

**Allauddin vs.state**

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**SooperKanoon Citation :** [sooperkanoon.com/1223597](http://sooperkanoon.com/1223597)

**Court :** Delhi

**Decided On :** May-31-2019

**Appellant :** Allauddin

**Respondent :** State

**Judgement :**

\* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment Reserved on:

25. h October, 2018 Judgment Delivered on:

31. t May, 2019 CRL.A. 81/2018 ALLAUDDIN ..... Appellant Represented by: Mr.Ankur Sood and Ms.Romila Mandal, Advocates STATE versus Represented by: Mr.Ashok Kumar Garg, APP for State ..... Respondent with SI Nitin Kumar, PS Geeta Colony Mr.Sunil Fernandes and Mr.Arn timerVid yarthi, Advocates for BSES YPL CORAM: HON'BLE MS. JUSTICE MUKTA GUPTA1 By the present appeal Allauddin challenges the impugned judgment dated 16th December 2017, whereby he was convicted for the offence punishable under Section 135 Electricity Act and the order on sentence dated 18th December 2017 directing him to undergo simple imprisonment for the period of one year six months and to pay a fine of 26,74,422/-, in default whereof to undergo simple imprisonment for a period of three months for the offence punishable under Section 135 Electricity Act.

2. Assailing the conviction, Learned Counsel for the appellant submits that as per the proviso to Section 135, a written complaint should be filed in the police station

within 24 hours from the time of disconnection due to theft CRL.A. 81/2018 Page 1 of 6 of electricity. In the present case, the same has not been complied with as the inspection and disconnection occurred on 5th January 2007 while the complaint was filed on 19th March 2007 which is a gap of almost two and a half months. As per clause 52 (iii) of the DREC Supply Code, the inspection team is required to carry photo ID card and visiting cards, which should be shown and handed over at the time of inspection. In the present case, respondent no.2 has neither placed on record nor proved any written authority signed by a designated officer or any ID cards that were used to inspect the premises. Furthermore, as per Section 25(vii) of the DERC (Performance Standards - Metering and Billing) Regulations, 2002, the inspection report prepared by the inspecting authority should be signed by each and every member of the inspection team but inspection report in the present case does not carry the signatures and therefore should be disregarded. He further submits that the videography has not been proved as the videographer was not examined as a witness and no affidavit was filed under Section 65B of the IT Act. As per the allegations, the appellant was supplying illegal electricity to 106 jhuggis but only one person from these 106 jhuggis has testified against the appellant who also did not place on record any receipt. The inspection team has also not proved on record the alleged receipt issued by the appellant that was seized by them. The appellant was an employee of Sallauddin, who was the actual owner of the premises.

3. Per contra, Learned Counsel for BSES submits that the impugned order and judgment does not suffer from any illegality. The appellant was identified by Vinod Mehto (PW-11) as the person who was supplying electricity and collecting electricity charges from him every month. The CRL.A. 81/2018 Page 2 of 6 appellant was identified by several members of the inspection team who have stated that at the time of inspection there was no valid/authorized source of consumption of electricity at the inspected premises and the same was going on through illegal tapping. He further submits that there was no delay in filing the complaint since as per Section 468(2) Cr.P.C. the period of limitation in filing the complaint shall be 3 years. Proviso to Section 135(1A) was only introduced vide the Electricity Amendment Act, 2007 which came into effect from 15th June 2007 and hence it will not be applicable to the present case. He further submits that the

inspection report has been signed by seven members of the inspection team. Even if the inspection is not a valid inspection, the respondent still has a right to prove that theft of electricity has taken place. Reliance was placed upon the decision of the Delhi High Court reported as 2007 (99) DRJ108Mukesh Rastogi v. North Delhi Power Ltd. He submits that even if the videography is disregarded because a certificate under Section 65B of the IT Act has not been proved, the conviction will still stand since he has been identified by seven witnesses who were part of the investigation team. The appellant cannot escape his criminal liability merely on the ground that the residents of the 106 jhuggis have not been made accused in the present case.

4. Sequence of events leading to the present case are that on 5th January, 2007 a raid was conducted by raiding team which was headed by Rakesh Kumar consisting of Nafees Ahmed, H.C. Sharma, Gyaneshwar, Vinay Gupta, Virender Kumar, K.Rehman, Sunil Sharma, Vishnu and Arun at 12:35 P.M. at premises bearing number T-16, J.J.

Cluster, Shamsanghat, Geeta Colony, Delhi. On inspection, direct theft of electricity was found by tapping from BSES LV over head main/ LTMP line through illegal wire and CRL.A. 81/2018 Page 3 of 6 distributing the supply to different jhuggi dwellers. The connected load at the site was found to the extent of 82.286 KW/DX/DT. The users were using the electricity directly from the LV main. The site was photographed. The connected load was taken, and illegal wires were removed. The removed material was seized vide seizure memo Ex.PW-1/D. The inspection report was prepared vide Ex.PW-1/A. The load report and meter details report were prepared vide Ex.PW-1/B and Ex.PW-1/C respectively. Receipts were collected from the jhuggi dwellers which showed that the petitioner was distributing the electricity to them.

5. On the basis of the abovementioned inspection, a complaint (Ex.PW- 8/A) was lodged. Consequently, FIR No.128/2008 was registered at PS Geeta Colony for the offence punishable under Section 135 Electricity Act.

6. On the basis of a secret information, the petitioner was arrested on 24th March, 2007 vide arrest memo Ex.PW-4/2. His personal search was conducted vide

personal search memo Ex.PW-4/1. House of the petitioner was also searched vide premises search memo EX.PW-10/1. The case property was seized vide seizure memo Ex.PW-10/2. On 4th April 2007, the statements of the BSES officials who constituted the raiding team were recorded.

7. Notice under Section 251, Cr.P.C. was given to the appellant to which he pleaded not guilty and claimed trial. To substantiate the complaint, eleven witnesses were examined.

8. Vinod Mehto (PW-11), resident of Geeta Colony stated that in the year 2007 he was taking electricity from the appellant who used to collect electricity charges from him every month and issued a rough slip against the electricity charges in their locality. On 9th March 2007, the appellant was CRL.A. 81/2018 Page 4 of 6 arrested in his presence and the arrest memo and personal search memo were prepared. He further stated that earlier Salluddin was the contractor who used to supply electricity prior to the inspection. He could not bring the rough slip issued by the appellant as it was destroyed due to fire. The appellant used to supply electricity to 150 jhuggis.

9. All the incriminating evidence put to the appellant was denied by him in his statement under Section 313 Cr.P.C. wherein he took the defence that he was not the owner of the inspected premises nor was a tenant nor occupier of the said premises. He was working for Salluddin who was supplying electricity at the locality. He stated that he had a photocopy of the receipt which was issued in the name of Salluddin for electricity connection at the inspected premises.

10. Appellant examined Vikas Srivastav, Meter Reader, BSES as DW-1 who brought consumer details of customer K.No.1220R4410016. As per the record, the aforesaid connection was allotted in the name of Salluddin for single power distribution. Said connection was disconnected in February, 2004. Connection details were proved vide Ex.DW-1/A (colly).

11. Case of the appellant is that Salluddin who was allotted a single power distribution connection was distributing the electricity illegally and the appellant has been wrongly arrested and convicted. No doubt Salluddin was allotted a single

power distribution connection however the same was disconnected in February, 2004 and the witnesses of the prosecution clearly identified the appellant was the one who was supplying illegal electricity to 106 jhuggis. Merely because the residents of the 106 jhuggis did not appear in the witness box and only one witness namely Vinod Mehto appeared would not belie the version of Vinod Mehto. Vinod Mehto also clarified CRL.A. 81/2018 Page 5 of 6 that earlier Salluddin was a contractor who used to supply electricity however subsequently it is the appellant who was supplying the electricity. Merely because the complaint was filed after 24 hours of the disconnection of electricity would not make the registration of the FIR and the investigation carried out illegal. The witnesses of inspection had appeared in the witness box however the appellant did not challenge their authority to conduct the inspection prosecution duly exhibited also proved the theft of electricity by seizing the wires from which illegal abstraction of energy was being done which were produced in evidence. None of the jhuggi dwellers was having meter but still electricity is being used. Considering the evidence of the prosecution and that the public witness also deposed that it was the appellant who was supplying the electricity, this Court finds no error in the impugned judgment of conviction and order on sentence.

12. Appeal is accordingly dismissed.

13. Copy of this order be sent to Superintendent Central Jail Tihar for updation of the Jail record.

14. TCR be returned. MAY31 2019 vj/mamta (MUKTA GUPTA) JUDGE CRL.A. 81/2018 Page 6 of 6

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