

Bihar State Electricity Board and Another

Vs

Nand Kishore Tamakhuwala

Criminal Appeal No. 509 of 1977

(V. B. Eradi, G. L. Oza JJ)

17.03.1986

JUDGMENT

OZA, J. -

1. This appeal arises in peculiar circumstances. A complaint was filed in the court of the Sub-Divisional Judicial Magistrate, Sahibganj on April 26, 1974. The complainant claimed to be the son of one of the partners of the firm M/s Dhanraj Sagarmal Tamakhuwala which owned a flour mill at Sahibganj. The allegations made in the complaint were of failure of power supply for four days to the flour mill and the Bihar State Electricity Board and other officers were joined as accused persons and it was alleged that it resulted in monetary loss to the flour mill. No particular act or omission of any particular officer or Board who were arrayed as accused persons was mentioned. The offences alleged were under Section 42(b) of the Indian Electricity Act, 1910 ('Act' for short) and Sections 166 and 427 of the Indian Penal Code. Against the order of the learned Magistrate taking cognizance of the complaint, a petition was filed in the High Court under Section 482 of the Code of Criminal Procedure for quashing the prosecution.

2. A learned Judge of the High Court by his order dated November 29, 1976 quashed the proceedings against petitioners 2, 4 and 6 but rejected the prayer in respect of petitioner 1 i.e. the Board and petitioner 5 Shri Haldar Prasad. Aggrieved by this order of the High Court dated November 29, 1976 this Court was approached for leave to prefer an appeal and the leave having been granted this appeal has been filed in this Court.

3. The complaint was filed in 1974. The order of the High Court was passed on November 29, 1976 and it is unfortunate that the matter has come up for hearing only today i.e. March 11, 1986.

4. It was contended that the appellant, the Bihar State Electricity Board is not a licensee and a prosecution against the Board under Section 42(b) could not be initiated. It was also contended that a perusal of the complaint itself revealed that no positive acts of omission or commission have been alleged against the Board or accused persons who have been arrayed in the complaint nor is it clearly made out as to what was the duty cast upon a particular person who failed to discharge it. It appears that it is a case of the long lapse of time when the complainant probably has lost interest in the matter and that explains to us as to why nobody appeared for the respondent-complainant.

5. Section 42(b) of the Act reads as under :

42. Penalty for illegal or defective supply or for non-compliance with order. -
Whoever -

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(b) being a licensee or a person who has obtained the sanction of the State Government as aforesaid, in contravention of the provisions of this Act or of the rules hereunder, or in breach of the conditions of licence or of the sanction, as the case may be, and without reasonable excuse, the burden of proving which shall lie on him, discontinues the supply of energy or fails to supply energy; or

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shall be punishable with fine which may extend to one thousand rupees, and, in the case of a continuing offence or default, with a daily fine which may extend to one hundred rupees.

6. It is apparent that offence under this section will be made out if contravention of the provisions of this Act or rules made thereunder is proved and further if it is established that without reasonable cause supply of energy is discontinued. A perusal of the complaint shows that what was mentioned was that the power supply has been interrupted on a number of occasions because of wilful failure and so far as the duties which are made the basis of the offence, the allegation was that electricity was not being supplied knowingly and intentionally to cause wrongful loss and damage to the concern. It is, therefore, clear that no facts have been specifically stated to constitute an offence under Section 42(b) of the Act. Section 166 of the Indian Penal Code reads thus :

Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both. To make out an offence under this provision, it has to be stated that the public servant knowingly disobeyed any particular direction of the law which he was bound to obey and further that such disobedience would cause injury to any person to the knowledge of the public servant. A perusal of the complaint does not disclose any particular act or omission of any of the officers of the Board because it is not disputed that the officers of the Board will be public servants within the meaning of definition of the term in the Indian Penal Code.

7. Section 427 of the Indian Penal Code provides :

Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

This provision contemplates commission of mischief and mischief has been defined in Section 425 which reads thus :

Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

In order to make out an offence of mischief, it has to be alleged that the person caused the

destruction of any property or any such change in the property or in the situation thereof. From a perusal of the complaint it is clear that no acts are alleged against any one of the accused persons which could bring any of their actions within the mischief of the definition of mischief. Apparently therefore the offence under this section also is not even prima facie alleged. Section 50 of the Act provides for the persons who could launch a prosecution for any offence under this Act. Section 50 reads as under :

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.

Although the complainant claims to be the son of one of the partners of the firm owning the flour mill but it is not shown any existing interest that he has in the flour mill but as on the facts stated, no offence prima facie appears to have been committed, we do not think it proper to go into this question.

8. In view of the discussion above therefore we see no reason for continuance of this prosecution any further. The lapse of time is also one additional circumstance and we therefore allow the appeal and quash the prosecution launched against the appellants. The amount deposited by the appellants may be returned to them as none has appeared for the respondent.

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