

(4)

IN THE COURT OF THE XI METROPOLITAN MAGISTRATE AT SECUNDERABAD

PRESENT: SRI. S. P. ISMAIL, B.A., B.L.
XI METROPOLITAN MAGISTRATE

DATED THIS THE 4th DAY OF MARCH 1997

CALENDAR CASE NO: 157/95

Between:-

The State through the Inspector of Police .. Complainant
Vigilance & A.P.T.S., APSEB, Vidyut Soudha, Hyd.

And

1. Radhe Shyam s/o. Lodharam, 38yrs Accused
R/o: 19/1, Paiga colony, Secunderabad.

Offence: Under Section 39 & 44 of I.A. Act

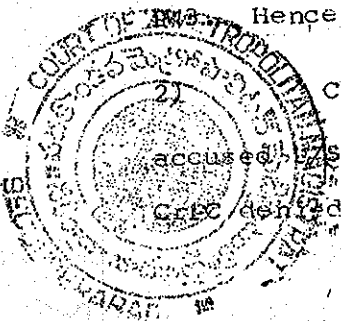
This case is coming for final hearing before me on 28.2.97 in the presence of Sri. A.P.P. for the state and of Sri. Kasim Saheb, Advocate for the accused, upon considering the material on record and hearing both sides the court delivered the following:-

J U D G M E N T

1). The Inspector of Police, Vigilance & APTS, APSEB, Vidyut Soudha, Hyd. led a charge sheet against the accused that on 27.2.93 PW1 inspected ^{the} premises of the accused, ^{i.e. 12} sailor Inn (Bar & Restaurant) and found the accused was indulging in theft of energy by meddling the meter and suppressing the meter recording by tampering meter box seal, cover seals and removing the TC Seal. Due to which board sustained a loss of Rs. 3,75,948-25. On a report a case in Cr.No. 17/95 was registered. During the course of investigation the accused was arrested and remanded to judicial custody. The Investigation Officer (PW4) examined PW1 to Hence the charge.

Copies of the documents were furnished to the accused u/s 207 CrPC. The accused when examined u/s 251 denied the offence.

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3) The prosecution in all examined PW's 1 to PW4 and got marked Exs.P1 to P6 and MO's 1 to 3.

4) The accused when examined U/S 313 CrPC, denied the incriminating material available against him and examined no defence witness on his behalf.

5) The point for consideration is, whether the prosecution has proved its case against the accused U/S 39 & 44 I.E.Act beyond all reasonable doubt?

6) The case of the prosecution is that on 29.3.93 at about 1.30 p.m. PW1 along with PW2 and other staff of APSEB inspected the premises of Sailors Inn Bar & Restaurant and found that all the 4 meter seals ^{were} tampered and thereby indulged in pilferage of energy and due to that the board sustained a loss of Rs.3,75,000/-. The prosecution has examined PW1 to PW4 in support of its case. PW1 and PW2 are the Board Officials, PW3 inspected the tampered meter and PW4 is the Investigation Officer.

7) The learned A.P.P. argued that the evidence on record is sufficient to bring home the guilt of the accused for the offence he stands charged. In contra the first contention of the defence is that there is no proof of the ownership of the premises in question. He also argued that there is a delay of 6 days in lodging Ex.P1 report by PW1 which is fatal to the prosecution case. He lastly argued that the evidence of PW3 the Asst. Divil. Engineer who tested the alleged meter is itself sufficient to water-
down the case of the prosecution.

8) As can be seen from the evidence of PW1 and PW2 that they inspected the Sailors Inn Bar & Restaurant on 29.3.93

the meter

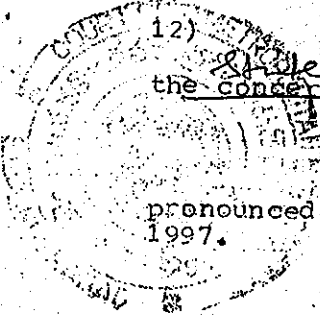
PW3 tested him and opined under Ex.P3 report that on testing the meter found intact. The evidence of PW3 with regard to the allegations of the prosecution that the meter was tampered has waterdown the case of the prosecution. As per the allegations of the prosecution the meter was tampered but whereas PW3 opined that on testing the meter found intact. The evidence of PW3 *gives* against the case of the prosecution. The date of offence is on 29.3.93 and whereas PW3 tested the meter on 18.8.93 i.e. nearly after 5 months of the inspection of the premises by PW1. It was not explained *by* PW1 or PW4, the Investigation Officer have taken such *all* ~~steps~~ in inspecting the meter in question. All these aspects would goes to show that right from the beginging the investigating agency is accommodating the accused very conveniently. The Investigation Officer has not collected the best material which is available for the reasons best known to him. It appears from the record that *the* prosecution right from the begining is not at all interested in prosecuting the case against the accused. The Investigation of PW4 is perfunctory.

10) In view of the aforesaid reasons I have no hesitation to find that the prosecution miserably failed to bring home the guilt of the accused beyond all reasonable doubt-

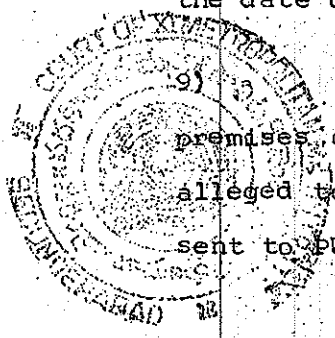
11) IN THE RESULT:- The accused is acquitted U/S 258(1) CrPC for the offence U/S 39 & 44 of I.E.Act and his bail bonds shall stands cancelled.

12) The property MO's 1 to 3 is *shall be consigned to* already returned to *state after appeal held to me.* the concerned police ~~(i.e. APT3)~~ and that order holds good.

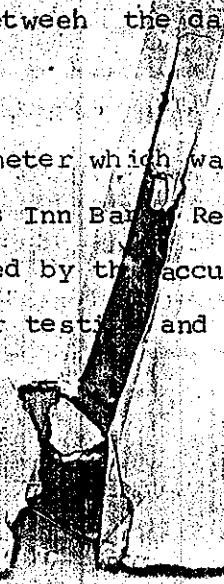
Dictated by *[Signature]* transcribed by steno, corrected and pronounced by me in the open court, this the 4th day of March 1997.



around 1.30 p.m. According to them they found all the meter seals were tampered and there is no seal to the terminal cover of the meter. They further stated that the accused indulged in pilferage ~~xxx~~ of energy and sustained loss to the Board to about 3.75,000/-. According to them they one P.C.Modi is the owner of the premises in question and that the accused has taken the said premises on lease to run the said Bar & Restaurant. If so, the prosecution ought to have ~~filed~~ the lease deed which is the best piece of evidence to fix the accused that he is running the Bar & Restaurant. But for the reasons best known to the prosecution they have not taken steps to file the said lease deed. Unless the owner of the house gives consent no licence to run Bar & Restaurant will be given by Excise authorities ~~to run it~~ as per the rules framed under Excise Act. The Investigation Officer did not take any steps to file the important document to fix the accused about the possession of the premises in question. Apart from it, there is ^aunexplained delay of 6 days in lodging Ex.P1 report by PW1 to PW4 which was not explained. The date of inspection in this case ^{is} on 29.3.93 and the date of report is 3.4.93. Even if PW1 walks ~~xxx~~ ^{is} the entire city he might have traced PW4 within 24 hours, but whereas he took nearly 6 days to trace him, ~~this aspect~~ there is no explanation from him ^{on this aspect}. Therefore, much water might have been ~~flooded~~ ^{blown} in between the date of inspection and the date of report.



The ~~alleged~~ meter which was seized from the premises of the Sailors Inn Bar & Restaurant which was ^{been} alleged to have tampered by the accused was inspected sent to PW3, the ADE for test and report. Accordingly



**APPENDIX OF EVIDENCE
WITNESSES EXAMINED**

FOR PROSECUTION

FOR DEFENCE

PW1 : Sri. M.Chimanjeevi, Board official	NIL
PW2 : Sri. J.Narsimha Rao	"
PW3 : Sri.B.Padmanabham, Inspected the tampered meter	
PW4 : Sri.Venkatanarayana, I.O.	

EXHIBITS MARKED

Ex.P1 : Inspection report
Ex.P2 : Complaint
Ex.P3 : Report
Ex.P4 : F.I.R.
Ex.P5 : Seizure report
Ex.P6 : Sketch

MATERIAL OBJECTS MARKED

M01 : Meter along with wire
M02 : Current transformer
M03 : Sealed cover containing seals

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