

(1962) 07 MP CK 0002
In the Madhya Pradesh High Court

State of Madhya Pradesh

APPELLANT

Vs

J.P. Cassad and Another

RESPONDENT

Date of Decision : 30-07-1962

Acts Referred:

Mines Act, 1952 — Section 17, 2

Citation : (1963) CriLJ 685 : (1962) JLJ 838 : (1962) 7 MPLJ 1084 : (1962) MPLJ 1084

Hon'ble Judges : Shiv Dayal Shrivastava, J;S.P. Bahrgava, J

Bench : Division Bench

Judgement

Shiv Dayal, J.

This is an appeal against acquittal of Respondent J.P. Cassad and D.M. Tembhekar who were tried along with Khan Sahib Haji Mulla Akbar Ali and Babusingh for the contravention of Rule 136 of the Indian Electricity Rules, 1956.,

Khan Sahib Haji Mulla Akbar Ali is the Chairman of the Board of Directors of Kalichhappar Colliery; J.P. Cassad is the Agent; Tembhekar is the Manager; and Babusingh the electrician.

In connection with an enquiry into the electrocution of one Gudiya, Spare Pump Khalasi of the Mine, Mr. H.K. Bhattacharya, Inspector of Mines, inspected the electrical fittings in the bungalow of the Assistant Manager of the Mine. He found that neutral conductor of light circuits were taken through switches instead of taking these lines direct to lamps and that live lines were taken direct to the points instead of taking these lines through the switches, which resulted in contravention of Sub-rule (2) of Rule 32 of the Indian Electricity Rules, 1956. All the above four accused were tried under Rule 141 of the Indian Electricity Rules, 1956. In this appeal we are concerned only with the Agent (J.P. Cassad) and the Manager (Tembhekar). Both these accused admitted in their statements u/s 342, Cr.P.C. that they were the Agent and the Manager respectively of the Mine.

Rule 32 (2) of the Indian Electricity Rules, 1956, provides that no cut-out, link or

switch other than a linked switch arranged to operate simultaneously on the earthed or earthed neutral conductor and live conductors shall be inserted or remain inserted in any earthed or earthed neutral conductor of a two-wire system or in any earthed or earthed neutral conductor of a multiwire system or in any conductor connected thereto, with the following exceptions:

- (a) A link for testing purposes, or
- (b) A switch for use in controlling a generator or transformer.

It is undoubtedly proved by the evidence of Bhattacharya that there was contravention of this rule. The question is whether the respondents can be held liable for the contravention. The State relies on Rule 136 to hold that they are liable. That Rule runs as under:

Where any person is responsible for the observance of any of these rules, every agent and Manager of such person shall also be responsible for such observance in respect of matters under their respective controls.

In order that the Agent or the Manager may be held responsible under these Rules, it must first be shown I that their principal was responsible for the observance of any of the rules. The opening clause "where any person is responsible for the observance of these rules" denotes that the operation of Rule 136 will not be attracted unless that condition Is fulfilled. The second condition to be satisfied before a conviction can be sustained with the aid of this rule is that the agent or manager must be responsible for such observance "in respect of matters under their respective control". In this case, the prosecution has not established as to who was responsible for the observance of Rule 32(2), Khan Sahib Haji Mulla Akbar Ali was prosecuted as the owner, but the trial Magistrate acquitted him and there is no appeal before us against it.

That aside, Rule 45 of the said Rules lays down that electrical installation work shall be carried out only by an electrical contractor licensed. It is not established who did the installation work. What is more, Rule 131 enacts that an electrician shall be appointed in writing by the Agent or Manager of a mine and Clause (3) of this Rule lays down the responsibilities of the electrician. Now, In this case It Is not In dispute that an electrician had been appointed. In fact, Babusingh was prosecuted, and acquitted. There is no appeal against him either.

Adverting to the Mines Act, 1952, we find that Section 2(c) defines "Agent" thus:

"Agent", when used in relation to a mine, means any individual whether appointed as such or not, who acts as the representative of the owner in respect of the management, control and direction of the mine or of any part thereof, and as such superior to a manager under this Act; Section 17 lays down the general responsibilities of the "Manager" the Manager is responsible for "control, management, supervision and direction of the Mines". This expression would hardly cover a daily supervision in respect of an electrical installation in a residential accommodation.

Here, the accident took place at the Assistant Manager's bungalow. The Assistant Manager was not prosecuted. The electrician has been acquitted and there is no appeal against him. The learned Counsel for the State Is unable to point out any provision in the Mines Act or the Indian Electricity Rules under which it was the duty of the Manager or the Agent to supervise electrical installation in residential bungalows of the officers. It was for the prosecution to establish that the respondents' responsibilities extended to the control, management or supervision of residential buildings as well.

For these reasons, we see no error in the order of acquittal. The appeal is dismissed.