

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**Crl. Acq. Appeal No.226 of 2018**

Date	Order with signature of Judge
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For hearing of main case.

**Present: Mr. Justice Nazar Akbar**

Petitioner : M/s K-Electric Ltd.  
Through Mr. Shoukat Iqbal, advocate.

Respondent No.1 : Shafiq-ur-Rehman. (Nemo)

Respondent No.2 : Saif-ur-Rehman. (Nemo)

Respondent No.3 : The State. (Nemo)

Date of hearing : 21.05.2018

Date of decision : 21.05.2018

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**ORDER**

**NAZAR AKBAR, J:-** This Crl. Acq. Appeal is directed against the order dated **05.3.2018** passed by the learned VIIth Civil Judge and Judicial Magistrate, Central Karachi in case No.1635/2014 arising out of FIR No.41/2014 U/S 39/39-A of Electricity Act, 1910 R/W Section 379/109 PPC, registered at P.S FIA EGOA at NR3C, Karachi.

2. Brief facts of the case are that on **20.6.2014** at day time a raid was conducted by the FIA at Dubai Plastic Industry (D.P.I) Ground Floor 12/8, Golimar No.02, Firdous Colony, Karachi in which Respondents No.1 and 2 found to have committed theft of electricity from main service connection of K-Electric by using Hook/Kunda through 04 core cable, as reported by one Aamir Ahmed Shaikh (Manager) (RPR) I.B.C Nazimabad, K-E, Karachi.

3. After completion of investigation the FIA officer/IO submitted report U/s 173 Cr.P.C i.e Challan against Respondents No.1 and 2/ accused U/s 39/39-A Electricity Act 1910 R/W Section 379 PPC for

trial of Respondents No.1 and 2. One accused Shafiq-ur-Rehman was arrested and the other accused Saif-ur-Rehman got pre-arrest bail from the Court of IIIrd ADJ, Central Karachi.

4. Formal charge was framed U/S 242 Cr.P.C vide (Ex.2) and plea of Respondents No.1 and 2 were recorded vide Ex.2/A to 2/B respectively. They pleaded not guilty and claimed to be tried.

5. In order to prove its case, prosecution examined seven witnesses i.e **PW-1** complainant Ameer Ahmed at Ex-3, he produced copy of complaint at Ex-03-A, copy of notice at Ex 03-B, SIR copy of Site Inspection Report at Ex-03-C, and copy of FIR at Ex-03-D. **PW-2**, Musher, Abdul Rehaman at Ex.4. **PW-3**, Masher/MIO Fahad Ali at Ex.5, he produced memo of seizure at Ex:05-A. **PW-4**, I/O SIP Ahmed Khan as Ex.06, he produced memo of arrest at Ex 06-A, copy of pay order and cheques at Ex.06-B to 06-E. **PW-5**, MIO, Ikhlaq Hussain at Ex.07. **PW-6**, Mushir Private witness namely Muhammad Noman at Ex.08. After examination of all witnesses the prosecution closed its side at Ex.-09.

6. The statement of Respondent No.1 and 2 were recorded at Ex.10 and 11 wherein all the incriminating evidence were put to the Respondents No.1 and 2. In their statement U/S 342 Cr.P.C Respondents No.1 and 2 have stated that they have falsely been implicated in the case and they have no concerned with the theft of Electricity. They stated that they were not available at the time of raid conducted by FIA. They claimed to be innocent and prayed for justice.

7. After examination of witness and hearing learned counsel for the parties, learned VII-Civil Judge and Judicial Magistrate, Karachi Central, acquitted both the Respondents by extending them benefit of

doubt U/s 245(I) of Cr.PC. thereafter the appellant/K-Electric has filed instant Cr. Acq. Appeal against the said order.

8. I have heard learned counsel for the appellant and perused the record.

9. From perusal of record and evidence of the parties, it appears that this was case of no evidence for prosecution against Respondents No.1 and 2. The following observation of trial Court are worthy of taking note of:-

It appears that case property produced before court was not in sealed condition. If case property especially 50 mm wire that was recovered from incident place were not sealed at their respective place of recovery then possibility of tampering with the said piece of evidence cannot be ruled out for simple reason that wire/cable might be manipulated.

It is pertinent mention here that accordingly k-electric team took the photographs of the illegal connection i.e. kunda/hook that was directly connected to main line before meter connection. That items i.e. two cables one was 50 MM core cable of 10 meter length, and other was 35 MM, core cables 15 meter in length. Those photographs are not produced by prosecution before court. It is further observed that meter was installed at incident place accused persons paid monthly bill approximately up to Rs.150,000 to k-electric company.

It appears that Investigation officer did not conduct site inspection of the incident place; he also did not prepare site sketch / map of the incident place to show the structure of premises.

It appears that incident place i.e. industry building is comprised of three to four floors. Only one floor is used by the plastic industry while remaining portions i.e. floors are used by the tenants for residential purpose. It is not in clear in charge sheet that which floor of the premises used the kunda/hook of electricity for theft purpose.

It also appears that meter installed at said premises having consumer number AP 063523 is not in the name of the accused persons,

investigation officer did not investigate from that person who owned that meter.

It is admitted by the investigation officer and k-electric team MIO officer that notice u/s 20 of the electricity act 1910 was handed over to Muhammad Noman who was just employee of the plastic industry. They also admitted that at the time of raid accused persons were not present.

10. In view of the above observation, the learned trial Court has rightly acquitted Respondents. Accordingly, instant Crl. Acq. Appeal is dismissed. Consequently, impugned order dated **05.3.2018** passed by the learned VII Civil Judge and Judicial Magistrate, Karachi Central is upheld.

JUDGE

*Ayaz Gul/PA*