

Bombay High Court

The State Of Maharashtra vs Jitendrasingh Balbirsingh & Ors on 8 May, 2017

Bench: R.P. Mohite-Dere

apeal.519.02.217.d

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO. 519 OF 2002

The State of Maharashtra  
(At the instance of Khopoli  
Police Station)

...Appellant  
(Orig.Complainant)

Versus

1. Jitendrasingh Balbirsingh, 46 yrs.,
2. Rajpal Shriomprakash Singh, 38 yrs.  
Both R/o. B.P.T Plot No. 52,  
Victoria Overbridge Road,  
New Darukhana, Mumbai No.10
3. Brijbihari Vasudeo Singh, 40 yrs.,  
R/o. 18/7, Adoshi Road,  
Mitra Steel Company,  
Atkargaon.
4. Subodh Santosh Mahiti, 33 yrs.  
R/o. Tagaria, Post-Kontai,  
Tal. Kontai, Dist. Midanapur

...Respondents  
(Orig.Accused 1 to 4)

Mrs. P. P. Shinde for the Appellant-State

None for the Respondents

CORAM : REVATI MOHITE DERE, J.

MONDAY, 8th MAY, 2017 ORAL JUDGMENT :

1. Heard learned A.P.P for the Appellant-State.

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2. By this appeal, the appellant-State of Maharashtra, has impugned the judgment and order dated 1 st February, 2002 passed by the learned Judicial Magistrate First Class, Khalapur in regular Criminal Case No. 151 of 1994, acquitting the respondents-accused of the offences punishable under Section 379 r/w 34 of the Indian Penal Code and under Sections 39 and 44 of the Indian Electricity Act.

3. A few facts as are necessary to decide the aforesaid appeal are as under :

Prakash Dattatraya Ambale, Deputy Executive Engineer, is the complainant. He has stated that he was serving as a Deputy Executive Engineer, Flying Squad, Aurangabad in Maharashtra State Electricity Board ('MSEB'). According to the complainant, it was the duty of the Flying Squad to give surprise visits to places and find out, whether there is any fraud or malpractice with regard to electricity, and take necessary action, where required. According to the complainant, as per the directions of the Director of Vigilance, Mumbai, he and his team came to Khopoli during the period from 28th May, 1994 to 31st May, 1994. He has stated that he had received information from the Director, that there was theft of SQ Pathan 2/9 appeal.519.02.217.doc electricity at Mitra Steel and Alloys Pvt. Ltd., at Atkargaon and was directed to inspect the electricity meters. He has stated that as per the directions of the Director, he and his team visited M/s. Mitra Steel Company on 28th May, 1994 and inspected the meter body, meter terminal, test terminal block and meter box seal and noted the same in the spot inspection sheet. He has stated that during the load test, it was found that KWH meter was working slowly and KVAH and RKVAH meters were stopped. He has stated that they found material like M-Seal, affixed to the tin of the meter and there was bulging and the same was accordingly mentioned in the spot inspection sheet. On 30th May, 1994, the meters were tested by the Executive Engineer of Testing Division, Pen and it was found that the KVAH meter was working slowly by 21.67% and KVAH and RKVAH meters were stopped. They also found that there were holes on all the three meter bodies. After perusing the bills, they found that the consumption of units was less and there was a difference in units in consumption of various months. According to the complainant, he found that by putting wires through these holes to the meters, M. D. was recorded less and as such noticed that the consumer had committed theft of electricity of 23 lakh units and had caused loss of approximately Rs. 41 SQ Pathan 3/9 appeal.519.02.217.doc lakhs. Accordingly, a complaint was lodged with the police on 31 st May, 1994, which was registered vide C.R. No. 51 of 1994 with the Khopoli Police Station. Thereafter, investigation was carried out, statements of witnesses were recorded, etc. and charge-sheet was filed as against the respondents-accused.

4. The accused pleaded not guilty to the charge and claimed to be tried. The defence of the respondents-accused was of total denial. The prosecution, in support of its case, examined 6 witnesses. PW 1-Taturam Patil and PW 2-Ashok More were declared hostile. Prakash Ambale-the complainant was examined by the prosecution as P.W.3. Prakash Ambale has deposed that he had received instructions from the Director of Vigilance that there were holes to the electric meter body of Mitra Steel Company and was accordingly directed to check the said meters and to submit a report with regard to the same. He has stated that on 28 th May, 1994, he along with his team, went to Mitra Steel Company and checked the electric meters. He has stated that on inquiry, he learnt that Mr. Subodh Maity (Respondent No.4) was the Electric Supervisor available there and told him

that they wanted to check the meters. P.W. 3-Prakash Ambale has SQ Pathan 4/9 apeal.519.02.217.doc stated that pursuant thereto, Mr. Maity took him to the place where the electric meters were installed and accordingly spot panchanama was done. He has stated that on testing the electric meters, they found that KWH meter was working slowly and KVAH and RKVAH meters were stopped. On checking the meter body, they found that there was one bulging (small) at the bottom sheet of meter body below KWH and RKVAH meters and accordingly, the same was mentioned in the spot inspection report. It was also found that the KWH meter was working slowly by 21% and that the other two meters i.e. KVAH and RKVAH meters were defective. Accordingly, panchanama was prepared. According to the complainant, they found that there was theft of electricity, as there was less recording of meter and it was shown that there was lesser consumption than actual and hence, a complaint was lodged as against the respondents-accused, alleging all the aforesaid offences.

5. PW 4-Dilip Dudhwadkar was examined as a panch witness to the panchanama that was carried i.e. Exhibit 66. PW 5-Raosahab Patil is the Assistant Vigilance Officer, who had accompanied PW 3-Prakash Ambale and PW 6- API Suresh Jadhav, the Investigating Officer.

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6. After considering the evidence on record, the learned Sessions Judge was pleased to acquit the respondents-accused on several grounds. The learned Judge held that the prosecution had failed to prove, evidence of theft as against the respondents-accused; and that the respondents-accused had used any artificial means for commission of theft of electricity. The learned Judge has observed, that the complainant had admitted in his cross- examination, that if there was any abnormality in the meters when inspected, then it was necessary for them to take photographs and it was the responsibility of the MSEB to provide cameras and that admittedly, no photographs were taken. The learned Judge has considered the admissions of the complainant that when the meter boxes were inspected, he had found that the said meter boxes were intact and that the Investigating Officer had also admitted the same when he prepared the panchanama i.e. the seal of the meter boxes were intact. The complainant had also admitted in his cross-examination that there were no holes at the bottom of the meter boxes, except cable holes. The learned Judge has observed that if the meter boxes had holes, and there were no additional holes to the meter boxes, then it was impossible to commit theft, by inserting/putting wires in the SQ Pathan 6/9 apeal.519.02.217.doc meters. It was observed that merely because there were holes to the meters, is not sufficient to prove that there was abstraction of energy. The learned Judge has further observed that the meters were not even produced before the Court and it was not shown by the prosecution that there were additional holes to these meters and as such, there was nothing to show that there was tampering to the said meters.

It was also observed that the prosecution had failed to show that M-seal was affixed to these meters above the holes, as the Investigating Officer had not seized the M-seal. It was also noted that no wires from which abstraction of energy was alleged to have been done, were seized. Learned Judge observed that unless wire/wires is/are put in the said meters through the hole/holes, there cannot be any abstraction of energy. As the said valuable material was not collected, the learned Judge did not place any reliance on the said evidence. Learned Judge has also observed that there was non-compliance of Section 20 of the Indian Electricity Act, inasmuch as, prior notice to the occupier of their inspection was not given. Admittedly, PW 3 had not given any notice about inspection to Mitra Steel Company. The learned Judge also observed that the prosecution had failed to prove, that Subodh Maity was the consumer or that he was the authorized person of the Company. He has SQ Pathan 7/9 appeal.519.02.217.doc observed that neither, the complainant had confirmed whether Subodh Maity was an authorized person nor had the Investigating Officer collected any material to show that Subodh Maity was the authorized person of Mitra Steel Company and as such inspection of the meters was not done in the presence of the authorized representative of the consumer. It was also noted that although the meters were inspected on 28 th May, 1994, whereas, the complaint was lodged with the police on 31 st May, 1994 and that the said delay was unexplained.

7. According to the prosecution, the meter which was installed in Mitra Steel Company, was repaired by the MSEB and thereafter, the same meter was installed at Theramax Company. Learned Judge has observed that PW 3-Prakash Ambale had admitted in his cross-examination that on 2nd December, 1991, one meter of SIMCO Company was newly installed at the new meter room of Mitra Steel Company and that on 5 th May, 1993, when that meter was checked, it was working slowly and hence a direction was given to replace that meter and accordingly on 25 th May, 1993, the said meter was replaced by meter No. 005941. The learned Judge has observed that it has come on record that the meter No. 005941 which was seized by SQ Pathan 8/9 appeal.519.02.217.doc the Investigating Officer was installed in Mitra Steel Company on 25 th May, 1993 and as such it was evident that before 25 th May, 1993, the meter No. 005941 had not been installed in Mitra Steel Company and as such it cannot be said that the theft was committed with the help of the said meter. Apart from the aforesaid reasons, the learned Judge has given several other reasons, for disbelieving the prosecution case, on the basis of the evidence on record.

8. Perused the evidence on record as well as the impugned judgment, by which the respondents-accused have been acquitted. The view taken by the learned Judge is a plausible view and it cannot be said to be either perverse or unsustainable. The reasons are cogent and are based on the evidence and material on record. Considering the same, no ground is made out for interfering the said impugned judgment and order. Accordingly, the appeal is dismissed.

REVATI MOHITE DERE, J.

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