



2026:CGHC:24495

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ACQA No. 714 of 2019

- Chhattisgarh State Power Distribution Company Ltd, Through Assistant Engineer, Sub- Division (Distribution) Pradeep Painkra (Operation And Maintenance) Division Chhattisgarh State Power Distribution Company Ltd. Champa, District- Champa, Chhattisgarh, District : Janjgir-Champa, Chhattisgarh

... Petitioner

versus

- Dinesh Chandra S/o Late Soopcharan Chandra Aged About 41 Years R/o Village- Bansula P.S. Bamnidih, District- Janjgir-Champa, Chhattisgarh, District : Janjgir-Champa, Chhattisgarh

... Respondent

For Petitioner(s) : Mr. Ghan Shyam Patel, Advocate.

For Respondent(s) : Mr.Tapan Kumar Chandra, Advocate.

(Hon'ble Mr. Justice Narendra Kumar Vyas)

Order on Board

17/06/2026

1. Heard on the question of sentence.
2. Learned counsel for the respondent would submit that this is the first offence committed by the respondent, he is aged about more than 50 years and if he is sentenced to undergo the jail sentence, then his entire family will be adversely affected. He would further submit that after that incident no offence under Electricity Act has been registered against him, therefore, he would pray for taking lenient view.
3. On the other hand, learned counsel for the appellant vehemently opposing the aforesaid submissions made by learned counsel for respondent would submit that the respondent illegally used electricity by hooking wire to LT connection as a result of which loss has been caused not only to the appellant but also to the Nation as generation of electricity requires lot of minerals and financial burden to the public exchequer. Thus, he would pray for taking stringent view against the respondent.
4. I have heard learned counsel for the parties and also examined the provisions of Section 135 and 137 of the Electricity Act.
5. From perusal of Section 137 of the Electricity Act, 2003, it is quite vivid that Section 137 of the Act 2003 provides imprisonment of either description for a term which may extend to three years or with fine or with both.
6. Taking into consideration the facts and circumstances of the case, the respondent is sentenced in the following manner:

“(I), The respondent shall deposit the amount for which he is being charged for committing theft of electricity to the tune of Rs.43,623/- along with fine of Rs.5000/-.

(ii) The amount of Rs. 43,623/- shall be deposited by the respondent before the Electricity Board and fine amount of Rs.5000/- shall be deposited by the respondent before the learned trial Court within a period of two months from today who in turn shall pay the same to the appellant by way of compensation.

(iii) It is made clear that if the respondent fails to deposit the aforesaid amount along with fine amount within the stipulated period, then he shall undergo simple imprisonment for three months, in addition to depositing of fine amount of Rs.5000/- as well as the payment of Rs.43,623/- payable to the appellant towards bill raised by the appellant against the respondent.

7. Accordingly, this Acquittal Appeal is allowed.

Sd/-
(Narendra Kumar Vyas)
JUDGE

Raju

RAVVA
SATYANARAYANA
RAJU

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AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Reserved on 8-5-2026

Pronounced on 15-06-2026

ACQA No. 714 of 2019

- Chhattisgarh State Power Distribution Company Ltd., through Assistant Engineer, Sub-Division (Distribution) Pradeep Painkra (Operation & Maintenance) Division Chhattisgarh State Power Distribution Company Ltd., Champa District Champa (CG).

... Appellant

versus

- Dinesh Chandra s/o. Late Soopcharan Chandra, age 41 years, r/o. Village Bansula, P.S. Bamnidih, District Janjgir Champa (CG).

... Respondent

For appellant	: Mr. Ghanshyam Patel, Advocate.
For Respondent	: Mr. Tapan Kumar Chandra, Advocate.

(Hon'ble Mr. Justice Narendra Kumar Vyas)

CAV Judgment

1. This Acquittal Appeal has been filed by the appellant/Chhattisgarh State Power Distribution Company Limited against the judgment of acquittal dated 3-11-2016 passed by the learned Special Judge (designated under Electricity Act 2003), District Janjgir Champa, wherein the learned Special Judge dismissed the criminal complaint case filed by the appellant against the respondent for commission of offence under Section 135 of the Electricity Act, 2003 (in short "Act of 2003") and acquitted the respondent/accused from the charges.

2. The facts of the case, in brief, are that the complainant/Chhattisgarh State Power Distribution Company Limited has filed a complaint under Section 135 (1) of the Act of 2003 before the Special Court Janjgir Champa alleging that:
 - (a) On 10-3-2014 at about 2 'O clock a vigilance team consisting of R.K. Acharya, Executive Engineer, Vinod Kumar Mahilange, Assistant Lineman and Ramji Pandit, Assistant Lineman have inspected the house of the respondent in presence of Smt.Vimla Bai representative and wife of the accused/respondent and found that the electricity connection bearing Meter (B.P. No. 1001619924) obtained by the accused has already been disconnected by them due to non-payment of electricity charges, but the accused illegally used the electricity by hooking the wire directly from Low Tension Line and was running fan, cooler, TV, water-pump, bulb, CFL bulb and illegally consumed 1606 Watt electricity.
 - (b) A Panchnama (Ex. P/3) regarding the unauthorized use of electricity, Inspection Report (Ex. P/4) seizure memo (Ex. P/5), Map (Ex. P/6), Form No. 2, Form No. 4 (Ex. P/1 & P/3), calculation sheet (Ex. P/7) were prepared and Form 5 (Ex. P/8) was issued to the appellant assessing the charge to the tune of Rs. 43,623/-. Thereafter, the appellant filed a complaint under Section 135(1) of the Act of 2003 before the learned Special Judge and also prayed that the demand bill of Rs. 43,623.00 (Rupees forty-three thousand six hundred twenty-three only) be

paid to the complainant towards compensation and also prayed for imposition of penalty upon the respondent.

3. Learned Special Judge taking cognizance of the complaint issued summons to the accused for his appearance before the trial Court on 10-4-2015 and in pursuance thereof, the respondent had appeared before the trial Court on 1-9-2025 and has furnished bail bond. In order to bring home the guilt of the accused, prosecution has examined Pradeep Painkra, Assistant Engineer, (PW/1), R.K. Acharya, Executive Engineer (PW/2), Vinod Mahilange, Assistant Lineman (PW/3), Shekhar Soni, Assistant Engineer (PW/4), H.K. Pradhan, Assistant Engineer (PW/5) and exhibited documents from Ex. P/1 to Ex. P/8 as detailed above, information regrading arrears of electricity charges payable to the complainant (Ex. P/9) and information regarding disconnection of electricity meter installed in the premises of the respondent (Ex. P/10).
4. Respondent accused neither examined any witness nor exhibited any document, but he was examined under section 313 of Cr.P.C wherein he denied the allegations levelled against him and has taken plea of false implication, but in reply to question No. 21, he has admitted that at the time of inspection, Vimla Bai was present who is his wife.
5. Learned trial Court after appreciating the evidence and material on record has recorded its finding in para 20 that the prosecution has not examined any independent witness and has also not proved that the accused was in possession of the property or owner of the property. Learned trial Court has also recorded its finding that the mandatory provisions under the Act of 2003 have not been followed by the

complainant and has recorded its finding that the prosecution is unable to prove the case against the respondent beyond reasonable doubt and acquitted the respondent vide its judgment dated 3-11-2016. Being aggrieved by the said order of acquittal, present Acquittal Appeal has been filed by the prosecution.

6. Learned counsel for the appellant would submit that the learned trial Court has failed to consider the provisions of Act of 2003, particularly Section 135(2)(a) of the Act of 2003 which provides authorization to any Officer of Distribution Licensee or supplier to enter, inspect, break open and search any place or premises in which he has reason to believe that electricity has been, is being, or is likely to be used unauthorizedly. Accordingly, it is not required for them to examine any independent witness. He would further submit that the respondent/accused has admitted his signature in Panchnama (Ex.P/3), spot inspection report (Ex.P/4), seizure memo (Ex.P/5), Map (Ex.P/6), and Ram Bai who is wife of the accused was representative of the accused and she was present at that time of inspection. He would further submit that the accused has put his signature from Ex.P/3 to Ex.P/6 without any objection, therefore, the learned trial Court has erred in disbelieving the documents which clearly proves the guilt of the accused beyond reasonable doubt. He would further submit that learned trial Court erred in holding that the mandatory provisions of Section 135 of Act of 2003 have not been complied with by non-preparing the Form No. 3, whereas Form No. 3 is only required when raid conducted after sunset, as such preparation of Form No. 3 is not required in the present case as raid has been

conducted before sunset.

7. It has been further contended that the learned trial Court has committed illegality in holding that non-preparation of Form No. 6 is fatal for the case of prosecution because Form No. 6 is only prepared when the accused objects after receiving the Form No. 5. In the instant case, the accused has never objected after receiving the form No.5 ie., demand of penalty. Thus, on the perverse finding, the accused has been acquitted. He would further submit that since the respondent has taken electricity connection in his name bearing electricity meter service No. 1004140924, as such he is owner of the said property and no further evidence is required to prove the ownership or title of the accused over the property where electricity meter has been installed as it is not a case of title dispute of the suit property.
8. He would further submit that the finding recorded by the learned trial Court suffers from perversity or illegality and has prayed for allowing the appeal. To substantiate his submissions, he has referred to the judgments of Hon'ble Supreme Court in case of **Punjab State Electricity Board and another vs. Ashwani Kumar, reported in (2010) 7 SCC 569**, and also referred to judgment of High Court of Delhi (Criminal Appeal No. 2060/2010) and Cri. M. (B) No. 1253 of 2010 **in the case of Sushil Sharma vs. BSES Rajdhani Power Ltd and another**, decided on 22-12-2010 and also referred to **Chhattisgarh Electricity Rules, 2006 (in short "Rules of 2006")**.
9. On the other hand, learned counsel for the respondent would submit that the finding of the learned trial Court that the complainant has not

followed the mandatory provisions of Act of 2003 which vitiates the entire exercise carried out by the complainant, cannot be found faulty. He would further submit that the prosecution has not examined any independent witness and non-submission of any independent witness is also fatal in the facts and circumstances of the case. Thus, he would submit that the finding recorded by the learned trial Court does not suffer from perversity or illegality warranting interference by this Court in this appeal. He would further submit that even otherwise, it is well settled position of law that where two views are possible and if the trial Court has taken one view favouring the accused by acquitting him then normally the appellate Court should not interfere in the well reasoned finding recorded by the learned trial Court. He would further submit that the appellant is unable to point out any patent perversity or illegality committed by the trial Court while acquitting the respondent, as such, he would pray for dismissal of the present acquittal appeal.

10. I have heard learned counsel for the parties and perused the record of the case with utmost circumspection.
11. From the submissions made by the parties before this Court, the point emerged for determination is whether the acquittal of the accused by the learned Special Judge (Electricity Act, 2003) suffers from perversity or illegality or liable to be interfered in this acquittal appeal.
12. To appreciate the point emerged for determination and for consideration of the submissions made by the parties, it is expedient for this Court to go through the provisions of Sections 126 and 135 of the Act of 2003 which reads as under:

“Section 126: (Assessment): --- (1) If on an inspection of any

place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

[(3) The person, on whom an order has been served under sub- section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment of the electricity charges payable by such person.]

(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.]

(6) The assessment under this section shall be made at a rate equal to 1[twice] the tariff rates applicable for the relevant category of services specified in sub-section (5). Explanation.- For the purposes of this section,- (a) “assessing officer” means an officer of a State Government.

“Section 135. (Theft of Electricity): --- 1[(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, (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:

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 on 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; (ii) exceeds 10 kilowatt, the fine imposed on 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 sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station: Provided also that if it is proved that any artificial means or means not authorized by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer. (1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorized for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hours from the time of such disconnection:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of

such deposit or payment.]

(2) Any officer of the licensee or supplier as the case may be,] authorized in this behalf by the State Government may --

(a) enter, inspect, break open and search any place or premises in which he has reason to believe that electricity 2[has been or is being,] used unauthorisedly;

(b) search, seize and remove all such devices, instruments, wires and any other facilitator or article which has been, or is being, used for unauthorized use of electricity;

(c) examine or seize any books of account or documents which in his opinion shall be useful for or relevant to, any proceedings in respect of the offence under sub-section (1) and allow the person from whose custody such books of of account or documents are seized to make copies thereof or take extracts therefrom in his presence.

(3) The occupant of the place of search or any person on his behalf shall remain present during the search and a list of all things seized in the course of such search shall be prepared and delivered to such occupant or person who shall sign the list:

Provided that no inspection, search and seizure of any domestic places or domestic premises shall be carried out between sunset and sunrise except in the presence of an adult male member occupying such premises.

(4) The provisions of the Code of Criminal Procedure, 1973, relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act."

13. From perusal of Sections 126 and 135 of the Act of 2003, it is quite vivid that Section 126 of the Act deals with assessment and Section 135 of the Act deals with an offence of theft of electricity and penalty that can be imposed for such theft. Section 135 of Act of 2003 squarely falls within the dimensions of criminal jurisprudence and *mens rea* is one of the relevant factors for finding a case of theft and it is applicable to whoever dishonestly does any of the listed actions defined under this Section so as to obstruct or consume electricity would be punished with the provisions of the Act of 2003. Dishonesty is a state of mind which has to be shown to exist before a person can

be punished under the provisions of that section. The word “dishonest” in normal parlance means ‘wanting in honesty’. A person can be said to have dishonest intention if in taking the property it is his intention to cause gain, by unlawful means of the property to which the person so gaining is not legally entitled or to cause loss by wrongful means, of property to which the person so losing is legally entitled. The word “Dishonestly” has been defined in Section 24 of the Indian Penal Code 1860. It means whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing dishonestly.

14. In the aforesaid light of parameters, now this Court is examining the evidence led by the prosecution before the learned trial Court to examine whether the accused has dishonestly committed theft of electricity.
15. Prosecution star witness namely R.K. Acharya, Executive Engineer (Ex. P/2) who in examination-in-chief has stated that when they visited the house of the respondent/accused on 10-3-2014, it was found that the electricity connection installed in the house of respondent accused was disconnected and he is using the electricity by direct hooking to the LT line and when they called the wife of the respondent/accused, she appeared before them and on being asked about premises of the house, she stated that the house belongs to the respondent/accused. Thereafter, he along with team entered into the house of the respondent wherein it was found that hook was taken to the Switch Board from L.T. Line and fan, cooler, TV, water-pump, bulb, CFL bulb were running. Thereafter, he prepared a panchnama (Ex.P/3) wherein

he has put his signature and wife of the accused has also put her signature. He would further state that he has also prepared inspection report vide Ex. P/4, Seizure Memo (Ex. P/5) and Map (Ex. P/6) wherein he has put his signature and the representative of respondent has put her signature. This witness was cross-examined by the complainant wherein he has admitted that he is not aware when the electricity connection was disconnected from the house of the accused. He has also admitted that when the electricity connection is disconnected and wire is removed from electricity pool. He has also admitted that he has not mentioned this fact in the report. He has also admitted that he has seized 10 ft., wire and also admitted that at the time of inspection, it was found that hook was disconnected from pool. He has also admitted that he has not examined any independent witness and denied that he has prepared the documents in the office. He has also denied that they have put fabricated signature of representative of the respondent and also admitted that they have not produced any document regarding title of the property.

16. From the evidence of other witness, it is quite vivid that the member of the inspection team has supported the case of prosecution and nothing was brought on record to rebut the said contention made by them.
17. PW/5 H.K. Pradhan, Assistant Engineer who has supported the case of the complainant stated that he has prepared the temporary assessment to the tune of Rs. 46,623/-, sent information to the accused in Form No.5 (Ex.P/8), information was also sent to the accused regarding arrears of payment vide Ex.P/9 wherein he has put

his signature and information was sent regarding deduction of electricity vide Ex.P/10. He denied that (Ex.P/9) and (Ex.P/10) were not served upon the accused and denied false signature on the said document.

18. From the evidence, it is quite vivid that the inspection and panchnama were prepared on the spot and it is also not in dispute that regarding inspection and panchnama no independent witness was examined and on this count learned trial Court has disbelieved the correctness of the panchnama. From the evidence brought on record, it is quite vivid that panchnama and inspection report were prepared by the official of Electricity Board which is an act done in discharge of their duties and could not be straightaway disbelieved unless and until there is definite and cogent material brought on record by the defense to arrive that such a finding placed on record by the complainant is false and fabricated one. In the present case, the respondent has not led any evidence to rebut the correctness or genuineness of the panchnama of inspection report. On the contrary, in the cross-examination R.K. Acharya, Executive Engineer (PW/2) has categorically stated that he has prepared panchnama on the spot wherein the representative of respondent accused has put her signature. Thus, the finding of the learned trial Court that in absence of any independent witness, panchnama or inspection cannot be relied upon to prove the guilt of the accused suffers from perversity or illegality.
19. Hon'ble Supreme Court in case of **Punjab State Electricity Board and another vs. Ashwani Kumar**, reported in **(2010) 7 SCC 569** has

examined the validity of report prepared by the authority in discharge of duty and held that unless contrary is proved by cogent evidence presumption will lie in favour of such act or document and not against them as onus lies upon person objective to show while leading proper and cogent evidence that the said report is not proper. The Hon'ble Supreme Court has held in paragraphs 18, 21 and 22 as under:

“18. The report prepared by the officers of the Electricity Board is an act done in discharge of their duties and could not be straight away reflected or disbelieved unless and until there was definite and cogent material on record to arrive at such a finding. It is not disputed before us that if two connections are operating in the same premises, in that event, the concept of clubbing and consequential charges and penalty would be attracted. That being so, and particularly, where a National Commission has not adverted to some discussion on the points raised in the appeal, the policy of the Electricity Board and the regulations cannot be rendered otiose.

21. The inspection report is a document prepared in exercise of its official duties by the officers of the Corporation. Once an act is done in accordance with law, the presumption is in favour of such act or document and not against the same. Thus, there was specific onus upon the consumer to rebut by leading proper and cogent evidence that the report prepared by the officers was not correct.

22. As already noticed, no objections were filed to the said report except some protest, that too, without stating as to what was the specific protest about, whether the facts recorded in the report were factually incorrect or that the report was received under protest. As is apparent from the reports on record, it bears two signatures of the consumer/consumer's representatives, one with regard to the preparation of report and other with regard to receiving the copy of the report. The words 'under protest' have been recorded at the bottom of the report. This, itself indicates the ambiguity in the protest raised by the consumers.”

20. Thus, learned trial Court should have drawn the presumption of correctness of the panchnama in absence of producing the cogent evidence or rebuttal by the accused to disprove the genuineness and correctness of the panchnama. As it is well settled position of law that

the facts required to form the basis of a presumption of law exist, no discretion is left with the court but to draw the statutory conclusion, but this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary. Therefore, it is incumbent upon the respondent to rebut the conclusively established about the fact of preparation of panchnama and the inspection report, but no such evidence was led by the respondent to believe the defence of the respondent that the panchnama was prepared not at the spot or it is a false one. The Hon'ble Supreme Court has examined the issue of presumption under Section 138 of Negotiable Instruments Act, 1881 in case of **Hiten P. Dalal vs. Bratindranath Banerjee, reported in (2001) 6 SCC 16** and has held in para 22 and 38 as under:

"22. Because both Sections 138 and 139 require that the Court "shall presume" the liability of the drawer of the cheques for the amounts for which the cheques are drawn, as noted in *State of Madras vs. A. Vaidyanatha Iyer* AIR 1958 SC 61, it is obligatory on the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. "It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused" (ibid). Such a presumption is a presumption of law, as distinguished from a presumption of fact which describes provisions by which the court "may presume" a certain state of affairs. Presumptions are rules of evidence and do not conflict with the presumption of innocence, because by the latter all that is meant is that the prosecution is obliged to prove the case against the accused beyond reasonable doubt. The obligation on the prosecution may be discharged with the help of presumptions of law or fact unless the accused adduces evidence showing the reasonable possibility of the non-existence of the presumed fact.

38. The burden was on the appellant to disapprove the presumptions under Ss. 138 and 139 a burden which he failed to discharge at all. The averment in the written statement of the appellant was not enough. Incidentally, the defence in the written statement that the four cheques were given for intended transactions was not the answer given by the

Appellant to the notice under Section 138. Then he had said that the cheques were given to assist the Bank for restructuring (Ex.H). It was necessary for the appellant at least to show on the basis of acceptable evidence either that his explanation in the written statement was so probable that a prudent man ought to accept it or to establish that the effect of the material brought on the record, in its totality, rendered the existence of the fact presumed, improbable. (Vide *Trilok Chand Jain Vs. State of Delhi* 1975 (4) SCC 761). The appellant has done neither. In the absence of any such proof the presumptions under Sections 138 and 139 must prevail.”

21. From the aforesaid provisions of law considering the evidence and material on record, it is quite vivid that neither the respondent has led any evidence to rebut the contention of panchnama nor led any evidence to substantiate his contention that he has not committed any offence of theft of electricity, though the prosecution has proved its case that there was theft of electricity, as such it was incumbent upon the respondent to rebut the said presumption and in absence of any rebuttal, the finding of the learned trial Court that due to non-examination of independent witnesses, the entire panchnama and inspection report are illegal, suffers from perversity and illegality which deserves to be set aside by this Court and accordingly it is set aside.
22. Further finding assigned by the learned trial Court that mandatory provisions of the Act 2003 as well as the provisions of Section 126 and Rule 7 framed under the Rules of 2006 have not been followed by the complainant, therefore, the complainant is unable to prove beyond reasonable doubt that the accused has committed theft of electricity is illegal, therefore, it deserves to be set aside. As Sections 135 and 126 of the Act of 2003 are applicable in different spheres as Section 126 of the Act of 2003 provides for assessment of dues

whereas Section 135 of the Act of 2003 deals with the offence of theft of electricity. The Hon'ble Supreme Court in case of **West Bengal State Electricity Distribution Company Ltd., vs. Orion Metal Pvt. Ltd., (Civil Appeal No. 6547 of 2019, decided on 21-8-2019), reported in AIR Online 2019 SC 982**, has examined the provisions of Section 126 and 135 of the Act of 2003 and has held that both provisions work in different fields. The Hon'ble Supreme Court in para 14 has held as under.

“14. We also do not find any valid reason for making a distinction as made by the High Court in applying Section 126 of the Act. From the scheme of the Act, it appears that after inspection team notices unauthorized use of energy by tampering the meter, the authorities can disconnect the power supply immediately and make immediate assessment for loss of energy, by invoking power under Section 126(1) of the Act. The term “unauthorized use of energy” is of wide connotation. There may be cases of unauthorized use of energy, not amounting to theft, which are cases viz. exceeding the sanctioned load or using the electricity in the premises where its use is not authorized etc. But at the same time, when there is an allegation of unauthorized use of energy by tampering the meter, such cases of unauthorized use of energy include ‘theft’ as defined under Section 135 of the Act. The power conferred on authorities for making assessment under Section 126(1) of the Act and power to determine civil liability under Section 154(5) of the Act, cannot be said to be parallel to each other. In this regard, we are of the view that the High Court has committed an error in recording a finding, that both proceedings cannot operate parallelly. In a given case where there is no theft of energy, amounting to unauthorized use of energy, in such cases no complaint of theft can be lodged as contemplated under Section 135 of the Act. In such cases for loss of energy, on account of unauthorized use of energy not amounting to theft, it is always open for the authorities to assess the loss of energy by resorting to power under Section 126(1) of the Act. In cases where allegation is of unauthorized use of energy amounting to theft, in such cases, apart from assessing the proceedings under Section 126(1) of the Act, a complaint also can be lodged alleging theft of energy as defined under Section 135(1) of the Act. In such cases, the Special Court is empowered to determine civil liability under Section 154(5) of the Act. On such determination of civil liability by the Special Court, the excess amount, if any, deposited by the petitioner, is to be refunded to the consumer.

It is a settled principle that to prove the guilt of the accused in a criminal proceeding, authorities have to prove the case beyond reasonable doubt and the element of mens rea is also to be established. On the other hand, such a strict proof is not necessary for assessing the liability under Section 126(1) of the Act.”

23. Thus, presuming (but not holding) that there is non-compliance of Rule 7 of the Rules of 2006, it does not vitiate the proceeding conducted under Section 135 of the Act of 2003 as the Rule 7 of the Rules of 2006 deals with assessment of dues on inspection of the premises, if any consumer or person is found to have indulged in unauthorized use of electricity, the assessing officer, after taking into consideration the facts and circumstances of the case, shall make a provisional assessment of the charge payable by the owner or occupier of the premises who is benefited by indulging in unauthorized use of energy or may have given benefit to any other person whereas Section 135 of the Act of 2003 provides panel provision for commission of offence of theft of electricity, thus, the finding of learned trial Court in paragraph 17 of its judgment is illegal and it is quashed.
24. The finding of the learned trial Court at paragraph 18 that no revenue document regarding title of the respondent on the premises was not placed on record and no one has seen that the respondent is getting electricity after hooking with the L.T. lines and accordingly, it has acquitted the accused, is also perverse, contrary to the provisions of law. The learned trial Court should have considered that as per provisions of Section 2(51) of the Act of 2003 the premise has been defined according to which any land, building or structure and consumer has been defined in Section 2(15) of the Act of 2003. As per the definition, the consumer means any person who is supplied

with the electricity for his own use by licensee or the government or by any other person engaged in supply of electricity to the public under this Act or any other law for the time being enforce and includes any person whose premises are for the time being connected for the purposes of receiving electricity with the works of the licensee, the Government or such other person as case may be.

25. From perusal of aforesaid definitions, it is quite vivid that the electricity should have been supplied by the licensee on the premises or person who will be called as consumer. The appellant has exhibited the notice (Ex. P/2) dated 03-02-2014 disconnecting the electricity due to non-payment of bill which was issued in the name of respondent. The respondent has neither disputed about issuance of notice dated 03-02-2014 by the appellant nor regarding service connection number mentioned in the notice. These facts are sufficient to hold that the respondent is consumer of the electricity and since it is not in dispute pertaining to title of the suit property, as such, it was not required for the complainant to place on record the revenue records of the premises and the learned trial Court should have drawn inference that the meter was installed in the premises of the respondent. Thus, it has committed illegality in recording the finding that in absence of any revenue record produced by the complainant, it cannot be held that the respondent is the owner of the premises.
26. The further submission of learned counsel for the respondent that the view taken by the learned trial Court is not based on perversity or illegality and in view of well settled position of law that unless and until there is a cogent apparent mistake while acquitting the accused, then

only this Court can interfere in the order of acquittal. As such, the appeal is liable to be dismissed by this Court, is being considered.

27. From the aforesaid findings recorded by this Court in foregoing paragraphs, it is quite vivid that the learned trial Court while acquitting the accused has not considered the provisions of the Act 2003 and the rules made under Rules of 2006 as well as committed illegality in not believing the panchnama or inspection report in absence of any cogent evidence or material placed on record by the respondent and has recorded its finding of acquittal which is perverse and contrary to the law. Thus, the learned trial Court committed illegality in applying the law, recorded patent perversity about ignoring the panchnama and inspection report, as such, no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record, therefore, this Court can very well interfere in the findings of the trial Court acquitting the accused by reversing the findings to conviction of the accused. Thus, submission made by the learned counsel for the appellant that two views can be taken then view which is more favourable to the accused should be considered by the Court and should not interfere in the finding of the acquittal deserves to be rejected, and accordingly it is rejected.

28. The Hon'ble Supreme Court in case of **Babu Sahebagouda Rudragoudar and others v. State of Karnataka** reported in **2024 (8) SCC 149** has held in which circumstances the findings can be reversed, the Hon'ble Supreme Court in paragraphs 41 and 42 has held as under:

“41. Thus, it is beyond the pale of doubt that the scope of

interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within the four corners of the following principles:-

41.1 That the judgment of acquittal suffers from patent perversity;

41.2 That the same is based on a misreading/omission to consider material evidence on record;

41.3 That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

42. The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.”

29. Therefore, this Court in exercise of power conferred under Section 386 of Cr.P.C. (Section 427 in the Bharatiya Nagarik Suraksha Sanhita (BNSS)) can very well interfere in the findings recorded by the trial Court and can reverse such findings by convicting the accused for the commission of offence under Section 135 of the Act of 2003.
30. Accordingly, this acquittal appeal deserves to be allowed and it is hereby allowed and the order of acquittal is set aside. Since this Court is setting aside the order of acquittal, therefore, the matter has to be listed for hearing of the appellant on the quantum of sentence to be imposed upon the appellant on **17.06.2026** as per compliance of Section 235(2) of Cr.P.C./258(2) of BNSS.

Sd/-
(Narendra Kumar Vyas)
JUDGE

Raju