

A. Devendra Vs. State of Karnataka, rep. by Station House Officer

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Court : Karnataka

Decided On : Jun-22-2015

Judge : Pradeep D. Waingankar

Appeal No. : Criminal Appeal No. 22 of 2010

Appellant : A. Devendra

Respondent : State of Karnataka, rep. by Station House Officer

Judgement :

(Prayer: This Crl. Appeal is filed under Section 374(2) of Cr.P.C. by the Advocate for the appellant praying that this Hon'ble Court be pleased to set aside the judgment of conviction and sentence dated 05.12.2009 in Spl. CC No.117/2005 on the file of the I Addl. District and Sessions Judge and Special Judge, Bengaluru Rural District, Bengaluru convicting the appellant/accused for the offence punishable under Sections 39 and 44 of the Indian Electricity Act, 190 and sentenced to pay a fine of Rs.1,000/- for the offence under Section 39 of the Indian Electricity Act, 190 or in default to undergo S.I. for two months, and the accused is also convicted and sentenced to pay a fine of Rs.2,000/- for the offence under Section 44 of the Indian Electricity Act, 1910 or in default to undergo S.I. for three months, in the event of default to pay fine, both sentences shall run concurrently.)

1. This appeal is directed against the judgment dated 05.12.2009 in Special Case No.117/2005 on the file of the 1st Additional District and Sessions Judge and Special Judge, Bengaluru Rural District whereby the appellant/accused has been convicted for the offences punishable under Sections 39 and 44 of the Indian Electricity Act, 1910.

2. The case of the prosecution is briefly stated as under:

The appellant/accused is running a mosquito coil factory under the name Vidya Enterprises situated at Kumbalagodu, Mysuru Road, Bengaluru. He is a consumer of electricity supply to run the factory under RR No.W6P84/P2/469 LT-5(A).

3. On 20.02.2003 at about 4.00 p.m., PW-1, PW-2, PW-7 and PW-8 conducted a raid on his factory and inspected the electric meter. They found that the left side screw of the meter was broken and the meter cover was opened and thereby by tampering the meter the accused was illegally extracting the power supply in order to run his mosquito coil factory. As such, the power supply was disconnected, meter was removed and seized under a mahazar Ex.P.7 in the presence of PW-5 and PW-6 employees of the factory. The meter (MO.1) was forwarded to Meter Testing Department. The meter was tested in the Laboratory by PW-3 and PW-4 Assistant Executive Engineers and a report was furnished as per Ex.P6 stating that it was tampered. PW-7-Police Inspector in Vigilance, BESCO, Police Station received complaint from CW-1-Assistant Executive Engineer as per Ex.P9, registered a case under Sections 39 and 44 of Indian Electricity Act and recorded statement of witnesses, secured back billing report Ex.P8 and Ex.P2. As such, a charge-sheet came to be filed against the accused for the offences punishable under Sections 39 and 44 of the Indian Electricity Act.

4. The accused having denied the charges levelled against him, the prosecution examined as many as 8 witnesses as PWs-1 to 8 and got marked documents Exs.P1 to P10 apart from MO-1, meter. The defence of the accused is that of total denial.

5. The learned Special Judge upon hearing and on appreciation of the evidence held that the prosecution has been able to establish the tampering of the meter

and theft of electricity, which resulted in conviction of the accused for the offences punishable under Sections 39 and 44 of the Indian Electricity Act. Hence, this appeal, questioning the legality of the judgment of conviction and sentence.

6. Heard the learned counsel for the appellant/accused and learned counsel for the Respondent State. Perused the records.

7. From the evidence on record, the fact that the accused was the owner of a mosquito coil factory at Kumbalagodu, Mysuru Road is not in dispute. It is also not in dispute that the said factory was supplied with electricity through R.R.No.W6P84/P2/469. It is borne out from the record, Ex.P2 that the meter stands in the name of accused. The case of the prosecution is that on 20.02.2003 at about 4.00 p.m., the officials of the Electricity Department, namely, PWs-1, 2, 7 and 8 inspected the meter and they found tampering of the meter as screw of the meter was broken, meter cover was opened and thereby it was possible to obstruct the rotation of disc, in order to avoid recording of the consumption of electricity in the meter. These witnesses PWs-1, 2, 7 and 8, the Assistant Executive Engineers have categorically deposed having inspected the meter and tampering of the meter. Being convinced the tampering of the meter and illegal extraction of power supply, the power supply was disconnected, the meter MO-1 was seized under a panchanama Ex.P7 in the presence of PW-5 and PW-6 panchas. Of-course, PW-6 has turned hostile. PW-5 has partially supported the case of the prosecution. He has admitted for having seized the meter in his presence. The official witnesses have spoken about the seizure of the meter including PW-7, the Police Inspector attached to the Vigilance Police Station, BESCO, Bengaluru. PWs- 3 and 4, the Assistant Executive Engineers from Meter Testing Department have categorically deposed for having tested the meter in their Laboratory and found that the meter was tampered, the screw affixed to the meter was broken, meter cover was opened. The possibility of breaking of the screw on account of rust is also ruled out since PWs-3 and 4 have categorically deposed that the seal that was broken was of brass seal. It has to be stated that no consumer of electricity has a right to touch the meter or open the screw or the cover, if at all the meter is not in order, they are required to lodge a complaint before the competent authority. But in this case, by the evidence of the witnesses,

it is established beyond doubt that the meter was tampered by breaking the screw and opening the cover. The theft of electricity was calculated as 1778 units. This court is not concerned with the exact quantity of electricity that was illegally extracted by the accused. What is required to be considered is whether the meter was tampered and thereby it was possible to extract the electricity illegally. Since the screw was broken and the cover was opened, it was possible to insert a foreign object inside the meter so as to stop the rotation of the disc in order to avoid the recording of consumption of electricity. Thus, the learned Special Judge appreciated the evidence on record in its proper perspective and came to the right conclusion. On my re-appreciation, I do not find any illegality committed by the learned Special Judge. The appeal is bereft of merits. Hence, I pass the following:

ORDER

The appeal is dismissed.

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