[2025] 10 S.C.R. 381 : 2025 INSC 1206

Mahaveer
v.
State of Maharashtra and Anr.

(Criminal Appeal No(s). 2154-2155 of 2011)

08 October 2025

[Sanjay Karol* and Prashant Kumar Mishra, JJ.]

Issue for Consideration

Issue arose whether the acquittal of the appellant-director of the company was correctly reversed by the High Court and whether his conviction u/ss.39 and 44 of the Electricity Act, 1910 for committing theft of energy and for interference with meters or licensee's works, and for improper use of energy, sustainable.

Headnotes†

Electricity Act, 1910 – ss.39 and 44 – Theft of energy – Penalty for interference with meters or licensee's works, and for improper use of energy – Conviction of the appellant-director of the company for the offence punishable u/ss.39 and 44, for committing theft of energy and for interference with meters or licensee's works, and for improper use of energy by the High Court, reversing the findings of acquittal recorded by the Magistrate – Sustainability:

Held: Under s.39, for the presumption against the consumer to take effect, it must be proved that an artificial means or a means not authorised by the licensee had been used in committing the theft – Presumption is not of automatic application, and instead, something is required to be established for it to apply, thus, on facts, it must be established by the MSEB that an artificial means had been employed – None of the five witnesses deposed with complete confidence about the alleged theft of electricity and the use of artificial means therein, by the appellant – Most of the testimonies based on estimation, presumption, approximation or possibilities, which cannot be deemed to be sufficient for proving the theft – As a necessary follow-up of the inability of the prosecution to prove the use of artificial means, the presumption against the

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consumer, that is, the appellant, not set in motion – Charge u/s.44 is resting on shaky grounds as well – Nothing on record to show that the meter had been injured or tampered with – None of the investigators from the MSEB carried out a practical exercise of checking the holes and the wires, and the possibility of it being actually used for theft, as alleged to have taken place – None of the witnesses or any other third person saw the accused, or, for that matter, any other person connected to the Company, openly tampering with the box – No categorical statement that at the time of installation or any time prior to the inspection of the meter box by officials of the MSEB, there were no holes in the box – There are too many open possibilities for criminal liability to be affixed to any person – s.44 also has not been proved beyond a reasonable doubt – Thus, neither ss.39 nor 44 could be established against the appellant – Judgment and order passed by the High Court set aside. [Paras 13-17]

Case Law Cited

Ramesh Babulal Doshi v. State of Gujarat **[1996] Supp. 2 SCR 265 : (1996) 9 SCC 225;** *Satya Narain Prasad v. Bhagwan Ramdas* **(1995) Supp. 4 SCC 629;** *Kalamani Tex v. P. Balasubramanian* **[2021] 1 SCR 668 : (2021) 5 SCC 283;** *Vadivelu Thevar v. State of Madras* **[1957] 1 SCR 981 : 1957 SCC OnLine SC 13 – referred to.**

List of Acts

Electricity Act, 1910.

List of Keywords

Theft of energy; Interference with meters or licensee's works; Improper use of energy; Presumption; Use of artificial means; Holes in the box; Criminal liability.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No(s). 2154-2155 of 2011

From the Judgment and Order dated 15.10.2010 of the High Court of Judicature at Bombay at Aurangabad in CRLA Nos. 270 and 346 of 1997

Appearances for Parties

Advs. for the Appellant:
Sunil J. Mathews, Deepak Kore, Ms. Jyoti Rani Chib, Ms. Yashika, Rajeev Singh.

Advs. for the Respondents:
Ajit Bhasme, Sr. Adv., Shrirang B. Varma, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Sanjay Kumar Visen, Rohan K Santoshi, Parth Sarathi, Prashant Sharma, Gyanendra Vikram Singh, Ms. Soumya Gulati.

Judgment / Order of the Supreme Court

Judgment

Sanjay Karol, J.

1. These appeals, at the instance of the appellant-convict, are directed against the judgment and order dated 15th October, 2010, passed in Criminal Appeal No.270/1997 and Criminal Revision Application No.346/1997, whereby a learned Single Judge of the High Court of Judicature at Bombay (*Bench at Aurangabad*) overturned the findings of acquittal recorded by the IIIrd Jt. Judicial Magistrate (FC) at Jalan in Reg. Criminal Case No.108/93 for the offence punishable under Sections 39 and 44 of the Indian Electricity Act, 1910[1].

2. The facts as have been laid out by the Courts below are as follows:-

   2.1 The appellant-convict was a Director of M/s. Rushi Steels and Alloys Pvt. Ltd.[2], situated at Plot No.52/7 of MIDC Area, Jalan and was responsible for conducting the business of the Company. The power supply to the Company was provided by the Maharashtra State Electricity Board[3].

   2.2 The officials of the MSEB, in March 1993, noticed a mismatch between the units supplied to these factories *vis-à-vis* the readings taken from the meters at these factories. The alleged disparity was to the extent of 36.6 per cent. Naturally, an

1 Hereinafter referred to as "The Act"

2 Hereinafter referred to as the "Company"

3 Hereinafter referred to as "MSEB"

investigation was followed in the months of April and May 1993. During inspection of the meters placed at the factory of the appellant-convict by senior officials of MSEB, in the presence of independent witnesses, it was found that the meter had been tampered with, and the box in which it was placed had 3 holes of 4 mm each.

2.3 According to the prosecution, the officials of the MSEB concluded that the workers of the Company had been using additional wires, interfering with the meter supply and thereby causing a slowdown in the running of the meter. As such, the holes were sealed. On a subsequent reading of the meter, the disparity was now found to be around 10 per cent.

2.4 The approximate quantification of the alleged theft of electricity was to the tune of Rs.30 lakhs.

2.5 The Executive Engineer, MSEB, lodged a First Information Report with the Taluka Jalan Police Station, on 25th June 1993. Upon completion of the investigation, a chargesheet was filed before the Court on 1st October 1993.

3. The prosecution examined five witnesses. Statement under Section 313 Code of Criminal Procedure[4] of the two accused, namely Radheshyam and Mahaveer, the present appellant-convict (Mahaveer), was also recorded. It may be noted here itself that the appeal *qua* Radheshyam stood dismissed as abated *vide* order dated 30th September 2019. The defence did not lead any other evidence and furnished a whole and complete denial of the accusations levelled by the prosecution.

4. The Trial Court, on consideration of the entire evidence, concluded that the prosecution had failed to establish its case beyond a reasonable doubt. It could not prove abstraction, dishonest use or consumption of electrical energy. The charges under Sections 39 and 44 of the Act could not be established and as such, the following order was passed:-

> "1. Both the accused viz., (1) Radheshyam S/o Ratanlal Agrawal, age 40 years and 2) Mahaveer S/o Ratanlal

4 Hereinafter referred to as "Cr.PC"

Agrawal, age 55 years, Directors of M/s. Rushi Steel and Alloys Pvt. Ltd. Company are hereby acquitted of the punishable offence under Section 39 of the Indian Electricity Act, 1910.

2. Both the accused are further acquitted of punishable offence U/sec. 44 of the Indian Electricity Act, 1910.

3. Both accused are acquitted under the provisions of Section 248(1) of Cr. P.C.

4. Bail bonds of both accused stand cancelled.

5. Both the accused be set at liberty forthwith.

6. Muddemal viz., meter box in question be delivered to prosecution vide Exh. 122, application of prosecution claiming meter box in question U/sec. 452 Cr.P.C. subject to condition that prosecution shall execute a bond to restore it to the court if order made under Sub Section (1) of Sec. 452 Cr.P.C. is modified or set aside an appeal or revision."

(S.D. Agrawal)
3rd Jt. Judicial Magistrate
(F.C.) Jalna

Date : 25.4.1997"

5. On appeal, the High Court framed the following points for consideration:-

"i) Whether the prosecution proves that the respondents committed theft of energy?

ii) Whether the prosecution proves that the respondents interfered with the electric meter?

iii) Whether the complaint is made by competent person as expected under Section 50 of the Electricity Act?

iv) What is the scope of appreciation of evidence when the appeal against acquittal is filed?"

6. On consideration of evidence, the High Court held that once the extra holes in the meter box were sealed, the consumption increased significantly, and since the possibility of any other user stealing the

electricity had been foreclosed by the holes being plugged with a metal plate having been placed there, it stood proved that the appellant-convict(s) was responsible for the theft. Regarding Section 44 of the Act, it was concluded that the case would fall squarely under clause '*c*' of the said Section. Further, it was observed that the appellant-convict(s) did not make any attempt to prove that the extra holes in the meter box were not caused by them. Regarding the issue that PW-3 Dinkar, being the competent authority to lodge the complaint, it was held that he was given that he had been deputed by the MSEB as the officer responsible for that area. Accordingly, a complaint at his instance would be treated as a complaint made on behalf of MSEB, and so, it would be in accordance with the law. On the next point, it was held by the learned Single Judge that the Trial Court had not appreciated the law as laid down by this Court in ***Ramesh Babulal Doshi v. State of Gujarat***[5]. Having recorded as above, the appeal and the revision were allowed, and the appellant-convict(s) was sentenced to suffer rigorous imprisonment for a period of one year and to pay a fine of Rs.2 lakhs each, in default whereof the appellant-convict(s) was to undergo further rigorous imprisonment for a period of 3 months.

7. Hence, these appeals. We have heard learned counsel appearing for the parties.

8. The short question to be considered is whether the acquittal of the appellant-convict(s) was correctly reversed by the High Court and whether the conviction so handed down to him is sustainable in law.

9. The two provisions, of which infraction is alleged on the part of the appellant-convict(s), are reproduced below for ready reference: –

> Section 39
>
> [**39. Theft of energy**.—Whoever dishonestly abstracts, consumes or uses any energy shall be punishable with imprisonment for a term which may extend to three years, or with fine which shall not be less than one thousand rupees, or with both; and if it is proved that any artificial means or means not authorised by the licensee exist for the abstraction, consumption or use of energy by the

5 (1996) 9 SCC 225

consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of energy has been dishonestly caused by such consumer.]

Section 44

44. Penalty for interference with meters or licensee's works, and for improper use of energy.—Whoever—

(a) connects any meter referred to in Section 26, sub-section (1), or any meter, indicator or apparatus referred to in Section 26, sub-section (7), with any electric supply-line through which energy is supplied by a licensee, or disconnects the same from any such electric supply-line, [1] [* * *]; or

[2][(aa) unauthorisedly re-connects any meter referred to in sub-section (1) of Section 26, or any meter, indicator or apparatus referred to in sub-section (7) of Section 26, with any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, when the said electric supply line or other works has or have been cut or disconnected under sub-section (1) of Section 24; or]

(b) lays, or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee, [3] [* * *]; or

(c) maliciously injures any meter referred to in Section 26, sub-section (1), or any meter, indicator or apparatus referred to in Section 26, sub-section (7), or wilfully or fraudulently alters the index of any such meter, indicator or apparatus, or prevents any such meter, indicator or apparatus from duly registering; or

(d) improperly uses the energy of a licensee;

shall be punishable with [4] [imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both], and, in the case of continuing offence, with a daily fine which may extend to [5] [fifty] rupees; and [6] [if it is proved that any artificial means exist] for making such connection as is referred to in clause (a), [7] [or such re-connection as is referred to in

clause (aa),] or such communication as is referred to in clause (b), or for causing such alteration or prevention as is referred to in clause (c), or for facilitating such improper use as is referred to in clause (d), [8] [and that] the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, [9] [it shall be presumed, until the contrary is proved,] that such connection, [10] [re-connection,] communication, alteration, prevention or improper use, as the case may be, has been knowingly and willfully caused by such consumer.

(Emphasis supplied)

10. In ***Satya Narain Prasad v. Bhagwan Ramdas***[6] it was observed as follows:

"**3.** …It can be seen that Section 39 as such does not prescribe any sentence but yet it creates an offence by raising a fiction, namely, that whoever has dishonestly used or abstracted any energy shall be deemed to have committed the theft within the meaning of Penal Code, 1860. Therefore, dishonest abstraction of electricity is deemed to be an offence under the Penal Code by virtue of this fiction created under Section 39 of the Electricity Act. Interpreting this section, this Court in Avtar Singh case [(1965) 1 SCR 103 : AIR 1965 SC 666] held: (SCR p. 107-A-B)

"To put it shortly, dishonest abstraction of electricity mentioned in Section 39 cannot be an offence under the Code for under it alone it is not an offence, the dishonest abstraction is by Section 39 made a theft within the meaning of the Code, that is, an offence of the variety described in the Code as theft. As the offence is created by raising a fiction, the section which raises the fiction, namely Section 39 of the Act, must be said to create the offence. Since the abstraction is by Section 39 to be deemed to be an offence under the Code, the fiction must be

6 (1995) Supp. 4 SCC 629

> followed to the end and the offence so created would entail the punishment mentioned in the Code for that offence. The punishment is not under the Code itself for under it abstraction of energy is not an offence at all."

It looks as though the High Court has only referred to the last sentence and overlooked the fact that Section 39 expressly made dishonest abstraction of electricity, as offence punishable under the Code. Section 39, therefore, makes something which was not a theft within the Penal Code, a theft within it, and consequently that section also makes theft punishable in the manner provided in the Code because the illegal abstraction of electricity is deemed to be a theft within the meaning of Code and it must be deemed for all purposes a theft including the purpose of imposing the punishment. Therefore, in deciding whether an offence of theft as provided under Section 39 is made out or not the Court has to read Section 39 along with provision of IPC dealing with theft."

(Emphasis supplied)

11. It has to be noted that prior to proceeding with the merits of the case, that reversal of acquittal by the High Court in exercise of its appellate jurisdiction in and of itself does not call upon this Court to reappreciate the entire evidence when an appeal is preferred by special leave under Article 136 of the Constitution of India. Reference to ***Kalamani Tex v. P. Balasubramanian***[7] would suffice. A Bench of three learned Judges records the position as under:

> **"11.** Having given our thoughtful consideration to the rival submissions, we do not find any valid ground to interfere with the impugned judgment [P. Balasubramanian v. Kalamani Tex, 2017 SCC OnLine Mad 35499]. It is true that the High Court would not reverse an order of acquittal merely on formation of an opinion different than that of the trial court. It is also trite in law that the High Court ought to have compelling reasons to tinker with an order

7 (2021) 5 SCC 283

of acquittal and no such interference would be warranted when there were to be two possible conclusions. [C.K. Dasegowda v. State of Karnataka, (2014) 13 SCC 119, para 14 : (2014) 5 SCC (Cri) 599] Nonetheless, there are numerous decisions of this Court, justifying the invocation of powers by the High Court under Section 378 CrPC, if the trial court had, inter alia, committed a patent error of law or grave miscarriage of justice or it arrived at a perverse finding of fact. [State of U.P. v. Banne, (2009) 4 SCC 271, para 27 : (2009) 2 SCC (Cri) 260; Ghurey Lal v. State of U.P., (2008) 10 SCC 450, para 70 : (2009) 1 SCC (Cri) 60]

12. On a similar analogy, the powers of this Court under Article 136 of the Constitution also do not encompass the reappreciation of entirety of record merely on the premise that the High Court has convicted the appellants for the first time in exercise of its appellate jurisdiction. This Court in Ram Jag v. State of U.P. [Ram Jag v. State of U.P., (1974) 4 SCC 201, para 14 : 1974 SCC (Cri) 370] , Rohtas v. State of Haryana [Rohtas v. State of Haryana, (2019) 10 SCC 554, para 12 : (2020) 1 SCC (Cri) 47] and Raveen Kumar v. State of H.P. [Raveen Kumar v. State of H.P., (2021) 12 SCC 557 : 2020 SCC OnLine SC 869, para 14] , evolved its own limitations on the exercise of powers under Article 136 of the Constitution and has reiterated that while entertaining an appeal by way of special leave, there shall not ordinarily be an attempt to reappreciate the evidence on record unless the decision(s) under challenge are shown to have committed a manifest error of law or procedure or the conclusion reached is ex facie perverse."

(Emphasis supplied)

12. By way of an appeal, it is urged before us that the High Court has committed a manifest error in overturning the findings of acquittal entered by the Trial Court. A perusal of the record convinces us that there may be some strength to this submission. As such, while being conscious of the self-imposed limitations *qua* reappreciation of evidence by this Court under the extant jurisdiction, we tread further.

13. A perusal of Section 39 of the Act reveals that any person who dishonestly abstracts, consumes or uses any energy commits theft of energy. The second part of the Section provides that if it is proved that any artificial means or the means that have not been authorised by the licensee, are used in such theft of energy till the contrary is proved, it shall be assumed and presumed that such theft has been committed by the consumer. What is obvious from the above is that for the presumption against the consumer to take effect, it must be proved that an artificial means or a means not authorised by the licensee had been used in committing the theft. In other words, the presumption is not of automatic application, and instead, something is required to be established for it to apply. In the instant case, therefore, it must be established by the MSEB that an artificial means had been employed.

14. As we have already noted *supra*, the State examined five witnesses to establish its case. Let us now examine how these five witnesses are able to establish that artificial means had been employed in the theft of electricity.

    14.1 PW -1 was one Shankarrao, who was a witness to the *panchnama*. He states that he was called there and shown a meter box. He made a positive statement that he signed the said document. When cross-examined, he stated that when he signed the document, he had no knowledge of what had taken place there, nor was the document written as per his understanding. It was written independently, and he had only affixed his signature on it. The meter he was shown was not working. He was also shown some wires affixed to a wooden board. It is admitted that he, having noticed whatever he was shown, deduced, without confirmation, that there had been a theft of electricity.

    14.2 PW-2 was Balwant, Dy. Ex. Engineer, MSEB, Officer, Jalna. In his detailed examination in chief, this witness detailed the entire process of the cloud of suspicion being cast on the company of the appellant-convict, as also the step-by-step actions taken in regard of such suspicion. In his cross-examination, it comes for that he had not checked the consumption of electricity by the other companies. It was further stated:-

> "…It is true to suggest that all the statement made by me by deposite and regarding less recording of energy are based on guesswork and nothing specific. It is true to nothing specific with regard record with less electricity can be stated by me.… I do not know as to whether previously there were separate whole at the bottom of the metre is question…. It is to do to suggest that I have been pressurised by superior in deposed before the Hon'ble Court"

14.3 PW-3 was the complainant. He testified that during the inspection of the meter box, 3 holes were found. After plugging the holes, it was stated that the discrepancy fell to 10 percent. The numbers mentioned in the report, according to him, were correct, and he has signed the same. In his cross-examination, he admits that none of the officers of the MSEB verified the possibility of –

> "shortening the current by insulting wires in the holes of the bottom of metre box. It is true to say that, all the conclusions reached by us in the alleged occurrence about theft of electricity in respect of metre box in question entirely based upon the inference only."

14.4 PW-4 testified that he had come to Jalan for the purpose of conducting tests on the meters. At the time of testing, the original seal of the meter box was found to be intact. He further said that there was a direct correlation between the plugging of the holes in the meter box and the number of discrepancies, which were reduced significantly. In his cross-examination, it comes forward that he had, on the basis of what he saw during the inspection drew an inference that the energy consumed was not in a proper manner because *"there was possibility due to existing the three holes in question."* The further relevant portion is reproduced as under:

> "I had given in my report send to S. E. the fact that, I suspected have gone behalf of accused company. It is true to suggest that, I have adopted the procedure of elimination in between the 4 consumers after making observations of all for consumers and gave

> my conclusion that, the losses are due to 3 holes of metre box in question."

14.5 PW- 5 is a retired Chief Engineer, who at the relevant point in time, was the Superintending Engineer, Aurangabad Circle. He is the one who gave directions to the concerned officials to commence the investigation. He details in his testimony, the receipt of information of the discrepancy to the extent of 36.6% and the steps he took thereafter, including discussing with higher officials. In his cross-examination, he admits as follows:

> "it is true to suggest that, the existence of 3 holes at the bottom of the metre box of the accused is be only because for charging the accused for pilferage of energy."

15. It is evident from the above discussion and extracts of the testimonies put forward by the prosecution that none of them have deposed with complete confidence about the alleged theft of electricity and the use of artificial means therein, by the appellant-convict. Most of the testimonies are based on estimation, presumption, approximation or possibilities. Needless to state, the same cannot be deemed to be sufficient for the purposes of proving the above. Reference may be made to ***Vadivelu Thevar v. State of Madras***[8], wherein this Court has explained the nature of witness testimony and its corresponding effect on the overall case. The second of the three mentioned therein is '*wholly unreliable*.' The testimonies that make up this case appear to fall squarely into this categorization. As a necessary follow-up of the inability of the prosecution to prove the use of artificial means, the presumption against the consumer, that is, the appellant-convict, is not set in motion.

16. Insofar as the charge under Section 44 is concerned, we find that to be resting on shaky grounds as well. Nothing has been brought on record to show that the meter had been injured or tampered with. None of the investigators from the MSEB carried out a practical exercise of checking the holes and the wires, and the possibility of it being actually used for theft, as is alleged to have taken place.

8 1957 SCC OnLine SC 13

None of the witnesses or any other third person saw the accused, or, for that matter, any other person connected to the Company, openly tampering with the box. There was no categorical statement whatsoever that at the time of installation or any time prior to the inspection of the meter box by officials of the MSEB, there were no holes in the box. In other words, there are too many open possibilities for criminal liability to be affixed to any person. In our considered view, therefore, Section 44 of the Act also has not been proved beyond a reasonable doubt.

17. Consequent to the above discussion, we hold that neither Sections 39 nor Section 44 could be established against the appellant-convict. As such, the appeals are allowed. The judgment and order dated 15th October 2010, passed in Criminal Appeal No.270 of 1997 and Criminal Revision Application No. 346 of 1997, passed by the High Court of Punjab and Haryana, is set aside. Mahaveer, the instant Appellant, is acquitted of all charges. The bail bonds are discharged.

Pending application(s), if any, are disposed of.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Nidhi Jain