in that premises. He has not investigated touching MP No. 3134 and MP No. 163. He had not verified the seal of those installations. Rating of the meter MP No. 3134 and MP No. 163 was not done by P.W.1 in his presence. He could come to know through P.W.1 that the seal was fake. He had not enquired P.W.1 as to whether anybody else in the department conducted rating of the meter.

14. Perusing the oral evidence of the prosecution witnesses, it is stated by the prosecution witnesses that there is a tampering of the seal in the meter M.O.1 and there was a slow recording of the consumption, and the prosecution has to prove the same beyond all reasonable doubts that this slow recording of consumption is mainly because of the act of the appellant/accused No. 1 in tampering the meter as well as the seals. But perusing the evidence of prosecution witnesses, more particularly of P.W.1, who inspected the meter, except P.W.1 no others inspected the meters and are not having the personal knowledge about the same. Even according to the evidence of the investigating officer-P.W.6, he has deposed that he was told by P.W.1 that the seal was fake. He consistently deposed that he has not verified the concerned register to ascertain whether the seal is a fake seal or not. Not only that, P.W.1, who himself inspected the meter and lodged the complaint in this case clearly admitted in his

evidence that in Ex.P.3 he had mentioned that there was slow reading by 9.93 percent on account of dust which was stored. If, according to the case of the prosecution and as per the complaint averments, the slow recording of consumption of the units to the extent of 9.93 percent was because of the tampering of the seals and because of the act of the accused same could have been mentioned in Ex.P.3 also. But looking to Ex.P.3 and the mention made by P.W.1 in rating report is concerned it also goes to show that there is evidence that slow reading is because of the dust stored in the meter. In view of this evidence of P.W.1 in the cross-examination it raises a reasonable doubt in the mind of the Court as to whether the slow reading of the meter and slow recording of the consumption to the extent of 9.93 per cent may be on account of dust stored in the meter. As stated by P.W.1 and as per his evidence this possibility also cannot be completely ruled out because he is the technician in the said aspect of the matter and submitted rating report also. It has also come in the report that in the said premises there were two other installations bearing MP No. 3134 and MP No. 163 which were also connected to installation MP No. 3133. When it is the evidence of the prosecution that other two installations were also connected with this installation, it was the bounden duty of P.W.1 or any other officers who accompanied him to check the other two installations to know what was the reading of these two installations, which is not done by the prosecution witnesses in this case, according to their own evidence. This important material aspects were not at all properly appreciated and considered by the Trial Court and the Trial Court wrongly read the evidence both oral and documentary and wrongly proceeded to convict the accused person. When the material raises a reasonable doubt, the benefit of doubt has to go to the accused person. Therefore, the lower court was not justified in passing the judgment and order of conviction insofar as the appellant/accused No. 1 is concerned.

15. Accordingly, appeal is allowed. The judgment and order of conviction dated 30th day of October, 2009 passed by the II Additional Sessions & Special Judge at Dharwad in Special (KPTCL) C.C. No. 13/2008 insofar as it relates to accused No. 1 is hereby set aside and the appellant/accused No. 1 is acquitted of all the charges levelled against him.

The bail bonds executed by appellant/accused No. 1 stands cancelled.

The fine amount deposited by the appellant/accused No. 1 before the Trial Court is ordered to be refunded to the appellant.