

**Present**

**Mr. Justice Sheikh Abdul Awal**

**Criminal Revision No. 3051 of 2019**

Oli Ullah Patwary (Owner of Laundry)

.....Convict-Petitioner.

-Versus-

The State

.....Opposite parties.

Ms. Lucky Ahmed

.....For the Petitioner.

Ms. Shahida Khatoon, D.A.G with

Ms. Sabina Perven, A.A.G with

Ms. Kohenoor Akter, A.A.G.

..... For the Opposite party.

**Heard on 25.02.2024, 27.02.2024 and**

**Judgment on 28.02.2024.**

**Sheikh Abdul Awal, J:**

This Rule was issued calling upon the opposite party to show cause as to why the impugned judgment and order dated 24.10.2018 passed by the learned Additional Sessions Judge, Chandpur in Criminal Appeal No. 12 of 2000 dismissing the appeal and affirming the judgment and order of conviction and sentence dated 06.01.2000 passed by the learned Magistrate, First Class, Chandpur in C.R No. 298 of 1998 convicting the petitioner under section 39 of the Electricity Act, 1910 and sentencing him thereunder to

suffer rigorous imprisonment for a period of 1(one) year and to pay a fine of Taka 10,000/- (ten thousand) in default to suffer simple imprisonment of period of 3 (three) months more should not be set-aside and/or such other or further order or orders passed as to this Court may seem fit and proper.

The relevant facts briefly are that one, Dipak Chandra Paul, Assistant Director, Power Development Board, Chandpur as complainant filed a petition of complaint in the Court of Magistrate, First Class, Chandpur against the convict petitioner under section 39 of the Electricity Act, 1910 stating, inter-alia, that the accused petitioner as subscriber took electricity connection for more than 8 years ago for his shop and at one stage he took separate line beyond the meter for stealing electricity without taking any permission from the electricity authority resulting he damaged electricity power amounting to Taka 20,000/- of the authority.

On receipt of the petition of complaint, the learned Magistrate took cognizance under section 39 of the Electricity Act, 1910 and issued summons against the accused-petitioner. Thereafter, charge was framed against the petitioner under section 39 of the Electricity Act, 1910.

Ultimately, the Trial was held against the accused-petitioner in-absentia as the accused petitioner was absconding.

At the trial, the complainant party examined as many as 5(five) witnesses to prove its case, while the defence examined none.

On conclusion of trial, Magistrate, First Class Chandpur by his judgment and order dated 06.01.2000 found the accused petitioner guilty for the offence under section 39 of the Electricity Act, 1910 and sentenced him thereunder to suffer rigorous imprisonment for a period of 1(one) year and also to pay a fine of Taka 10,000/- (ten thousand) in default to suffer simple imprisonment for a period of 3 (three) months more.

Being aggrieved by the aforesaid judgment and order of conviction and sentence dated 06.01.2000 the convict-petitioner preferred Criminal Appeal No. 12 of 2000 before the learned Sessions Judge, Chandpur, which was subsequently transmitted to the Court of the learned Additional Sessions Judge, Chandpur for disposal, who by the impugned judgment and order dated 24.10.2018 dismissed the appeal and affirmed the judgment and order of conviction and sentence dated 06.01.200 passed by the learned Magistrate.

Aggrieved convict-petitioner then preferred this Criminal Revision and obtained the present rule.

Ms. Lucky Ahmed, learned Advocate appearing for the convict-petitioner at the very outset referring supplementary affidavit dated 02.10.2019 submits that the petitioner has already deposited entire outstanding dues amounting to Taka 20,000/- before the concerned authority of Power Development Board on 11.10.2004 although the Court of appeal below without considering it mechanically affirmed the judgment of the trial Court. The learned Advocate further submits that as per NID card of the convict-petitioner, he is aged more than 75 years and in this case, he has already suffered his sentence for near about 3 months and there is no specific evidence on record to show that the convict-petitioner deliberately committed any offence under the Electricity Act and as such, the convict-petitioner is entitled to get an order of acquittal.

Ms. Shahida Khatoon, the learned Deputy Attorney-General appearing for the State-opposite party, supports the judgments of 2 Courts below, which were according to her just, correct and proper. She, however, admits that the convict-petitioner has already deposited outstanding bill amounting to Taka 20,000/- (twenty thousand) before the Power Development Board. She

further submits that in this case the petitioner deliberately in order to lift Electricity of the Government took separate line beyond meter resulting the convict petitioner damaged Taka 20,000/- (twenty thousand) of the Government and all the witnesses categorically stated that the accused took separate line beyond meter resulting the convict petitioner damaged Taka 20,000/- (twenty thousand) of the Government and accordingly, the Courts below committed no illegality in finding that the accused guilty for the offence under section 39 of the Electricity Act, 1910 and sentenced him thereunder to suffer rigorous imprisonment for a period of 1(one) year and also to pay a fine of Taka 10,000/- (ten thousand) in default to suffer simple imprisonment of period of 3 (three) months more.

Having heard the learned Advocate for the convict-petitioner and the learned Deputy Attorney General and having gone through the materials on record, the only question that calls for my consideration in this Rule is whether the Courts below committed any error in finding that the accused petitioner guilty for the offence under section 39 of the Electricity Act, 1910.

On scrutiny of the record, it appears that one, Dipak Chandra Paul, Assistant Director, Power

Development Board, Chandpur as complainant filed a petition of complaint in the Court of Magistrate, First Class, Chandpur against the convict petitioner under section 39 of the Electricity Act, 1910 stating, inter-alia, that the accused Oli Ullah Patwary as subscriber took electricity connection over a period of 8 years for his shop and at one stage he took separate line beyond the meter for stealing electricity resulting he damaged electricity of Taka 20,000/-.

It further appears that in this case trial was held in absentia. At the trial the complainant side examined as many as 5 witnesses out of which the complainant himself was examined as PW-1, who in his deposition stated that occurrence took place on 23.06.1998, accused-petitioner's electric line was disconnected on 27.04.1998 as he did not pay his outstanding dues and thereafter, he at his own motion took electricity connection and thereafter, again the said electric connection was disconnected. This witness proved his petition of complaint as "Ext.-1" and his signature thereon as "Ext.-1/1". Rest witnesses namely, PW-2, PW-3, PW-4 and PW-5 in their respective testimony corroborated the evidence of PW-1 in respect of material particulars. These witnesses were not cross-examined as the convict-petitioner was absconding.

On and analysis of the above evidence of PWs, it appears that prosecution witness Nos. 1-5 proved the prosecution case as to the time, place and manner of occurrence and thus, the prosecution proved the guilt of the accused petitioner beyond reasonable doubt.

It further appears that the Magistrate, First Class Chandpur by his judgment and order dated 06.01.2000 found the accused petitioner guilty for the offence under section 39 of the Electricity Act, 1910 and sentenced him thereunder to suffer rigorous imprisonment for a period of 1(one) year and also to pay a fine of Taka 10,000/- (ten thousand) in default to suffer simple imprisonment of period of 3 (three) months more. On appeal, the learned Additional Sessions Judge on due consideration of the entire evidence and materials on record by the impugned judgment and order affirmed the judgment of the trial Court below. On a close perusal of the judgments of 2 courts below, I find no flaw in the reasonings of the two Courts below or any ground to assail the same. The learned Judge of the appellate court appears to have considered all the material aspects of the case and justly upheld the judgment and order of conviction of the trial Court. I find no reason to interfere therewith.

At the end of the day the learned Advocate for the petitioner, however, further contends that the occurrence in this case took place in the year 1998 and a period of 25 years has already gone by. Petitioner has already suffered the agony of protracted trial, spanning over a period of two decades. Petitioner was 50 years of age at the time of occurrence and as such, his sentence may kindly be reduced to the period of sentence already undergone.

Learned State counsel has, of course, been able to defend this case on merits but practically has nothing to say insofar as reduction of sentence imposed upon the petitioner is concerned.

However, keeping in view the facts and circumstances of the case and the fact that the petitioner has already faced the agony of the protracted prosecution and suffered mental harassment for a long period of two decades, his sentence is reduced to the period of sentence already undergone, as prayed for.

The Rule is, consequently, is disposed of with modification of sentence. The sentence of the convict petitioner is reduced to the period of sentence already undergone. The bail bond of the convict petitioner, Oli Ullah Patwary, who was ordered to be released on bail, shall stand discharged.

Send down the lower Court records at once.



