

HIGH COURT OF DELHI

Bench : Justice Navin Chawla

Date Of Decision: 16.04.2024

Crl.L.P. 173/2024 & Crl.M.A. 10252/2024

Tata Power Delhi Distribution Limited ...Petitioner

Versus

Amit Bansal ...Respondent

Legislation:

Section 378(3) of the Code of Criminal Procedure, 1973 (Cr.P.C.)

Sections 135, 138, and 150 of the Electricity Act, 2003

Sections 105 and 106 of the Indian Evidence Act, 1872

Subject: Criminal leave petition challenging the acquittal of the respondent from charges of electricity theft under the Electricity Act, 2003, focusing on the alleged deliberate damage to an electricity meter and the subsequent forensic and legal interpretation of the evidence presented.

Headnotes:

Petition under Section 378(3) of the Cr.P.C. by Tata Power Delhi Distribution Limited against the acquittal of the respondent in case involving alleged electricity theft under Sections 135, 138, and 150 of the Electricity Act – High Court upholds acquittal, finding that the trial court correctly identified flaws in the forensic report and expert testimony – High Court concludes that petitioner failed to establish dishonest intent required under the Electricity Act beyond a reasonable doubt. [Paras 1, 12, 40-41]

Electricity Theft Allegations – Analysis of the trial court's evaluation of expert forensic testimony regarding a burnt electric meter – High Court agrees with trial court's judgment that expert testimony was unreliable and lacked scientific basis, thus failing to prove that the respondent dishonestly caused the meter to burn – Emphasis on burden of proof resting on the prosecution to establish guilt beyond a reasonable doubt, which was not met. [Paras 12, 27-33]

Burden of Proof and Expert Testimony – Discussion on the application of Sections 105 and 106 of the Indian Evidence Act – High Court finds that the prosecution did not adequately prove respondent's dishonest action, and expert witness was not competent in electrical engineering, undermining the prosecution's case – High Court rules that unreliable and unscientific expert testimony cannot solely determine the outcome of a theft allegation. [Paras 15-17, 27-28, 37-38]

Decision – Upholding of Trial Court's Acquittal – High Court finds no perversity in trial court's judgment and concludes that the factual findings of the trial court were neither improbable nor implausible – Leave to appeal against acquittal dismissed, confirming the trial court's decision in favor of the respondent. [Paras 39-41]

Referred Cases:

- Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO) & Anr. v. Sri Seetaram, (2012) 2
- Satye Singh & Anr. v. State of Uttarakhan, (2022) 5 SCC 438
- Shambu Nath Mehra v. State of Ajmer, AIR 1956 SC 404
- Anwar Ali & Anr. v. State of Himachal Pradesh, (2020) 10 SCC 166

Representing Advocates:

For the Petitioner: Mr. Sudhir Nandrajog, Sr. Adv. with Mr. Manish Srivastava, Mr. Moksh Arora, and Mr. Santosh Ramdurg

For the Respondent: Ms. Sahiba Singh

J U D G M E N T

1. This petition has been filed under Section 378(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') seeking leave to appeal against the judgment dated 08.01.2024 passed by the learned Additional Sessions Judge (Electricity), North West District, Rohini Court, Delhi in CC No.167/2019, titled ***Tata Power Delhi Distribution Ltd. v. Amit Bansal***, acquitting the respondent of offence under Sections 135, 138 and 150 of the Electricity Act, 2003, (hereinafter referred to as 'Electricity Act').

Case of the Petitioner

2. It is the case of the petitioner that the petitioner is a company engaged in the business of distribution and retail supply of electricity to its consumers

in North and North-West parts of the National Capital Territory of Delhi. The respondent is a consumer of the petitioner company, availing of its services.

3. It is the case of the petitioner that on 09.07.2018 at about 2:20 PM, a team of the petitioner company, comprising of Sh. Kishan Bahadur (Senior Manager), Sh. Rahul Dalal (Officer) and Sh. Prem (photographer), visited the premises, being I-238, Sector-01, DSIDC, Bawana, Delhi. The Inspecting Team, during the course of its visit, found one meter bearing no. 92301905 (CA No. 60013564905) (hereinafter referred to as the 'subject meter'), which was installed in the name of M/s. Jamna Industries, Propriety of Jamna Dass. The subject meter, the body of the meter box, and the resin cast CT, completely burnt. The remnants of the burnt parts of the LT/CT Meter were seized.

4. It is stated that the total connected load to the premises was found to be 87.362 KW, used for the industrial purpose of manufacturing plastic dana.

5. It is contended that at the site, an inspection report and seizure memo was prepared, both of which were duly served upon the respondent, who was present at the site.

6. Thereafter, the petitioner issued notice to the respondent and called upon him to appear before the Meter Testing Laboratory/Electronics and Quality Development Centre (in short, 'EQDC') on 17.07.2018 at 11:15 AM. The meter was tested in the presence of Mr. Ravi Aggarwal, father of the respondent, whereafter a report regarding the same was prepared, which advised the meter to be sent to a forensic lab for further testing.

7. Subsequently, the meter was referred to M/s Truth Lab, which specializes in such forensic services and is endorsed by the EQDC. 8. It is further stated that a forensic analysis was done by M/s Truth Lab of the burnt electric meter, and basis the observations, a report dated 21.09.2018 was prepared. Basis the report of M/s Truth Lab, EQDC prepared a report dated 01.10.2018, wherein it recommended the petitioner to proceed further on the basis of the report submitted by M/s Truth Lab.

9. The petitioner alleges that the consumption pattern of the subject meter was analysed, and the average recorded consumption was found to be 33.90% of the average computed consumption. 10. Based on the report of M/s Truth Lab, by way of a Speaking Order dated 04.10.2018, the petitioner, on 04.10.2018, charged the respondent with theft under Section 135 of the Electricity Act. As a consequence of the same, a theft bill of Rs. 33,78,327/- was raised on the respondent. The said amount was revised to Rs.26,57,771/-, during the proceedings before the Delhi Electricity Regulatory

Commission. 11. The petitioner also filed the above complaint, being CC. No. 167/2019, under Sections 135,138 and 150 read with Section 151 of the Electricity Act.

12. Vide the Impugned judgement dated 08.01.2024, the learned Trial Court, upon examination of the evidence, held that the conclusion arrived in the lab report by M/s Truth Lab is based on surmises and conjectures and does not have any scientific basis. It held that there are inherent and apparent lacunae in the case of the petitioner, which have remained unexplained. The learned Trial Court held that the benefit of such lacunae has to be given to the accused. The learned Trial Court, therefore, acquitted the respondent herein.

13. Aggrieved of the same, the petitioner has filed the present petition.

Submission of the learned senior counsel for the petitioner:

14. The learned senior counsel for the petitioner submits that the learned Trial Court has erred in law and on fact in ignoring and not relying upon the report given by M/s Truth Lab. He submits that in its report dated 21.09.2018, the Truth Lab had opined as under:-

8. CONCLUSION

Based on the visual, physical, chemical and stereomicroscopic as well as tool mark examination of the remnants of the burnt electric meter, the cause of burning of digital electric meter No92301905 installed vide CA No. 60013564905 was:

8.1 not due to electric short circuit caused by defective electrical components or excessive power transmission effects as observed from the stereomicroscopic data,

8.2 not on account of deliberate use of ignitable fire accelerants for burning as seen from the results of GC-MS analysis, 8.3 not on account of any other natural calamities such as lightning, thunderstorm etc.,

8.4 not on account of burning of premises where the meter was installed as the premises was found unaffected,

8.5 but due to superficial burning of the meter assembly by subjecting it to prolonged and sustained high temperature heat sources allowing it to burn steadily that caused the metallic pieces of the burnt parts to detach and fall down while the plastic parts formed into lumps of molten materials with metallic parts clinging to the remnants, and

8.6 The root cause of burning of electric meter is due to deliberate exposure to external heat sources by someone who has the means, motive and opportunity to indulge in such act. ||

15. He submits that in his statement under Section 313 of the Cr.P.C., it was the case of the respondent that the subject meter had burned accidentally due to a short-circuit and not due to any deliberate or intentional act/commission on his part. He submits that this being a specific defence of

the respondent and these facts being in his exclusive knowledge, in terms of Sections 105 and 106 of the Indian Evidence Act, 1872 (hereinafter referred to as the 'IE Act'), the burden of proving the same would be on the respondent.

16. He submits that the learned Trial Court has wrongly held that the petitioner had not been able to prove its case of theft of electricity against the respondent. He submits that the meter had been badly burned, which could have taken place only by external heat being administered to the meter by the respondent. He submits that on an analysis it was also found that the recorded consumption was 33.90% of the average computed consumption. He submits that, therefore, there was material on record to prove the charges against the respondent.

17. He submits that the learned Trial Court has also erred in holding that M/s Truth Lab was not an accredited laboratory. Placing reliance on the Notification dated 06.12.2021 issued by the Delhi Electricity Regulatory Commission, and a common order dated 15.09.2022, including in Appeal No. 22/2021 titled ***TATA Power Delhi Distribution Limited v. Delhi Electricity Regulatory Commission (DERC) & Anr.***, passed by the learned Appellate Tribunal for Electricity, he submits that similar challenge had, in fact, been rejected by the learned Appellate Tribunal.

Submission of the learned counsel for the respondent:

18. The learned counsel for the respondent, who appears on advance notice, submits that no error can be found in the Impugned Judgment of the learned Trial Court. She submits that no reliance can be placed on the report of the Truth Lab inasmuch as its author Ms. Akansha Chaudhary, was examined as PW-4 before the learned Trial Court. She admitted that she does not have any knowledge about electric engineering, but has knowledge only related to chemical forensic. She admitted that this subject does not include the study related to electric meters. The learned counsel submits that, therefore, the said witness cannot be considered as an expert under Section 45 of the IE Act.

19. Placing reliance on the cross-examination of PW-4, she submits that the said witness further admitted that she had not conducted any test to find out whether the meter in question was mounted on a wooden block. She also could not recollect any forensic literature/textbook wherein it is mentioned that charring of wire is not present in case of a short-circuit of the meter, which was the basis of her opinion in the report to rule out that the meter could have burnt due to a short-circuit. She submits that the witness admitted that her opinion was based on a presumption and does not have any scientific basis

and that she also could not say with certainty that the meter in question was faulty/defective or not due to internal fault, which resulted in the burning of the meter due to a short-circuit.

20. As far as the reliance of the learned senior counsel for the petitioner on the Notification issued by DERC and also on the order passed by the learned Appellate Tribunal is concerned, she submits that these documents were not filed before the learned Trial Court and, therefore, no reliance should be placed on them.

Analysis & Finding

21. I have considered the submissions made by the learned counsels for the parties.

22. Sections 135, 138, and 150 of the Electricity Act are reproduced hereinunder:-

—Section 135. Theft of Electricity.-

(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; or

(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 authorised 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 authorised 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, authorised 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 has been or is being,

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

(b) 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 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 (2 of 1974), relating to search and seizure shall apply, as far as may be, to searches and seizure under this Act.

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Section 138. Interference with meters or works of licensee.

(1) Whoever,--

(a) unauthorisedly connects any meter, indicator or apparatus with any electric line through which electricity is supplied by a licensee or disconnects the same from any such electric line; or

(b) unauthorisedly reconnects any meter, indicator or apparatus with any electric line or other works being the property of a licensee when the said electric line or other works has or have been cut or disconnected; or

(c) lays or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee; or.

(d) maliciously injures any meter, indicator, or apparatus belonging to a licensee or wilfully or fraudulently alters the index of any such meter, indicator or apparatus or prevents any such meter, indicator or apparatus from duly registering, shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to ten thousand rupees, or with both, and, in the case of a continuing offence, with a daily fine which may extend to five hundred rupees; and if it is proved that any means exist for making such connection as is referred to in clause (a) or such re-connection as is referred to in clause (b), or such communication as is referred to in clause (c), for causing such alteration or prevention as is referred to in clause (d), and that the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, it shall be presumed, until the contrary is proved, that such connection, reconnection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and wilfully caused by such consumer.

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Section 150. Abetment.

(1) Whoever abets an offence punishable under this Act, shall, notwithstanding anything contained in the Indian Penal Code (45 of 1860), be punished with the punishment provided for the offence.

(2) Without prejudice to any penalty or fine which may be imposed or prosecution proceeding which may be initiated under this Act or any other law for the time being in force, if any officer or other employee of the Board or the licensee enters into or acquiesces in any agreement to do, abstains from doing, permits, conceals or connives at any act or thing whereby any theft of electricity is committed, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

(3) Notwithstanding anything contained in sub-section (1) of section 135, sub-section (1) of section 136, section 137 and

section 138, the licence or certificate of competency or permit or such other authorisation issued under the rules made or deemed to have been made under this Act to any person who acting as an electrical contractor, supervisor or worker abets the commission of an offence punishable under sub-section (1) of section 135, sub-section (1) of section 136, section 137, or section 138, on his conviction for such abetment, may also be cancelled by the licensing authority:

Provided that no order of such cancellation shall be made without giving such person an opportunity of being heard.

Explanation.--For the purposes of this sub-section, "licencing authority" means the officer who for the time being in force is issuing or renewing such licence or certificate of competency or permit or such other authorisation.

23. A reading of the above provisions would show that to charge a person with offence of theft of electricity, under Section 135 of the Electricity Act, the prosecution must establish that such person has 'dishonestly' *inter alia* damaged or destroyed an electric meter. The onus of proof of the same shall always lie on the prosecution and such onus must be discharged on the touchstone of '*beyond reasonable doubt*'. The prosecution cannot shift this onus on the accused. It is not for the accused to prove his innocence.

24. In ***Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO) & Anr. v. Sri Seetaram***, (2012) 2

SCC 108, the Supreme Court opined that the term 'dishonestly' as used in Section 135 of the Electricity Act, would mean as under:-

—31. Section 135 of the 2003 Act significantly uses the words —whoever, dishonestlyll does any of the listed actions so as to abstract or consume electricity would be punished in accordance with the provisions of the 2003 Act. —Dishonestyll is a state of mind which has to be shown to exist before a person can be punished under the provisions of that section. 32. The word —dishonestll in normal parlance means —wanting in honestyll. A person can be said to have —dishonest intentionll 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. —Dishonestlyll is an expression which has been explained by the courts in terms of Section 24 of the Penal Code, 1860 as:

—24. Dishonestly'.—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'.ll

[The Law Lexicon (2nd Edn., 1997) by P. Ramanatha Aiyar]

33. This Court in *S. Dutt v. State of U.P.* [AIR 1966 SC 523] stated that a person who does anything with the intention to cause wrongful gain to one person or wrongful loss to another is said to do that dishonestly.

34. *Collins English Dictionary explains the word —dishonest as —not honest or fair; deceiving or fraudulent. Black's Law Dictionary (8th Edn.) explains the expression —dishonest act as a fraudulent act, —fraudulent act being a conduct involving bad faith, dishonesty, a lack of integrity or moral turpitude.*

35. *All these explanations clearly show that dishonesty is a state of mind where a person does an act with an intent to deceive the other, acts fraudulently and with a deceptive mind, to cause wrongful loss to the other. The act has to be of the type stated under sub-sections (1)(a) to (1)(e) of Section 135 of the 2003 Act. If these acts are committed and that state of mind, mens rea, exists, the person shall be liable to punishment and payment of penalty as contemplated under the provisions of the 2003 Act....*

25. In the present case, there is no dispute on the fact that in an inspection carried out on 09.07.2018 at the subject premises, the officers of the petitioner company found that the body of the electric meter, the meter box, and CT resin cast was completely burnt. The onus to prove that it was 'dishonestly' burnt or destroyed by the respondent, is on the petitioner. To prove the same, it placed reliance on the report of M/s Truth Lab (Ex.PW-4/D). The conclusion in the report has already been extracted hereinabove. The question to be determined by the learned Trial Court, was the relevance of this report.

26. Section 45 of the IE Act makes an opinion of an expert relevant. It is reproduced hereinbelow:-

—45. Opinions of experts.—*When the Court has to form an opinion upon a point of foreign law or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts. Such persons are called experts.*

27. The opinion under Section 45 of the IE Act, therefore, has to be of a person who is 'specially skilled' in such science. In the present case, PW-4, the author of the report, has admitted in the course of her cross-examination that she does not have the knowledge about electric engineering, but has knowledge relating to chemical forensic. She admits that the said subject does not include the study related to electric meters. She specifically admits that she has no expertise or knowledge about the fire emerging from the electricity/electric meter. This itself makes her report irrelevant to the facts of the present case.

28. PW4 further admits that she could not tell if the cause of the fire was due to an electric short-circuit/fault. That apart, in the course of her cross-examination, she further admitted that she could not tell what is the real cause

of the fire in the CT meter. She stated that as there was a charring effect on the wire of the meter in question, therefore, it could be opined/concluded that it was not a case of a short-circuit. However, she stated that she could not recollect any forensic literature/textbook wherein it is mentioned that charring of wires is not present in cases of a short-circuit. She, in fact, specifically admitted as under:-

—The finding given by me as regards means, motive and opportunity to bum the electric meter is based on my presumption and it does not have any scientific basis.¶

29. She further admitted that it was not possible for her to examine the cause of fire due to a loose circuit connection or any other fault in the meter. She further admitted as under:-

—It is correct that I can not say with certainty that the meter in question was faulty/defective or not due to internal fault which resulted in the burning of the meter due to short circuit.¶

30. She further, to a specifically put question, admitted that she had not conducted any scientific test to find out that the burning of the meter was due to some alleged external source. I may quote from her statement as under:-

*—Q. Have you conducted any scientific specific test to find out that the burning of the meter was due to some alleged external source?
Ans. I have not conducted any such specific test.¶*

31. She admitted that there is no scientific test through which she could conclude about the real cause of the burning of meter in question.

32. From her above testimony, it is evident that the petitioner was unable to prove its case against the respondent on the touchstone of beyond reasonable doubt. In fact, the statement of the said witness creates more doubts than answers of the same.

33. The learned Trial Court has also deeply analyzed the statement of PW-4, to hold that on the basis thereof and on the basis of the consequent report of M/s Truth Lab, the respondent cannot be convicted. I find absolutely no fault with the said finding.

34. The learned senior counsel for the petitioner relied upon the average recorded consumption being only 33.90% of the average computed consumption, as an evidence sufficient to convict the respondent of the offence charged. The said submission cannot be accepted. Even assuming the recorded consumption to be lesser than the average computed consumption of electricity, it can at best raise a doubt against the respondent;

it cannot act as a proof beyond reasonable doubt to hold that the respondent has dishonestly tampered with the meter.

35. Similarly, the reliance of the learned senior counsel for the petitioner on Sections 105 and 106 of the IE Act, also cannot be accepted. The said provisions are reproduced hereinabove:-

—105. Burden of proving that case of accused comes within exceptions. —*When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.*

106. Burden of proving fact especially within knowledge. —*When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.*||

36. As far as Section 105 of the IE Act is concerned, it is applicable only where the accused claims existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code or within any special exception or proviso contained in the IPC or in any other law defining the offence. In the present case, the respondent was not claiming exemption from the offence on any exception or proviso. In fact, there is no exception in Sections 135, 138 or 140 of the Electricity Act. Therefore, Section 105 of the IE has no application.

37. As far as Section 106 of the IE Act is concerned, in **Satye Singh & Anr. v. State of Uttarakhan**, (2022) 5 SCC 438, the Supreme Court has reiterated that the purpose of Section 106 of the IE Act is not to relieve the prosecution of its duty to prove the case against the accused. It placed reliance on the earlier judgment in **Shambu Nath Mehra v. State of Ajmer**, AIR 1956 SC 404, wherein it has been held as under:

—11. This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are —especially|| within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word —especially|| stresses that. It means facts that are pre-eminently or exceptionally within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts

outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried.

These cases are Attygalle v. Emperor [Attygalle v. Emperor, 1936 SCC OnLine PC] and Seneviratne v. R. [Seneviratne v. R., (1936) 3 All ER 36]||

38. Applying the above principle, in the present case, it was for the petitioner to prove that the meter had been 'dishonestly' burnt by the respondent. The petitioner, having failed to prove the same, cannot shift this burden on the respondent by placing reliance on Section 106 of the IE Act.

39. It is also to be remembered that a decision of acquittal, strengthens the presumption of innocence in favour of the accused. At the same time, the appellate court, while considering a leave to appeal, has a duty to satisfy itself if the view taken by the trial court is both possible and plausible. The principles guiding the Court in such situations has been succinctly stated by the Supreme Court in **Anwar Ali & Anr. v. State of Himachal Pradesh**, (2020) 10 SCC 166, as under:-

—14.2. When can the findings of fact recorded by a court be held to be perverse has been dealt with and considered in para 20 of the aforesaid decision, which reads as under: (Babu case [Babu v. State of Kerala, (2010) 9 SCC 189])

—20. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (Vide Rajinder Kumar Kindra v. Delhi Admn. [(1984) 4 SCC 635], Excise & Taxation Officer-cumAssessing Authority v. Gopi Nath & Sons [1992 Supp (2) SCC 312], Triveni Rubber & Plastics v. CCE [1994 Supp (3) SCC 665], Gaya Din v. Hanuman Prasad [(2001) 1 SCC 501], Arulvelu [Arulvelu v. State, (2009) 10 SCC 206] and Gamini Bala Koteswara Rao v. State of A.P. [(2009) 10 SCC 636]|| xxx||

40. In light of what has been noted above, this Court finds that the petitioner has not been able to make out any ground to grant leave to appeal to the petitioner against the Impugned Order.

41. Resultantly, the leave petition alongwith pending applications is dismissed. There shall be no order as to costs.

*Disclaimer: Always compare with the original copy of judgment from the official website.