

**Inderjeet vs.state & Anr**

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**SooperKanoon Citation :** [sooperkanoon.com/1212806](http://sooperkanoon.com/1212806)

**Court :** Delhi

**Decided On :** Feb-15-2018

**Appellant :** Inderjeet

**Respondent :** State & Anr

**Judgement :**

\$~ \* % IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on:

12. 02.2018 Judgment delivered on:15.02.2018 + CRL.A. 1197/2012 INDERJEET STATE & ANR ..... Appellant Through Mr. D.S.Kauntae, Adv. versus Through Mr. Amit Ahlawat, APP for the State. ....

... RESPONDENTS

Mr. Sunil Fernandes, Standing counsel for BSES with Mr. Amav Vidyarthi and Ms. Anju Thomas, Advs for R-2. CORAM: HON'BLE MS. JUSTICE INDERMEET KAUR INDERMEET KAUR, J.

1 This appeal has impugned the judgment and order on sentence dated 17.09.2012 and 26.09.2012 respectively wherein the appellant Inderjeet stood convicted under Section 135 of the Electricity Act, 2003. He had been sentenced to undergo RI for a period of one year and to pay a fine of CRL A. 1197/2012 Page 1 of 11 37,99,314/- and in default of payment of fine to undergo SI for a period of six months. The civil liability computed under Section 154 (5) of the Act had worked out to 25,32,876/- which was payable with simple interest @ 6% per

annum. During the course of this appeal, the appellant had died. His legal heirs i.e. his widow and son are brought on record. They are contesting the appeal. 2 The case of the prosecution is that respondent No.2 had filed a complaint dated 06.08.2008 alleging that the appellant was guilty of theft of electricity; this was pursuant to an inspection carried out by the joint inspection team of respondent No.2 which was dated 22.11.2007. This joint inspection had been conducted at premises No.615, khasra No.126, Saini Mohalla, Bhootonwali Gali, Nangloi which was besides premises No.621-A of the same locality. In the aforementioned premises (615), a connected load of 83.42 KW was found being used for non-domestic purposes; this meter installed at the premises was found to be fake. Inspection report, seizure memo and meter details report was prepared at the spot. The appellant was asked to sign but he refused. 3 The prosecution examined five witnesses of whom the star witnesses were PW-1, PW-3 and PW-4. They were the members of joint inspection CRL A. 1197/2012 Page 2 of 11 team. PW-3 & PW-4 had identified the appellant at the spot. The appellant was also served of the summons dated 04.03.2010 at the same address substantiating the submission of the complainant that the appellant was the owner, occupier, user and had a direct link with the premises where the disputed meter was found installed. No documents/papers were however produced before the Court to prove the ownership of the appellant. 4 The statement of the accused was recorded under Section 313 of the Cr.PC. He denied his connection with the aforementioned premises; submission being that his wife was the owner of shop No.621-A; he had no connection with shop No.615. 5 In evidence two witnesses were produced by the accused; the defence witnesses produced documents to substantiate his submission that an electricity meter was installed in the name of his wife at shop No.621-A where electricity charges were being paid by her. 6 The Trial Court on the basis of evidence adduced before him was of the view that there was direct linkage and connection of the appellant with the premises No.621-A; an order of conviction had accordingly followed. CRL A. 1197/2012 Page 3 of 11 7 On behalf of the appellant, it has been argued that in view of the judgment of the Apex Court reported as (2014) 3 SCC696 Vishal Agrawal and Another Vs. Chhattisgarh State Electricity Board and Another cognizance under Section 135 of the Electricity Act cannot be taken unless an FIR has been registered; this is a cognizable offence

and cognizance on a complaint is bad. Proceedings are liable to be quashed. His second submission is that the evidence of the PW-1, PW-3 & PW-4 who were the members of joint inspection team does not in any manner establish that the disputed premises (615) where the offending electricity meter was found, was in manner connected with the appellant; categorical statement of the appellant being that he was not the owner of this premises. It was for the prosecution to prove its case to the hilt. The videography proved on record by the complainant also did not evidence the presence of the appellant at the spot. The appellant is the owner of the shop No.621-A for which he has adduced evidence and his witness has established his submission that he is paying electricity charges for the electricity being generated in that shop which is in the name of his wife. Shop No.615 is not connected to him. 8 These arguments have been refuted. On behalf of respondent No.2, it is pointed out that the connection of the accused with the aforementioned CRL A. 1197/2012 Page 4 of 11 premises is writ large and this is gathered not only with the evidence of PW- 1, PW-3 & PW-4 but also the admitted position that summons dated 04.03.2010 had been received by the appellant at the same address i.e. shop No.615; if he had no connection with shop No.615, then what he was doing in the premises has not been answered and explained by him. 9 Arguments have been heard. Record has been perused. Written submissions of the parties have also been perused. 10 The appellant stands convicted under Section 135 of the Electricity Act, 2003. Section 135 contained in Chapter IV of the Act deals with the theft of electricity. The necessary ingredient is that the electricity must have been illegally used by the dis-honest person. As rightly pointed out by the learned counsel for the appellant the linkage with the installation of the illegal meter and the alleged illegal user of the electricity has to be established before the offence under this Section is made out. 11 PW-1, PW-3 & PW-4 were the members of the joint inspection team which had carried out the inspection of the premises No.615, khasra No.126, Saini Mohalla, Bhootonwali Gali, Nangloi on 22.11.2007. They were all official witnesses. Their categorical testimony is to the effect that they had gone to inspect premises No.615 which is adjacent to shop No.621-A. The CRL A. 1197/2012 Page 5 of 11 said premises was being used by Inderjeet and Manoj Kumar both of whom were present at the spot. PW-1 had not been able to identify the appellant. PW-3 & PW-4 had identified the appellant. They had prepared a

joint inspection report and a seizure memo. This joint inspection report and seizure memo had not been signed by the appellant. The co-accused Manoj Kumar had absconded and in fact had been declared as proclaimed offender as he had not appeared before the Trial Court. The videography of the proceedings was also conducted and the CD was proved as CW-2/4. In their cross-examination, all the witnesses admitted that the users Inderjeet and Manoj Kumar were present at the spot and they themselves disclosed that they are users of the said premises. In another part of the cross-examination of PW-1, he has stated that he cannot say whether the appellant Inderjeet was the owner of the said premises; in a latter part, PW-1 volunteered by stating that the appellant had disclosed that he is the owner of the premises. The testimony of PW-3 & PW-4 is also bordered on the same lines. There was admittedly no ownership document or any other document to establish that the appellant was an owner or an occupier or a user of the said premises. The vehement submission of the learned counsel for the appellant all along being that he is not the owner of the premises and nor the occupier of the CRL A. 1197/2012 Page 6 of 11 premises. He was present at the spot only for the reason that his wife is the owner of shop No.621-A which shop is adjacent to the disputed shop. He had refused to sign the inspection report of shop No.615 as he was not connected. This was the defence adopted by the appellant right from the inception i.e. during the cross-examination of the witnesses as also his categorical statement recorded under Section 313 of the Cr.PC. In defence the appellant had examined two witnesses of whom DW-1 had produced the papers relating to ownership of shop No.621-A; this shop was in the name of the wife of the appellant where electricity charges were being issued in her name for which electricity bills were also being paid. The defence of the appellant all along being that he has no connection with the disputed premises. 12 In a criminal trial, it is for the prosecution to prove its case beyond all reasonable doubt; it must stand on his legs. This Court is of the view that the appellant is right in his submission that there is no document on record to show that the appellant was either the owner or the occupier or the user of the said premises and was using the electricity generated from the illegal meter installed at that premises. It is not the case of the prosecution that this illegal meter was found installed in the premises of the appellant. Shop No.CRL A. 1197/2012 Page 7 of 11 621-A is owned by the wife of

the appellant. Appellants connection with shop No.615 is not established. Merely because he was found present at the spot which was natural for the reason that shop No.621-A was adjacent to shop No.615 does not make out a case that the appellant was occupying shop No.615 as well. What was the activity being carried out at shop No.615 has also not been spelt out by the prosecution. It is also not the case of the prosecution that shop No.621-A is connected with shop No.615 which could in any manner evidence the connectivity of the appellant with shop No.615. 13 Prosecution having failed to prove this necessary ingredient, the case of the prosecution must fail. Section 135 of the Electricity Act positively pre-supposes a situation that a dishonest abstraction of electricity and its use must be established against the party before that party can be nailed. At the cost of repetition, there is nothing on record which could establish the ownership/occupation of disputed shop (615) with the appellant. The mere bald statement of PW-1, PW-3 & PW-4 that they had noted the presence of the appellant at the time of inspection would not be sufficient to nail the appellant. The appellant was the owner of the adjacent shop. For the prosecution to establish user of alleged illegal abstraction of electricity in the CRL A. 1197/2012 Page 8 of 11 disputed shop, it would be incumbent upon them to establish that shop No.615 was owned/occupied/used by the appellant. This onus has not been discharged by the prosecution. 14 The summons dated 04.03.2010 heavily relied upon by the prosecution, which was also a piece of evidence noted by the trial Court to hold the appellant liable, is also a document which has to be noted to be rejected. The summons dated 04.03.2010 were addressed to the appellant and the address mentioned in the summons is shop No.615 adjacent to shop No.621-A. These summon even as per the report of the process server had been received by the appellant at the adjacent shop No.621-A. Moreover, if this was an incriminating piece of evidence, this should have been put to the accused under Section 313 of the Cr.PC. This is absent. 15 Needless to state that the law on this aspect is well established; every incriminating piece of evidence has to be put to the accused before he can be held liable. 16 In 2007 (3) ACR2884(SC) Ajay Singh Vs. State of Maharashtra, the Apex Court in this context has held as under:-

"CRL A. 1197/2012 Page 9 of 11 The importance of observing faithfully and fairly the provisions of Section 313 of the Code cannot be too strongly stressed. It is not

sufficient compliance to string together a long series of facts and ask the accused what he to say about them. He must be questioned separately about each material substance which is intended to be used against him. The questionings must be fair and couched in a form which an ignorant or illiterate person will be able to appreciate and understand. Even when an accused is not illiterate, his mind is apt to be perturbed when he is facing a charge of murder. Fairness, therefore, requires that each material circumstance should be put simply and separately in a way that an illiterate mind, or one which is perturbed or confused, can readily appreciate and understand. 17 Benefit of doubt must accordingly accrue in favour of the appellant as this Court is of the view that the respondent has failed to prove its case to the hilt. This Court however does not agree with the first submission made by the appellant for which he had relied upon the judgment of Vishal Agrawal (supra). This judgment lays down the law that in addition to a registration of the FIR for a cognizable offence under Section 135 of the Electricity Act, a complaint can also be tried by the Trial Court. This submission of the appellant is without merit. CRL A. 1197/2012 Page 10 of 11 18 In view of the above narrated discussion, appeal is allowed. The judgment of the Trial Court is set aside. The appellant is acquitted of the charges leveled against him. 19 Appeal disposed of in the above terms. FEBRUARY15 2018 A INDERMEET KAUR, J CRL A. 1197/2012 Page 11 of 11