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RAM CHANDER PRASAD SHARMA

v.

STATE OF BIHAR & ANR.

February 8, 1966

B

[A. K. SARKAR AND J. R. MUDHOLKAR, JJ]

Indian Electricity Act (9 of 1910), ss. 39 and 50—Existence of artificial means for abstraction of electricity—When evidence of dishonest abstraction—Complaint to police on behalf of Company—If prosecution at the instance of person aggrieved.

C

The appellant's mill was supplied with electric energy by the Patna Electricity Supply Company. The electric meter was tampered with by breaking its seals, opening its stud and inserting a wire which prevented the rotation of the disc, so that, the consumption of electricity was not registered. There was thus a perfected artificial means for abstraction of electric energy. At the instance of the Chief Engineer of the Electricity Supply Company, who had been specifically empowered to act on behalf of the company, a report was made by the Assistant Engineer against the appellant to the police and the appellant was prosecuted for an offence under s. 39 of the Indian Electricity Act, 1910. The trial Court acquitted him but the High Court, on appeal, convicted him.

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In appeal to this Court,

HELD : (i) The appellant was guilty.

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For a conviction under s. 39, it must be established that there was a perfected artificial means for abstraction of electrical energy and that the dishonest abstraction was by the accused person. In the instant case the tampering was so blatant and so effective that it could not have been done without the appellant's knowledge or connivance. [524 B-C]

Jagannath Singh alias Jainath Singh and Sohari Lal v. B. S. Ramaswamy, [1966] 1 S.C.R. 885, explained.

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(ii) Since the Electricity Supply Company was a body corporate, it must act only through its officers, and therefore it would follow that the law was set in motion by the "person aggrieved" within the meaning of s. 50 of the Act. [523 C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 48 to 51 of 1963.

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Appeals from the Judgment and Order dated the 23rd January 1963 of the Patna High Court in Government Appeals Nos. I of 1960, 39 and 19 of 1959, and Criminal Appeal No. 42 of 1959 respectively.

M/s. Nuruddin Ahmad and U. P. Singh, for the Appellants (In Cr. As. Nos 48 to 50 of 1963, and Appellant No. 2 (In Cr. A. No. 51 of 1963) :

M/s. D. P. Singh and U. P. Singh, for Appellant No. 1 (In Cr. A. No. 51 of 1963) :

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M/s. A. N. Sahay, N. K. Prasad Rukhaiyer and D. Goburdhan, for Respondent No. 1.

M/s. A. N. Sahay and S. P. Varma, for Respondent No. 2.

The following judgment of the court was delivered by :

Mudholkar J.—By a common judgment delivered on January 23, 1963 the High Court at Patna decided four appeals preferred by the State of Bihar and two criminal revision petitions, one on behalf of the complainant and another on behalf of an accused person. These appeals arose out of four prosecutions launched against certain persons running mills or factories which were supplied with energy by the Patna Electricity Supply Company (hereafter referred to as P. E. S. Co. for the sake of brevity). The offences with which they were charged were under ss. 39 and 44 (c) of the Indian Electricity Act, 1910 (9 of 1910) and r. 138 read with r. 56 made under the Act. The trying magistrate acquitted all those persons who are appellants before us in respect of each of these offences, except Ram Chander Prasad, appellant in CrI. A. 48 of 1963. He was convicted of all the three offences and sentenced variously. In appeal he was acquitted of the offence under s. 39 by the Additional Sessions Judge, Patna while his conviction and sentences under the other two provisions were upheld. The State thereupon preferred an appeal against his acquittal under s. 417, Code of Criminal Procedure before the High Court. The State likewise preferred appeals against the acquittal of the accused persons in the other three cases. All the appeals were heard together and were substantially allowed. The complainant Ram Chandar Parsad Sharma's petition was allowed and that of an accused person dismissed. The accused persons have, therefore, preferred four appeals before us and though we will deal with them in this judgment we will take them separately one after the other.

Criminal Appeal No. 48 of 1963 :

According to the prosecution, on June 11, 1958 the Assistant Engineer (Mains) of the P. E. S. Co. by name Chatterjee visited the Ramji Mills situated at Dinapur. The mill is run with a 15 horse power motor which is supplied with electric energy by P. E. S. Co. It is provided with a three phase meter. Chatterjee found the mill working but noticed that the disc of the meter was not rotating with the result that the consumption of electrical energy was not being registered at all. Upon inspection of the meter Chatterjee noticed that a piece of wire had been inserted into the meter through the top stud hole on the right hand side of the meter cover. This had been done by unscrewing the nut and thus exposing the stud hole. Eventually a report was made to the police by Chatterjee at the instance of Ramaswami the then Chief Engineer and General Manager of P. E. S. Co. After investigation the appellant was placed for trial before the Judicial Magistrate, First Class, Dinapur. He framed charges against him in respect of all the three offences. The appellant pleaded not guilty and denied having inserted the wire inside the meter or to have tampered with it in any way. His main defence, however,

- A was that the mill belonged to the joint family and its management was in the hands of his father Nathuni Thakur. He further said that he was practising medicine and was running a homoeopathic dispensary in Dinapur. He did not deny that the meter had been tampered with but according to him this was done by Chatterjee himself because he was not given illegal gratification which he had demanded from Lohari Pandit, who was the munshi of the mill.

- B All the courts are concurrent in holding that the appellant was running the mills and that he was a consumer as defined in s. 2(c) of the Act. Moreover, his convictions under s. 44(c) and under r. 138 read with r. 56 are not challenged before us. In the circumstances it is not open to him now to say that he had no concern with the mills. The only question then is whether the offence under s. 39 has been brought home to him. Section 39 of the Act reads thus :

- C “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.”

- D It has been concurrently found by the courts below that at the time of the inspection the mill was working but the meter was not registering the consumption. It has also been found concurrently that the meter had been tampered with, that its seals were broken, that its stud was open and a wire had actually been inserted in it which prevented the disc from rotating. These findings were not challenged before us and in our opinion quite rightly. What was, however, said was that in view of our recent decision in *Jagannath Singh alias Jainath Singh and Sohari Lal v. B. S. Ramaswami*(¹) these facts by themselves would not justify the inference that the appellant has committed an offence under s. 39. That was a case in which, though the meter seal was broken and the sealing nut was loosened which exposed the stud hole of the meter there was no evidence to show that a wire or any other foreign matter had been introduced in the meter which would have the effect of stopping or retarding the rotation of the disc. The meter was actually registering consumption of energy and the prosecution had not established by using a check meter or otherwise that what was being registered was less than the current actually consumed by the mill. It is in the background of these facts that this Court observed :

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H “The effect of the last part of s. 39 is that the existence of the unauthorised means for abstraction is *prima facie*

evidence of dishonest abstraction by some person. The special rule of evidence goes no further. The prosecution must prove *aliunde* that the accused made the abstraction. The fact that the accused is in possession and control of the artificial means for abstraction coupled with other circumstances showing that he alone is responsible for the abstraction may lead to the inference that he is guilty of the dishonest abstraction."

This Court also held that an exposed stud hole cannot by itself be regarded as a perfected artificial means for abstraction of electrical energy. In the present case, however, the artificial means was 'perfected' because a wire had actually been introduced through the stud hole and had the effect of preventing the rotation of the disc. The High Court has held that the appellant was not merely a consumer but was the person who supervised over the working of the mill and the custody of and control over the meter could not be with anyone else but him. Tampering was so blatant and so effective that it could not have been done without his knowledge or connivance. Further there is evidence on record to the effect that it takes a considerable time and requires certain amount of skill to do what has been found to have been done to this meter. Clearly, therefore, it could not be the work of any one other than an interested person. Indeed, looking to the effectiveness of the tampering it must follow that its object was to prevent the recording of electrical energy consumed by the mill. The person interested in this would naturally be the consumer. The learned Additional Sessions Judge no doubt said that the possibility of the appellant's father or some other member of the family tampering with the meter cannot be ruled out. In our view such a speculative possibility is not enough to create reasonable doubt, the benefit of which could be given to the appellant. In our opinion, therefore, the High Court was right and accordingly we dismiss this appeal.

Criminal Appeal No. 49 of 1963 :

This case deals with Onkar Mills which, according to the prosecution, is run by the appellant Jainarain Lal. When Chatterjee inspected this mill along with Kamla Prasad, Government inspector, on June 13, 1958 he found that two sealing wires of the meter were broken. He drew up a report of this on August 2, 1958 and submitted it to Ramaswami. Before this date, however, that is, on July 1, 1958 Ramaswami had visited the place along with Chatterjee and Srinivasan, the then Mains Superintendent. Both the appellants took these persons to the room in which the meter had been installed. Ramaswami found the sealing wires cut near the seals and also found that both the seals had been tampered with. According to the prosecution, therefore, the appellants were guilty

A of offences not only under r. 138 read with r. 56 framed under that Act but also of offences under s. 44(c) and s. 39 of the Act. In so far as the offence under s. 39 is concerned what is mainly relied upon by the prosecution is that while between June 28 and July 1, 1958 the meter reading showed a daily consumption of electric energy at about 300 units, for the period prior to that it showed an average daily consumption of only 100 units.

B In so far as the offence under s. 44(c) is concerned the facts to be borne in mind are these : On July 1, 1958 the meter was bound with wires at the instance of the P. E. S. Co. officials. It is, however, a fact that the meter stopped registering the current used all of a sudden within 24 hours: Indeed, on this score the appellants themselves made a complaint to the P. E. S. Co. by telegram. When the meter was examined it was found that nitric acid had been poured on it and thus the meter had been tampered with. This evidence was not accepted by the trying magistrate who felt that things looked rather suspicious. On the other hand the High Court upon a consideration of the evidence has come to the conclusion that the meter had been deliberately tampered with. The appellants have been found by the High Court to be consumers and in our opinion rightly and, therefore, with respect to the offence of tampering which is punishable under s. 44(c) they must be held to be guilty. It is not for us to re-assess the evidence on the point because it is the High Court which as the final court of facts, has to assess evidence. In the circumstances we see no ground to interfere with the convictions and sentences passed on the appellants by the High Court for the offence under s. 44(c) of the Act.

E In so far as the offence under r. 138 read with r. 56 is concerned it is clear that the offence has been established. Indeed, it is not even the appellants' case that the meter was not tampered with. But according to them all this was done by Chatterjee. This explanation has been rejected by the High Court and in our opinion rightly. We, therefore, dismiss their appeal in respect of their conviction and sentences for this offence.

F In our opinion, the conviction of the offences under s. 39 is unsustainable. It is no doubt true that the meter had been tampered with. But there is nothing to show that there was any perfected artificial means in existence so as to raise the presumption of dishonest abstraction under s. 39 prior to the stopping of the meter. The mere fact that the consumption of energy between June 28 and July 1, 1958 was about 300 units per day whereas it was much less prior to that date does not necessarily lead to the inference that in the past there was dishonest abstraction of electric energy. The rise in consumption between June 28 and July 1, could be accounted for by circumstances such as longer working hours, user of current in a wasteful manner, user of current for more

appliances and so on. In the circumstances, therefore, we do not think that the High Court was right in convicting the appellants under 39 of the Act. We, therefore, set aside their convictions and sentences in respect of the offence under s. 39.

Criminal Appeal No. 50 of 1963 :

This appeal concerns the tampering of seals of three power meters installed in the mill belonging to the appellant Krishna Prasad Sao. Accepting the evidence of N. N. Ghosh, a meter inspector, the High Court has held the prosecution case to be established. While assessing the evidence of Ghosh the prosecution has referred to the evidence of Ramaswami who had inspected the meters in question three days after Ghosh had inspected them and also to the evidence of the Mains Superintendent Bhattacharya and meter reader Sen who accompanied him. The High Court has also accepted the prosecution case that at the inspection by Ramaswami it was found that the terminal covers of two of the meters were dislodged from their normal positions and were actually hanging by the wires. It was also found that the cover seals of all the meters had been tampered with. Indeed, according to Ramaswami the seals had been so cut and placed that despite what had been done they gave a deceptive appearance of being in tact. It was further found that there were no seals on two of the cut-outs that the seals on the terminal covers of all the three meters were not genuine and that one of the meters had registered no advance whatsoever subsequent to Ghosh's visit on the 19th while the other two had registered only 49 and 50 units respectively between that date and the 22nd July.

It may be mentioned that Krishan Prasad actually made an extra-judicial confession when he was questioned by Ramaswami regarding the tampering. He no doubt retracted the confession but the High Court has relied upon it. Acting on the evidence the High Court set aside the acquittal of Krishan Prasad in respect of all the offences including the one under s. 39 of the Act.

Before we come to the merits we will deal with an objection to the effect that the prosecution was incompetent as it was not launched by a person competent to do so. It is based upon s. 50 of the Act which runs thus :

“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 Electric Inspector, or of a person aggrieved by the same.”

The prosecution here was commenced with a chargesheet submitted by the police to the Judicial Magistrate. The offences were investigated into by the police after the first information report was launched

A with them by Bhattacharya. What is contended is that information given by him could not entitle the police to submit the chargesheet. It is also said that submission of a chargesheet by the police is not the same thing as institution of prosecution at the instance of the State. It is, however, not disputed that if the law was set in motion by a person aggrieved by making a first information report to the police a chargesheet could properly be submitted by the police. 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 launched the first information report and, therefore, it would follow that the law was set in motion by the "person aggrieved". The objection based on s. 50 must, therefore, be held to be untenable.

D Now as to the merits. In so far as convictions for the offences under s. 44(c) of the Act and r. 138 read with r. 56 are concerned there is ample evidence. In addition to the evidence of Ramaswami and Bhattacharya there is the evidence of Kamla Prasad, Assistant Electrical Inspector who is an independent person. The evidence of these witnesses has been believed by the High Court and it shows clearly that the meters were tampered with and the seals cut. The finding of the High Court that Krishna Prasad Sao was a consumer and that the meters were in his custody and under his control is also based upon adequate material. The High Court was, therefore, justified in convicting the appellants for offences under those provisions. The High Court has also relied upon the extra-judicial confession of Krishna Prasad which, it may be mentioned, was retracted by him later in the sense that he denied having made any such confession. Mr. Nur-ud-din Ahmed on behalf of the appellant contended that no conviction can be based upon a retracted extra-judicial confession. The respondent contended that this was not a case of retracted confession to which the rule of prudence requiring corroboration applies. It would not be profitable to discuss the merits of the rival contentions and we will proceed on the assumption that this is a case of retracted confession. It seems to us that in any event Mr. Nur-ud-din's contention cannot be accepted. In *Pyarelal v. State*⁽¹⁾ this Court, while pointing out that ordinarily corroboration is required it is not a rule of law but only a rule of prudence. It is also said that it is not an inflexible rule of practice or prudence that in no circumstances such a conviction can be based without corroboration.

(1) [1963] Supp. 1 S.C.R. 689.

ration, on a retracted confession. We are satisfied that the High Court had before it adequate material apart from the retracted confession for holding that the meters had been tampered with and the seals broken.

In so far as the conviction under s. 39 is concerned the matter stands on a different footing. It is not sufficient to say that a meter had been tampered with and that it was under the control of the accused person. It is further necessary to show that there was dishonest abstraction, consumption or use of electrical energy by the accused person. Before raising a presumption thereunder that there was dishonest abstraction the presence of an artificial means which would render abstraction of energy possible has to be established. Here we have three-phase meters and, therefore, unless all are tampered with abstraction of energy without fear of detection is not possible. It is difficult to presume that the appellant would have knowingly done something to the meter which would not have escaped detection of a meter reader and facilitated the abstraction of electric energy. In fact what he had said in his confession was that Jai Narain, a meter reader of the company had done something to the meter. That may or may not be so. Jai Narain who was co-accused with the appellant was acquitted by the trial court and his acquittal was not challenged by the State. There is no material on the basis of which it could be held that there was either a perfected artificial means of abstraction or there was in fact any abstraction of electrical energy. In the circumstances the presumption permissible under s. 39 can not be raised in favour of the prosecution. It follows, therefore, that the appellant's conviction under s. 39 is unsustainable. We accordingly set it aside as also the sentences passed upon him in respect of that offence.

Criminal Appeal No. 51 of 1963 :

The appellant here is Durga Prasad. The mains which were alleged by the prosecution to have tampered with were installed in Shankarji Mills. According to the prosecution the appellant Durga Prasad and Chandra Mohan Prasad are the proprietors of the mill, having purchased it from one Musanlal. It is not disputed that the sale deed is in their names. According to the appellants, however, it was purchased by Sarju Prasad father of Durga Prasad and maternal grandfather of Chandra Mohan. On June 18, 1958, Chatterjee inspected the installation. Further, according to him the normal consumption of the mill would be 70 units per day of eight hours working while the meter showed 700 to 750 units per month. He also found that both the seals provided on the top cover of the meter had been tampered with and the top right sealing nut on the stud to be loosened and raised up leaving stud hole on the meter exposed. He also found lot of dust in the

A meter. The company's seals on one of the cut-outs were also found missing. He, therefore, reported the matter to Ramaswami and also on June 19, 1958 there was a joint inspection by Ramaswami and Chatterjee. Eventually a prosecution was launched against the appellants for offences under s. 39 and s. 44(c) of the Act and r. 138 read with r. 56. As already stated, the appellants were acquitted by the trying magistrate but were convicted by the High Court.

The main contention raised on the appellant's behalf by Mr. Nur-ud-din is that the appellants cannot be regarded as consumers and, therefore, they could not be convicted of any of the offences.

C It is no doubt true that in the company's books it is Musanalal, the original owner who is shown as proprietor of the mill. But it is not denied that he sold the mill to the appellants. It may be that the consideration came from Sarju Prasad but the evidence which has been accepted by the courts below shows that the mill was actually run by both the appellants. According to the prosecution the appellants are partners. Though it is true that the partnership deed has not been placed before us there is other material which would justify the conclusion that they are partners. The fact that the sale deed stands in the names of both these persons shows *prima facie* that both of them have interest in the mill. Then there is a statement of Ramaswami to the effect that they were partners. Then there is the evidence to the effect that both of them were taking part in running the mill. In the circumstances they could both be held to be the co-owners of the mill. Before its amendment in the year 1959 the definition of consumer in s. 2(c) was as follows :

F "Consumer means any person who is supplied with energy by a licensee, or whose premises are for the time being connected for the purposes of a supply of energy with the works of a licensee."

G It is an admitted fact that the mill was connected with works of P. E. S. Co. If, therefore, the appellants became co-owners by reason of the purchase of the mill from Musanalal they must be regarded as consumers even though Musanalal's name still continues to be borne on the records of P. E. S. Co.

The High Court has found as a fact, after consideration of the evidence, that the meters had been tampered with and the company's seals broken. The appellants who are consumers are thus liable to be convicted under s. 44(c) and r. 138 read with r. 56.

H In so far as the offence under s. 39 is concerned the position is, however, different. There is no material on the basis of which it could be said that what was done to the meter was a perfected

artificial means by reason of which dishonest abstraction, consumption or use of electrical energy was possible. Nor again, is there evidence to show that electrical energy was being consumed by the mill over and above what was recorded by the meters. In these circumstances the conviction of the appellants under s. 39 cannot be maintained. We, therefore, allow his appeal to this extent and set aside the conviction and sentence in respect of the offence under s. 39 of the Act.

What we have said above is sufficient to dispose of all the appeals.

*Appeal 48/63 dismissed.
Appeal Nos. 49, 50 and 51
of '63 allowed in part.*