

SUPREME COURT OF INDIA

Jagarnath Singh

Vs.

H. Krishna Murthy

Crl.A.No.178 of 1964

(V. Ramaswami, V. Bhargava and Raghubar Dayal, JJ.)

31.08.1966

JUDGEMENT

RAGHUBAR DAYAL, J.:

1. The only point urged in this appeal, by certificate, is whether on the facts found, the appellant can be convicted of the offence under S 39, Indian Electricity Act, 1910 (Act IX of 1910), hereinafter called the Act, for having dishonestly abstracted electrical energy supplied by the Patna Electric Supply Co., hereinafter called the company.

2. The facts alleged and found to be proved by the Courts below are that on June 18, 1958, an Assistant Engineer of the company found, on inspection, that the electric meter installed at the Mill of the appellant had been tampered with. The seals on the meter cover had been tampered with, the left top sealing nut on the stud was loose and was so screwed as to leave the stud hole on the cover exposed. The cover on one of the cut-outs was found removed and there was no seal on the terminal cover of the meter.

3. It has been further found that the meter was installed in a dark corner and that the passage to the meter had certain obstructions. It has also been found that by inserting a wire through the stud hole, the movement of the meter which registers the consumption of electric energy could be affected in a way as to either totally prevent the rotating wheel from rotating or slow down its movement the result of which could have been consumption of electric energy without full payment for the same.

4. It is now well settled that the existence of such tampered meter does not amount to 'such artificial means for the abstraction of electricity' as would make it an offence under S. 39 of the Act. It was said in *Jagannath Singh v. Ramaswamy*, AIR 1966 SC 849 at p. 852, that a meter with an exposed stud hole, without more, was not a perfected instrument for unauthorised taking of energy and could not be regarded as an artificial means for its abstraction. It may be mentioned here that it was observed at p. 851 that the tampering of the meter and the taking of the unrecorded energy were unauthorised by the contract with the electrical company, the unauthorised taking was an abstraction and the crippled meter an artificial means for abstraction.

5. The view in *Jagannath Singh's* case, AIR 1966 SC 849, was reiterated by this Court in *Ram Chandra Prasad Sharma v. State of Bihar*, Cri. Appeals Nos. 48 to 51 of 1963, D/- 11-I0-1966: (reported in AIR 1967 SC 349).

6. Learned counsel for the respondent has submitted that the facts as found in the present case, together with certain circumstances present in Criminal Appeal No. 130 of 1963 which was disposed of by the judgment in *Jagannath Singh's* case, AIR 1966 SC 849, establish the offence under S. 39 of the Act and has urged that the two circumstances, viz., installation of the meter in a dark corner and the presence of certain obstructions in the passage leading to the meter, together with other facts found in the present case, would justify the finding of the Courts below that the appellant had committed the offence under S. 39 of the Act.

7. The two circumstances in the present case are not sufficient, in our opinion to establish that the appellant did abstract electrical energy by tampering with the meter. The installation of the meter in a dark corner does not show any guilty conscience of the appellant. In fact, when the meter was installed by the electric company it could have chosen a better lighted place. The presence of the obstruction in the passage is not sufficient to show that the servants of the company could not have reached the meter for the purpose of inspection and checking whenever they chose to do so. There appears to be no statement on the record to the effect that at any time such servants were thwarted in their attempt to check the meter by the appellant or his representatives, or on account of the alleged obstruction in the passage.

8. An entry on the meter index card to the effect that the meter at the appellant's Mill was found

locked on July a, 1957, referred to by the High Court, is with respect to a period of time about a year earlier than the date on which the meter was found tampered and, by itself, is no evidence to the effect that electrical energy was dishonestly abstracted at the time. The meter could have been locked to protect it from any interference by any unauthorised person. Keys could not have been available if they had been misplaced.

9. It is clear, therefore, that the appellant's conviction for the offence under S. 39 of the Act is bad in law.

10. Learned counsel for the appellant did not contest the legality of the appellant's conviction for contravening S. 44 of the Act and R. 138 of the Indian Electricity Rules.

11. We, therefore, allow the appeal partially and set aside the conviction and sentence of the appellant for the offence under S. 39 of the Act. The appeal with regard to the other contentions will stand dismissed.

Appeal partially allowed