

Vikram Singh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Sep-01-2009

Reported in : 2009(5)MPHT182

Judge : N.K. Mody, J.

Appellant : Vikram Singh

Respondent : State of M.P.

Advocate for Def. : Smt. Anjali Jamkhedkar

Judgement :

ORDER

N.K. Mody, J.

1. Being aggrieved by the judgment dated 5-7-2005 passed by IInd ASJ, Ujjain in S.T. No. 10/2005, whereby the appellant was convicted for an offence punishable under Section 353 of IPC with fine of Rs. 2,000/- and under Section 135 of the Electricity Act sentencing him to undergo one year R.I., against which the present appeal has been filed.

2. Case of the prosecution was that on 29-11 -2004, Junior Engineer of MPEB along with staff went for inspection, at that time, it was found that appellant was stealing the energy for the purpose of irrigation by running the motor of 3 horse-

power. It was alleged that Panchnama was prepared and the electricity equipment from which the electricity was stolen were seized. Upon the complaint of the complainant, case was registered against the appellant at Crime No. 327/2004 under Section 135 of Electricity Act, 2003. After framing of charges and also after recording of evidence, appellant was convicted as stated above, against which the present appeal has been filed.

3. Learned Counsel for the appellant argued at length and submits that the impugned judgment passed by the learned Court below is illegal and deserves to be set aside. It is submitted that Section 151 of the Act bars the respondent to file challan under Section 173 of the Act. Shri C.L. Yadav, learned Senior Counsel further submits that the word complaint has been used in Section 151 and the word complaint has nowhere defined in the aforesaid Act but defined under Section 2(1)(d), Cr.P.C., which reads as under:

'Complaint' means any allegation made orally or in writing to a Magistrate with a view to his taking action under this Code, that some person whether known or unknown has committed an offence, but does not include a police report.

It is submitted that Section 151 of the Act reads as under:

151. Cognizance of offences.-- No Court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by Appropriate Government or Appropriate Commission or any of their officer authorized by them or a Chief Electrical Inspector or an Electrical Inspector or licensee or the generating company, as the case may be, for this purpose.

4. It is submitted that Electricity Act of 2003 has been amended vide amendment Act No. 26 of 2007, which has come in force w.e.f. 29-5-2007 and the following proviso has been inserted in Section 151 of the Act:

provided that the Court may also take cognizance of an offence punishable under this Act upon a report of a police officer filed under Section 173 of the Code of Criminal Procedure, 1973 (2 of 1974):

Provided further that a Special Court constituted under Section 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial.

5. It is submitted that the object to amend Section 151 of Electricity Act was that as per Section 151 of the Act the offence is relating to theft of electricity, electric lines and interference with meters are cognizable offences. Concerns have been expressed that the present formulation of Section 151 stands as a barrier to investigation of these cognizable offences by the police. It is proposed to amend Section 151 so as to clarify the position that the police would be able to investigate the cognizable offences under the Act, to expedite the trial before the Special Courts, it is also proposed to provide that a Special Court shall be competent to take cognizance of an offence without the accused being committed to it for trial.

6. It is submitted that thus, the respondent was authorized to file the charge-sheet against the appellant after 29-5-2007 but in the present case the charge-sheet has been filed by the respondent on 8-1-2005. It is submitted that the proviso to Section 151, which has been amended to the Electricity Act cannot be given retrospective effect. It is submitted that the appeal filed by the appellant be allowed and the impugned judgment be set-aside.

7. Smt. Anjali Jamkhedkar, learned Counsel for the respondent submits that the contention raised by the learned Counsel for the appellant is having no force. Reliance is placed on a decision of this Court in the matter of Sheikh Mohd. Khalil v. State of M.P. reported in 2005 (4) M.P.H.T. 12(NOC) : 2005 (4) M.P.L.J. 479, wherein the incident of theft of electricity took place on 6-4-2004, i.e., prior to the date of the amendment and the charge-sheet was filed by the State. This Court observed as under:

When, on a complaint made by anyone who is competent to make a complaint under Section 151 of the Electricity Act, the police takes cognizance and after investigation sends its report to the Court along with the complaint received by it on which the investigation started, the Court can take cognizance because the person making the complaint to the police is one enumerated under Section 151 as competent to make a complaint. There is no illegality in the procedure, as

Section 151 of the Act does not require that the complaint should directly be made to the Court. The substance of the provision of Section 151 of the Act is a complaint for taking cognizance made by one who is competent to make it under that section and not that it should be directly presented to the Court. This is also the scheme of Rule 12 of the Electricity Rules, 2005 directly be made to the Court. The substance of the provision of Section 151 of the Act is a complaint for taking cognizance made by one who is competent to make it under that section and not that it should be directly presented to the Court. This is also the scheme of Rule 12 of the Electricity Rules, 2005 made by a notification dated 8-6-2005. Rule 12 enable that the complaint can be made to the police and the police will send the complaint along with its report to the Court for taking cognizance. Even though the said rule came later, the same procedure was adopted in this case and such a procedure does not go against Section 151 of the Act. Admittedly, the complaint was also made by a person enumerated under Section 151 of the Act as competent to make.

8. The offence of theft of electricity was committed by the petitioner on 29-11-2004. Proviso to Section 151, Electricity Act was amended on 29-5-2007. Charge-sheet was filed by the prosecution on 8-1-2005. Electricity Rules, 2005 came in force with effect from 8-6-2005. Rule 12 of the Rules has empowered the police to take cognizance of the offence punishable under the Act. In the matter of Sheikh Mohd. Khalil (supra), this Court has taken the view that even though the said Rule came later the same procedure was adopted in this case and such a procedure does not go against Section 151 of the Act. In view of this the objection regarding the validity of the proceedings initiated by the prosecution has no merits and on that ground the judgment passed by the learned Court below cannot be set aside.

9. On merits learned Counsel for the appellant argued at length and submits that appellant has convicted illegally while appellant has not committed any offence. Learned Counsel further submits that the learned Court below committed error in not properly appreciating the evidence, which resulted incorrect judgment and is liable to be set-aside in this appeal. It is submitted that the learned Court below committed error in not considering that material omissions and contradictions appearing in the testimony of the prosecution witnesses. It is prayed that appeal

be allowed and conviction be set aside.

10. In alternative learned Counsel for appellant submits that appellant was in jail w.e.f. 5-7-2005 to 1-8-2005. The jail sentence was suspended on 1-8-2005. Thus the appellant was in jail for a period of one month approximately. Learned Counsel submits that keeping in view the facts and circumstances of the case the jail sentence be reduced as undergone and the fine amount be enhanced reasonably.

11. Learned Counsel for the State submits that after due appreciation of evidence learned Court below has found the appellant guilty for the aforesaid offence. Hence no interference is called for in the findings recorded by the learned Trial Court.

12. From perusal of the record, it appears that to prove the offence prosecution has adduced the cogent evidence from which it is proved that the appellant was rightly convicted, which requires no interference.

13. So far as the period of sentence is concerned, looking to the limited prayer made by the Counsel for the appellant and the nature of offence and the fact that appellant has already served substantive period of jail sentence the purpose would be served in case the jail sentence awarded to the appellant is reduced to the period already undergone, subject to depositing further sum of Rs. 10,000/-, within a period of two months, in default the appellant shall suffer jail sentence awarded by the learned Court below. The fine amount shall be transferred to the concerned office of the Electricity Board.

14. In the result, the appeal is partly allowed. The findings of conviction is hereby maintained with the modification to the extent that the jail sentence awarded to the appellant is reduced to the period already undergone subject to depositing further fine of Rs. 10,000/-, within a period of two months, in default the appellant shall suffer jail sentence awarded by the learned Court below. In case of arrest on account of default upon depositing the aforesaid amount, appellant be released forthwith, if not required in any other case. The fine amount shall be transferred to the concerned office of the Electricity Board. It is also made clear that in case of arrest then appellant fails to deposit the amount he shall be further liable to pay

fine @ Rs. 50/- per day and shall be released forthwith upon depositing the amount with fine.

With the aforesaid observations, appeal stands disposed of.

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