



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF AUGUST, 2023

BEFORE

THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL APPEAL NO. 1128 OF 2011

BETWEEN:

STATE BY PI MESCON
VIGILANCE SQUAD, UDUPI

...APPELLANT

(BY SRI RENUKARADHYA R D, HCGP)

AND:

B USMAN BEARY
AGED ABOUT 40 YEARS
S/O LATE KALANDAR BEARY
RESIDING AT KADAVINA BAGILU HOUSE
GULVADI VILLAGE
GULVADI, KUNDAPURA TALUK.

...RESPONDENT

(BY SRI LINGARAJ, ADVOCATE)

THIS CRL.A. IS FILED U/S.377 OF CR.P.C PRAYING TO MODIFY AND ENHANCE THE INADEQUATE SENTENCE IMPOSED ON 6.6.11 IN SPECIAL CASE No.12/09 PASSED BY THE SPECIAL/SESSIONS JUDGE UDUPI DISTRICT, UDUPI-CONVICTING THE RESPONDENT ACCUSED FOR THE OFFENCE PUNISHABLE UNDER SECTION 135 AND 138 OF ELECTRICITY ACT, 2003 AND ETC.,

THIS APPEAL COMING ON FOR FINAL HEARING THIS DAY, THE COURT DELIVERED THE FOLLOWING:





JUDGMENT

1. The State has preferred this appeal praying to modify and enhance the sentence passed in Special Case No.12/2009 dated 06.06.2011 by the Sessions/Special Judge, Udupi for the offences punishable under Sections 135 and 138 of the Electricity Act, 2003 (for short hereinafter referred to as 'the Act').
2. Heard learned High Court Government Pleader for the appellant – State and learned counsel for the respondent – accused.
3. The respondent – accused has been convicted for the offences under Sections 135 and 138 of the Act and sentenced to pay fine of Rs.5,000/- for the offence under Section 135 of the Act and fine of Rs.5,000/- for the offence under Section 138 of the Act. In addition, the respondent – accused has been directed to pay the back billed amount of Rs.36,063/-. The respondent –



accused has not challenged his conviction for the offences under Sections 135 and 138 of the Act.

4. In the present appeal, the State has contended that the minimum sentence for the offence under Section 135 of the Act shall not be less than three times the financial gain on account of theft of electricity in the event of first conviction, as provided under Section 135(1) of the Act.

5. Learned High Court Government Pleader would contend that the Special Court has imposed the sentence less than the minimum sentence and therefore, the sentence imposed on the respondent – accused requires to be enhanced. He further submits that the sentence imposed for the offence under Section 138 of the Act is adequate and they have not sought for any enhancement of sentence for the offence under Section 138 of the Act.

6. Learned counsel for the respondent – accused would contend that the sentence imposed by the Special Court is



proper and adequate. The respondent – accused has already paid the back billed amount of Rs.36,063/-

7. Therefore, considering the above submissions of the counsels, it is required to be ascertained as to whether the sentence imposed on the respondent – accused for the offence under Section 135 of the Act is proper or not.

8. Section 135 of the Act reads thus;

"135. Theft of electricity- (1) *Whoever, dishonestly.-*

(a) *xxxx*

(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 authorized,

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:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use.—

*(i) does not exceed 10 kilowatt, **the fine imposed or first conviction shall not be less than three times the financial gain on account of such theft of electricity** and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;”*

9. As per the proviso (i) of Section 135(1) of the Act, the fine imposed on the first conviction shall not be less than three times the financial gain on account of such theft of electricity. Then, what is the financial gain by this respondent – accused by theft of electricity is required to be ascertained from the evidence on record.



10. PW3 is a Junior Engineer working in Talluru MESCOM Section and he has deposed that, on the basis of average use, he has calculated the back billing as per Ex.P4 and given notice of the back billing and the back billing amount as Rs.36,063/-. There is no cross examination with regard to back billing amount of Rs.36,063/-. This back billing amount has been arrived on the basis of the average consumption by the respondent – accused and the consumption of units recorded in the meter. Therefore, the back billing amount is a financial gain by the respondent – accused by commission of theft of electricity. Therefore, the financial gain by the respondent – accused is of Rs.36,063/-. Even, the Special Court, based on the evidence on record has held that the back billing amount is Rs.36,063/- and it is required to be paid by the respondent – accused to the MESCOM.

11. The minimum sentence for the theft of electricity under Section 135 of the Act for the first conviction is, if the load used is less than 10 kilowatt, shall not be less



than three times the financial gain. The financial gain by this respondent – accused by the said offence of theft of electricity is Rs.36,063/-. Therefore, the minimum fine is three times the said amount of Rs.36,063/- which comes to Rs.1,08,189/-.

12. The sentence imposed by the Special Court is Rs.5,000/- for the offence under Section 135 of the Act. Therefore, the sentence imposed by the Special Court for the offence under Section 135 of the Act is less than the minimum sentence and it is not proper. Therefore, the sentence imposed by the Special Court for the offence under Section 135 of the Act requires to be enhanced which is three times the financial gain of Rs.36,063/- which comes to Rs.1,08,189/-.

13. In the result, the following;

ORDER

The appeal is ***allowed.***



(i) The sentence imposed by the learned Sessions/Special Judge for the offence under Section 135 of the Act in Special Case No.12/2009 is modified and enhanced to Rs.1,08,189/-.

(ii) If the respondent – accused does not deposit the said modified fine of Rs.1,08,189/-, within a period of six months from today, the Special Court shall recover the same from the respondent – accused in accordance with law.

(iii) The respondent – accused, even permitted to deposit the said modified fine amount in installments.

Sd/-
JUDGE

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List No.: 1 Sl No.: 22