

State of Karnataka

Vs

Adimurthy Alias B. Moorthy

Criminal Appeal No. 285 of 1983

(A. P. Sen, E. S. Venkatramiah JJ)

11.05.1983

JUDGMENT

A. P. SEN, J. -

1. This appeal by special leave is directed against a judgment of the Karnataka High Court dated December 15, 1980 affirming the order of acquittal passed by the Munsif & Judicial Magistrate First Class, Krishnarajanagar dated July 10, 1979 acquitting the respondent of an offence punishable under Section 39 and 44 of the Indian Electricity Act, 1910 read with Section 379 of the Indian Penal Code, 1860.

2. The prosecution case in brief was as follows. On August 25, 1976 at about 12 noon PW 1 Syed Ameer, supervisor, Karnataka Electricity Board, went to the house of the respondent on a routine inspection to check the electric meter installed there. He found the meter board at the entrance and though the meter was not recording consumption of electric energy, the lights and fans were on. It appeared that the respondent had tampered with the main connection by fixing two switches to the wall of the house and by operating the switches the lights and fans inside the house could be use without the meter recording any consumption. Later in the day, he along with the Assistance Engineer attached to the Karnataka Electricity Board, Krishnarajanagar and the Junior Engineer went to the house of the respondent and saw that there was theft of electric energy. Accordingly, on the direction of the Assistant Engineer, PW 1 Syed Ameer lodged a report with the police Ex P-1. After an investigation into the complaint, the Krishnarajanagar police filed a challan. The prosecution led evidence of five witnesses including that of PW 1 Syed Ameer, Supervisor and PW 2 Bheemanna, Junior Engineer to substantiate the charge. The learned trying Magistrate however acquitted the respondent of the offence with which he was charged under Section 248 (1) of the Code of Criminal Procedure, 1973 on the ground that the prosecution had failed to establish that PW 1 Syed Ameer had been authorized to lodge a complaint. On a reading of Section 50 of the Act, he held that a Junior Engineer of the Electricity Board could lodge a complaint but not the Supervisor, and the mere presence of the Junior Engineer after detection of the theft, does not imply that the Supervisor had been authorized to lodge a complaint. The High Court has upheld the order of acquittal passed by the learned trying Magistrate on the ground that the notification issued by the Karnataka Electricity Board authorizing Junior Engineers, Section Officers and Supervisors to institute prosecutions in terms of Section 50 of the Act not having been published in the official Gazette, the court could not take judicial notice of any such notification and it was for the prosecution to lead evidence in proof thereof to establish that PW 1 Syed Ameer was competent to lodge a complaint. It rejected a prayer of the learned Public Prosecutor to lead additional evidence in proof of the notification on the ground that that would be tantamount to allowing the prosecution to fill up a lacuna in the case.

3. The decision of the appeal must turn on the construction of Section 50 of the Act which reads as follows :

50. Institution of prosecutions. - 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.

4. According to the plain English language, the ordinary meaning of the phrase "at the instance of" in the collection of words "No prosecution shall be instituted... except at the instance of" must, in the context in which it appears, mean 'at the behest of, or, at the solicitation of'. The word 'instance' as a verb means "to urge, entreat urgently, importune". The meaning of the phrase 'at the instance of' as given in Random House Dictionary of the English Language at page 690 is : 'at the urging of suggestion of'. 'Instance' does not imply the same degree of obligation to obey as does 'command'. That is also the legal sense in which the phrase "at the instance of" in Section 50 of the Act has been understood. It is clear upon the terms of Section 50 that it nowhere requires that the authorization should be by a notification published in the official Gazette.

5. The order of acquittal recorded by the learned Magistrate and as affirmed by the High Court proceeds in a construction of Section 50 of the Act which is wholly unwarranted and has resulted in manifest miscarriage of justice. There can be no doubt that the prosecution had been launched "at the instance of" Electricity Board within the meaning of Section 50 of the Act. The Karnataka Electricity Board which is a statutory body had issued a notification No. KEB/A5/6053/73-74/SOL/401/72 dated April 18, 1974 which finds place in the Karnataka Electricity Board Manual, Vol. I, 2nd Edn. at page 80 which is to the following effect :

Section 134 (4) (iv) :

Superintending Engineers, Executive Engineers, Assistant Engineers, Junior Engineers, Section Officers and Supervisors are authorised to institute prosecution or make complaints to the jurisdictional officers in charge of Police Stations, for instituting prosecutions when offences under any of the Sections 39, 41, 43 and 44 of the Electricity Act or Rule 56 read with Rule 138 of the Electricity Rules are committed or are reasonably believed to have been committed in their respective jurisdictions.

6. The matter is no longer res integra. In Ram Chander Prasad Sharma v. State of Bihar the court observed :

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. Co. 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. Co., 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 lodged the first information report and, therefore, it would follow that the law was set in motion by the "person aggrieved".

7. Interpreting the phrase "at the instance" in Section 50 of the Act, the Allahabad High Court in

Vishwanath v. Emperor stated :

If it had been the intention of the Legislature that no case should not be instituted in Court except by the Electric Company itself or the other persons mentioned in Section 50 of the Act, the Legislature would, we think have used the ordinary phrase "on the complaint of" and the section would have been on the lines that no Magistrate should take cognizance of any offence referred to in Section 50 of the Act, except upon the complaint of certain persons. The phrase "at the instance of" means merely "at the solicitation of or at the request of,..."

8. In that case the prosecution was in fact launched by the police at the behest of the electric supply company and the High Court held that there could be no doubt that the company desired that the accused should be prosecuted for the offences. The officers of the company had discovered the theft and they had, as here, reported the matter to the police and asked the police to make an investigation, as in the instant case. Upon these facts, the Allahabad High Court held that the prosecution had been launched at the instance of the electric supply company within the meaning of Section 50 of the Act. That construction of Section 50 of the Act by the Allahabad High Court in Vishwanath case, has throughout been followed.

9. We find that the Delhi High Court in State (Delhi Administration) v. Dharam Pal as well as the Karnataka High Court in State of Karnataka v. Abdul Nabi have taken the same view placing emphasis on the circular issued by the General Manager laying down the procedure to be followed in launching prosecutions of theft of electricity Board. It is unfortunate that the learned Judges of the Karnataka High Court should have disregarded their earlier judgment in Abdul Nabi case; more so, when none of them was a member to the earlier Bench. After referring to the judgement of the Allahabad High Court in Vishwanath case, as to the meaning of the phrase "at the instance of ", the High Court had earlier observed in Abdul Nabi case :

Where, therefore, a person acting for and on behalf of the Board lodges a complaint with police in respect of unlawful extraction of electric energy and the police in turn file a charge sheet, the prosecution must be regarded as instituted at the instance of the Board.

10. In the instant case, the High Court refers to the concession of the learned Government Advocate that 'the notification had not been published in the official Gazette' and observes :

In that view of the matter, it is plain that this Court cannot take judicial notice of existence of such notification and the facts contained in that notification. The prosecution ought to have led in evidence on producing this notification to establish that PW 1 was legally authorized to prosecute within the meaning of Section 50 of the Act. It has failed to do so.

It appears that the High Court was obviously misled by the use of the word 'notification' contained in the Manual. The Karnataka Electricity Board is constituted under Section 5 of the Electricity (Supply) Act, 1948, Under Section 12 of that Act, the Electricity Board is a body corporate having perpetual succession and a common seal. The Electricity Board therefore is an artificial person and depends on its officers and servants to carry out its powers, functions and duties. The aforesaid notification is a general order issued by the Electricity Board in terms of Section 50 of the Act authorising the Superintending Engineers, Execution Engineers, Assistant Engineers, Junior

Engineers, Section Officers and Supervisors to institute prosecution or make complaints to the police for instituting prosecutions when offences under any of the Sections 39, 41, 43 and 44 of the Electricity Board and it is quite clear upon the terms of Section 50 that PW 1 Syed Ameer, Supervisor was authorized to lodge a complaint with the police. The Electricity Board being a public authority, it was sufficient for the prosecution to have placed on record a copy of the Manual containing the relevant notification. That was sufficient proof of the authorization requisite under Section 50 of the Indian Electricity Act, 1910.

11. It may not be out of place to mention that even if the requirement of Section 50 of the Act were that the authorization should have been by a notification published in the official Gazette, that would hardly make difference. The phrase "by notification in the official Gazette" occurs in Section 6 (1) of the Criminal Law Amendment Act, 1952 and it also occurred in Section 16 of the Criminal Procedure, 1898. In *Balkrishna Anant Hirlekar v. Emperor*, Beaumont, C.J. while dealing with Section 16 of the Criminal Law Amendment Act, 1908 which empowered the local government by notification in the official Gazette to declare an association unlawful on the grounds mentioned therein which are in effect that the association constitutes a danger to the public peace, observed :

The word used in Section 16 is "notification" and not. "insertion". "Notification" is defined in Webster's Dictionary as "Act of notifying; act of making known; an intimation or notice; esp., act of giving official notice or information by words, by writing, or by other means;" so that the essence of notification is the giving of notice, and, in my opinion, the words "by notification in the official Gazette" mean simply "by giving notice in the official Gazette".

In the context of Section 16 of the Criminal Law Amendment Act, 1908 the court required a stricter proof that all the formalities require to the act of notifying or in other words, publishing the notification had actually been carried out. That was because the law under which it was issued entrenched upon the right and liberties of the citizens.

12. Finally, a few words on the merits. On a consideration of the evidence adduced, the learned Munsiff came to the conclusion that the prosecution had established its case against the respondent beyond all reasonable doubt, but on a misconstruction of Section 50 of the Act, acquitted him under Section 248 (1) of the Code. In maintaining the order of acquittal, the High Court confined its decision on its interpretation of Section 50 of the Act and has not touched upon the merits. We have gone through the evidence led by the prosecution in sufficient to raises an inference of guilt against the respondent. This is not contested by learned counsel for the respondent, but he only pleads that a lenient view should be taken in regard to the punishment.

13. For these reasons, the appeal succeeds and is allowed. The judgment of the High Court of Karnataka upholding the order of acquittal of the respondent is set aside and he is convicted of having committed an offence punishable under Section 39 of the Indian Electricity Act, 1910 read with Section 379 of the Indian Penal Code, 1860. The learned standing counsel made it clear at the time of grant of special leave that the State Government was only desirous that the law on the point should be settled and it was not interested in the imposition of a punishment on the respondent. In view of this, we do not impose any sentence on the respondent, having regard to the period of time that has elapsed.

14. We are thankful to Shri V. A. Bodbe who appeared as amicus curiae for the assistance that he has rendered.

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