(1978) 09 GUJ CK 0011

In the Gujarat High Court

Suresh Ramanlal Patel APPELLANT

Vs

State of Gujarat and Others RESPONDENT

Date of Decision : 27-09-1978

Acts Referred:
Electricity Act, 1910 — Section 50, 50

Citation : (1979) 1 GLR 391

Hon'ble Judges : M.K. Shah, J

Bench : Single Bench

Judgement

M.K. Shah, J.—An interesting question with regard to the interpretation of Section 50 of the Indian Electricity Act, 1910, (hereinafter referred to "the Act") arises in this criminal revision application which is preferred by the original first informant at whose instance the prosecution was launched against opponents Nos. 2 and 3, that is original accused Nos. 1 and 2 for the offences under Sections 39 and 44 of the Act read with Section 379 of the Indian Penal Code.

2. A few facts necessary to decide the point which arises in this revision application may be briefly stated as follows:

The complainant who is attached as an electrical inspector with the Ahmedabad Electricity Company Ltd. (hereinafter referred to as "the company") which is a body incorporate having its head office at Bombay, lodged a complaint alleging that by certain devices and alterations made in the electric fittings connected with the meter recording consumption of electricity which was being supplied to the premises of accused No. 1 by the company, it was so managed that the meter would show zero reading though electrical energy would be consumed by putting lights etc. on. It was also the prosecution case that theft of electrical energy was being done in this manner by accused No. 1 with the aid of accused No. 2 who had carried out the alterations and installed the said devices. Accused No. 2 was working as an electrical wireman. This fact came to the notice of the complainant-inspector on 24th December 1976 and he apprised his superior officer viz. the Commercial Superintendent of the company U.K. Sheth of the same. After some inquiry made at the instance of Sheth and photographs taken, Sheth passed an authority letter as per Ex. 4 in favour of the complainant to prosecute the accused in this behalf, and the complainant accordingly lodged the first information report with the police. The two accused were later put up for trial before the learned Metropolitan Magistrate, 11th court, Ahmedabad.

3. It was the defence of accused No. 1 that she had no knowledge about any theft of electrical energy being done; that she had merely employed services of accused No. 2 for the purpose of effecting repairs as the connection was out of order, and after the repairs were effected, the connection came in order and she started receiving the electrical energy needed for her household purposes. It was defence of accused No. 2 that he had nothing to do with the alleged setting up of the devices or carrying out of wiring work Or alteration. It was also the contention that the prosecution not having been launched in accordance with the provisions of law, no order of conviction could be passed against the accused.

4. The learned trial Judge on the evidence led before him, came to the conclusion that the theft of electrical energy had been done by accused No. 1. He, however, held that the prosecution had failed to establish that accused No. 2 had aided accused No. 1 in carrying out this object. He however held that the prosecution was not instituted in accordance with the provisions contained in Section 50 of the Act. He, therefore, passed an order of acquittal against both the accused. It is this order of acquittal which is challenged in this revision application filed by the petitioner, the inspector of the company who is the original first informant.

5. Mr. H.B. Shah, the learned advocate appearing for the petitioner contends that the learned Magistrate has misconstrued and misinterpreted the provisions of Section 50 and has erred on such misconstruction and misinterpretation in arriving at the conclusion that the prosecution in the instant case is not instituted in accordance with the said provisions. There is no dispute that the prosecution is launched by the police on the basis of the complaint received by them from the complainant who is attached as an inspector to the company at Ahmedabad. The company is a body corporate having its registered office at Bombay and the highest officer stationed at Ahmedabad representing the company is the Chief Executive under whose signature the electricity bills are issued. Three electricity bills so issued to accused No. 1 are at Exs. 9 to II. The letter, Ex. 4 is dated 24th December 1976. It is addressed by U.K. Sheth, Commercial Superintendent of the company at Ahmedabad to the complainant Section R. Patel, inspector, grade ''A'', attached to the company at Ahmedabad. In this letter, it is inter alia recorded that the complainant is, by the aid letter, authorised to carry out necessary investigation with regard to the reported theft of electrical energy and its improper use which was reported to be taking place with regard to the meter at Section No. 213289 standing in the name of accused No. 1, and lodge a complaint with the police against those responsible or suspected to be responsible for the theft or improper use of electrical energy. The letter ends thus "A complaint may be lodged u/s 50 of the Indian Electricity Act, 1910, read

with sees 39 and 44 of the said Act". It is fairly conceded by Mr. Shah that the author of this letter Ex. 4, that is commercial Superintendent, is not the highest officer of the company stationed at Ahmedabad, but he is subordinate to the highest officer of the company stationed at Ahmedabad viz. The Chief Executive.

6. On these facts, Mr. Shah submits that it cannot be said that the prosecution instituted is not instituted at the instance of the company which is a person aggrieved by the offence of theft of electrical energy alleged to be committed by the accused. Section 50 of the Act provides

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 an electrical inspector, or of a person aggrieved by the same.

Prosecution, therefore, can be instituted as provided in Section 50 against an accused person for any offence against the Act or any rule etc. (i) at the instance of the Government or (ii) at the instance of an electrical inspector or (iii) at the instance of a person aggrieved by the same. In the case in which we are concerned, the company would be the person aggrieved by the offence. The prosecution need not be instituted by the company itself. It can be instituted at the instance of the company, that means, any responsible officer acting for and on behalf of the company and it is not required that a complaint should be by any specified person. Section 50, further submits Mr. Shah, was enacted to ensure that prosecution should not be instituted by some independent busy body who had nothing to do with the matter but if a responsible officer of the company sets the machinery of law into motion and if the State launches the prosecution against the accused on the basis of such initiation, it can be said that the prosecution is instituted at the instance of a person aggrieved by the offence. What is required is that the proceeding should commence at the motion, solicitation or at the request of the aggieved party and there is no necessity that there should be specific authorisation in favour of any particular officer of the company in this behalf. A complaint by a responsible officer of the company would meet with the requirement of the section and would fall within the ambit of the phrase "at the instance of which is to be given wider meaning so as to exclude persons who had nothing to do with the company from giving a complaint.

7. As against this, Mr. K.S. Shukla, the learned Advocate appearing for original accused No. 1 contends that, unless the officer is specifically empowered by the company to set the criminal law into motion for the purpose of Section 50, he would not be competent to represent the company for the purpose of Section 50. A Company which is a body incorporate can act either through its Board of Directors who act by passing appropriate resolution in the matter or through its Managing Director empowered by the company, that is the Board of Directors, in this behalf and a Commercial Superintendent, who is a subordinate officer to the Chief Executive stationed at Ahmedabad, of the company, which has its head office at Bombay, suo motu without any authority from the company which

should emanate either from the Board of Directors or the Managing Director or in any other manner as provided by the Articles of Association of the company, cannot validly act for the purpose of Section 50.

8. It is true, there is nothing in Section 50 which requires the prosecution to be launched by the person aggrieved himself (in the instant case, by the company itself) because the prosecution pan be instituted at the instance of a person aggrieved, that means, at the motion, solicitation or the request of a person aggrieved. But the question which arises is as to how such motion, solicitation or request is to be conveyed to the prosecuting agency by the company, that is, the person aggrieved. Can any officer of the company or for that matter, any responsible officer of the company, suo motu, without any express authority from the company act in the matter by virtue of his holding a responsible post in the company? Mr. Shah urged that, in the instant case, a very high officer of the category of a Commercial Superintendent whose duty it would be to look to the commercial side of the company''s affairs which would include supply of electrical energy to the consumers and collection of bills in respect of such supply etc., had acted in the matter of reporting the offence connected with the theft of electric energy which was being supplied by the company to the concerned consumer. Can it be said, asks Mr. Shah, that such a highly placed officer was not acting for and on behalf of the company when he passed the authority letter, Ex. 4, authorising the complainant to set the machinery of law into motion against the accused? The intention of the legislature in enacting Section 51 was only to sea that unauthorised persons or outsiders do not file such complaints against the consumers id respect of electrical energy which is misused or which is stolen and which energy is to be supplied for consideration by the company to the consumers. The requirement of Section 50, therefore, would be met if it is established that a responsible officer of the company had authorised launching of the prosecution and, therefore, submits Mr. Shah, the learned Magistrate in the instant case, committed a grave error in holding that the requirements of Section 50 were not satisfied in the instant case and in acquitting the accused on this technical ground. Mr. Shan, in this connection has tried to draw support from a number of decisions of the various High Courts, as also a decision of the Supreme Court, and I will refer to the said decisions in brief.

In State Vs. Maganlal Chunilal Bogawat, the complaint was lodged by a local manager of Ahmednagar Electric Supply Co. Ltd. having its head office at Bombay and the local office at Ahmednagar and while negativing the contention that the complaint should be by a specified person, it was observed as follows at page 356:

The legislature has by Section 50 not provided that before proceedings can be instituted against a person charged with having committed an offence under the Electricity Act, or any rule, licence or order thereunder, there should be a complaint by any specified person. If the proceedings have been commenced at the instance of the Government or the person specified in Section 50, the prosecution must be regarded as proper.

These observations which are in the content of interpreting Section 50, pin point that it is not necessary that any specified person must file a complaint and it is in this context that it is stated that if the proceedings are commenced at the instance of the Government or that person specified in Section 50, the proceedings must be regarded as proper. Again, it would be significant to note that in the case before the Bombay High Court, Mr. Gore, Local manager who had filed the complaint, was acting for and on behalf of the company as is observed in the latter part of para 5 at page 356.

9. Mr. Shah very vehemently relied on Vishwanath Vs. Emperor, Here also, the question was as to whether the prosecution must be instituted by a person aggrieved and the phrase "at tile instance of was interpreted to mean "at the solicitation or at the request of as contrasted with the phrase "on the complaint of. Mr. Shah strongly relies on the following observations appearing at page 743:

The officers of the company discovered the theft and they reported it to the police and asked the police to make an investigation. We feel that there can be no real doubt that they intended that a prosecution should follow according to the result of the investigation. That made further reports to assist the police, and, their officers came into court and gave evidence. We are satisfied that the prosecution was really at the instance of the Electric company, although they may cot have made the immediate complaint on which the Magistrate took cognizance of the offence. We consider that there is no ground for interference in revision.

Mr. Shah wants to point out that in the case before the Allahabad High Court, the officer had acted suo motu without a specific authority from the company to initiate proceedings and it came within the meaning of the phrase "at the instance of the company". The real controversy which the Allahabad High Court had to decide was as to whether the phrase "at the instance of conveys the meaning that the company itself should file a complaint or the same should be filed at the solicitation or request of the company. The question as to how the company should act in the matter of convejirg request or solicitation did not specifically arise before the court and was not decided. This decision, therefore, does not help Mr. Shah.

10. Similarly, the Supreme Court decision in Avtar Singh v. State of Punjab A.I R. 1965 S.C. 665, merely decided the question whether the 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, and it approved the Allahabad decision so far as it relates to the controversy with regard to the offence not being the offence against the Act, on the ground that it was one punishable in contravention of Section 379 of the Indian Penal Code, and as observed at page 669:

It has never been disputed at any earlier stage-that the prosecution had not been at the instance of one of the persons mentioned in Section 50.

The Supreme Court in terms said that the onus of proving that fact was clearly on the respondent and it is a question of fact and has to be decided on the material on record.

11. Mr. Shah lastly relies on The Public Prosecutor Vs. Abdul Wahab and Others, Here also, the expressions "person aggrieved" and "at the instance of appearing in Section 50 came up for interpretation. The prosecution, which was launched, was by a power of attorney agent of the company who was also the Chief Engineer; and it was held that when a power of attorney agant or officer is appointed by the Managing Agents, his services are for and on behalf of the company and that absence of any complaint by the corporation or any resolution authorising the Chief Engineer to file a complaint will not invalidate the prosecution. The complaint here was by a chief engineer of the company, who was also a power of attorney agent of the company. It was observed at page 283, after placing reliance on Vishwanath Vs. Emperor, as follows:

This decision would support the view that the phrase "at the instance of should be given a wider meaning and it was intended for the purpose of excluding indipendent persons who had nothing to do with the company from giving a complaint; A complaint by reasonable (responsible?) officers of the company, even though there is no specific authorisation, would be "at the instance of the company."

It was observed-

Even assuming that the complainant was not a power of attorney agent, in the circumstances of the case, it can be found that the complainant was acting at the instance of Kumbakonam Electric Supply Corporation and the complaint was signed by him for the said Corporation as its chief Electrical engineer.

This decision also is based on facts of that case which showed that in any event, the complainant was in entire charge of the administration of the Corporation including Accounts department and it was found by the Madras High Court that he was acting on behalf of the Corporation by signing agreement forms for giving connections to the applicants. His case that he was acting on behalf of the Corporately and that he had instituted the prosecution before the police as a responsible officer was accepted and, therefore, signing of the complaint without mentioning that he did so on behalf of the Corporation would not make any difference, because, in the complaint itself, he had stated that he was the chief engineer of the Corporation; and it was on these facts that the court was satisfied that in the circumstances of that case, the requirement that institution of the prosecution should be at the instance of the aggrieved person had been satisfied.

12. It would be thus seen that, in all the cases which are cited by Mr. Shah, there was material on record to justify the conclusion that the officer of the company

who lodged the complaint before the police was acting for and en behalf of the company or had authority of the company to act in that particular behalf. It is true, Section 50 does not require that prosecution must be launched by the company itself and it would be sufficient if it is shown that it is launched at the instance of or at the request of the company. But, there must be some material en record showing that it was the company which had made such a request, may be acting through one of its officers. The company must authorise some of its officers to act u/s 50. Any officer of the company, suo motu without any authority from the company cannot act u/s 50. His act must be one authorised by the company and must be for and on behalf of the company. If these requirements are fulfilled, then, it can be said that the prosecution is instituted at the instance of the company. Now, a limited company, Ikie the Ahmedabad Electricity Company Ltd. acts in such matters, either through its Board of Directors or through its Managing Director. There must be some authority validly conferred by the company on its officer to act u/s 50. Unless this is established, it cannot be said that the officer is acting for and on behalf of the company or under the authority of the company and it therefore, cannot be said that the proceedings instituted at the instance of such officer are instituted at the instance of the company. In the instant case, there is no such material on record showing that the Commercial Superintendent had any such authority or power conferred on him by a valid act of the company to move in the matter u/s 50 of the Act. Again, it is significant to note that the Commercial Superintendent who passed the said letter of authority Ex. It has not (who is not the Chief Officer of the company at Ahmedabad and is subordinate to the Chief Executive) been examined as a witness and there is nothing on record to show under what authority and in what circumstances, he was acting when he passed the said letter of authority, Ex. 4 authorising the complainant inspector to initiate proceedings, la this view of the matter, it cannot be said that the proceedings instituted on a complaint filed by the complainant-inspector in pursuance of the letter of authority, Ex. 4, issued by the Commercial Superintendent, is a prosecution instituted at the instance of the company.

13. I am fortified in the view which I take by a decision of the Patna High Court in Rama Shanker Sinha Vs. The State, to which my attention was drawn by Mr. Shukla. Here, the prosecution was started by secretary of a company and it was held that since he had not proved that he had power or authority to initiate prosecution, the prosecution was not maintainable. The observations appearing at page 132 in para 6 are important and they read thus-

In the instant case, I have already mentioned that the prosecution was started on the basis of a letter (Ex. 8) of Shri Thatham (P.W. 13), the Secretary. There is no evidence to show what functions the Secretary has to perform, what his duties and powers are. The learned Sessions Judge has said that the Secretary sent the letter for and on behalf of the company because at the foot of the letter, he has put his signature "for and on behalf of the company". I am unable to agree. The petitioner was contending that the prosecution had not been started at the instance of any of the persons named in Section 50. It was, therefore, necessary for the complainant or for the management to prove either that the Secretary had himself the power to launch the prosecution or that he had such authority from the appropriate officer. The investigating officer (P.W. 15) has stated that Shri Thatham did not produce before him any authority unsure the Electricity Act to file a complaint.

14. A second decision is the Supreme Court decision in Ram Chandra Prasad Sharma and Ors. v. State of Bihar and Anr. AIR 1967 349. After setting out Section 50, it has been observed at page 352 as follows:

The prosecution here was commenced with a charge-sheet submitted by the police to the Judicial Magistrate. The offence were investigated into by the police after the first information report was launched with them by Bhattacharya. What is contended is that information given by him could not entitle the police to submit the charge-sheet. It is also said that submission of a charge sheet by the police is not the same thing as institution of prosecution at the instance of the State. It is, however, not disputed that if the law was set in motion by a person aggrieved by making a first information report to the police a charge-sheet could properly be submitted by the police. It is true that Bhattacharya was not himself a "person aggrieved" and that the "person aggrieved" was the P.E.S. Co. The P.E.S. company however, is a body corporate and must act only through its directors or officers. Here we have the evidence of Ramaswami to the effect that he held a general power of attorney from the P.E.S. company and that he was specifically empowered thereunder to act on behalf of P.E.S. Co. in all legal proceedings. The evidence shows that it was at his instance that Bhattacharya launched the first information report and, therefore, it would follow that the law was set in motion by the "person aggrieved".

15. It would be thus seen that the person at whose instance the proceedings were launched held the power of attorney from the person aggrived, viz. the company itself and that specifically empowered him to act on behalf of the company in all legal proceedings. In our case also, the person aggrieved would be the company which is a body corporate and it must, therefore, act only through its Directors or officers. There is no evidence or material on record to show that the officer who acted in the matter had a specific authority of the company to act u/s 50 or generally for that matter, to institute legal proceedings.

16. The prosecution, therefore, was not instituted in conformity with the provisions contained in Section 50 of the Act, and the learned Magistrate was, therefore, right in acquitting the accused on this ground. No case is made out for interference with that order in revision. The result will be the following order:

Rule discharged. Revision application dismissed.