

N.D.P.L. Vs. Sony Steels

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Court : Delhi

Decided On : Jan-08-2014

Judge : S. Muralidhar

Appellant : N.D.P.L.

Respondent : Sony Steels

Advocate for Pet/Ap. : Mr. Vikram Nandarajog, Mr. Sushil Jaswal, Mr. Ujjwal K. Jha, Mr. B.P. Agarwal

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI R-6 & 7 + CRL.A. 57 of 2008 N.D.P.L. Through: Appellant Mr. Vikram Nandarajog and Mr. Sushil Jaswal, Advocates versus SONY STEELS Through: Respondent Mr. Ujjwal K. Jha and Mr. B.P. Agarwal, Advocates WITH CRL. A. 230 of 2008 NARENDRA KUMAR GUPTA Appellant Through: Mr. Ujjwal K. Jha and Mr. B.P. Agarwal, Advocates versus N.D.P.L. Through: Respondent Mr. Vikram Nandarajog and Mr. Sushil Jaswal, Advocates CORAM: JUSTICE S. MURALIDHAR %

ORDER

0801.2014 1. These are two Appeals - one by Mr. Narender Kumar Gupta, the Appellant in Crl. A. 230 of 2008 and the other by North Delhi Power Limited (NDPL), being Crl. A. No.57 of 2008 against the impugned judgment dated 29th September 2007 and the conviction order dated 5th October 2007 passed by the

learned Additional Sessions Judge (ASJ), Delhi.

2. By the impugned judgment dated 29th September 2007, the learned ASJ held Mr. Narender Kumar Gupta to be guilty of the offence under Section 135 of the Electricity Act, 2003 (ct), and by the said order, the civil liability was determined to be Rs. 1,98,762 on the basis of 6x5 formula. As regards the sentence for the conviction under Section 135 of the Act, the learned ASJ, by the separate conviction order dated 5th October 2007, sentenced Mr. Gupta to a fine of Rs. 1,00,000, and in default thereof, to undergo rigorous imprisonment for nine months.

3. Learned counsel for Mr. Gupta referred to the complaint preferred by NDPL before the Court of the ASJ as well as the evidence on record and submitted that there was nothing to show that Mr. Gupta had, in fact, been responsible for injecting high voltage electricity, which resulted in the meter burning out. It is further pointed out that, since the seals in the meter were found intact, there was no occasion for the meter to have been tampered by Mr. Gupta. Reliance is placed on the decisions dated 17th March 2010 in WP(C) No.4103 of 2007 titled Bansi Lal v. B.S.E.S. Rajdhani Power Ltd. and Modern Rice Mill v. Madhyanchal Vidyut Vitran Nigam Limited 2012 (1) ADJ296 4. Mr. Vikram Nandarajog, learned counsel for the NDPL, on the other hand, submitted that it had come in evidence that there was no occasion for only the meter of the accused to be burnt if there was indeed a possibility of a spike of electricity in the system, because the neighbouring meters were all found to be intact. Secondly, it was submitted that for direct injection, there was no need to tamper with the seal as long as the accused had access to the mains from which the high voltage electricity was being injected. He referred to the denial by the witnesses of the NDPL in their cross-examinations, that they had failed to bring on record all the meters checked by the neighbours only because there was no such checking of the neighbours meters. He submitted that the learned trial Court had acted fairly in restricting the calculation of the amount payable to a period of 1 months and had also not sentenced the accused to any imprisonment.

5. The complaint by NDPL before the Court was to the effect that a joint inspection team of the officials was formed to conduct a raid at premises No.1114 g/g Block, DSIDC Industrial Area, Narela, Delhi on 6.9.2004 comprising Mr. Mukesh Kumar, J.E.(Enf.) and Mr. Ashish Joshi, ET(Enf.), and that during the course of such inspection, it was found that the meter in question was segregated at the site and that the meter was found deliberately burnt by injecting high voltage, thus damaging the status of the meter.

The fact of the matter is that it was Mr. Gupta who, in fact, gave a complaint to NDPL on 5th September 2004 that the meter was not displaying any reading. This was an electronic digital meter. Therefore, when the display stopped, the consumer, i.e., Mr. Gupta, gave a complaint. In his hand written complaint, a copy of which is on record, he also set out the reading that was available on 4th September 2004. This was, therefore, not a case of NDPL, on its own, having conducted a raid on the premises of the consumer.

6. It is also not in dispute that till the date on which the complaint was made, Mr. Gupta was not found to have indulged in any dishonest abstraction of electricity. There was no previous complaint against him. The case of Mr. Gupta is that till that date he was consuming around 75% of the connected load. In the speaking order passed by the NDPL, the consumption was found to be 52% of the connected load. Be that as it may, the answer given by the NDPLs witnesses in their cross-examination to the question whether the PCB on the meter could be burnt as a result of a spike of high voltage on the part of NDPL, Mr. Surender Singh, PW-1, gave the following answers:

The pressure wire circuit was found burnt. By giving high voltage from outside the PCB can be burnt. It is correct that high voltage can be from the NDPL side and in that eventuality also PCB can be burnt. (Vol. We had checked the neighbourers meter whose supply was going on through the same feeder and the meters were found O.K.). The seals of the meter box were found intact and O.K. We have not brought any record to show that the meter of the neighbour was found O.K. It is wrong to suggest that the meter of the neighbour was not checked and due to this reason no record has been brought and placed on record.

7. In discussing the above evidence, the learned ASJ has, in the impugned order, gone by the fact that the witness had denied the suggestion that the meters in the neighbourhood were not checked.

8. If NDPL wanted to dispel any doubts about the PCB being burnt due to a spike of electricity in the system, it was required to show that the neighbours meters were in working order at around the same time. It should not have been difficult for NDPL to produce records to substantiate this plea. Once the answer to the question whether PCB could be burnt through high voltage from the side of the NDPL is in the affirmative, then the burden could not have been shifted to the consumer to prove the contrary on the facts of the case. In the present case, clearly, the NDPL did not discharge that burden.

9. The other aspect of the matter was that the seals of the meter were found intact. This was admitted by PW-1 in his cross-examination. He explained that the high voltage can be given through the cable. The outgoing of the meter is connected to the main switch which is accessible to the consumer.

However, this appears to be a surmise on the part of the witness since no photographs were filed with the complaint to show that it was the consumer who, through the mains, tried to inject the high voltage electricity into the meter.

10. The Court finds that the discussion of the evidence by the trial Court is not satisfactory. It has verbatim quoted from the speaking order and come to the conclusion that it did not call for interference. Being a trial Court, it was required to analyse the evidence to determine if it clearly indicated, beyond all reasonable doubt, that an offence under Section 135 of the Act was committed by the consumer.

11. The evidence on record does not unmistakably point to the guilt of the consumer in the instant case. Consequently, this Court is unable to uphold the conviction of the Respondent for the offence under Section 135 of the Act. The impugned judgment dated 29th September 2007 is hereby set aside.

12. Consequently, the question of imposing any civil liability on the Respondent under Section 154(5) of the Act does not arise. The order to that extent is also hereby set aside.

13. Resultantly, Mr. Gupta is entitled to a refund of all the amounts paid by him pursuant to the impugned judgment dated 29th September 2007 as well as the conviction order dated 5th October 2007, both of which are hereby set aside.

14. Crl. A. 230 of 2008 is accordingly allowed and Crl. A. No.57 of 2008 is dismissed. S.MURALIDHAR, J JANUARY08 2014 tp

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