

# The Assistant Executive Engineer vs A.V.K.Velayutharaja on 24 June, 2008

**Author: A.Selvam**

**Bench: A.Selvam**

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24/06/2008

CORAM

THE HONOURABLE Mr.JUSTICE A.SELVAM

Criminal Revision Case No.786 of 2005

The Assistant Executive Engineer,  
Distribution/Rural,  
Tamil Nadu Electricity Board,  
Sankarankovil,  
Tirunelveli District. ... Petitioner/PW1

Vs

1.A.V.K.Velayutharaja ... Respondent/  
Accused

2.State rep. by the Inspector  
of Police, Sankarankovil  
Police Station,  
(Crime No.327/1994) ... Respondent/  
complainant

Criminal revision case is filed under Section 397 read with 401 of the Code of Criminal Procedure, against the judgment dated 30.12.2003 passed in C.A.No.99 of 2002 by the Additional Sessions cum Fast Track Court No.I, Tirunelveli, reversing the judgment dated 08.04.2002 passed in C.C.No.171 of 1997 by the Judicial Magistrate, Sankarankovil.

!For petitioner ... Mr.M.Patturajan

^For 1st respondent ... Mr.V.Kathirvelu

For 2nd respondent . . . Mr.P.Rajendran,  
Government Advocate,  
(criminal side)

: ORDER

Challenge in this criminal revision case is to the judgment dated 30.12.2003 passed in Criminal Appeal No.99 of 2002 by the Additional Sessions cum Fast Track Court No.I, Tirunelveli, wherein the conviction and sentence passed in Calendar Case No.171 of 1997 by the Judicial Magistrate Court, Sankarankovil are set aside.

2.The epitome of the prosecution case can be stated like thus;

The accused has been running a factory under the name and style of 'Raja Enterprises'. The factory of the accused has given electric service connection and he removed seals from electric meters and put up bogus seals. He has also removed seals from transformer chamber. The accused has made the electric meter not to run and thereby he has stolen electricity and he caused loss to the tune of Rs.25,15,220/- to the Tamil Nadu Electricity Board. Under the said circumstances, the accused is said to have committed offences under Sections 39(1) and 44(1)(aa) of the Electricity Act, 1910.

3.On receipt of Ex.P1, the investigating agency has done investigation and after completing the same, laid a final report on the file of the Judicial Magistrate Court, Sankarankovil and the final report has been taken on file in Calendar Case No.171 of 1997.

4.On the basis of the accusation made against the accused, a charge under Section 39(1) and 44(1)(aa) of the Electricity Act, 1910 and the same have been read over and explained the accused. The accused has denied the charges and claimed to be tried.

5.On the side of the prosecution, PWs.1 to 9 have been examined and Exs.P1 to P6 and MOs.1 to 4 have been marked. When the accused has been questioned under Section 313 of the Code of Criminal Procedure, as respects the incriminating circumstances appearing in evidence against him, he denied his complicity in the crimes. However no oral and documentary evidence have been let in on the side of the accused.

6.The trial Court, after pondering the evidence available on record, has found the accused guilty under Sections 39(1) and 44(1)(aa) of the Electricity Act, 1910 and sentenced him till rising of the Court in each section and also imposed a fine of Rs.5,000/- upon each section with default clause. Against the conviction and sentence, the accused as appellant has preferred Criminal Appeal No.99 of 2002 on the file of the first appellate Court.

7.The first appellate Court, after reappraising the evidence available on record, has allowed the appeal and ultimately acquitted the accused. Against the judgment passed by the first appellate Court, the present criminal revision case has been filed.

8.The crux of the prosecution case is that the accused has been running an industry under the name and style of 'Raja Enterprises' and the same has been given electric service connection. On 04.05.1994, the factory of the accused has been inspected and ultimately found that the accused has removed original seals from electric meter as well as transformer chamber and stolen electricity and thereby caused loss to the tune of Rs.25,15,220/- and he has committed offences under Sections 39(1) and 44(1)(aa) of the Electricity Act, 1910.

9.The trial Court, after considering the evidence available on record, has found the accused guilty under the said Sections and sentenced him as noted down earlier, but the first appellate court has acquitted the accused.

10.The learned counsel appearing for the revision petitioner has repeatedly contended that the first appellate Court has rendered its judgment on 30.12.2003 and the Electricity Act, 2003 has come into force on 10.06.2003 and therefore, on the date of pronouncement of the judgment by the first appellate Court, the first appellate Court has no jurisdiction to pass judgment in Criminal Appeal No.99 of 2002 and the first appellate Court has rendered its judgment without jurisdiction and therefore, the entire judgment passed by the first appellate Court is liable to be set aside.

11.The learned counsel appearing for the respondent/accused has also equally contended that the specific case of the prosecution is that the accused has committed the alleged theft of electricity on 04.05.1994 and the Electricity Act has come into force only on 10.06.2003. Since offence is alleged to have taken place on 04.05.1994, the first appellate Court is having jurisdiction to render its judgment in Criminal Appeal No.99 of 2002 and therefore, the argument advanced by the learned counsel appearing for the revision petitioner is liable to be rejected and the present criminal revision case deserves dismissal.

12.On the basis of the divergent submissions made by either counsel, the Court has to analyse as to whether the first appellate Court is having jurisdiction to pass judgment in Criminal Appeal No.99 of 2002.

13.It is an admitted fact that the Electricity Act, 2003 has come into force on 10.06.2003 and as per Section 185 of the said Act, the Indian Electricity Act, 1910 (9 of 1910), the Electricity (Supply) Act, 1948 (54 of 1948) and the Electricity Regulatory Commissions Act, 1998 (14 of 1998) are repealed. Therefore, from 10.06.2003 the only Act applicable is the Electricity Act, 2003. The offences mentioned in part XIV of the Electricity Act, 2003 have to be tried only by the Special Court. Section 153 of the Electricity Act, 2003 deals with "Constitution of Special Courts" and the same reads as follows;

"The State Government may, for the purposes of providing speedy trial of offences referred to in Sections 135 to 139 by notification in the Official Gazette, constitute as many Special Courts as may be necessary for such area or areas, as may be specified in the notification."

14. Section 151 of the Electricity Act, 2003 deals with "Cognizance of offences" and the same reads as follows;

"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 authorised 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."

15. Section 154 of the Electricity Act, 2003 deals with "Procedure and Power of Special Court" and the same reads as follows;

"(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under Sections 135 to 139 shall be triable only by the Special Court within whose jurisdiction such offence has been committed.

(2) Where it appears to any court in the course of any inquiry or trial that an offence punishable under Sections 135 to 139 in respect of any offence that the case is one which is triable by a Special Court constituted under this Act for the area in which such case has arisen, it shall transfer such case to such Special Court, and thereupon such case shall be tried and disposed of by such Special Court in accordance with the provision of this Act.

Provided that it shall be lawful for such Special Court to act on the evidence, if any, recorded by any Court in the case of presence of the accused before the transfer of the case to any Special Court:

Provided further that if such Special Court is of opinion that further examination, cross-examination and re-examination of any of the witnesses whose evidence has already been recorded, is required in the interest of justice, it may re-summon any such witness and after such further examination, cross-examination or re-examination, if any, as it may permit, the witness shall be discharged.

(3) The Special Court may, notwithstanding anything contained in sub-

section (1) of Section 260 or Section 262 of the Code of Criminal Procedure, 1973 (2 of 1974), try the offence referred to in Sections 135 to 139 in a summary way in accordance with the procedure prescribed in the said Code and the provisions of Sections 263 to 265 of the said Code shall, so far as may be, apply to such trial:

Provided that where in the course of a summary trial under this sub-Section, it appears to the Special Court that the nature of the case is such that it is undesirable to try such case in summary way, the Special Court shall recall any witness who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the said Code for the trial of such offence:

Provided further that in the case of any conviction in a summary trial under this Section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding five years.

(4) A Special Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to, any offence tender pardon to such person on condition of his making a full and true disclosure of the circumstances within his knowledge relating to the offence and to every other person concerned whether as principal or abettor in the commission thereof, and any pardon so tendered shall, for the purposes of Section 308 of the Code of Criminal Procedure, 1973 (2 of 1974), be deemed to have been tendered under Section 307 thereof.

(5) The Special Court may determine the civil liability against a consumer or a person in terms of money for theft of energy which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of twelve months preceding the date of detection of theft of energy or the exact period of theft if determined whichever is less and the amount of civil liability so determined shall be recovered as if it were a decree of civil Court.

(6) In case the civil liability so determined finally by the Special Court is less than the amount deposited by the consumer or the person, the excess amount so deposited by the consumer or the person, to the Board or licensee or the concerned person, as the case may be, shall be refunded by the Board or licensee or the concerned person, as the case may be, within a fortnight from the date of communication of the order of the Special Court together with interest at the prevailing Reserve Bank of India prime lending rate for the period from the date of such deposit till the date of payment.

Explanation- For the purpose of this Section, "civil liability" means loss or damage incurred by the Board or licensee or the concerned person, as the case may be, due to the commission of an offence referred to in Sections 135 to 139."

16. From the close reading of the Sections mentioned supra, it is made clear that after passing of the Electricity Act, 2003 (i.e., from 10.06.2003), the concerned State Government should constitute Special Courts for the purpose of conducting trials with regard to offences committed under Sections 135 to 139 of the said Act and further after 10.06.2003, no Court shall take cognizance of an offence punishable under the said Act, except upon a complaint as mentioned in Section 151 of the said Act.

17. In the instant case, the alleged offence has taken place on 04.05.1994 and the trial Court has rendered its judgment on 08.04.2002 and on the date of passing of the judgment by the trial Court, the Electricity Act, 2003 has not come into existence, but the first appellate Court has rendered its judgment in Criminal Appeal No.99 of 2002 on 30.12.2003. The Electricity Act has come into force on 10.06.2003 and as per the said Act, only Special Courts are having jurisdiction to try the offences

mentioned in Sections 135 to 139 of the said Act. Therefore, virtually the first appellate Court has no jurisdiction to pass judgment in Criminal Appeal No.99 of 2002. The first appellate Court, without considering the relevant section of the Electricity Act, 2003, has erroneously passed its judgment on 30.12.2003 and therefore, the judgment passed by the first appellate Court on 30.12.2003 is totally illegal and the same is liable to be set aside and the Criminal Appeal No.99 of 2002 is also liable to be remitted to the first appellate Court.

18.In view of the foregoing enunciation of both the factual and legal premise, it is needless to say that the argument advanced by the learned counsel appearing for the revision petitioner is really having subsisting force and whereas the argument advanced by the learned counsel appearing for the respondent/accused is sans merit.

19.In fine, this criminal revision case is allowed. The judgment passed in Criminal appeal No.99 of 2002 by the Additional Sessions cum Fast Track Court No.I, Tirunelveli is set aside and the Criminal Appeal No.99 of 2002 is remitted to the file of the Additional Sessions cum Fast Track Court No.I, Tirunelveli and directed to pass order as per the relevant provisions of the Electricity Act, 2003.

gcg To

- 1.The Additional Sessions Judge, (Fast Track Court No.I), Tirunelveli.
- 2.The Judicial Magistrate, Sankarankovil.
- 3.The Inspector of Police, Sankarankovil Police Station, Sankarankovil.
- 4.The Public Prosecutor, The Madurai Bench of Madras High Court, Madurai.