
(1997) 09 AP CK 0109

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 1669 of 1997

Nizamuddin

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 12-09-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Electricity (Supply) Act, 1948 — Section 79
Electricity Act, 1910 — Section 39, 41, 43, 44, 50

Citation : (1997) 2 ALD(Cri) 923 : (1997) 2 ALT(Cri) 921

Hon'ble Judges : T. Ranga Rao, J

Bench : Single Bench

Advocate : Vinod Kumar Deshpande, for the Appellant; Public Prosecutor, for the Respondent

Judgement

1. This petition is filed u/s 482 Cr. P.C. to quash the proceedings in CC No. 1345 of 1996 on the file of the III Metropolitan Magistrate, Hyderabad.

2. The facts in giving rise to the filing of this petition are, briefly, as follows :-

The Inspector of Police, Vigilance & Anti Power Theft Squad, Team-II filed charge-sheet against the petitioner alleging that the petitioner herein is having electric service connection in Plot No. 14, Sikh village, Sec"bad, and the Asst. Engineer/ DPE-II, inspected the said premises on 8-4-96 and found that the petitioner is indulging in theft of energy by meddling with meter mechanism and then seized the meter cover under a mediator"s report and gave report to the Inspector of Police, Vigilance, A.P.T.S., who registered a case in Cr. No. 21 of 1996, took up investigation and found that the petitioner caused loss of Rs. 1,76,098/50 ps. to the revenue of Andhra Pradesh State Electricity Board on account of the theft of electrical energy and sought to punish the accused for the offence under Sections 39 and 44 of the Indian Electricity Act, 1910.

3. Now the petitioner filed this petition u/s 482 Cr. P.C. seeking to quash the proceedings to CC No. 1345/1996.

4. The learned counsel for the petitioner submitted that u/s 50 of the Indian Electricity Act, 1910, no prosecution shall be initiated against any person for any offence under the said Act except at the instance of the Government or a State Electricity Board or an Electrical Inspector or of a person aggrieved by the same and the assistant Divisional Engineer, who gave the report is not one of the persons mentioned in Section 50 of Indian Electricity Act and is not competent to initiate prosecution and hence, the proceedings against the petitioner are not maintainable and liable to be quashed and he relied on a decision *Avtar Singh Vs. State of Punjab*, wherein the Apex Court has held as under :-

"..... A theft of electricity is an offence against the Electricity Act and hence, the prosecution in respect of that offence would be incompetent unless it is instituted at the instance of a person named in Section 50 of the Act ..."

He further relied on another decision *Tamilnadu Electricity Board, Tiruttani v. D. K. Kanniappa Mudaliar* 1985 Cri LJ 561 to the same effect.

5. But the learned Public Prosecutor submitted that the State Electricity Board has issued a notification in B.P. (V & S) Ms. No. 8 Dtd. 27-11-1993 in exercise of the powers conferred u/s 79 of Electricity (Supply) Act, 1948 r/w Section 50 of Indian Electricity (Amendment) Act, 1986 authorising all the officers of Assistant Engineer, Additional Assistant Engineer and above rank to institute prosecutions or make complaints to the jurisdictional officers in charge of the Police Stations for instituting prosecutions in respect of the offences under Sections 39, 41, 43 and 44 of the or Rule 56 r/w Rule 138 of the Indian Electricity (Amendment) Act, 1986 and hence, Assistant Engineer is competent to initiate prosecution and she relied on a decision *Hyderabad Vanaspathi Limited Represented by the Director, The Hyderabad Vanaspathi Ltd. Vs. The State of Andhra Pradesh*, .

6. It is useful to extract Section 50 of the Indian Electricity Act, 1910 which reads as under :-

".. No prosecution shall be instituted against any person for any offence against this Act or any rule, licence 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. It is not in dispute that the theft of electrical energy is an offence u/s 39 of the Electricity Act and punishable u/s 44 of the said Act. It is true that u/s 50 of the Indian Electricity Act, 1910, the Government or the State Electricity board or the Electrical Inspector or a person aggrieved by the same are competent to initiate prosecution regarding the offence under the Indian Electricity Act. The Electricity Board in exercise of the powers conferred on it u/s 79 of the Electricity (Supply) Act, 1948 r/w Section 50 of the Indian Electricity (Amendment) Act, 1986, issued notification dated 27-11-1993, referred to by the learned Public Prosecutor. It is relevant to extract the relevant part of the said notification and reads as follows :-

"... In exercise of the powers conferred by Section 79 of the Electricity (Supply) Act, 1948, (Central Act LIV of 1948) read with Section 50 of I.E. (Amendment) Act 1986 (Act 81 of 1986) the Andhra Pradesh State Electricity Board, hereby authorises all the Officers who are incharge of Anti-Power Theft Squad Police Stations, detailed in para 1 above and all Officers of Assistant Engineer/ Additional Assistant Engineers and above rank to initiate prosecution or make complaints to the jurisdictional Officers in charge of Police Stations, for instituting prosecutions when the offences under any of the Sections 39, 41, 43 and 44 of the Electricity Act or Rule 56 read with Rule 138 of the Indian Electricity Rules, 1956 are committed or are reasonably believed to have been committed in their respective jurisdiction"

8. It is manifest from the reading of the above notification, that the Electricity Board has authorised the Assistant Engineers or the Additional Assistant Engineers and above rank to institute prosecutions or make complaints to the jurisdictional Officers incharge of the Anti-Power Theft Squad Police Stations and admittedly, in this case, the Assistant Divisional Engineer, lodged the complaint with the jurisdictional Inspector of Police, Vigilance, who investigated and file the charge-sheet.

9. The learned counsel for the petitioner submitted that the Board cannot delegate its powers to the Assistant Engineers or Additional Assistant Engineers. But I am unable to accede to the submission of the learned counsel. It is not delegation of powers, but it is only authorisation to the Assistant Engineers and Additional Assistant Engineers to give complaints or to launch prosecution. The Electricity Board is a busy body and one cannot expect for each and every theft of energy to give complaint and initiate prosecution by itself. It can authorises certain category or officers to initiate prosecution, in exercise of the powers u/s 79 of the Electricity (Supply) Act, 1948 r/w Section 50 of Indian Electricity (Amendment) Act, 1986 and the initiation of the proceedings by the persons authorised by the Andhra Pradesh State Electricity Board amounts to initiation of the proceedings at the instance of the State Electricity Board and hence, it cannot be said that the persons mentioned in Section 50 of the Indian Electricity Act have not initiated the proceedings and they contravened the said provision of law. The same view was taken by this Court in Hyderabad Vanaspathi Limited's case, third referred to above, wherein it is held as under :-

"... The Police are competent to investigate the case for an offence u/s 39 of the Electricity Act. The Assistant Engineers were empowered by the State Electricity Board to institute prosecution. If so, they can give a report to the Police. When the Police file the charge-sheet, it is really a prosecution at the instance of the Electricity Board, within the meaning of Section 50 of the Act ..."

10. Therefore, in the light of the foregoing discussion and on considering the entire material on record, I have no hesitation in holding that the petitioner failed to establish that the prosecution initiated against him contravening Section 50 of the Indian Electricity Act and hence, the case in CC No. 1345/96 on the file of the

III Metropolitan Magistrate, Hyderabad, is not maintainable. Absolutely, there is no substance in the contention of the learned counsel for the petitioner. The petitioner is not entitled to the relief sought for.

In the result, the petition fails and is accordingly dismissed.

11. Petition dismissed.