IN THE COURT OF SH. JITENDRA SINGH, ADDITIONAL SESSIONS JUDGE, ELECTRICITY COURT, DISTT. NORTH WEST, ROHINI COURTS, DELHI

CNR No. DLNW01-003760-2019
SC No. 365/2019
FIR No. 988/2018
P.S. Aman Vihar
U/S. 135 OF THE ELECTRICITY ACT, 2003

STATE VS. IMTIYAZ KHAN

1. Date of Commission of Offence	:02.05.2018
2. Date of institution of the case	:15.04.2019
3. Name of the complainant	:Sh. Rajiv Gupta, TPDDL, UP Samaj Building, Pitampura, Delhi.
4. Name of accused, parentage & address.	:Imtiyaz Khan S/o Sh. Mumtaz Khan, R/o; H.No. 373, B-Block, Camp No. 2, JJ Colony, Nangloi, Delhi.
5. Offence complained or proved	:135 of Electricity Act, 2003.
6. Plea of Accused person	:Pleaded not guilty.
7. Final Order	:Acquitted
8. Date of Reserving judgment	:06.08.2024
9. Date of Final Order	:09.08.2024

JUDGMENT

BRIEF FACTS OF THE CASE:-

1. Succinctly, the facts of the present case are that on 02.05.2018, at about 12.10 PM a team of Tata Power Delhi

Distribution Limited **(hereinafter referred to as 'TPDDL'**), visited the premises i.e. Meat Shop No. 3, Main Road, Prem Nagar-1, Delhi-86 **(hereinafter referred to as 'Premises')**. During inspection no meter was found at site and direct theft of electricity was being committed by puncturing TPDDL Low Tension Aerial Bunched Conductors **(hereinafter referred to as 'LT ABC')** at pole no. HT-523-2/4 and connecting one illegal two core black colour wire of multiple joint, which was further connected to the internal wiring of the premises of the accused.

2. At the time of inspection, representative of the accused Mr. Saharukh was present at site, who signed the inspection report. Total load of 0.972 KW was found connected at site for commercial purpose. Inspection report, which is Ex. PW2/1 was prepared at site. Thereafter, illegal wire, which was being used for theft was removed and seized, vide seizure memo, which is Ex. PW2/2. Site sketch was also prepared at site, which is Ex. PW2/3.

3. The photographer Sh. Prem Singh had taken 10 photographs, which are Ex. PW4/A-1 to Ex. PW4/A-10 at the time of inspection and conducted the videography. The Compact Disc **(hereinafter referred to as 'CD')** of the photographs and videography is Ex. PW4/B and the certificate under Section 65-B of Indian Evidence Act, is Ex. PW4/C. Thereafter, the police complaint was made and accordingly the present First Information Report

(hereinafter referred to as 'FIR') was got registered under Section 135 of the Electricity Act, 2003 **(hereinafter referred to as '2003, Act')** in the Police Station: Aman Vihar **(hereinafter referred to as 'PS').**

NOTICE AGAINST THE ACCUSED:-

4. After completion of investigation, the charge sheet under Section 135 of Electricity Act, 2003 was filed against the accused ***Imtiyaz Khan*** by the Investigating Officer **(hereinafter referred to as 'IO').** The notice under Section 135 of The Electricity Act, 2003 was framed against the accused, wherein he pleads not guilty and claimed trial.

PROSECUTION EVIDENCE:-

5. **PW-1 Sh. Rajeev Gupta (DGM),** who deposed that he had given a complaint in PS Aman Vihar and on the basis of inspection report dated 02.05.2018 conducted at the premises of the accused. Inspection was conducted by Sh. Bikesh Kr. Jena, Sh. Abhishek Makhija, Sh. Umesh Kumar, Sh. Rahul Dalal, Sh. Kunal Kant Sharma alognwith photographer Sh. Prem Singh of Dev Photo Magic Studio. He further deposed that at the time of inspection direct theft of electricity was being committed at the premises from TPDDL LT ABC for commercial purpose and connected load was found to be 0.972 KW. He further deposed that on the basis of the said inspection, he had given the complaint u/s. 135 of Electricity

Act. The said complaint was received in the PS on 18.05.2018, which is Ex. PW1/A signed by him at point A. He further deposed that the said complaint was given alongwith all original documents of the case i.e. Inspection Report, seizure memo, 10 photographs, CD of the photographs and videography, site sketch and certificate u/s. 65-B of Indian Evidence Act regarding the CD and photographs.

6. **PW-2 Sh. Kunal Kant Sharma (Officer)**, who deposed that on 02.05.2018, he alongwith Sh. Bikas Kr. Jena, Sh. Rahul Dalal, Sh. Abhishek Makhija, Sh. Umesh Sharma alongwith photographer Prem Kumar had inspected the premises of the accused. At the time of inspection, accused was taking supply by committing direct theft from pole no. HT 523/2/4 by deliberately puncturing LT ABC by using one number two core black colour wire and by further connecting the same to the load circuit of the user/accused load. He further deposed that the supply was being used for commercial purpose and the connected load was 0.972 KW. At the time of inspection one Saharukh worker of the accused was present at site. No electricity meter was found installed at the site. He further deposed that inspection report was prepared at site, which is Ex. PW2/1. The inspection report was served to said Shahrukh after taking thumb impression of said Shahrukh at point X. He further deposed that one illegal wire i.e. black colour two core cable with multiple joint having length approx. 14 meter was seized from the site, vide seizure memo, which is Ex. PW2/2 signed by him at point

A. Thumb impression of Shahrukh at point X. He further deposed that a rough site sketch was also prepared at site, which is Ex. PW2/3. Place of theft was shown at point X. Photographs taken at the time of inspection by the photographer are Ex. PW2/4 (A-1 to A-10). They also got videography conducted at site.

7. **PW-3 Sh. Rahul Dalal (Executive),** who deposed on 02.05.2018, he was working as Officer with the complainant company. On that day, he along with Shri Bikash Kumar Jaina, the then Manager, Shri Abhishek Mukhija, the then Manager, Shri Kunal Kant Sharma, the then Officer, Shri Umesh Sharma, the then Officer alongwith Photographer Shri Prem Kumar Singh from M/s. Dev Photo Magic inspected the premises of the accused. He further deposed that at the time of inspection, no meter was found installed at site and direct theft of electricity was being committed by puncturing LT ABC at Pole No. HT-523-2/4 by using two core black colour wire having multiple joints, which was connected to the internal wiring of the shop. He further deposed that at the time of inspection, one person namely Sharukh was present at site, who stated that he is working there and the shop is being run by one Imtiyaz Khan. A load of 0.972 KW was found connected for commercial purpose. The inspection report, which is Ex. PW2/1 was prepared at site bearing his signatures at point B. It also bears the thumb impression of Shri Sharukh at point X. He further deposed that one black colour two core cable with multiple joints

approximate length 14 meters was removed and seized vide seizure memo, which is Ex. PW2/2, bearing his signature at point B. It also bears the thumb impression of Shri Sharukh at point X. He further deposed that they had also prepared a site sketch, which is exhibited as Ex. PW2/3, bearing his signature at point A and place of commission of theft is shown at point X. The photographer had taken 10 photographs at the time of inspection and had conducted the videography. He further deposed that the photographs are exhibited as Ex.PW2/4 (A1 to A10). The CD of the photographs and the videography is Ex.PW3/A. He further deposed that the photographer had also issued a certificate u/s. 65-B of the Indian Evidence Act, which is Ex. PW3/B. He further deposed that he can identify his signatures and writing as he had seen him, while signing the document. He had submitted the case property to the IO, vide seizure memo, which is Ex.PW3/C, bearing his signature at point A.

8. **PW-4 Sh. Prem (Photographer),** who deposed that on 02.05.2018, he was working as a photographer with M/s. Dev Photo Magic and on the said date, he had gone to the site in question with Shri Vikas Kumar Jaina, Shri Rahul Dalal, Shri Abhishek for taking the photographs. At the instructions of Shri Vikas Kumar Jaina, he had taken 10 photographs. The same are exhibited as Ex. PW2/4 (A1-A10), now exhibited as Ex. PW4/A1 to Ex.PW4/A10. He further deposed that thereafter videography was done by him and prepared one CD in this regard and the same is Ex.PW4/B. He had

also given a certificate U/s. 65-B of the Indian Evidence Act and the same bears his signature at point A and the same is Ex.PW4/C.

09. **PW-5 SI Bhagwan Sahai (Investigating Officer)**, who deposed that on 18.05.2018, he was posted as ASI at PS: Aman Vihar. This case was marked to him by the SHO, PS: Mangol Puri on 18.05.2018, regarding the alleged theft of electricity by the accused Imtiyaz Khan, the said complaint is Ex. PW1/A and the rukka was given to the DO, PS: Aman Vihar for registration of the FIR. He further deposed that after the registration of the FIR the investigation of the present case was marked to him. He gave notice u/s. 41-A Cr.P.C., which is Ex. PW5/A to the accused on 25.01.2019, the accused joined the investigation and he was bound down the accused on 26.01.2019. He further deposed that the case property was already seized by the complainant company on 12.10.2018 and the same was provided to him by the official of the complainant company in Malkhana, vide Fard Makboozgi, which is Ex.PW3/C. He had recorded the statement of the witnesses and filed the charge sheet in the court.

STATEMENT OF THE ACCUSED:-

10. Statement under Section 313 Cr.P.C. of the accused has been recorded. All incriminating evidence was put to the accused. He stated that he is innocent and he has been falsely implicated in the instant case. He led the defence evidence.

DEFENCE EVIDENCE:-

11. **The accused examined himself as DW-1,** who deposed that he was working in Veterinary shop of Mr. Faizan. The Veterinary license is Mark A. He was not the owner of the said shop. The present shop was getting electricity from Mr. Vinod and has a sub meter. The copy of the settlement order against CA No. 60023316296 is Mark B. The Lok Adalat settlement qua CA No. 60000260145 is Mark C (colly). Copy of bill of CA No. 60000260145 is Mark D. The copy of the settlement plan of complainant is Mark E (colly). He has no relation with the present case. He has not committed any theft of electricity. He has been falsely implicated in the instant matter by the official of the complainant company.

APPRECIATION OF EVIDENCE:-

12. Section 135 of the Electricity Act provides as under :-

> *"135. Theft of electricity - (1) Whoever, dishonestly,-*
> *(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier, as the case may be; or*
>
> *(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or*
>
> *(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity; or*

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorised;

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:"

13. In the case in hand the accused has been facing trial for indulging in direct theft of electricity as provided under Section 135(1)(a) of Electricity Act, 2003. To prove its case the complainant was required to establish beyond reasonable doubt:-

(a) That the accused Imtiyaz Khan has indulged in direct theft from pole no. HT523-2/4 by deliberately puncturing LT ABC by using one number two core black colour wire and the same was further connecting to the load circuit of the user/accused load.

(b) That the accused Imtiyaz Khan has committed the theft by using one number two core black colour wire.

14. PW-2 Sh. Kunal Kant Sharma (Officer) and PW-3 Sh. Rahul Dalal (Executive) are the material witnesses in this case. The said witnesses were member of the inspection team of the complainant company. The said witnesses have corroborated the allegations mentioned in the complaint, which is Ex. PW1/A and deposed that during inspection accused was found indulged in direct theft of electricity from pole no. HT523-2/4 by deliberately puncturing LT ABC by using one number two core black colour wire and the same was further connected to the load circuit of the

user/accused load. PW-2 and PW-3 also deposed that they had seized the illegal wires, vide seizure memo, which is Ex. PW2/2. PW-2 and PW-3 deposed that inspection report, site sketch and seizure memo of illegal wires were prepared at the spot and they had proved on record the inspection report as Ex. PW2/1, Site sketch as Ex.PW2/3 and seizure memo as Ex.PW2/2. The said witnesses were cross-examined on behalf of accused, but nothing fruitful came out in favour of the accused.

15. PW-4 Sh. Prem (photographer) supported the version of PW-2 and PW-3 and deposed that on the date of inspection, 02.05.2018, he was working as a photographer with M/s. Dev Photo Magic and on the said date, he had gone to the site in question with Shri Vikas Kumar Jaina, Shri Rahul Dalal, Shri Abhishek for taking the photographs. At the instructions of Shri Vikas Kumar Jaina, he had taken 10 photographs. The same are exhibited as Ex. PW2/4 (A1-A10), now exhibited as Ex. PW4/A1 to Ex.PW4/A10. He further deposed that thereafter, videography was done by him and prepared one CD in this regard and the same is Ex.PW4/B. He had also given a certificate U/s. 65-B of the Indian Evidence Act and the same bears his signature at point A and the same is Ex.PW4/C. The accused has failed to dispute the execution of Certificate u/s. 65-B of The Indian Evidence Act, 1872 rendering the said photographs admissible in the eyes of law. Reliance is placed upon the judgment of Hon'ble Supreme Court in case titled as **Anvar PV Vs. PK Basir (214) 10 SCC**

473.

16. The testimony of PW-2, PW-3 and PW-4 are sufficient to prove on record that direct theft of electricity was being committed at the premises in question. Next the prosecution was required to prove on record that the theft of electricity was being committed by the accused.

IDENTITY OF THE ACCUSED:-

17. The case of the prosecution is that accused Imtiyaz Khan was indulged in direct theft of electricity for non-domestic purpose. The accused has been charged with the offence of theft of electricity on the ground that one Shahrukh was found present at the time of inspection, who disclosed that he was working for the accused.

18. The entire case against the accused is based upon the oral submission of representative (Shahrukh) of the accused, who was allegedly present at the time of inspection. The prosecution has failed to implead him as a witness or provide his details such as name, address or any other relevant details to prove that accused was indulged in theft of electricity. The prosecution is expected to prove by way of documentary or oral evidence that the alleged premises was in possession of the accused or he was the owner of the premises. Admittedly, accused was not present at the site on the date and time of inspection. The burden was heavy on the prosecution to connect the accused with the theft of electricity.

19. The raiding team member, who have been examined as PW-2 and PW-3 have failed to bring on record any evidence to prove that the accused was indulged in theft of electricity. Non examination of the representative of the accused who was allegedly found at the time of inspection is fatal to the case of the prosecution.

20. Further, it has been brought out in the cross examination of photographer, who has been examined as PW-4 that he does not remember whether accused was present at the site in question on the date of raid. He further stated that accused is not visible in any photographs, which are on record. The relevant extract of the cross examination is reproduced below for ready reference:-

> *"….I do not remember whether accused was present at site in question on the date of raid. It is correct that accused is not visible in any photographs which are on record…..I cannot say whether the raiding team enquired about the ownership of the shop in question. I cannot say whether the accused was not having any concern with the shop in question…."*.

21. The benefit of doubt has to be given to the accused. In case law reported as ***"Sadhu Singh Vs. State of Punjab"*** **1997 (3) Crime 55** the Punjab & Haryana High Court had observed as under:-

> "5. *In a criminal trial, it is for the prosecution to establish its case beyond all reasonable doubts. It is for the prosecution to travel the entire distance from 'may have' to 'must have'. If the prosecution appears to be improbable or lacks credibility the benefit of doubt necessarily has to go to the accused".*

22. There is inherent and apparent lacunas in the case of the

prosecution, which has remained unexplained. The benefit of the same has to be given to the accused. It is for the prosecution to travel the entire distance from *'may have'* to *'must have'*. If the case of the prosecution appears to be improbable or lacks credibility the benefit of doubt necessarily has to go to the accused. The prosecution has miserably failed to prove that the accused has indulged in theft of electricity.

CONCLUSION:-

23. The aforementioned contradictions, omissions and lacunas clearly shows that the prosecution has been unable to prove the alleged offence against the accused beyond reasonable doubt, whereby the accused has become entitled to the benefit of doubt. From the aforesaid testimonies, I am of the view that the prosecution has failed in proving the offence under Section 135 of the Electricity Act, 2003. Accordingly, I accord the benefit of doubt to the accused, whereby the accused is acquitted of the charge levelled against him. The accused is directed to furnish the bail bond u/s. 437-A Cr.P.C. **File be consigned to Record Room as per rules after compliance of necessary legal formalities.**

JITENDRA SINGH
Digitally signed by JITENDRA SINGH
Date: 2024.08.09 15:42:08 +0530

Announced in the open court today i.e. on 09.08.2024

(JITENDRA SINGH)
ASJ (Electricity)/ Distt. N/W
Rohini Courts, Delhi