

(1946) 07 PAT CK 0002

In the Patna High Court

Jokhiram Mahesika and Another

APPELLANT

Vs

Bhagalpur Electric Supply Co. Ltd.

RESPONDENT

Date of Decision : 03-07-1946

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 192, 242, 247

Citation : AIR 1947 Patna 339

Hon'ble Judges : Ray, J;Bennett, J

Bench : Full Bench

Judgement

Bennett, J.—The petitioners, Jokhiram Mahesika and his son Ram Prasad Mahesika have been convicted by a Magistrate of the first class of an offence under Rule 124, Indian Electricity Rules, 1937, and sentenced to pay a fine of Rs. 200 and in default of payment to one month's rigorous imprisonment, and also in respect of a continuing breach of the said Rule, to a daily fine of Rs. 10 each from 27-4.1945, until the said breach is removed. On appeal the learned Sessions Judge of Bhagalpur confirmed the convictions and sentences.

2. It will be convenient first to set out the relevant provisions of the Indian Electricity Act, 1910, and of the Indian Electricity Rules, 1937, made thereunder. Section 2, and sub paras. (A), (f), (i) and (1) of the Act are as follows:

2. In this Act, expressions defined in the Indian Telegraph Act, 1885, have the meanings assigned to them in that Act, and unless there is anything repugnant in the subject or context,--

(a) "aerial" line, means any electric supply line which is placed above ground and in the open air:

* * * *

(f) "electric supply-line" means a wire conductor or other means used for conveying, transmitting or distributing energy together with any casing, coating, covering, tube, pipe or insulator enclosing, surrounding or supporting the same

or any part thereof, or any apparatus connected therewith for the purpose of so conveying, transmitting or distributing such energy.

* * *

(i) "main" means any electric supply-line through which energy is, or is intended to be, supplied by a licensee to the public:

* * *

(1) "Service-line" means any electric supply line through which energy is, or is intended to be, supplied by a licensee: (i) to a single consumer either from a distributing main or immediately from the licensee's premises, or (ii) from a distributing main to a group of consumers on the same premises or on adjoining premises supplied from the same point on the distributing main.

Section 50 of the Act provides:

50. 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.

Rule 2, Sub-rule (2), Electricity Rules, 1937, provides:

(2) In these rules other words and expressions have the same meaning as are assigned to them in the Act.

Rule 5, Sub-rule (4) thereof provides:

(4) An Inspector may serve an order in the form set out in Annexure VIII upon any licensee, non-licensee, consumer or occupier, calling upon him to comply with any specified rule and the person so served shall thereupon comply with the order within the period named therein, and shall report in writing to the Inspector when the order is complied with:

Provided that, it within that period an appeal is filed against the order the appellate authority may suspend its operation pending the decision of the appeal.

Rule 69 thereof provides:

69 Height from ground and distance from buildings "(1) Every conductor of an aerial line (not being a trolley-wire or a traction feeder on the same support as trolley-wire) shall be (a) at least 20 feet above the ground where it is over any part of a street or other public place: (b) inaccessible, either from ground or from any building or structure, whether permanent or temporary, except by the aid of ladder or other special appliance.

(2) Where an aerial line is on a consumer's or an owner's premises, the height of every conductor from the ground or from any mineral or refuse dump and from parts of buildings or structures to which persons have access, shall unless the conductors are adequately guarded, be not less than 15 feet or such greater

height as may be necessary to prevent danger.

(3) The owner of the aerial lines shall be responsible for ensuring that the provisions of Sub-rules (1) and (2) are observed.

Rule 70 thereof provides:

70 Erection or alteration of buildings. (1) If, at any time subsequent to the erection of an aerial line any person proposes to erect a new building or structure, whether permanent or temporary or to make in or upon any building or structure any permanent or temporary addition or alteration he shall, if such building, structure, addition or alteration would, during or after construction, result in a contravention of the provisions of Sub-rule (1) or Sub-rule (2) of Rule 69 give notice in writing of his intention to the owner, and to an Inspector, and shall furnish therewith a scale drawing showing the proposed building, structure, addition or alteration and the scaffolding required during its construction:

Provided that the owner may, before so altering the aerial line, require the person from whom the notice was received to deposit the estimated cost of such alteration.

(2) On receipt of such notice the owner shall, without undue delay, so alter the aerial line as to ensure that it will not be accessible in such a manner as to contravene the provisions of Sub-rule (1) or Sub-rule (2) of Rule 69 either during or after construction and shall be entitled to recover, from the person from whom the notice was received, the cost of such alterations which shall be deemed to include the following items, namely:

(i) the cost of additional material used on the alteration; (ii) the wages of labour employed in effecting the alteration; (iii) supervision charges to the extent of 15 per cent of item (ii); and (iv) any charges incurred by the owner in complying with the provisions of Section 16 in respect of such alterations.

(3) No work upon the building, structure, addition or alteration shall be commenced until the Inspector has certified that neither during nor after construction the provisions of Sub-rule (1) or Sub-rule (2) of Rule 69 will be contravened;

Provided that an Inspector may, if he is satisfied that the aerial line has been so guarded as to secure the protection of persons and property from injury or risk of injury, permit the work to be executed prior to, or, in the case of a temporary addition or alteration, without the alteration of the aerial line

and finally Rule 124 thereof provides:

124. Penalty for breach of rules. Whoever, being licensee or non-licensee or consumer or authorised person, or the agent or manage of a licensee, non-licensee or consumer commits a breach of these rules or, being a person specified in Rule 70(1) commits a breach of that rule, shall be punishable for every such breach with fine which may extend to three hundred rupees, and in

the case of a continuing breach with a further fine which may extend to fifty rupees for every day after the first during which the breach has continued.

3. The particulars of the alleged offence were stated to the petitioners by the learned Magistrate u/s 242, Criminal P.C., in the following terms:

You have been building a house in close proximity to the electric line of the Bhagalpur Electric Supply Company's line which is easily accessible without the necessary consent.

4. The facts of the case as proved in the evidence at the trial were that on 26th April 1945, the petitioners wrote to the Resident Engineer of the Bhagalpur Electricity Company Limited (to whom I shall hereinafter refer as "the complainant") as follows:

We draw your attention to the fact that in Sujaganj on D.N. Singh Road a building is under construction which is nearing completion. Just in front of the way out of the said building there stands the electric pole which is likely to cause an accident by giving injury to the concerned at the time of coming in and going out. We, therefore, request you to kindly have the said electric pole removed from there to any other nearest place considered convenient.

Thanking you and requesting the favour of your compliance at an early date.

It is to be observed that this letter was in no sense a notice under Rule 70(1) of the Indian Electricity Rules, 1937. It related solely to the removal of a pole for reasons which had no relation whatsoever to the possible accessibility of the structure in question to any aerial line. On 28th April 1945, the Resident Engineer replied as follows:

With reference to your letter No. 639/46 dated 26th April 1945, please see that in constructing the building, you do not contravene the Indian Electricity Rules.

With regard to the shifting of the pole, I regret, that this cannot be done at any rate, not during the summer months, as it will interfere with the working of fans in the Bazar,

5. The Resident Engineer clearly understood the petitioners' letter of 24th April 1945, in the sense I have above mentioned and did not take it to refer to any possible accessibility to any aerial line. The refusal to remove the pole for the reasons mentioned until after the summer merely to facilitate access to the building does not appear to me to have been entirely unreasonable. The Resident Engineer very properly opened this letter by a warning as to the possible contravention of the Indian Electricity Rules. In spite of this warning, however, the petitioners continued with the building and on 4th May 1945, the complainant Company's Meter Inspector reported to the Resident Engineer as follows:

For your information I beg to report that Messrs Sobharam Jokhram have enclosed the stay wire of pole No 194 Mansurganj Road by an iron structure

fitted on the first floor for ceiling purpose and the construction has come to such a height that the service wires can easily be touched from the first floor of the buildings.

On receipt of this report the Resident Engineer wrote to the complainant Company's Electrical Engineer on 6th May 1945, as follows:

I beg to report that Messrs Sobharam Jokhram Sujaganj are constructing a new house in Sujaganj Bazar, in close proximity of this Company's Mains, and there is possibility of B. 69 of the Indian Electricity Rules being contravened. Kindly take necessary action in the matter.

On 10th May 1945, the Electrical Engineer wrote to the petitioners as follows:

It is understood that you are constructing a new "building at Sujaganj Bazar in close proximity to the Electric Supply mains of the Bhagalpur Electric Supply Co. Ltd. without giving notice of your intention to the undersigned as well as to the Bhagalpur Electric Supply Co. Ltd. and furnishing therewith a scale drawing showing the proposed building or structure and the scaffolding required during construction.

A notice under Indian Electricity B. 5(4) is therefore served on you for immediate compliance.

You are also warned not to proceed with the building work until all the conditions of relevant Indian Electricity Rules, are fulfilled.

The terms of the notice enclosed with the Electrical Engineer's letter of 10-5-1945, were as follows:

Order under Rule 5 of Sub-rule (4), Indian Electricity Rules, 1937.

Whereas it appears to me that you have not complied with Rule 70, Indian Electricity Rules, 1937, in the following respects, namely that you are constructing a new building in Sujaganj Bazar in close proximity to the Electric Supply lines of the Bhagalpur Supply Co. without giving notice and furnishing therewith a scale drawing showing the proposed building structure, and the scaffolding required during construction you are hereby called upon to comply with the said rule on or before 21-5-1945 and to report compliance in writing to me.

2. An appeal may be filed against this order under B. 5,(4) Indian Electricity Rules within three months of the date on which this order is received by you; but" this order must be complied with, notwithstanding such appeal, unless the appellate authority on or before the date specified in paragraph 1 above suspends its operation.

6. It is perhaps relevant to note in passing that though in his letter the Electrical Engineer refers to the erection of the building in close proximity to the Company's mains, yet the notice clearly refers to the complainant Company's

supply-lines which include, of course, both the mains and the service-lines. No appeal against the order contained in the notice was lodged by the petitioners.

7. On 23-5-1945, nearly two weeks later, the petitioners replied to the Electrical Engineer as follows:

With reference to your No. 5756, date 10-5-45 which was received by us on 15-5-45, we have the honour to say that in our letter dated 26-4-45, we had written to the Resident Engineer, Bhagalpur Electric Supply Co. Ltd., Bhagalpur to do the needful but they in their letter dated 29-4-45, wrote to us in reply that it was not possible for them to do anything in the matter during the summer months; we had sent a copy of our said letter to the Resident Engineer, to you also, but it appears that the same has not been received by your office.

We are again sending the scaled drawing of the proposed construction and in view of the distance of; the Electric Mains it will be clear that the rule will not be contravened and the necessary distance will be maintained.

We hope you will find it in order.

This letter contains statements which are at least of doubtful truth and one of which was quite untrue. It was quite untrue to say that in their previous letter of 26-4-1945, the petitioners had asked the Resident Engineer to do the needful in regard to the aerial line. The needful in regard at any rate to the service lines did not necessarily, or, probably at all, connote the removal of the pole in question. It appears very doubtful whether the statement that the petitioners had sent a copy of their letter of 24-4-1945, to the Electrical Engineer is true. It was certainly never received by him. Similarly, the suggestion that the petitioners had on any previous occasion sent scaled drawings to any representative of the complainant Company appears of doubtful truth.

8. The impression left on my mind by this letter and the delay in reply to the Electrical Engineer's letter and notice of 10-5-1945, is that in the interval the petitioners had taken advice on their position and were building up a defence to a possible suggestion that they had contravened the Electricity Rules, 1937, On 26-5-1945. the Electrical Engineer replied to the petitioners as follows:

Please refer to your letter dated 23-5-45. It appears from the drawing enclosed that there will be contravention of Indian Electricity Rule 69, if the building work is proceeded with.

You are therefore warned not to proceed with the building work until such time as the aerial lines are removed by the Bhagalpur Electricity Supply Co. Ltd. at your cost.

and on the same day he issued the following instructions to his Sectional Officer:

He will please inspect the spot quickly and submit a drawing showing the building work in relation to the aerial lines. He will also please state if any scaffoldings have been put up, and if so, its distance from the nearest aerial conductor.

On 30-5-1945, the Sectional Officer reported to the Electrical Engineer as follows:

With reference to your letter No. 6401, dated 26-5-1945, I have the honour to state that the scaffoldings which were put up near the supply Co.'s M.P. aerial lines have been removed but on the the northern side near the L.P. service-line are still existing. It is stated by the proprietor of the building that all works near the aerial lines have been stopped and drawing showing the building under construction has also been submitted to the B.E. Supply Co. Ltd. and also to you on 28-5-1945. It is also stated by him that he is ready to pay the cost of any alteration required."

A drawing showing the building work and distance from the nearest aerial line conductor to the building and scaffolding is submitted.

The drawing enclosed in this letter shows that any person of ordinary commonsense who had been to the site must have realised that the building and its scaffolding were dangerously accessible to the service-lines running north and south from the polo in front of the building to serve the houses on the north and south of the building under construction.

9. On 8-6-1945, the Resident Engineer wrote to the Electrical Engineer as follows:

With reference to your Memo. No. 6400 of the 26th ultimo, I beg to inform you that the party concerned has not stopped the construction of the building. I think be should be prosecuted at once.

On 16-6-1945, the petitioners wrote to the Resident Engineer requesting him to remove the aerial line at their cost as early as possible. This, of course, is what they should have done before commencing any work on the building and with their request they should have sent the appropriate drawings of the proposed structure and scaffolding. No such drawings were ever sent. On 19-6-1945, the Resident Engineer inspected the building and he found that, in spite of the letter of 10-5-1945, the petitioners had proceeded thereafter with the construction of the building, that Men were working on the premises and that iron rods for unimposed construction had been placed horizontally across the roof of the first floor which reached within 2" of the main aerial lines. On 22-6-1946, the complainant company lodged their complaint alleging, inter alia, that the petitioners in contravention of Rule 70 read with Rule 69, Indian Electricity Rules, 1937, had constructed a building in close proximity to the company's live aerial supply mains (wires) and (sic) so that the service wires could easily be touched from the first floor of the building and had continued the construction of the said building after express warning not to do so.

10. During the trial the learned Magistrate viewed the premises and in his judgment he set out the following findings of fact based upon the evidence as confirmed by his view:

Among the things I noticed the important points worth considering are these:

- (1) Distance from the 1st floor verandah to the electric pole in front of the building (west) is 1 ft. 7 inches horizontally.
- (2) Distance between the 1st floor and the service wire going towards northeast (vertically) is at one place 7 ft. 3 inches and at another place 5 ft. 6 inches. Distance between the northern corner of the 1st floor verandah to the service line, vertically, is 6 ft. 7 inches; Distance between the 1st floor verandah to the south-eastern service line is at one place 5 ft. 8 inches, at a second place 5 ft. 3 inches and at a third place 6 ft. 1 inch. The" service line and an earth wire (which is dead) both overside the northern corner of the 1st floor verandah. These wires are accessible from the 1st floor verandah.
- (3) Distance from the 1st floor and the main wire is vertically 9 ft 6 inches and from the earthwire in the brackets of the pole to the 1st floor is 8 ft. 10 inches. These wires are not accessible from the 1st floor with hand by tall man.
- (4) There is another thick main wire above the one referred to in No. (3) above. This can be accessible from the 2nd floor verandah (roof of the 1st floor is constructed.)
- (5) Iron rods projecting from the wall of the building meant for construction of the 2nd floor verandah which were found bent. I got one of the rods stretched lengthwise and its western end came just up to the main wire the distance between them being barely about 2 inches.
- (6) Southeastern service wire more sloping than the northeastern service wire.
- (7) Stay wire projecting the electric pole enclosed within the portion of the 1st floor verandah.

These facts almost tally with the statements of the P. Ws. made before me.

11. The first point taken by Mr. Sri Narain Sahay who argued the case on behalf of the petitioners is that there was no evidence that the main aerial lines of the complainant company were in fact accessible from any part of the building, that both the learned Magistrate and the learned Sessions Judge had based their judgments upon the finding of fact that the service wires were accessible and that their judgments are consequently wrong in law, firstly, because ch. 8, Indian Electricity Rules, 1937, which contains, inter alia, Rules 69 and 70 thereof, relates solely to main aerial lines and not to mere service lines; secondly, because, in any event, Rules 69 and 70 relate solely to main aerial lines and not to service lines; and thirdly, because the explanation of the charge against the petitioners given by the learned Magistrate u/s 242, Criminal P.C., cannot properly be understood as relating to any thing but the main aerial lines and it was not therefore open to him to convict the petitioners upon what was substantially another charge, relating solely to the service lines.

12. In the exercise of its appellate as of its revisional jurisdiction, this Court is not bound by the findings of fact of the lower Courts, nor is it precluded, if it

considers that the evidence so justifies, from making other and different or additional findings of fact. In my opinion, both the Courts below have erred in the point of time from which they have judged whether or not the petitioners have committed a contravention of Rules 69 and 70, Electricity Rules, in respect of the main aerial lines. The question is not whether any of the main aerial lines are in fact accessible from any part of the building so far as it had been constructed at the date the complaint was lodged, namely, 22-6-1945, but whether at any time prior to that date the petitioners had commenced work upon a building which at some time in the course of its complete construction would be accessible otherwise than by the aid of a ladder or other special appliance to any main aerial wire. That being so, there can be no possible doubt whatever, in my opinion, that on the basis of the first and third, of the fourth and of the fifth findings of fact above-mentioned, the petitioners have committed a contravention of Rule 70(3), Electricity Rules, 1937, in regard to the main aerial lines in at least three different respects.

13. The first contention relied upon by Mr. Sri Narain Sahay, therefore, becomes academic in all three of its aspects and it is unnecessary for me to consider any one of them in any detail. I do not wish to be understood, however, as thinking that there is any substance in them. In my opinion, having regard to their defined meaning, to the otherwise plain and ordinary meaning of the words used therein and to the clear scope and purpose of chap. 8, Electricity Rules, 1937, that chapter and more particularly Rule 69(1)(b) apply equally to main and service I aerial lines. I think, moreover, that the explanation of the charge u/s 242, Criminal P.C., was sufficient *prima facie* to convey to the petitioners that the accessibility complained of was both as to the main and service aerial wires and, having regard to the terms of the complaint and of the written statement put in on behalf of the petitioners at the trial, in both of which documents the main and service lines were separately mentioned, I do not think that it can be suggested that the petitioners were ever under any misapprehension as to the nature of the charge they faced and consequently that there would, in any event, have been any sufficient ground in this respect for interference with the conviction in revision.

14. The second contention urged on behalf of the petitioners was that the complainant company did not appear at the hearing on 29-8-1945, in that Rai Saheb S.C. Ghosh, the Resident Engineer of the Company, who filed the original complaint on 22-6-1945, although present and giving evidence on 29-8-1945, had ceased before that date to be an officer of the complainant company and in that his successor as Resident Engineer of the complainant company, Mr. N.R. Dutt (P.W. 4), did not file an application for permission to represent the company until 1-9-1945, and permission was given only as from that date.

15. It is first to be noted that the order-sheet of 29-8-1945 states, *inter alia*, as follows: "Parties and 3 P.W. present"; and secondly, that no objection was raised until 17-9-1945, and that the objection when made on that day was, according

to the entry in the order-sheet, a general one to the right of Mr. Dutta to represent the complainant company in the absence of Rai Saheb S.C. Ghosh who lodged the original complaint and had previously represented the company and an acquittal on that-ground was sought and not on the ground that the petitioners ought already to have been acquitted u/s 247, Criminal P.C., on 29-8-1945. Mr. Dutta stated in evidence that on 29-8-1945 he was present in Court and had already taken over his duties as Resident Engineer of the complainant company. Neither the learned Magistrate nor the learned Sessions Judge saw any reason to disbelieve his statement. Having regard to the delay in objection, I also think that Mr. Dutta's statement must be accepted and, if it is accepted, it disposes of this contention, because his petition on 1-9-1945 was mere surplusage. He was not bound to ask for or receive permission to represent the company of which he was the responsible officer and his courtesy to the Court in asking for such permission on 1-9-1945 cannot affect the fact of his presence as such responsible officer on 29-8-1945.

16. Finally, so far as the objections to the convictions are concerned, Mr. Sri Narain Sahay, contended that the whole trial was void and without jurisdiction in that on 28-8-1945, the Sub-Divisional Officer made an order u/s 192, Criminal P.C., transferring the case to Mr. R. Prasad, Magistrate of the First Class, for favour of disposal and that on being informed that Mr. Prashad was absent that day, the Sub-Divisional Officer purported to transfer the case from Mr. Prashad to Mr. B. Shankar, the trial Magistrate, merely by crossing out the name of Mr. Praahad and writing thereover the name of Mr. Shankar, without first recalling the case to his own file as required by Section 528(2), Criminal P.C., and without recording his reasons in writing for so doing as required by Section 528(5), Criminal P.C. Mr. Sahay urged upon us very strongly that this was no mere technicality or irregularity, but involved a point of fundamental importance, namely, that once an order or judgment has been-made by a Court or Magistrate, a position of *functus officio* arises and no alteration in such judgment or order can or should in any circumstances be allowed to be made. I would not seek to quarrel with the general principle so stated and I agree that any slackening in the application of that principle would open the door to the gravest abuse, but I do not think that the principle applies to the order here in question for the very simple reason that the Sub-Divisional Officer in relation to that order was not *functus officio*. Section 528(2) expressly gives him power to:

withdraw any case from or recall any case which he has made over to any Magistrate subordinate to him and to inquire into or try such case himself or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

The power of withdrawal and the power of recall are each equivalent to a power of cancellation of the previous order as from the date when the order of withdrawal or recall is made. More-Over, it is, in my opinion, erroneous to suggest that the Magistrate acting u/s 528(2), Criminal P.C., must first recall the

case to himself. That suggestion overlooks the power of withdrawal which is alternative to the power of recall. Omitting the references to the power of recall, Section 528(2), Criminal P.C., reads:

may withdraw any case from...any Magistrate subordinate to him and...refer it...for trial to any other such Magistrate competent to inquire into or try the same.

and that, in effect, is exactly what the learned Sub-divisional Officer did in this case. No doubt he ought to have gone through the motions of making an express order of withdrawal and fresh order of transfer, but it cannot seriously be suggested that his failure to do so amounts to more than an error or irregularity curable u/s 537, Criminal P.C. Similarly, he ought to have recorded his reasons in writing, but it has to be borne in mind that there had been no hearing of the case prior to the transfer to Mr. Prashad and that neither the order of transfer nor the case itself ever reached Mr. Prashad who was never, except notionally, seised of the case. In those circumstances, I have no doubt that the failure of the Sub-divisional Officer to record his reasons in writing amounted to no more than an irregularity curable u/s 537, Criminal P.C. This point was taken for the first time in this Court. I am satisfied that neither irregularity has in fact occasioned the slightest failure of justice and I am bound, therefore, to hold that they afford no reason for interfering with the conviction of the petitioners.

17. In regard to sentence, Mr. Sahay urges three considerations, firstly, that there was no continuing offence and that the daily fine is consequently illegal; secondly, that having regard to the undue delay exhibited by the complainant company in complying with their statutory duty to remove the aerial lines in question, no more than a nominal fine should be inflicted; and thirdly, that the petitioners as partners in the firm of Sobharam Jokhram cannot each be subjected to a fine.

18. The offence of which the petitioners have been convicted is that contrary to the provisions of Sub-rule (3) of Rule 70, Indian Electricity Rules, 1937, they commenced work on a building which would during or after construction result in a contravention of Sub-rule (1) of Rule 69 thereof without the issue of any certificate or permission by the Inspector. That offence appears to me to have been complete when the work was commenced and, having regard to the fact that the onus of remedying any dangerous accessibility to an aerial line is placed by Sub-rule (2) of Rule 70 upon the complainant company, I can find no ground, even if such a construction were otherwise open, for reading Sub-rule (3) of Rule 70 as if it were worded so as to give rise to a continuing offence.

19. It appears that the complainant company have not even yet discharged their obligation of altering their aerial lines. It was urged that the lines were a material exhibit in the case, but I cannot help feeling that at least an application for permission to alter the lines should have been made at the earliest opportunity to the trial Court, and, if only in their own interest, it is certainly most desirable

that the complainant company should remedy the position without further delay. I do not think, however, that the delay by the complainant company constitutes in the circumstances of this case any excuse for the action of the petitioners. They appear to me to have taken no trouble in the first place to ascertain their obligations and when those obligations were pointed out to them, they chose to ignore and to endeavour to escape them.

20. Each member of a firm who is concerned in the commission of an offence by the firm is liable to punishment in respect of that offence, but where, as here, the offence is essentially a single offence, I do not think that their respective liabilities which flow from their association in the firm can or, at any rate, should be extended so as to increase the total punishment beyond the maximum prescribed for the offence. The maximum punishment prescribed for the offence by Rule 124, Indian Electricity Rules, 1937, is a fine of Rs. 300. If both members are to be punished, therefore, their respective fines should not exceed Rs. 150. Considering that both petitioners were liable to the maximum penalty, the learned Magistrate fixed the fine at two-thirds of the maximum and I see no sufficient reason to depart from that proportion.

21. I would, therefore, confirm the conviction of both petitioners but I would alter the sentence upon each of them to a fine of Rs. 100.

Ray, J.

22. I agree.