

**The State of Karnataka Vs. Abdul Hammed and Another**

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**Court :** Karnataka Gulbarga

**Decided On :** Dec-13-2012

**Judge :** Mohan Shantanagoudar

**Appeal No. :** Criminal Appeal No. 3710 of 2011

**Appellant :** The State of Karnataka

**Respondent :** Abdul Hammed and Another

**Judgement :**

Heard.

By the impugned judgment the respondents herein were convicted for the offence punishable under Section 135 of Electricity Act, 2003 and are sentenced to pay fine of Rs.1,500/- each. Default sentence is also imposed. The State has filed this appeal praying for enhancement of sentence on the ground that inadequate sentence is imposed on the respondents.

Case of the prosecution is that the complainant Manohar Rao Biradar who was the Assistant Executive Engineer at GESCOM, Vigilance, Bidar, on getting credible information of theft of electricity pertaining to the house of accused persons situated at Naubad went to the spot along with staff and police at about 4.00 PM on 05.01.2007. They inspected the installation of R.R.No.NBL 320, which stood in the name of accused No.1 and found that there is a direct hook from the LT line and consequently the electricity was being used unlawfully, though the meter was

already removed. Thus it was prima facie clear that there was theft of electricity by the accused. Complaint came to be lodged by the Assistant Executive Engineer in Crime No.17/2003 and Crime No.336/2004. After completion of investigation as per law, charge sheet is filed. Charge were also framed for the offence punishable under Section 135 of Electricity Act.

In order to prove its case, the prosecution has examined 5 witnesses and marked 6 documents. After 4 hearing, the Trial Court convicted the accused and sentenced accused Nos.1 and 2 to pay fine of Rs.1,500/- each with default clause. The accused have not filed appeal. Thus the conviction order stands against them.

However, the only question is relating to sufficiency of quantum of fine. Proviso to sub-section (i) of Section 135 of Electricity Act reads thus:

"(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;"

From the above it is clear that the fine to be imposed on first conviction shall be not less than three times of the financial gain on account of such theft of electricity.

5. Learned Additional S.P.P. submits that the meter was connected with less than 10 KW electricity connection. Thus, the minimum sentence of fine would be three times of the financial gain. In the matter on hand, the financial gain of the accused is to an extent of Rs.2714/- as is clear from the charge sheet. Thus, the person in whose name the meter stands is liable to pay fine to an extent of three times of the financial gain. Thus the first accused in whose name the meter stands shall pay Rs.8,142/- rounded off to Rs.8,200/- towards fine. However, no fine can be imposed on accused No.2 inasmuch as the meter does not stand in his name. Accordingly, the following order is made:

## **ORDER**

Sentence is modified as under:

(a) The first respondent shall pay fine of Rs.8,200/- (Rupees Eight Thousand Two Hundred Only), in default, will have to undergo imprisonment for two months for the offence punishable under Section 135 of Electricity Act, 2003.

(b) No additional fine need to be paid by accused No.2/ respondent No.2.

Appeal stands allowed accordingly.

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