

(1937) 09 PAT CK 0022

In the Patna High Court

Bhagalpur Electric Supply Co., Ltd.

APPELLANT

Vs

Hari Prasad Sahay and Others

RESPONDENT

Date of Decision : 02-09-1937

Acts Referred:

Electricity Act, 2003 — Section 2, 37, 44, 50

Citation : 172 Ind. Cas. 940

Hon'ble Judges : Rowland, J

Bench : Single Bench

Judgement

Rowland, J.—This is an application to revise an order of acquittal by a Magistrate of the First Class, against which the Sessions Judge has refused to send a reference to the High Court. The proceeding was a complaint of offences punishable u/s 44(c), Electricity Act (Act IX of 1910) and Rule 106 of the Rules framed under that Act. The complaint was presented in the name of the Bhagalpur Electric Supply Co., Ltd. by Mr. K. N. Makhija, the Resident Engineer of the Company. Before presenting the complaint he had written to the Managing Agents of the Company to authorize him to prosecute, and a letter from them authorizing him to prosecute was received by him and was filed in Court after he had presented the complaint. The Sub-Divisional Magistrate entertained the complaint and issued processes: but the trying Magistrate thought that the complaint was not entertainable because of the provisions of Section 50 of the Act, which says that:

No prosecution shall be instituted against any person for any offence against this Act or any rule, license or order thereunder, except at the instance of the Government or an electric Inspector, or of a person aggrieved by the same.

2. The argument for the petitioner is that Mr. Makhija, who is the Resident Engineer and is the principal officer of the Company in charge of the management of their business at Bhagalpur, is a person aggrieved by the offence alleged to have been committed. I have no doubt that the person who is directly in charge of the property of the Company in Bhagalpur is within the description

of the "person aggrieved" by any offence against the Company, or by any tampering with its meters, or wrongful appropriation of electric current. As explained in *Vishwanath Vs. Emperor*, by a Division Bench of the Allahabad High Court, when a responsible officer of a Company reports an offence to the Police and a prosecution is thereupon set on foot, that will be considered to be a prosecution instituted at the instance of the Company. The learned Judges said:

We think that the Legislature meant only that a prosecution should not be instituted by some independent busy-body who had nothing to do with the matter.

3. The first ground, therefore, on which the Magistrate held that the prosecution is illegal is manifestly untenable. The next ground on which it was contended before the Magistrate that the prosecution could not go on was that Rule 106 of the Rules under the Electricity Act, is ultra vires of the rule-making power conferred by Section 37(4) of the Act. The Magistrate cited a decision of the Rangoon High Court in which it was so held, and one of the Judicial Commissioner's Court at Nagpur in which the decision was otherwise, but has not expressed an opinion as to whether the Rule is ultra vires or not. The ground given in the Rangoon decision that the Rule is unreasonable is, in my opinion, a somewhat dangerous ground, and I note that in a Lahore case a conviction under Rule 106/37 (4) was affirmed : *Mohammad Sadiq v. Delhi Electric Supply & Traction Co.* AIR 1929 Lah. 867 : 116 Ind. Cas. 889 : (1929) Cr.Cas. 601 : 30 Cri.LJ 702 : Ind. Rul. (1929) Lah. 601. The Magistrate, however, addresses himself to the question of whether the accused are "consumers" under the Rule, and holds this not to be proved without apparently referring to the definition of "consumer" in Section 2(c) of the Act. The definition includes any person who is supplied with energy by a licensee, and any person whose premises are for the time being connected for the purposes of a supply of energy with the works of a licensee. Prima facie, it should be enough to prove either that energy was supplied for the use of the accused, or that the accused were owners or occupiers of premises connected up with the licensee's electric system. To this question the Magistrate has not applied himself. He seems to have thought that there would be something incongruous in holding that all five accused were consumers of energy supplied to a shop, when one of them is a Lawyer and another a Doctor : but if the prosecution establish that they are within the definition, that reasoning would not be to the point. There is evidence that the five accused are members of a joint family and the joint proprietors of the shop, and the Magistrate has not said whether he accepts that evidence or not. Even if the Lawyer and the Doctor brothers are not consumers, the Magistrate has not explained how the other three brothers fail to come within the definition. The Magistrate does not appear to have discussed the prosecution evidence which showed that offences u/s 44 and Rule 106 had been committed, but has acquitted apparently on the view that assuming them to have been committed, the accused are not shown to have been consumers. He has not, therefore, really tried the matters which were for his decision, having failed to appreciate the law

which he had to apply.

4. The acquittal will be set aside and retrial of the accused ordered. Should it result that all the accused turn out to be within the definition of "consumers", I express no opinion as to whether they are liable to a greater amount of fine than can under the Act be imposed on a single consumer. Without restricting the discretion of the District Magistrate, it is suggested that, the trial may take place before another Magistrate who will approach the matter with a fresh mind.