

(2002) 08 DEL CK 0234
In the Delhi High Court
Case No : Criminal MM 2168 of 2002

Swaran Dhawan

APPELLANT

Vs

The State (NCT of Delhi)

RESPONDENT

Date of Decision : 09-08-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Electricity Act, 1910 — Section 24(1), 26(1), 26(7), 39, 44
Penal Code, 1860 (IPC) — Section 379

Citation : (2002) CriLJ 4763 : (2002) 99 DLT 416 : (2002) 4 RCR(Criminal) 684

Hon'ble Judges : Mahmood Ali Khan, J

Bench : Single Bench

Advocate : Mohan Singh Sodhi, for the Appellant; Sunil Sharma, APP, for the Respondent

Judgement

Mahmood Ali Khan, J.—The petitioner has filed this petition u/s 482 Cr. P.C. for quashing the FIR No. 337/1999 u/s 39/44 the Indian Electricity Act (the Act) and Section 379 IPC and the taking of the cognizance of the offence by the Metropolitan Magistrate on the basis of the charge-sheet filed for prosecution of the petitioner.

2. Briefly, the facts are that the petitioner is owner of premises No. IIA-46 Lajpat Nagar, New Delhi. She had four electricity meters installed in this property, one of which electricity meters (meter No. 3194206) was in the name of Amolak Lall, who was the previous owner. On 4.4.1999 the staff of DVB of the respondent conducted a joint raid at the aforesaid premises of the petitioner and detected that both half seal of the meter No. E-3194206 K. No. 016/1497989 were fictitious thereby meaning that there was theft of electricity. A report was lodged with the police and the petitioner was challaned for the offences u/s 39/44 of the Act and Section 379 IPC. The Metropolitan Magistrate before whom it was filed had taken cognizance of the offence and has issued summons to the petitioner. The petitioner is aggrieved by this order and has filed the present petition.

3. Counsel for the petitioner relying upon the judgment of this Court in Ramesh Chander and Ors. v. State of Delhi and Anr., 1998 (1) JCC 13 Harbajan Singh Vs. State, has contended that on the allegations made in the FIR and in the charge-sheet no case for dishonest abstraction, consumption or use of the electricity has been disclosed and so no offence u/s 39/44 of the Act has been committed. It was argued that the staff of the DVB has found only half seal on the meter fictitious and this by itself does not lead to an inference that the electricity was being stolen from the meter. According to him, it is the report of the staff of the respondent that the disc of the meter was moving in the right direction and apart from the fictitious half seal, no other artificial means was found at the site for abstraction, consumption and use of the energy. Therefore, it was urged that taking the allegations made in the complaint at its face value the allegations therein do not disclose commission of any offence under the Act or the IPC for which charge-sheet has been filed and cognizance has been taken by the learned Magistrate.

4. Counsel for the State, on the other hand, has argued that the fictitious half seal of the meter is in itself a proof of the dishonest abstraction, consumption and use of electricity and also theft of the electricity which is a contravention of Section 39 of the Act and Section 379 IPC. He Therefore, justified the taking of the cognizance of the offence by the learned Magistrate both under the Act and the IPC and summoning the accused to face trial.

5. The allegation is that the petitioner was found committing theft of the electrical energy from the meter of which she was the consumer and thereby she committed an offence within the purview of Section 39/44 of the Act. Both Sections 39 and 44 being relevant for appreciating the case of the parties on merit are extracted below:

"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 abstracting, consumption or use of energy has been dishonestly caused by such consumer."

"44.- Penalty for interference with meters or licensee's works and for improper use of energy- Whoever-

a) connects any meter referred to in Section 26, Sub-section (1), or any meter, indicator or apparatus referred to in Section 26, Sub-section (7), with any electric supply-line through which energy is supplied by a licensee, or disconnects the same from any such electric supply-line; or

aa) unauthorisedly re-connects any meter referred to in Sub-section (1) of Section 26, or any meter, indicator or apparatus referred to in Sub-section (7) of

Section 26, with any electric supply-line or other works, being the property of the licensee, through which energy may be supplied, when the said electric supply line or other works has or have been cut or disconnected under Sub-section (1) of Section 24; or

b) lays, or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee; or

c) maliciously injures any meter referred to in Section 26, Sub-section (1), or any meter, indicator or apparatus referred to in Section 26, Sub-section (7), or willfully or fraudulently alters the index of any such meter indicator or apparatus, or prevents any such meter, indicator or apparatus from duly registering; or

d) improperly uses the energy of a licensee,

shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or with both, and, in the case of a continuing offence, with a daily fine which may extend to fifty rupees; and if it is proved that any artificial means exist for making such connection as is referred to in Clause (a) or such re-connection as is referred to in Clause (aa), or such communication as is referred to in Clause (b), or for causing such alteration or prevention as is referred to in Clause (c), or for facilitating such improper use as is referred to in Clause (d), and that the meter, indicator or apparatus is under the custody or control of the consumer, whether it is his property or not, it shall be presumed, until the contrary is proved that such connection, reconnection, communication, alteration, prevention or improper use, as the case may be, has been knowingly and willfully caused by such consumer."

6. Section 39 of the Act is in two parts. Under the first part offence of theft of electrical energy is committed when someone "dishonestly abstracts, consumes or uses any energy. The second part raises a presumption of the dishonest abstraction, consumption and use of electricity in case any artificial mean or means not authorised by the licensee i.e. DVB found existed for the abstraction, consumption and use of energy by the consumer. The word "dishonestly" in both these parts is significant. Unless there is mensrea, a dishonest intention to take out or draw electricity from the electrical works or electricity meters of the DVB or consumption or use of the electrical energy it cannot be held that the consumer had committed theft. The burden is on the licensee i.e. DVB to prove (1) that the electricity was being abstracted, consumed and used by the consumer; and (2) the consumer had dishonest intention to do that. But in the event an artificial means or devise is found which is used or facilitates the abstraction, consumption of energy, which is not authorised by the DVB for drawing electricity, the burden of proof shifts on the consumer to prove to the contrary.

7. Section 44 has provided penalty for interference with the meter or the electrical works of the licensee i.e. DVB or improper use of the energy. The

section prohibits punishment for the acts which have been embodied in Clauses (a) to (d) of the said section. Clause (a) provides punishment for connection of any meter, indicator or any apparatus as referred to u/s 26 with the electric supply line of licensee i.e. DVB or disconnection of the same from the said electricity supply line. Clause (aa) provides punishment for unauthorised re-connection of any meter, indicator or apparatus referred to in Section 26 with the electricity supply line or other works of the licensee i.e. DVB after the said electricity line and works has been disconnected u/s 24. Laying or causing to be laid or connecting up any works for the purposes of communicating with any other work belonging to the DVB would be punishable under Clause (b). Maliciously injuring any meter referred to in Sub-section (1) of Section 26, meter indicator or apparatus referred to in Sub-section 7 of Section 26 or willfully or fraudulently alters the index of any such meter, indicator, or apparatus or preventing any such meter, indicator or apparatus from duly registering the electricity connection would be punishable in accordance with Clause (e). Clause (d) on the other hand provides punishment for improper use of energy of the licensee i.e. DVB. Reference in this section is to the meter, indicator, apparatus as referred to in Sub-section (1) and Sub-section (7) of Section 26. Section 26(1) relates to the electricity meter. If there is no agreement between the consumer of the electricity and the DVB the electricity which the consumer uses would be as per registered in the electricity meter. The consumer may ask the licensee i.e. DVB to install a meter. Sub-section (7) gives power to the licensee (DVB) to install in addition to the electricity meter, other meters, maximum demand Indicator or other apparatus as it deemed fit for the purpose of ascertaining or regulating the amount of energy supplied to the consumer or the number of hours during which the supply is given or the rate per unit of time at which energy is supplied to the consumer or any other quantity or time connected with the supply. None of the Clauses (a) to (d) of Section 44 provided punishment in cases where the half seal of the meter is found fictitious or broken. Breaking half seal or fixing a fictitious seal will not invite punishment u/s 44. The clause relating to the punishment for various acts contemplated under Clauses (a) to (d), as reproduced above, explicitly exclude breaking of the half seals of the meter from the punishment provided in the clauses.

8. In the instant case apart from the allegation that half seal of the meter in question was found fictitious at the premises of the petitioner by the joint raiding party of the DVB, there is no further allegation in the FIR, in the charge-sheet or any other material to show that there was a dishonest abstraction, consumption or use of the electricity by the petitioner or any artificial means or device was found for drawing or taking out the energy from the meter which was not being registered in the said meter. Therefore, if the facts stated in the FIR and the charge-sheet coupled with the report of the staff of the DVB and the material placed Along with the charge-sheet like photographs etc. are admitted to be true and proved at their face value it would not be possible to hold that offence u/s 39 or 44 of the Act has been committed by the petitioners.

9. The case has been registered and the charge-sheet has been submitted u/s 379 PC. I need not reproduce this provision because counsel for the respondent has not claimed that if the offence within the ambit of Section 39/44 of the Act is not held to be committed, it could still be punished u/s 379 IPC. Section 378 IPC defines theft. In short, a person who intends to take dishonestly a moveable property out of the possession of any person without that person's consent and moves that property in order to such taking shall commit offence of theft which is punishable u/s 379 IPC. In other words. Section 379 IPC also punishes the abstraction, consumption or use of electrical energy of the DVB with dishonest intention. It is the reason why no such argument has been advanced on behalf of respondent No . 1.

10. This Court in Ramesh chander & Others (supra) was dealing with a similar case. The enforcement staff of DESU has found half seals of the electricity meters and both the revit seals tampered with. This Court following the judgments in the case of Ram Chander Prasad Sharma Vs. State of Bihar and Another, and Jagarnath Singh v. Krishna Murthy and Anr., AIR 1967 SC held that there must be material on record to show dishonest abstraction, consumption and use of the electricity in addition to the tampering of the seals for holding that the dishonest Intention for abstraction, consumption and use of the electricity energy or its theft existed within the ambit of Section 39 and 44. The court quashed the charges framed u/s 39 and 44 of the Act. This Court has followed this judgment In Harbhajan Singh (supra) where inspection of the premises of the consumer showed that the electricity meter was tampered with. It was held that there was no presumption of dishonest abstraction, consumption and use of electricity energy on the basis of a tampered meters.

11. For the reasons stated above, it must be held that the order of the Metropolitan Magistrate taking cognizance of the offence on the basis of the charge-sheet submitted by the respondent u/s 39/44 of the Act and Section 379 IPC suffers from illegality and impropriety and the continuation of the prosecution of the petitioner on the basis of the charge-sheet would be a gross misuse of the process of the court and its quashing will be necessary for securing ends of justice.

12. In the result, the petition succeeds and the FIR No. 337/1999 and the charge-sheet filed therein and the proceedings arising there from are quashed. The petitioner stands discharged.