

IN THE COURT OF THE SPECIAL JUDGE, ELECTRICITY:  
BHUBANESWAR.

PRESENT:-

Sri I.K. Das, LLB  
Special Judge, Electricity, Bhubaneswar.

T.R No. 161 of 2012

**Vide Hon'ble Courts Letter No. 8017 (44) dtd. 9.9.2014**

**Status of the accused person/persons:**

1. Accused is on bail:
2. Accused is present:

Date of argument- 16.10.14  
Date of Judgment- 20.10.14

S t a t e  
Vrs.

1. Dhruvad Chandra Dagara, aged about 66 years  
S/o Late Bisikesan Dagara, resident of: Sriramnagar  
PS: Lingaraj, Dist; Khurda
2. Ansuman Dagara, aged about 34 years  
S/o: Dhruvad Chandra Dagara, resident of: Sriramnagar  
PS: Lingaraj, Dist: Khurda

....Accused person

Advocate for the prosecution-

Sri A.K. Sahu, Addl. P.P. BBSR

Advocate for Accused

Shri R.K. Naik, Advocate

Offence Under Sections:-

135/138 of Electricity Act.

**J U D G M E N T**

Both the accused persons stand charged for the offence u/s 135/138 of Electricity Act 2003.

2. On 12.1.11 at about 2.30 PM JE, Electrical Old Town, No.1 Section alongwith his staff were patrolling for checking of electrical meters inspected the meter installed in the house of the accused persons at Sriram Nagar. They found the meter was tampered and was not able to record the actual consumption of quantity of electricity and digit of the meter was disfigured.

Thereafter, the informant lodged FIR before energy Police and IIC, energy PS registered the case and took up investigation of the case. During the course of investigation, police visited the spot, examined witnesses and seized the tampered meter. After completion of investigation, police submitted charge sheet against the accused persons in the above mentioned offences.

3. Plea of the defence is complete denial to the allegation and of false allegation.

4. Point for determination in this case are

(i) whether on dt.12.1.11 at about 2.30 PM at Sriram Nagar, the accused persons tampered the meter unauthorizably installed in their house for dishonest obstruction of power for which the meter is not recording actual consumption and thereby committed an offence punishable u/s 135 of Electricity Act ?

(ii) Whether on the same day, time and place of occurrence, the accused persons interfered with the meter and metering installation for causing dishonest abstraction of power for which loss was caused to the Government to the tune of Rs.2,80,000/- and thereby committed an offence punishable u/s 138 of Electricity Act ?

5. Prosecution examined 6 witnesses out of which P.Ws.1 to 5 are electrical staffs and P.W.6 is the IO.

6. P.W.1, the inspecting officer, Temple sub division in his evidence said that his office staff alongwith MRT squad conducted inspection of the meter installed in the house of the accused persons and they found that the meter box seal was damaged. The paper seal of the meter box was broken. The figures on the meter scale was also disfigured. One Mihir Mohanty examined the meter at the spot and prepared the report. But, during his cross examination P.W.1 said that he cannot say the name of the house owners who are accused in the case. He also said no specific test was conducted in his presence to believe that the meter was tampered. Mihir Mohanty, the Asst. Engineer, CESU is examined as P.W.3. In his evidence he said that he was a member of raiding party on the relevant day. He said that during inspection of the meter it was found that the meter was having

no seal and the paper seal was broken. The digits in the meter were scratched. In his cross examination he said that he has no document to prove that he is authorized for inspection of electric meter. He only verified the present bill of the accused persons during inspection of the meter. 2 to 3 outsiders were present at the time of verification of the meter. P.W.2 is the squad operating person, but in his evidence he said that he cannot say the name of the house owner whose meter was checked on the relevant day. On the requisition of MRT squad he joined with the team. P.W.4 was Jr. Engineer and also supported the prosecution case regarding tampering of the meter installed in the house of the accused persons. He said that the seal of the meter was broken and subsequently, it was pasted with gum. The incoming and outgoing terminal was short by using a piece of wire inside the meter. The niddle inside the meter was tightened. Taking into consideration the electrical articles used in the case house, the meter was not giving the correct reading. This witness is the informant of the case. He said that the meter reading was visible, although it was scratched. In contrast the evidence of P.W.3. This witness said that no outsider was present at the time of inspection of the meter. He uses to check the meter as a routine duty. During his cross examination, learned counsel for the accused persons brought out from his mouth that he does not remember if he stated before police that tampering was made with a piece of wire inside the meter. P.W.5 is the Executive Engineer who was also a member of raiding party. He was called to the spot after detection of the case. The MRT squad prepared the report and he only put his signature thereon. The IO in his evidence supported his investigation.

7. During the course of argument, learned defence counsel argued that in the formal FIR only the name of DhruPAD Chandra Dagara appears as accused being the owner of the case house. But, after completion of investigation, police submitted charge sheet against the same accused and his son Ansuman Dagara. The investigation of the case is purely defective on the ground that no investigation has been conducted as to who broke the seal of the meter and tampered it. Only because DhruPAD Dagara is the owner of the house, FIR was lodged. Subsequently, Ansuman has been impleaded as accused being the son of

Dhrupad. But, no evidence is available that both the accused persons have any role in commission of the offence.

8. The case house is a double storied building and Ansuman was staying with his family in the ground floor where the tampered meter was installed. There is no evidence that none other excepting the two accused persons were occupying the case house. It is argued by the defence that prosecution failed to establish that the case house was belonging to the accused persons and also it was in exclusive possession of both the accused persons in order to believe that none other excepting the accused persons broke the seal of the meter and tampered the same. None of the witness said involving both the accused persons with the commission of the crime in any manner. It is further argued that although FIR discloses that the informant lodged FIR on 12.1.11 with his signature, the IIC received the same on 13.1.11 and no explanation has been brought out in the mouth of IO regarding such inconsistency in receiving the FIR. Ext.1, the inspection report although prepared at the spot, none of the local witnesses signed thereon including the accused persons. Therefore, it also raises doubt regarding its authenticity. The tampered meter was seized by police vide Ext.3 in absence of any independent witnesses. It is argued that when the meter alleged to be tampered by the accused persons is not proved through the mouth of prosecution witnesses, the said meter should have been examined by any expert or would have been produced in the Court for appreciation of evidence. Surprisingly, the said meter is not produced in the Court nor its whereabouts is established through the evidence. In the forwarding report itself, police admitted that the accused persons were residing alongwith their family members in the case house. But, none of the member of the family is examined by the police to establish as to who tampered the meter by breaking open the seal. In addition to such contradiction, the evidence of PW.1, the Asst. Inspecting Officer that he cannot say who was the owner of the case house is another surprising feature in the prosecution case.

9. In the result, the accused persons are found not guilty for the offence u/s 135 of Electricity Act, 2003 and is acquitted thereof U/s.248 of Code of Criminal Procedure. They be set at liberty forthwith. Their bail bonds be canceled and

sureties discharged.

10. The seized articles if any be destroyed after four months of appeal period if no appeal is preferred or if appeal is preferred the same be dealt with in accordance with the direction of the Appellate Court.

Pronounced in the open Court to-day the 20<sup>th</sup> day of October, 2014

Special Judge, Electricity, Bhubaneswar.

Typed to my dictation and corrected by me.

Special Judge, Electricity, Bhubaneswar.

List of witnesses examined for the prosecution

P.W.1:- Trilochan Sahu

P.W.2:- Amarendra Sahu

P.W.3:- Mihir Kishore Mohanty

P.W.4:- Debendra Kumar Sahu

P.W.5:- Subash Chandra Jangid

P.W.6:- Pramod Kumar Jaisingh

List of witness examined for the defence

Nil

List of exhibits marked for the prosecution

Ext.1: Verification Report

Ext.1/1: Signature of P.W.1

Ext.1/2: Signature of P.W.3

Ext.2: FIR

Ext.2/1: Signature of P.W.4

Ext.1/3: Signature of P.W.4

Ext.1/4: Signature of P.W.5

Ext.3: Seizure list

Ext.3/1: Signature of P.W.6

List of exhibits marked for the defence

Nil

Special Judge, Electricity, Bhubaneswar.

