

The Junior Engineer Vs. the Jayamoorthy

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Court : Chennai

Decided On : Jun-27-2014

Judge : T.S.Sivagnanam

Appellant : The Junior Engineer

Respondent : The Jayamoorthy

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

27. 06.2014 CORAM THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
Crl.R.C.No.347 of 2008 The Junior Engineer/O&M, Tamil Nadu Electricity Board,
Mannur Section, Mannur 604 002. Tindivanam Division .. Petitioner Vs.

1. The Jayamoorthy 2. The Inspector of Police, Kiliyanur Police Station, Kiliyanur.
.. Respondents Criminal Revision Case filed under Section 397 and 401 Cr.P.C.
against the judgment dated 01.04.2008 made in Crl.Appeal No.9 of 2008 on the
file of the Additional District Sessions Court, FTC II at Tindivanam, reversing the
judgment dated 07.01.208 made in C.C.No.194 of 2005 on the file of Munsif cum
Judicial Magistrate Court at Vannur. For Petitioner : Mr.N.Muthuswaami For
Respondents : Mr.M.Murugan for R1 Mr.C.Iyyaparaj, Govt. Advocate for R2

ORDER

This revision has been filed u/s 397 and 401, Cr.P.C. as against the judgment
dated 01.04.2008 made in Crl.Appeal No.9 of 2008 on the file of the Additional

District Sessions Court, FTC II at Tindivanam, reversing the judgment dated 07.01.208 made in C.C.No.194 of 2005 on the file of Munsif cum Judicial Magistrate Court at Vannur.

2. The petitioner is the Tamilnadu Electricity Board challenging the order passed by the lower Appellate Court acquitting the first respondent / accused from the offence under section 379 IPC r/w section 39 (1) of Indian Electricity Act.

3. The case of the prosecution is that the poultry was being run by the respondent/accused and electricity service connection was provided from Pole No.10663 and an inspection was conducted in the premises and the Electricity Board found that theft of energy was committed and accordingly complaint was lodged which ultimately lead to filing of charge sheet which was taken on file in C.C.No.194 of 2005 on the file of the District Munsif cum Judicial Magistrate Court at Vannur.

4. Before the trial court, the prosecution examined seven witnesses and marked five documents. The M.Os were marked as M.Os 1 to 4. On behalf of the 1st respondent/accused, there was no oral or documentary evidence. The case of the prosecution solely rested upon the evidence PW5, one Narayanan who said that the poultry farm in which theft of energy was said to have been committed has been leased out to the 1st respondent/accused. The trial court accepted the case of the prosecution and convicted the 1st respondent/accused to undergo three years Rigorous Imprisonment and to pay a fine of Rs.5000/- in default to under three more months of imprisonment. Challenging the same, the 1st respondent / accused preferred appeal before the Additional District and Sessions Judge (FTC No.2), Tindivanam. The lower Appellate Court, after considering the contentions advanced by the 1st respondent/accused allowed the appeal setting aside the order of conviction and the fine imposed. Challenging the order of acquittal, this revision has been filed.

5. The petitioner, Electricity Board represented by its Junior Engineer who was examined as PW2, challenged the order passed by the lower Appellate Court and contended that the lower Appellate Court failed to appreciate the evidence of PW5, the owner of the land wherein he had categorically stated that he has leased

out the land to the 1st respondent/accused for a period of five years. Further, it is stated that the accused applied to the petitioner/Board for getting service connection and paid the amount on behalf of PW5 and ignoring this aspect, the lower Appellate Court proceeded solely on the basis that the prosecution has not proved the contention that the poultry farm was leased to the 1st respondent/accused.

6. The learned counsel appearing for the 1st respondent/accused while seeking to sustain the order of acquittal submitted that this court while exercising its revisional jurisdiction cannot act as a second Appellate Court and re-appreciate the evidence and that the power of this court exercising revisional jurisdiction is narrow than the scope of an appellate court and therefore the court has to examine as to whether the impugned order suffers from any manifest error of law or fact.

7. After considering the contentions raised by the Electricity Board and the submission of the learned counsel for the 1st respondent/accused, it is to be seen that though seven witnesses were examined by the prosecution, the case of the prosecution rested upon the evidence of P.W.5. P.W.5 is admittedly the owner of the land as well as the poultry farm. Service connection also stands in the name of P.W.5 and as per the records of Electricity Board, the amount remitted for securing the service connection was also made in the name of P.W.5. The case of P.W.5 was that the poultry farm in question was leased out to the 1st respondent/accused. In such circumstances, the onus is on P.W.5 and the prosecution to establish that there was a valid lease; that the lease was duly entered into the records of the Electricity Board and that the Board was aware of the lease transaction. Thus, when the terms and conditions of supply, as formulated by the Electricity Board which are statutory in character, it is the duty of the landlord to intimate the Electricity Board regarding the leasing of property. Unless the same is established, the presumption is that the owner of the premises / the person in whose name the service connection stands will be held responsible for any theft having been committed. Therefore, the lower Appellate court re-appreciated the entire evidence available on record already, that the prosecution has miserably failed to discharge the onus cast upon them to prove that P.W.5, the owner of the premises in whose name the service connection

stands, had entered into a valid lease agreement with the 1st respondent/accused. Thus, the court below has rightly set aside the order of conviction and in the absence of any error, this court is not inclined to interfere in the order of acquittal.

8. In the result, this Criminal Revision Case is dismissed. 27.06.2014 rgr To 1.The Additional District Sessions Judge, [FTC No.2]. at Tindivanam, 2.The District Munsif cum Judicial Magistrate, at Vannur. 3.The Public Prosecutor, High Court, Madras. T.S.SIVAGNANAM, J.

rgr Crl.R.C.347 No.of 2008 27.06.2014

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