
(1980) 10 MP CK 0031
In the Madhya Pradesh High Court

Jhalkan Singh and Another	Vs	APPELLANT
The state of Madhya Pradesh		RESPONDENT

Date of Decision : 06-10-1980

Acts Referred:

Electricity Act, 1910 — Section 39, 50
Penal Code, 1860 (IPC) — Section 109, 379

Citation : (1981) CriLJ 1230 : (1981) 26 MPLJ 409

Hon'ble Judges : M.D. Bhat, J

Bench : Single Bench

Judgement

M.D. Bhat, J.

The applicant-accused Jhalkansingh having been convicted u/s 39 of the Indian Electricity Act read with Section 379 of the IPC and the other applicant-accused Sumer, having been convicted u/s 39 of the Electricity Act read with Section 379/109 of the I.P.C. and each having been sentenced to pay the fine of Rs. 250/- and in default of fine, one month's S.I. by both the Courts below, present revision is now preferred against the same.

On 14-1-1976. meter reader Bhandari h?d gone to the tube well of the applicant-accused Jhalkansingh. In the cover of the meter, a hole was found and one wooden piece was found inserted and meter at that time was not recording the consumption of energy, although the tube well, at the relevant time, was in operation. At the relevant time. Jhalkansingh was not present, but the other applicant-accused Sumer was present who took out the inserted piece of wood and threw it away. Seizures were duly made and on the written complaint of the officer-in-charge of the M.P. Electricity Circle Gadawada. both the applicants-accused were put up for trial for the offence for which they have been convicted and sentenced. The applicants-accused took the plea of alibi. The trial Court convicted and sentenced both applicants-accused. Appeal preferred by them was also dismissed and hence now, their present revision.

The learned Counsel for the applicants-accused has urged before me that the

F.I.R. in the case, being delayed, does not deserve reliance. It is, next, urged that institution of the prosecution in the instant case has not been made by the proper person as enjoined by Section 50 of the Electricity Act. It is also urged that the conviction, as made, was bad in law. inasmuch as, conviction could not be made both u/s 39 of the Electricity Act and u/s 379 of the Penal Code. It is also urged that the applicants-accused could not be punished twice, inasmuch as, the applicant-accused Jhalkansingh has already been penalised by imposition of fine of Rs. 817.92 p.

I have considered the arguments pressed before me. So far as the grievance regarding the delay in lodging the F.I.R. is concerned, it is without any substance. The original written report of the officer-in-charge of the M.P. Electricity Circle Gadarwada is on record. It is dated 18-1-1976. This report is addressed to the police station Gadarwada and had been prepared four days after the incident. There are many endorsements on the body of this report showing certain actions on the part of the officers in verifying the truth of the report. It is on the basis of this report that the Police Inspector Gadarwada is found to have prepared the F. I.R. incorporating therein all the contents of the written report of the officer-in-charge M. P. Electricity Circle, Gadarwada. The report is not delayed at all. and does not create any suspicion whatsoever in the matter of contents therein. Suspicion is equally set at rest after considering the other documents which had been prepared on the very date when the meter was checked on 14-1-1976. One such document is Ex. P-3 signed by the applicant-accused Jhalkansingh himself.

Now, there are concurrent findings of both the Courts below on the material points that the meter had been tampered with. It has been held by both the Courts below that on checking of the meter by the meter reader Bhandarl- on the relevant date, the tube well was actually working at the relevant time. The seal of the meter was intact but a hole was made in the body of the meter and one wooden piece was found inserted therein, with the result that the meter was not working and was not recording the consumption of the electrical energy which it should have normally done, since the tube-well at the relevant time was running, The tube well, admittedly, was of the ownership of Jhalkansingh. who, at the relevant time, was not present. His servant viz. the other applicant-accused Sumer was present at the place. The tube well and the field in question, being admittedly of the ownership of Jhalkansingh and the meter which was thus found tampered with, being in the control and custody of the consumer viz. Jhalkansingh, it was legitimate for the Courts below to infer that it was the consumer viz. Jhalkansingh who was responsible for bringing into existence such an artificial means or device for abstraction of electrical energy because he was the person who really stood to profit by such dishonest abstraction. (See Ranjit Kumar Ghose Vs. Secretary, Indian Psycho-Analytical Society and Others,).

Both these applicants accused, therefore, in the circumstances as actually found at the time of checking, were guilty of dishonest abstraction of electrical energy

(See Jagarnath Singh Vs. B.S. Ramaswamy, . In the present case, it was the introduction of the resistance i.e. introduction of such friction by means of artificial piece of wood that the free movement of the meter had been impeded, leading to dishonest abstraction of electrical energy. There is no scope for interference in the above concurrent findings of the Courts below.

Now coming to the question as to what offence has actually been made out, the Supreme Court after reviewing the matter, has finally settled all the conflicting views of the various High Courts and has held in Avtar Singh Vs. State of Punjab, that dishonest abstraction of electrical energy has been made an offence by a fiction created by Section 39 of the Indian Electricity Act and consequently it is this section which makes dishonest abstraction of energy, an offence. The offence so created by fiction u/s 39 of the Electricity Act has to be followed to the end and the offence so created entails the punishment mentioned in the Indian Penal Code for that offence (See Avatar Singh v. State of Punjab (supra). It therefore follows that in the instant case, the offence committed is u/s 39 of the Electricity Act. the offence being punishable as a theft within the meaning of the Indian Penal Code. Now for successful prosecution for such an offence, institution of the prosecution has to be at the instance of the person named in Section 50 of the Electricity Act.

The question that now has to be finally considered is whether, in the instant case, institution of prosecution has been made at the instance of proper person as enjoined by Section 50 of the Indian Electricity Act. The F. I.R., in the instant case is found to be lodged by the officer-in-charge of the M. P. Electricity Circle, Gadarwada. It has been held in Bhagalpur Elec. Supply Co., Ltd. v. Hari Pd. Sahay. AIR 1938 Pat 51: (39 Cri LJ 206) that if the Resident Engineer or any person in charge of the affairs of the company makes a complaint or a prosecution is started at his instance, such a person would equally come within the definition of a person aggrieved, as required by Section 50 of the Electricity Act. This also seems to be the view of the Supreme Court, which has confirmed the Patna view (See Ram Chander Prasad Sharma Vs. State of Bihar and Another, . In the instant case, the aggrieved person viz. the officer-in-charge of the Electricity Circle Gadarwada had initiated the complaint on the strength of which the State has prosecuted the applicant-accused. Therefore, the prosecution, in the instant case, is found to be properly instituted. Thus, there is no illegality or irregularity in the procedure, in the matter of trial of the applicants-accused. Both the applicants-accused viz. the Master and the servant, are found to have committed the offence u/s 39 of the Electricity Act, liable for punishment as deemed to have committed the offence of theft within the meaning of the Indian Penal Code. Therefore, convictions of the applicants-accused u/s 39 of the Electricity Act read with Section 379 of the IPC for purposes of punishment are found to be proper. Conviction and sentence do not call for any interference. This case, by no stretch of imagination, calls for any leniency so as to afford the applicants-accused the benefit of Probation of Offenders Act. Question of punishment twice over does not arise, since. Rs.

817.92 p. had been paid not as fine but as dues of electricity charges.

In the result, thus, the revision is dismissed and the order of conviction and sentence as passed by the lower appellate Court is maintained in toto.