

(2008) 11 SC CK 0017

In the Supreme Court Of India

Case No : Criminal Appeal No. 1962 of 2008 (Arising out of S.L.P. (Criminal) No. 3878 of 2004)

Tamil Nadu Electricity Board

APPELLANT

Vs

Rasipuram Textile (P) Ltd. and Others

RESPONDENT

Date of Decision : 25-11-2008

Acts Referred:

Electricity Act, 1910 — Section 24(1), 26(1), 26(7), 39, 39(1)
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2009) 2 ACR 1502 : (2008) 13 JT 400 : (2009) 1 LW(Cri) 564 : (2009) 2 PLJR 26

Hon'ble Judges : S. B. Sinha, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : R. Nedumaran and T. Harish Kumar, for the Appellant; Jayant Muthraj, C.K. Sasi and Aribam Guneshwar Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Leave granted.

1. One Executive Engineer of the Tamil Nadu State Electricity Board made a surprise inspection of the premises of first respondent -Rasipuram Textile Mills. Allegedly, theft of electrical energy was detected.

2. A criminal prosecution was lodged not only against the company but also against its Managing Director and other Directors purported to u/s 39(1) and 44(1)(c) of the Indian Electricity Act, 1910.

3. Learned trial Judge, recorded a judgment of conviction against the accused. So far as the Directors of the Company are concerned, the learned trial Judge convicted despite noticing the provisions contained in Section 49A of the Indian Electricity Act, 1910, observing:

From the above, it is clear that, all the persons responsible for the administration of a company are liable for the offence committed by the Company. If anybody

disowns the liability and claims it has happened without his knowledge or despite the sincere efforts the offence has been committed, then it is for the concerned accused to prove the same. On this basis, the Managing Director and the other Directors A2 to A 10 were also included being the responsible persons of A! Mill. A 11 was included as Electrical Supervisor and A 12 as Spinning Master and A 13 as Electrical Helper were included by P.W.8 Thiru Jayachandran in the final report.

4. Indisputably, the Managing Director of the company - R. Nainamalai as also another Director of the company R. Palanivel Goundar expired during pendency of the said proceedings.

5. Learned Additional District and Sessions Judge, while setting aside judgment of the trial Court, categorically, held as under:

13. That the petitioner 2 to 8 only Directors of the Mill and the prosecution has not alleged that the petitioner is in charge of and was responsible to the accused No. 1 Mill for the conduct of the business of the Mill and the records of Investigation also did not show that the petitioner was or had been participating in the day to day affairs of the Mill and the mere fact that the petitioner was the Director of the accused No. 1 Mill would not be sufficient to fasten criminal liability on him and he relies on the decision of this Court in P. Jeyanthi v. State, rep. by Sub- Inspector of Police (Crimes), Maduravoyal Police Station, Chingleput District 1990 LWC 398. u/s 49A of the Act, the onus is on the prosecution to establish that every person, who at the time of the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the Company, before liability could be fastened. Once the initial onus of the prosecution is discharged, then the burden shifts to the other person to prove that the offence was committed without his knowledge or that he had exercised due diligence for prevention of commission of the offence.

14. The service connection 89 stands in the name of the Managing Director Ninamalai. In the final report it has been stated that 2 to 8 accused are directors of the No. 1 Mill. The facts stated earlier clearly show that as far as accused is concerned, there is no even a whisper nor any shred of evidence nor anything to show that there was any act committed by the accused, from which a reasonable inference can be drawn that they should also be vicariously liable.

15. In the absence of any allegation or material in the records to disclose that the petitioners were participating in the day to day affairs of the Mill the prosecution cannot be allowed to continue in so far as the petitioners are concerned.

6. A revision application filed by the appellant herein thereagainst before the High Court has been dismissed by reason of the impugned judgment.

7. Learned Counsel appearing on behalf of the appellant would contend that in terms of Section 49A of the Indian Electricity Act, 1910, the burden of proof was on the accused to show that despite the fact that they were the Directors of the

company, they had no knowledge about the commission of the offence. The learned Counsel would, furthermore, contend that they had made no effort far less any sincere effort to show that they were not aware of the commission of the offence by another person.

8. It was, furthermore, urged keeping in view the fact that eight witnesses had been examined and several documents have been brought on record for the purpose of proving the prosecution case, it was obligatory on part of the learned Additional Sessions Judge as also the High Court to consider the merit of the matter for the purpose of finding out as to whether the private respondents and/or any of them was incharge and/or responsible for the conduct of the business of the company or not.

9. Learned Counsel appearing on behalf of the respondents, however, supported the impugned judgment.

10. Indian Electricity Act, 1910 was enacted to amend the law relating to the supply and use of electrical energy. Section 39 of the Act provides for penalty if an offence of theft of energy is committed. Section 44 provides for penalty for interference with meters or licensee's works and for improper use of energy.

11. The said provisions read thus:

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 abstraction, 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), of 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 wilfully 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 exists] 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.

12. Section 49A which was inserted by Act 32 of 1959 provides for offence by companies. It reads as under:

49A Offence by companies- (1) If the person committing an offence under this Act is a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

PROVIDED that nothing contained in this Sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in Sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation- For the purposes of this section-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm.

13. In terms of the aforesaid provision, therefore, it was obligatory on the part of

the complainant not only to make requisite averments in the complaint petition but also to prove that any of the Directors who had been prosecuted for alleged commission of the aforementioned offence was incharge of and was otherwise responsible for the conduct or the affairs of the Company.

14. We have noticed hereinbefore that how the learned trial Judge has dealt with the entire aspect. Learned trial Judge has misconstrued and misinterpreted the provisions of Section 49A of the Act.

15. In terms of Sub-section (1) of Section 49A, it is for the complainant to prove that the Director of the Company at the time when the theft was committed was in charge of and/or was responsible for the conduct of its business. Only in the event such an averment is made and sufficient and cogent evidence is brought on record to prove the said allegations, the proviso appended to Section 49A would be attracted; meaning thereby only in the event it is proved that a Director or a Group of Directors of the Company were in charge of and/or were responsible for the conduct of the business of the company, the burden would shift on the accused to establish the ingredients contained in the proviso appended to Section 49A of the Act.

16 Learned Additional Sessions Judge as well as the High Court, in our opinion, therefore, were right in holding that in the absence of any averment made in the complaint petition as also in the absence of any evidence brought on record by the complainant to satisfy the requirements of Section 49A of the Act, the respondents could not have been convicted.

17 This aspect of the matter has been considered by a series of decisions of this Court including S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, . Following the said decision this Court in K. Srikanth Singh Vs. North East Securities Ltd. and Another, in a case arising u/s 138 of the Negotiable Instrument Act, held as under:

4. It is not in dispute that for showing a vicarious liability of a Director of a company upon the complaint it is incumbent to plead that the accused was responsible to the company for the conduct of the business of the company. No such allegation having been made in the complaint petition, in our opinion, the High Court was not correct in passing the impugned judgment. The allegation contained in the complaint petition was that all the accused Directors, participated in the negotiations for obtaining financial help for Accused 1, which in our opinion, would not give rise to an inference that the appellant was responsible for day-to-day affairs of the company....

See: Saroj Kumar Poddar Vs. State (NCT of Delhi) and Another,

Everest Advertising Pvt. Ltd. Vs. State, Govt. of NCT of Delhi and Others,

18. For the reasons aforementioned, there is no merit in this appeal. It is dismissed accordingly.