
(1978) 02 AP CK 0012
In the Andhra Pradesh High Court

The Hyderabad Vanaspathi Ltd.

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 10-02-1978

Acts Referred:

Electricity (Supply) Act, 1948 — Section 44
Electricity Act, 2003 — Section 39, 50
Penal Code, 1860 (IPC) — Section 34, 379

Citation : (1978) CriLJ 1824

Hon'ble Judges : Gangadhara Rao, J

Bench : Single Bench

Judgement

Gangadhara Rao, J.—The accused in C. C. No. 28/77 on the file of the Chief Metropolitan Magistrate, Hyderabad, were charge-sheeted by the Circle Inspector of Police, Malkajigiri u/s 379 I.P.C. read with Section 39 of the Indian Electricity Act read with Section 34 of the I.P.C. A-2 to A-4 were also charged u/s 44(c) of the Indian Electricity Act, read with Section 34 I. P. C, The case against them is that they were found committing theft of electrical energy by adopting artificial means and tampering with the seals; thereby caused loss to the Andhra Pradesh State Electricity Board which was estimated at Rs. 61,28,636/-. When the case was taken up for trial a preliminary objection was raised that the alleged offence is not an offence within the meaning of Section 379 I.P.C., and therefore the question of treating it as an offence u/s 39 of the Indian Electricity Act read Section 379 I.P.C. does not arise. Secondly, it was contended that the prosecution launched on the report of the two Assistant Engineers, Vigilance Cell, A. P. State Electricity Board, was not valid u/s 50 of the Indian Electricity Act. The learned Chief Metropolitan Magistrate negatived both the contentions and dismissed the objection. Thereupon the petitioner has filed this revision.

2. Two questions are raised by the learned Counsel for the petitioner. First, the accused has not committed an offence u/s 379 I.P.C. Even otherwise, Section 39 of the Indian Electricity Act does not provide for punishment. Therefore, the prosecution is bad. Secondly, the prosecution filed by the Assistant Engineers is

not valid u/s 50 of the Indian Electricity Act.

3. In order to appreciate these questions, it is necessary to refer first to Section 39 of the Indian Electricity Act, 1910. That Section reads as follows:

Section 39. Whoever dishonestly abstracts, consumes or uses any energy shall be deemed to have committed theft within the meaning of the I.P.C. and the existence of artificial means for such abstraction shall be prima facie evidence of such dishonest abstraction.

Theft of electrical energy is not an offence under the Indian Penal Code. It is made an offence by Section 39 of the Indian Electricity Act. By virtue of that Section whoever dishonestly abstracts, consumes or uses any electrical energy is deemed to have committed theft within the meaning of the Indian Penal Code. Therefore, it is an offence against the Act. It is not correct to state that theft of electrical energy is an offence under the Indian Penal Code. It is unnecessary to refer to all the decisions on this question. In *Avtar Singh Vs. State of Punjab*, after referring to the conflict of decisions in that regard, the Supreme Court held that it is not an offence under the I.P.C. but it is made an offence by Section 39 of the Indian Electricity Act.

4. It is true that the punishment as such is not prescribed u/s 39 of the Act, but it is unnecessary because it is deemed to be an offence of the theft within the meaning of the I.P.C. The Supreme Court observed in *Avtar Singh's* case, "As the offence is created by raising a fiction the section which raises the fiction namely Section 39 of the Act, must be said to create the offence. Since the abstraction is by Section 39 to be deemed to be an offence under the Code, the fiction must be followed to the end and the offence so created would entail the punishment mentioned in the Code for that offence." Consequently, I reject the first contention.

5. In order to decide the second question it is necessary to refer to Section 50 of the Indian Electricity Act. Since the offence committed by the accused is u/s 39 of the Electricity Act evidently the provisions of Section 50 of the Act are attracted. Section 50 of the Electricity Act reads as follows:

No prosecution shall be instituted against any person for any offence against this Act or any rule, license or order thereunder, except at the instance of the Government or an (Electrical Inspector), or of a person aggrieved by the same.

The section does not say that the prosecution shall be instituted by the Government or an Electrical Inspector or a person aggrieved. It says that the prosecution shall be instituted at the instance of those persons. In *Vishwanath Vs. Emperor*, it has been observed by the Allahabad High Court that the phrase "at the instance of" means merely "at the solicitation of or at the request of". The learned Judges observed that the Legislature has introduced that provision in order to prevent a busy-body who had nothing to do with the matter from launching prosecution. In this case a report was given to the police by the

Assistant Engineers concerned and the police have investigated into the case and filed a charge-sheet. The Andhra Pradesh State Electricity Board issued proceedings on 10-2-1967 authorising u/s 50 of the Indian Electricity Act, the Assistant Engineers concerned to institute prosecutions on behalf of the Board in criminal offences including theft of energy and property of the Board. Therefore, the contention of Sri V. Jagannadharao that the prosecution should be launched by the Government or an Electrical Engineer or by a person aggrieved is not correct. In this case the prosecution was launched at the instance of the Andhra Pradesh Electricity Board. Obviously, the Board is a person aggrieved by virtue of the theft committed by the petitioner.

6. Section 50 of the Electricity Act has been the subject matter of interpretation by many High Courts. They have also taken the same view. See *Vishwanath v. Emperor* 1936 38 Cri LJ 53, *State of Bihar v. Ram Chandra Prasad* 1963 (2) Cri LJ 579, *Hardwar Singh v. State of Bihar* 1976 Cri LJ 942, *State Vs. Maganlal Chunilal Bogawat*, ; *The Public Prosecutor Vs. Abdul Wahab and Others*, and *The State of Karnataka Vs. Abdul Nabi*, Therefore, this contention fails.

7. It is also submitted by Sri Jagannadharao that by virtue of Section 50 of the Electricity Act, the prosecution should be in a court of law at the instance of the persons mentioned in that section and, therefore, the report given by the Assistant Engineers to the police and the prosecution launched by the police are not valid. I do not agree with him. Section 50 of the Act does not say that the Court shall not take cognizance of a case except on a complaint at the instance of the Government or an Electrical Inspector or a person aggrieved by the same, or they alone should file the complaint in the Court. It is not disputed that the offence is punishable with imprisonment for 3 years which is a cognizable offence and the police can investigate the case. Therefore, the police are competent to investigate the case for an offence u/s 39 of the Electricity Act, The Assistant Engineers were empowered by the State Electricity Board to institute prosecution. If so, they can give report to the police When the police file the charge-sheet, it is really a prosecution at the instance of the Electricity Board, within the meaning of Section 50 of the Act. In *Vishwanath v. Emperor* 1936 Cri LJ 53; *Hardwar Singh v. State of Bihar* 1976 Cri LJ 942; and in *State Vs. Maganlal Chunilal Bogawat*, prosecutions were launched by the police on a complaint made at the instance of the Electricity Board. Therefore I hold that the prosecution of the petitioner in the present case is valid. Consequently, the Criminal Revision Case and the CrI. Miscellaneous Petition are dismissed.

8. After I have pronounced the Judgment, an oral application was made by the learned Counsel for the petitioner that leave to appeal to the Supreme Court may be granted. The questions raised in this case are now settled by the decision of the Supreme Court as well as by the other High Courts. No substantial question of law arises in this case which has to be decided by the Supreme Court. Hence the application is rejected.