

Dilip (Dead) Th. Lrs. vs Satish on 13 May, 2022

Author: Indira Banerjee

Bench: C.T. Ravikumar, Indira Banerjee

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 810 OF 2022
(ARISING OUT OF SPECIAL LEAVE PETITION(CRL.) NO. 8917 OF 2019)

DILIP(DEAD) THROUGH LRS.

VERSUS

SATISH & OTHERS

J U D G M E N T

INDIRA BANERJEE J.

Leave granted.

No one has appeared on behalf of Respondent Nos. 1 and 2, in spite of notice. The Respondent-State has appeared through the learned standing counsel.

This appeal is against a final judgment and order dated 21.06.2019 passed by the Aurangabad Bench of the High Court of Judicature at Bombay allowing Criminal Application No. 215 of 2019 and quashing the FIR No. 394/2018 filed by the appellant, arraying Respondent Nos. 1 and 2 as accused.

The Appellant is the owner of House No. 463 situated at Darzi Bazar, Bhazi Market Road, Cantonment, Aurangabad, Maharashtra, which is hereinafter referred to as the “said premises”. The father of the Respondent No. 1 was inducted as a tenant of a shop at the said premises. The said members filed a suit for eviction. While the said suit was pending, the appellant along with his mother inherited the said premises.

It is not necessary for this Court to go into the details of how the ownership of the said premises devolved on the Appellant.

Suffice it to mention that the Respondent No. 1 and his mother filed a petition under Section 17 of the Hyderabad Rent Control Act in the Court of the Rent Controller, Aurangabad, seeking directions on the Appellant to provide electricity connection at the said shop.

The application was rejected on the ground that from the inception of the tenancy the said shop was run with a petromax.

Electricity had never been provided. The Respondent No. 2 later applied for supply of electricity in his own name on the basis of a "No Objection" letter dated 15.07.2006 and got supply of electricity to the said shop in his own name.

It is the case of the Appellant that the no objection letter had been fabricated and the signatures thereon of Shantilal Maniklal Jaiswal, brother of the Appellant had been forged by Respondent No. 1. An FIR was lodged, the relevant portions of which are extracted hereinbelow :-

8. Thereafter on 3/12/2018 the Deputy Executive Engineer of Maharashtra State Electricity Board had taken action about taken illegal electric connection and disconnected the electric connection taken from Pavan Jaiswal in House No. 484 and this was intimated to the complainant by their letter dated 4/12/2004. The complainant was also intimated that Pavan has assured that henceforth he would not supply electricity after pay Rs. 25/- for reconnection the electricity was again started. This copy is annexed on Exhibit-G.

9. The complainant had a doubt that the accused is attempting to file application to Maharashtra State Electricity Board for getting new electric connection. Hence to prevent giving electric connection he raised objection on the application of the accused and filed his application. Copy of the said objection application is annexed on Exhibit-H.

10. In August 2006 the complainant came to know that when all attempts of the accused No. 1 for getting illegally the electric connection were failed, the accused No. 1 has illegally obtained new electric connection. In this regard when the complainant made inquiry with Maharashtra State Electricity Board, the complainant named Shantilal Maniklal Jaiswal and submitted to Maharashtra State Electricity Board on 1/8/2006 and on that basis new connection was given to him.

11. No sooner the complainant came to know about the illegal act of the accused he filed application with Maharashtra State Electricity Board on 9/8/2006 under Right to Information Act for getting concerned papers to find out as to how the new connection was received. Accordingly it was informed that with the help of Accused No. 4 for Maharashtra State Electricity Board with the help of Vendor Sayyed Shafi (accused No 3) on 15/7/2006 stamp paper of Rs. 20/- was purchased on which fake signature of Shantilal Maniklal Jaiswal was made and fake No Objection Letter was prepared.

It was notarized from the Notary Advocate M.P. Varkat (Accused No. 4) License No. 665. The complainant also noticed that the stamp paper was purchased from the Accused No 4 Sayyed Shafi and on the stamp paper of Rs. 20/- the accused No. 1 prepared agreement on which after making signature it was mentioned that after taking the electric connection if anything illegal is observed the Maharashtra State Electricity Board would full authorized to disconnect the same. In this way the same was notarized by Notary Advocate M.P. Varkad (accused No. 4). Along with all paper got by the complainant the fake No Objection Letter prepared on bond paper is also annexed on Exhibit-I.

12. Thereafter immediately on 12/8/2006 and on 14/8/2006 the complainant and his brother Shantilal Maniklal Jaiwal filed complaint with the office of Maharashtra Sate Electricity Board and Cantonment Police Station as well as with Police Commissioner against the illegal act committed by accused No. 1 requesting therein that requisite legal action is to be taken against all participants of this illegal act; but so far no any action has not been taken against the accused persons. Copy is annexed on Exhibit-J.

13. As the police did not take any action against the accused hence on 29/8/2006 brother of the complainant Shantilal Maniklal Jaiswal filed complaint against the accused No. 1 at Cantonment Police Station, Police Commissioner and Cantonment Aurangabad; but till today no any action has been taken by them against the accused. Copy of the said complaint dated 29/8/2006 is annexed on Exhibit-C.

14. On 4/6/2006 was the Democracy Day on which the complainant has filed application No 1185 in the office of District Collector, Aurangabad. Accordingly on 4/9/2006 as per the order letter No 443 of District Collector Maharashtra State Electricity Board was ordered to take action against the accused. Thereafter on 1/11/2006 vide letter No 5125 Maharashtra State Electricity Board informed the complainant that the papers of No Objection Letter have been given to Cantonment Police Station. It was also informed that if the said bond is found as fake the electric connection would be disconnected. Copy of this letter dated 1/11/2006 with application is on Exhibit-L.

15. The complainant knew that against the accused on the complaint of the complainant police did not take any action. Hence on 3/9/2016 the complainant filed last complaint to the police officer; but they said that they would not be able to take any action on the complaint of the complainant and asked him to file complaint with Maharashtra State Electricity Board.

16. Hence on 15/9/2016 the complainant filed complaint before Maharashtra State Electricity Board and requested them to take necessary action; but they did not take any action against the accused. This complaint is annexed on Exhibit- N.

17. On 14/3/2017 again the complainant made complaintsat Maharashtra State Electricity Board for taking necessary action against the accused; but no action, was taken. The complaint dated 14/3/2017 is annexed on Exhibit-O.

18. On 18/3/2017 regarding complaint of the complainant the Superintending Engineer of Maharashtra State Electricity Board sent a letter to the Executive Engineer and ordered that as per

the Company rules necessary action is to be taken and its report is to be submitted to their Department. This application is annexed on Exhibit-P.

19. As per the letter dated 18/3/2017 of Superintending Engineer of Maharashtra State Electricity Board the Executive Engineer did not take any action and did not submit their report. Hence on 27/6/2017 the Superintending Engineer sent letter to the Executive Engineer and called their explanation ordering that as per the Company rules the inquiry is to be made and report is to be submitted. This letter dated 27/6/2017 is annexed on Exhibit-O.

20. The Executive Engineer of Maharashtra State Electricity Board did not take any action. Hence again on 19/12/2017, 30/12/2017, 4/1/2018 the complainant gave written complaints to the Senior Officers of Maharashtra State Electricity Board; but till today no any action has been taken against the accused and the complainant has not been informed by any letter. These complaints are annexed on Exhibit-R. In this regard no any action was taken and the complainant was no at all informed. These complainants are annexed on Exhibit-5.

21. It is the fact that brother of the complainant Shantilal Maniklal Jaiswal did not purchase any bond from the accused and never given in writing the No Objection Letter to the accused. Hence in this matter there is need of detailed inquiry.

22. The accused made fake signature of brother of complainant named Shantilal Maniklal Jaiswal and prepared fake bond of No Objection and with an intention of causing deception to the complainant taken electric connection from Maharashtra State Electricity Board. However, Maharashtra State Electricity Board has taken criminal action against the accused.” As observed above, the said FIR has been quashed by the High Court by the judgment and order impugned in this special leave petition. The High Court held as hereunder :-

“4) It is not disputed that applicant No. 1 has obtained the connection of electricity. The submissions made show that applicant No. 1 is in possession of the shop and he is running a saloon shop. It is clear that he needs electricity for doing this business, but the first informant was not giving no objection certificate. He took every step to see that applicant No. 1 does not get supply of electricity for his business. It is not the case of the Applicant No. 1 that as per the agreement between him and landlord, the landlord, the landlord is bound to supply the electricity. Further, the Electricity Board seeks no objection of landlord only to verify that the possession of the tenant is authorised. There is no other purpose behind obtaining such no objection from landlord. The landlord cannot prevent the tenant from availing such facility at his own cost.

5) The aforesaid circumstances need to be kept in mind and then the definition of forgery, cheating, etc. given in the IPC needs to be seen. It cannot be said in the present matter that false record if any created has caused any harm to the property or person of the first informant. In view of this circumstance, it cannot be said that applicant No. 1 or his associate committed aforesaid offences by taking connection of

electricity on the basis of such no objection certificate. This Court holds that it will be misuse of process of law if the applicants are directed to face the trial for aforesaid offences. In the result, the application is allowed. The relief is granted to the applicants in terms of prayer clause 'B'. Rule is made absolute in those terms." It is now well settled proposition of law that electricity is a basic amenity of which a person cannot be deprived. Electricity cannot be declined to a tenant on the ground of failure/refusal of the landlord to issue no objection certificate. All that the electricity supply authority is required to examine is whether the applicant for electricity connection is in occupation of the premises in question.

Be that as it may, the High Court clearly fell in error in quashing the FIR. It cannot be said that fabrication and/or creation of records and/or forging a signature does not constitute an offence under the Indian Penal Code. The High Court completely overlooked the definition of cheating in Section 415 of the IPC.

The impugned order cannot be sustained and the same is set aside.

The appeal is, accordingly, allowed.

Pending applications, if any, shall stand disposed of.

It is however made clear that electricity supply granted, shall not be discontinued, subject to compliance by the Respondents of the terms and conditions of supply of electricity by the electricity department including payment of charges for the same.

..... J.

[INDIRA BANERJEE] J.

[C.T. RAVIKUMAR] NEW DELHI;

MAY 13, 2022