

PATNA HIGH COURT

Tulsi Prasad

Vs

State (Patna)

Criminal Revn. No. 1204 of 1962

(Kamla Sahai, J.)

27.09.1962. 14.02.1963

JUDGMENT

Kamla Sahai, J.

1. The petitioner has been convicted under section 379 of the Penal Code, and has been sentenced to pay a fine of Rs. 200/- or, in default, to undergo rigorous imprisonment for two months.
2. The petitioner had electric connection in his house, and the meter stood in his name as consumer No. 759. On the 21st October, 1961, Shivanandan Prasad (P.W. 1), Engineer Assistant attached to the Electricity Department, received some information. He then went with some other persons to the petitioner's house at 1 P.M. on the same date. The petitioner was present there. On examination of the electric connection, he found that the main switch and meter were not working, that another circuit was tacked to the main switch, and that the meter did not record any consumption even when the light was switched on as a wire had been so fixed in the earthing that electrical energy passed to the light points without going through the meter. He, therefore, submitted a report, which was treated as first information report, and the petitioner was put upon his trial, with the result already mentioned.
3. The petitioner's defence is that he is a teacher in a basic school, that he mostly remains away from Bihar, that his father, Nemchand Mahto, was in occupation of the house, and that there might have been some disorder in the meter itself.
4. The Courts below have considered the evidence adduced in the case, and have come to the conclusion that the prosecution case of theft of electrical energy by the petitioner has been established beyond reasonable doubt.
5. The learned Advocate for the petitioner has raised two points. His first point is that the prosecution against the petitioner was illegally instituted because it was not started at the instance of the Government or an Electrical Inspector or an aggrieved person, as provided for in Section 50 of the Indian Electricity Act, 1910. His second point is that, there being no evidence that it

was the petitioner who had fixed the wire in such a way as to pass electrical energy from the supply line to the light points without going through the meter, his conviction is bad. I propose to consider these points in the order in which I have mentioned them.

6. The petitioner has been convicted under Section 379 of the Penal Code and not for any offence under the Electricity Act or any rule, license or order framed or issued under the Act Section 39 of the Act reads;

"Whoever dishonestly abstracts, consumes or uses any energy shall be deemed to have committed theft within the meaning of the Indian Penal Code; and the existence of artificial means for such abstraction shall be prima facie evidence of such dishonest abstraction."

A plain reading of the section makes it clear that abstractions consumption or use of electrical energy is not an offence under the Electricity Act; but, by reason of the provisions contained in Section 39, it will be deemed to be theft within the meaning of Section 378 of the Penal Code. It will, accordingly, be punishable under Section 379 of that Code. Had it been the intention of the legislature that theft of electrical energy should be an offence under the Electricity Act itself, some sentence by way of punishment must have been provided for. It will be noticed that there are several reasons after Section 39 which provide for punishment for different acts, and those, acts must be held to be offences under the Act. If a person commits a breach of a condition given in the licence granted to him, his case will come under Section 50. Similarly, that section will be applicable to a person who contravenes a rule framed under the Act. It seems to me to be manifest that Section 50 has no application where a person is held, by reason of the provisions in Section 39, to have committed an offence under the Penal Code. This view receives support from the decision of a Bench in *State v. Maganlal Chunilal Bogawat*¹,

7. I hold, therefore, that the prosecution against the petitioner cannot be held to be vitiated simply because it was not started at the instance of the Government, the Electrical Inspector or the aggrieved person.

8. The second argument advanced by learned counsel is equally without substance. The person to be punished under Section 379 of the Penal Code as laid down in Section 39 of the Electricity Act is the person who 'abstracts, consumes or uses' electrical energy dishonestly. Admittedly, the petitioner is registered as the consumer. It is he who pays the bills for consumption of electrical energy in the house. His father and other inmates may be residing in the same house; but it is the petitioner who must be held to consume whatever electrical energy is used in the premises served by his meter. The term 'consumer' has been defined in Section 2(c) of the Act to mean the

"person who is supplied with energy by a licensee or the Government or by any other person engaged in the business of supplying energy to the public".

It is obvious that the consumer for the house in which electrical energy was being dishonestly consumed by artificial means is the petitioner within the meaning of Section 2(c) as he was the registered consumer. He cannot, therefore, escape his liability for the theft of electrical energy.

9. No other point has been raised except that the sentence is severe. I do not think that any interference with the sentence is called for. The application is dismissed.
Application dismissed.

Cases Referred.

¹ AIR 1956 Bom 354