
(1983) 09 OHC CK 0019
In the Orissa High Court
Case No : Criminal Revision No. 395 of 1980

Pranabandhu Misra

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 02-09-1983

Acts Referred:

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

Citation : (1984) 1 OLR 67

Hon'ble Judges : P.K. Mohanti, J

Bench : Single Bench

Advocate : S. Mishra 2 and R.C. Rath, for the Appellant; Addl. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

P.K. Mohanti, J.—The petitioner is being prosecuted for an offence u/s 379, I. P. C. on the allegation that he committed theft of electric energy. He prays for quashing the criminal proceeding in G. R. Case No. 87 of 1979 on the ground that it has been instituted in violation of Section 50 of the Indian Electricity Act. That Section reads :

"50. No. prosecution shall be instituted against any person for any offence against this Act or any rule, licence or order there under, except at the instance of Government or an Electrical Inspector, or of a person aggrieved by the same".

2. There can be no doubt that the prosecution was instituted in this case for an offence against the Indian Electricity Act because, u/s 39 of the Act, dishonest abstraction, consumption or use of electric energy is deemed to be theft, within the meaning of the Indian Penal Code.

3. The crucial question for consideration is whether the prosecution has been launched at the instance of one of the persons named in Section 50.

4. Apparently the prosecution has not been started at the instance of the

Government or an Electrical Inspector. P. W. 2 who lodged the First-Information--Report with the police is Sub-Assistant Engineer (Electrical) of the Narsinghpur Construction Division. He is not himself the person aggrieved. There is, no doubt, that the person aggrieved was the Orissa State Electricity Board. The Board could, however, act only through some person.

5. There is nothing to show that P. W. 2 held any power of attorney from the Board or that he was specifically empowered to act on behalf of the Board. During his evidence in Court he did not say that he lodged the First-Information-Report on behalf of the Board. He did not also say that he was in any way responsible for the loss caused to the Board. There is no material on the record to show what functions P. W. 2 has to perform and what his duties and powers are.

6. It was urged on behalf of the opp. parties that when the law is set in motion by a responsible officer for and on behalf of the Board, the prosecution should be regarded as having been instituted at the instance of the Board. Reliance is placed on a decision of this Court in the case of Sadhu Charan Sahu Vs. State of Orissa, In that case F. I. R. was lodged by the Executive Engineer of the city Distribution Division, Cuttack. The bills for consumption of electric energy were prepared by the Board through this Division under the signature of the Executive Engineer and the electric charges were realised by that Division. The Executive Engineer was a responsible officer of the Board and he was incharge of managing and looking after all the affairs of the Division. All correspondence of this Division of the Board was made in his name. Being in charge of the Division he was duty bound not only to payment illegal abstraction of electric energy, but also to take all legal action whenever such abstraction was detected. On receiving a telephone message he went to the place of occurrence, inspected the premises of the accused and on detecting the said illegal abstraction of electric energy lodged the F.I.R. at the Police Station. At the trial nothing was asked to him questioning his authority to lodge the F. I. R. Upon these facts, the Court held that the criminal case was instituted by a competent person.

7. In the present case P. W. 2 Laxmidhar Singh simply stated that he got information from a line helper about unauthorised taking of electric energy by the accused and lodged the information at the Police Station. In cross-examination he stated that he had not obtained sanction from the Department to file the case. As already stated, there is absolutely no material on the record to show the duties, functions and powers of P. W. 2.

8. In the premises aforesaid I would hold that the prosecution u/s 379, I. P. C. was launched by a person not competent to do so. The Criminal Revision is allowed and the Criminal Proceeding against the petitioner u/s 379, I. P. C. quashed.