
(2010) ILR (Kar) 3885 : (2010) 5 KarLJ 665

Karnataka High Court

Case No: Criminal Appeal No. 1765 of 2007

State of Karnataka

APPELLANT

Vs

Shivappa Thammaiah

RESPONDENT

Date of Decision: Jan. 5, 2010

Acts Referred:

Electricity Act, 1910 " Section 39, 44, 50

Citation: (2010) ILR (Kar) 3885 : (2010) 5 KarLJ 665

Hon'ble Judges: K.N. Keshavanarayana, J

Bench: Single Bench

Advocate: B. Balakrishna, H.C.G.P, for the Appellant; H.C. Shivaramu, for the Respondent

Final Decision: Allowed

Judgement

K.N. Keshavanarayana, J.

This appeal by the State of Karnataka, represented by K.P.T.C.L. (Vigilance). Mysore, is directed against the

judgment and order dated 12.7.2007 passed by the Special Court. Mandya, in Spl. Case (Elec) No. 99/2002. acquitting the respondent-accused

of the offences punishable under Sections 39 and 44 of the Indian Electricity Act, 1910 (for short "the Act").

2. P.W.4 H.S. Babu, working as Assistant Executive Engineer in the Vigilance Squad of the K.P.T.C.L. Mysore, along with his colleagues P.Ws.1

to 3, visited the electrical installation bearing R.R. No. HONP-13 installed in Hongahalli Mut. Keragodu Hobli, Mandya Taluk, standing in the

name of the respondent-accused, on 3.1.2001 and found that the electric meter pertaining to the installation had been tampered in such a way that

the entire electricity that was being consumed by the installation was not being recorded. Immediately, he lodged a complaint before P.W.8 S.

Honnachar. Head Constable working in the Vigilance Squad, on the basis of which a case was registered and. after investigation, charge-sheet

was filed against the respondent-accused for the offences punishable under Sections 39 and 44 of the Act.

3. The respondent-accused upon appearance, pleaded not guilty for the charges levelled against him. The prosecution examined P.Ws. 1 to 9 and

got marked Exs.P-1 to P-10. The respondent-accused denied all the incriminating circumstances appearing in the prosecution evidence when he

was examined u/s 313 of the Cr.P.C. The respondent-accused did not choose to lead any defence evidence. The defence of the respondent, was

one of total denial and that the installation was not inspected by P.Ws. 1 to 4 at any point of time and that he has not committed any offence.

4. The learned Special Judge, after hearing the parties and on appreciation of the oral and documentary evidence, though held that the evidence on

record clearly establishes that the respondent-accused is guilty of the offence punishable under Sections 39 and 44 of the Act, however, acquitted

him on the ground that the prosecution launched on the basis of the complaint lodged by P.W.4, who was not an authorised person in terms of

Section 50 of the Act, is not competent, therefore, the accused is entitled for an order of acquittal on technical ground. In that view of the matter,

the learned judge acquitted the accused of the offences charged against him.

5. Being aggrieved by the said judgment of acquittal, the State has presented this appeal inter alia on the ground that the judgment of the court

below acquitting the accused on technical grounds is contrary to the law laid down by this Court as well as by the Supreme Court in various

decisions and is also contrary to Section 50 of the Act.

6. Upon service of notice of this appeal, the respondent has appeared through his learned Counsel. I have heard both sides and perused the

records.

7. The learned Addl. Government Pleader appearing for the appellant-State vehemently contended that the acquittal recorded by the court below

on technical grounds is contrary to the judgment of a learned Single Judge of this Court in the case of Ayyanagouda v. State of Mysore reported in

ILR 1973 Kar 76; judgment of a Division Bench of this Court in the case of State of Karnataka v. Abdul Nabi reported in 1975 (1) Kar LJ 86

and the judgment of the Supreme Court in the case of State of Karnataka Vs. Adimurthy alias B. Moorthy, . It is his contention that in terms of

Section 50 of the Act, what is required to be shown is that the prosecution launched is at the instance of the Government or State Electricity Board

or an electrical inspector or a person aggrieved by the same, and since P.W.4, who lodged the complaint, was an employee of the Electricity

Board working in the Vigilance Squad, the prosecution launched on the basis of his complaint was at the instance of the Board, and, therefore, the

prosecution was perfectly legal and therefore the learned judge has committed an error in holding that the prosecution launched on the basis of the

complaint of P.W.4 is not legal. It is his further submission that various decisions relied upon by the learned judge of the court below were all

inapplicable to the present case and they are all contrary to the judgment of the Supreme Court referred to above.

8. On the other hand, the learned Counsel for the respondent contended that the learned judge of the court below, taking into consideration several

factors, has recorded an order of acquittal and at this length of time, there is no ground to interfere with the said judgment.

9, In the light of the above, the points for consideration are:

i) Whether the court below is justified in holding that the prosecution launched on the basis of the complaint of P.W.4 is not legal in terms of

Section 50 of the Act?

ii) Whether the court below is not justified in acquitting the respondent-accused?

10. There is no serious dispute that on the basis of the complaint lodged by P.W.4 with regard to the alleged offence under Sections 39 and 44 of

the Act, against the respondent-accused, the jurisdictional police registered the case, conducted investigation and filed the charge-sheet for those

offences. Section 50 of the Act, states that no prosecution shall be instituted against any person for any offence against this Act or any rule, licence

or order thereunder, except at the instance of the Government or a State Electricity Board or an Electrical Inspector, or of a person aggrieved by

the same. Thus, from the reading of Section 50, it is clear that the prosecution for the offence under this Act will have to be launched only at the

instance of any of the persons named therein. Section 50 does not refer to any authorisation. The scope of Section 50 especially with regard to the

expression ""at the instance of"" found in Section 50 had come up for consideration before this Court as well as before the Supreme Court in the

aforesaid decisions.

11. In the case of Ayyanagouda (supra), a learned Single Judge of this Court, while considering the prosecution launched for the offences under

Sections 39 and 44 of the Act on the basis of the complaint lodged by a Junior Engineer. Electrical Vigilance Squad of Mysore Electricity Board,

Gulbarga, on the basis of his inspection of the installation, has held that, the prosecution launched pursuant to the complaint lodged by the Junior

Engineer is competent. This Court has clearly stated that the complainant in that case was a Junior Engineer working in the Electrical Vigilance

Squad of the Mysore State Electricity Board and in pursuance of his duties he inspected the flour mill of the accused therein and detected the

offence and thereafter, filed the complaint before the police. Under those circumstances, it was held that even though he had not specific

authorisation, he was a responsible officer of the Board and acted on behalf of the Board. In that view of the matter, this Court held that the

prosecution launched on the basis of the complaint of the Junior Engineer was legal.

12. In Abdul Nabi's case, referred to supra, a Division Bench of this Court had once again occasion to consider the scope of Section 50.

According to the facts of that, case, the Junior Engineer of the Karnataka Electricity Board working in the Vigilance Squad, detected unlawful

consumption of the energy by the accused therein and thereafter he lodged the complaint based on which a case was registered and charge-sheet

came to be filed. Though in the said case also, the trial court held on the basis of the evidence on record that the accused was guilty of the offence

alleged, acquitted the accused on the ground that the Junior Engineer who filed the complaint was not a person aggrieved, therefore prosecution

launched at his instance was incompetent. This court, after referring to the provisions of Section 50 of the Act, has observed thus in paragraphs-5

and 6:

5. X X X X X X X X X X

This section provides that no prosecution shall be instituted against any person for any offence against the Act or any rule, licence or order except

at the instance of : (1) the Government; (2) an Electrical Inspector; or (3) a person aggrieved by the offence.

It is clear from the reading of Section 50 of the Act that prosecution for theft of electric energy can be instituted only by one of the persons

mentioned above. Therefore, there could be no prosecution except at the instance of the person aggrieved. In this case, the aggrieved person is the

"Board". It was the police who instituted the prosecution on the complaint of the Junior Engineer of the Board working in the vigilance squad,

whose work was to detect misuse of electric energy. Now the question is whether the prosecution launched on the complaint of the said Junior

Engineer was at the instance of the Board?

6. Upon reading Section 50 of the Act it is clear that the phrase at the instance of has purposely been introduced so as to make the provision a

very general one. If it had been the intention of the Legislature that no case should be instituted in Court except by the Board itself or the other

persons mentioned in Section 50 of the Act, the Legislature would have used the ordinary phrase on the complaint of and the section would have

been on the lines that no Magistrate should take cognizance of any offence referred to in Section 50 of the Act except upon the complaint of

certain persons. The phrase at the instance of means merely at the solicitation of or at the request of and we think that the Legislature meant only

that a prosecution should not be instituted by some independent busy-body who had nothing to do with the matter. (See AIR 1936 Allahabad

742).

13. In Adimurthy @ B. Moorthy's case, referred to supra, the Supreme Court had occasion to consider the scope of Section 50 of the Act in an

appeal arising out of the Judgment and order dated 15.12.1980 of this Court in Criminal Appeal No. 590/1979. As could be seen from the

judgment of the Supreme Court, the Supervisor of the Karnataka Electricity Board detected the theft of electrical power energy in the house of the

respondent therein and later, the Assistant Engineer as well as the Junior Engineer concerned checked the installation and confirmed the theft.

Thereafter, on the detection of theft, of the electrical energy, the Supervisor lodged a report and the police, after investigation into the complaint,

filed the charge-sheet. However, the learned Magistrate, who held the trial, acquitted the accused of the offence on the ground that the prosecution

had failed to establish that the Supervisor had been authorised to lodge the complaint. The said order of acquittal was affirmed by this Court in

appeal by the State on the ground that, the notification issued by the K.E.B. authorising the Junior Engineers, Section Officers and Supervisors to

institute prosecutions in terms of Section 50 of the Act had not been published in the official Gazette and, therefore, the court could not; take

judicial notice of such notification. In appeal before the Supreme Court, it was observed that the judgment of this Court in the said case was

contrary to the judgment of this Court in the earlier decision in Abdul Nabi's case. The Supreme Court, referring to the notification dated

18.4.1974 issued by the Karnataka Electricity Board, which is a statutory body, has noticed that the Superintending Engineers. Executive

Engineers, Assistant Engineers, Junior Engineers. Sections Officers, Supervisors are authorised to institute prosecutions or make complaints to the

jurisdictional officers in charge of Police Stations, for instituting prosecutions when offences under any of the Sections 39, 41, 43 and 44 of the

Electricity Act or Rule 56 read with Rule 138 of the Electricity Rules are committed. In the light of this, the Hon'ble Supreme Court, referring to

the judgment of the Allahabad High Court in the case of Vishwanath Vs. Emperor, and also a judgment of the Delhi High Court in the case of State

(Delhi Administration) Vs. Dharam Pal and others, . has held that the notification dated 18.4.1974 issued by the Karnataka Electricity Board is a

general order issued by the Electricity Board in terms of Section 50 of the Act authorising the persons named therein to institute prosecution or to

make complaint to the police for instituting prosecution for the offences stated therein.

14. Having regard to the facts and circumstances of that case, the Supreme Court held that the prosecution launched at the instance of any official

of the Electricity Board who detected the theft of electrical energy was in reality a prosecution launched at the instance of the Electric Supply

Company within the meaning of Section 50 of the Act. The Supreme Court affirmed the view expressed by the Division Bench of this Court in

Abdul Nabi's case, referred to supra, and in fact has observed that ""it is unfortunate that the learned judges of the Karnataka High Court have

disregarded their earlier judgment in Abdul Nabi's case, more so when none of them was a member to the earlier Bench"".

15. Thus, from the aforesaid decisions, it is manifestly clear that the prosecution launched on the basis of the complaint lodged by the official of the

Electricity Board, who was working in the Vigilance Squad and who detected theft of electrical energy, was in fact, a prosecution launched at the

instance of the State or Electricity Board. However, the court below, during the course of its judgment under appeal, has not made reference to

any of these binding decisions. On the other hand, the learned judge has proceeded to rely on the judgment of the Orissa High Court reported in

1994 CrL.L.J. 2242, judgment of the Madras High Court reported in 1985 CrL.L.J. 561 and the judgment of the Madhya Pradesh High Court

reported in 1985 CrL.L.J. 1133. As could be seen from these decisions, it is noticed that in none of these decisions, the judgment of the Supreme

Court in *Adi Murthy's* case, referred to *supra*, has been referred to. These judgments of the Orissa, Madras and Madhya Pradesh High Courts

directly run contrary to the judgments of the Supreme Court. Therefore, the learned judge of the court below ought not to have placed any reliance

on those judgments and the acquittal recorded on technical ground by placing reliance on those decisions is illegal and contrary to the judgment of

this Court as well as the judgment of the Supreme Court referred to *supra*.

16. In the case on hand also, P.W.4 is an employee of the K.P.T.C.L. working as an Assistant Executive Engineer in the Vigilance Squad. The

evidence on record as rightly held by the court below, has established that PW-4 visited the installation on 3.1.2001 along with his colleagues

P.Ws.1 to 3 and detected tampering of the electric meter pertaining to the installation standing in the name of respondent and thereby preventing

proper recording of electric power consumed. It is thereafter he lodged the complaint based on which the prosecution was launched. Having regard

to the facts and circumstances of the case and in the light of the law laid down in the decisions referred to *supra*, the prosecution launched on the

basis of the complaint lodged by P.W.4 was in reality a prosecution launched at the instance of the K.P.T.C.L. Therefore, the prosecution

launched in this case was at the instance of one of the persons named in Section 50 of the Act, as such, it was competent. Under these

circumstances, the court below is not justified in holding that the prosecution was not competent, therefore, the acquittal recorded on that basis is

illegal and is liable to be set aside. Accordingly, I answer point No. (i) in the negative.

17. The learned judge of the court below, after referring to the evidence of P.Ws.1 to 4, who are the officials of the K.P.T.C.L., has recorded a

finding that their evidence is convincing and their evidence has not been impeached in the cross-examination. As such, the learned judge has held

that the prosecution has proved that the respondent-accused has committed the offences punishable under Sections 39 and 44 of the Act. The

learned judge has also raised presumption available as provided by proviso to Section 39 of the Act. I do not see any error committed by the

learned judge in accepting the evidence of P.Ws. 1 to 4 to come to the conclusion that the respondent-accused is guilty of the offence for which he

has been charged. The finding recorded by the learned judge in this behalf is in consonance with the evidence on record and also is in tune with the

well settled principles of law.

18. The learned judge has properly appreciated the evidence on record and has come to the right conclusion that the accused is guilty of the

offences punishable under Sections 39 and 44 of the Act. There are no grounds to differ from the said finding. In fact, the respondent-accused has

not questioned the correctness of the said finding. In that view of the matter, the court below is justified in answering point No. (i) raised by him for

consideration, in the affirmative holding that the prosecution has established beyond all reasonable doubt that the accused has tampered the electric

meter and obstructed the recording of the electrical energy dishonestly. In this view of the matter, I answer point No. (ii) in the affirmative.

19. In view of the above discussion, the judgment of acquittal recorded by the court below is liable to be set aside and the respondent-accused is

liable to be convicted for the offences under Sections 39 and 44 of the Act.

20. The next question required to be considered is regarding the sentence to be ordered. Offence u/s 39 as stood on the date of detection of the

offence i.e., on 3.1.2001. was punishable with imprisonment for a term of three years or with fine which shall not be less than Rs. 1.000/- or with

both, while the offence u/s 44 is punishable with imprisonment for a term which may extend to three years or with fine which may extend to Rs.

5,000/- or with both. No doubt, subsequently, Section 39 has been amended with effect from 11.12.2001 whereunder the minimum sentence of

three months and a minimum fine of Rs. 5,000/- is prescribed. However, since the amendment of Section 39 was subsequent to the detection of

the offence in this case and also subsequent to filing of the charge sheet, the amended section cannot be applied to the case on hand. Under these

circumstances, the respondent-accused is required to be sentenced in terms of the unamended Section 39 of the Act. The offence was detected in

2001. We are already in 2010. In the charge sheet, the age of the respondent-accused has been shown as 60 years. Therefore, at present, the

respondent-accused is around 70 years of age. Taking into consideration the length of time consumed in this case as also the advanced age of the

respondent, the interest of justice would be met if the respondent-accused is sentenced to pay fine only for both the offences instead of sentencing

him for imprisonment.

21. In that view of the matter, I proceed to pass the following order:

The appeal is allowed. The judgment dated 12.7.2007 passed by the Special Judge, Mandya, in Special Case (Elec) No. 99/2002 acquitting the

respondent-accused is hereby set aside. The respondent-accused is convicted for the offences punishable under Sections 39 and 44 of the Act.

The respondent-accused is sentenced to pay fine of Rs. 10,000/- for the offence punishable u/s 39 and Rs. 5,000/- for the offence punishable u/s

44 of the Act. In default to pay fine, the respondent-accused shall undergo simple imprisonment for six months and three months respectively. The

respondent is granted four weeks" time to deposit the fine amount. If the fine amount is not deposited within four weeks, the court: below shall take

steps to recover the same.