

(1999) 04 DEL CK 0051

In the Delhi High Court

Case No : Criminal M. (M) No. 2207 of 1998

Madan Lal Ahuja

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 19-04-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438

Electricity Act, 1910 — Section 39, 44

Penal Code, 1860 (IPC) — Section 379

Citation : (1999) 3 AD 430 : (2000) 86 DLT 680 : (1999) 49 DRJ 551 : (1999) 1 ILR Delhi 467 : (1999) 2 RCR(Criminal) 746

Hon'ble Judges : J.B. Goel, J

Bench : Single Bench

Advocate : R.P. Kathuria, for the Appellant; Santosh Kohli, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Goel, J.—This is a petition for anticipatory bail u/s 438 of the Code of Criminal Procedure (for short the "Code") for offence u/s 39/44 of the Indian Electricity Act (for short the "Act") read with Section 379, IPC in Case FIR No. 374/97, P.S. Mukherji Nagar, Delhi.

2. Briefly the facts are that a joint raid was conducted by the team comprising of Officials of Enforcement (Zone 413) of Delhi Vidyut Board (DVB) on 8.9.1997 in some areas including Indira Vikas Colony, Delhi. During the said inspection the petitioner was found to be extracting electricity illegally and unauthorisedly by direct tapping from the DESU lines at premises Nos. 17/1 and 17/2, Indira Vikas Colony, Delhi where he was found to have installed various machines of load of 39.8 KW for industrial use. During raids photographs were taken and the offending material like wires, etc. used were also seized. In due course a report was lodged by Shri R.K. Aggarwal, Assistant Engineer, Zone 413, Dr. Mukherji Nagar, Delhi on the basis of which FIR No. 374/97 was registered at P.S. Mukherji Nagar.

3. The petitioner had approached the Sessions Judge for anticipatory bail but his application was dismissed on 22.7.1998. He has approached this Court.

4. A statement was made on behalf of the petitioner at the time of admission on 30.7.1998 that the petitioner will make payment of reasonable amount provided that a bill is supplied to him. But no payment appears to have been made.

5. I have heard learned Counsel for the parties. Learned Counsel for the petitioner has contended that Section 379, IPC is not attracted as it is not a theft within the meaning of Section 378, IPC as held in Avtar Singh Vs. State of Punjab, . Secondly, that the offence u/s 39/44 of the Act is not a cognizable offence and prosecution could be launched only by a competent person/ Authority as required u/s 50 of the Act and in this case such complaint has not been lodged by such Authority and as such no cognizance could be taken by the police. Whereas learned Counsel for the respondent has not seriously contended that Section 379 is not attracted, however she has contended that an offence u/s 39/44 of the Act is made out and in this case complaint has been lodged by the Assistant Engineer who is so authorised and is also aggrieved person within the meaning of that section. She has relied on certain Circulars issued in this connection by the General Manager/departmental head and some case law.

Section 39 of the Act reads as under:

"39. Theft of energy.--Whoever dishonestly abstracts, consumes or uses any energy shall be punishable with imprisonment for a term which may extend to three years, or with fine which shall not be less than one thousand rupees, or with both; and if it is proved that any artificial means or means not authorised by the licensee exist for the abstraction, consumption or use of energy by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of energy has been dishonestly caused by such consumer."

6. Dishonest abstraction of electricity is by Section 39 of the Act itself made an offence and also punishable under this section itself. It was held in Avtar Singh (supra), that such an offence does not fall u/s 378, IPC and as such Section 379 is not attracted. The fact remains that this offence prima facie is an offence u/s 39/44 of the Act and is punishable with imprisonment up to 3 years or fine or both.

Section 50 of the Act reads as under:

"50. Institution of prosecutions.--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 a State Electricity Board or an Electrical Inspector, or of a person aggrieved by the same.""

7. Since Section 39 create an offence tinder the Act, Section 50 would be applicable and the prosecution in respect of that offence would be incompetent unless it was instituted at the instance of a person named in Section 50. Such

prosecution could be launched at the instance of the Government or an Electrical Inspector or a person aggrieved by the theft.

8. The complaint in the present case has been lodged by Assistant Engineer, Zone 413, Mukherji Nagar. It is not disputed that the premises where the theft of electricity was noticed falls in Zone No. 413 of the DVB area. Section 50 does not say that the prosecution shall be instituted by the Government or an Electrical Inspector or a person aggrieved by the same. It says that the prosecution shall be instituted at the instance of those persons. In *The Hyderabad Vanaspathi Ltd. Vs. The State of Andhra Pradesh*, , the Andhra Pradesh State Electricity Board had instituted proceedings on 10.2.1967 authorising u/s 50 of the Indian Electricity Act the Assistant Engineer concerned to institute prosecution on behalf of the Board in criminal offences including theft of energy. It was held that Section 50 does not say that the prosecution shall be instituted by the Government or an Electrical Inspector or a person aggrieved and it only says that the prosecution shall be instituted at the instance of those person, and the Electricity Board was aggrieved person on account of the theft committed by the petitioner and the prosecution launched at the instance of the Board by Assistant Engineer was proper.

9. Again in *Ram Subhawan and Another Vs. State of U.P.*, , it was held that a person duty bound to make checking of consumption of electricity was an interested person within the meaning of Section 50 and the prosecution initiated on his complaint for an offence u/s 39 must be deemed to be properly initiated and there is no illegality or irregularity in such initiation. In *State (Delhi Administration) Vs. Dharam Pal and others*, , a Division Bench of this Court has also taken the same view. In that case it was held that in a case of theft of electricity supplied by DESU, its General Manager is the aggrieved person within the meaning of Section 50 and he is competent to institute the prosecution. It was further held that Section 50 of the Act does not require sanction or consent of the General Manager if the prosecution is instituted at the instance of the aggrieved person and any person acting in pursuance of the general Circular issued by the General Manager/ departmental head of DESU laying down the procedure how to deal with the prosecution with regard to theft of electric energy will Therefore, be acting at the instance of the General Manager, who is aggrieved person within the meaning of Section 50 and institution of prosecution by the Zonal Manager at the instance of the General Manager would be valid.

10. In the present case the raid for inspection was conducted by the Enforcement Wing concerned of the Delhi Vidyut Board (DVB) headed by the Assistant Engineer (Enforcement). Obviously, Assistant Engineer is the person entrusted with the job of checking and taking effective steps against theft of electricity. He is also an aggrieved person and is competent to lodge the FIR.

11. Learned Counsel for the respondent has also shown the Office Order No. CO.II/P-25/96-97/58 dated 26.2.1997 issued by General Manager/departmental head laying down the procedure to be followed for checking theft, processing the

theft of energy and procedure to deal with the same. Under these instructions also Assistant Engineer of the Zone concerned has been authorised to lodge the FIR in such case. The FIR has been lodged by the Assistant Engineer, Zone 413. The prosecution has thus been launched by a competent person.

12. The petitioner was found abstracting electricity illegally and without any authorisation for industrial use with a load of 39.85 KW. No payment has been made by the petitioner despite the opportunities given by the learned Additional Sessions Judge as well as by this Court. The conduct of petitioner is too recalcitrant and highly against public interest.

13. Taking into consideration the nature and gravity of the offence the increasing incidents of theft of electricity it is not in the interest of public to admit the petitioner to anticipatory bail. This petition is accordingly dismissed.

Interim order is vacated.