

Vishwanath Vs. Emperor

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Court : Allahabad

Decided On : Jul-17-1936

Reported in : AIR1936All742; 165Ind.Cas.689

Appellant : Vishwanath

Respondent : Emperor

Judgement :

ORDER

1. The applicant in this case was sentenced to a fine of Rs. 100 under Section 379, I.P.C., read with Section 39, Electricity Act, for the theft of electricity. It was found by the Magistrate that he had interfered with the electric meter and consequently had used electricity with the intention of not paying for it. The facts certainly constitute an offence punishable under the sections. Whether the facts occurred was a question to be decided by the Courts below, and both the Magistrate and the Sessions Judge in appeal have found against the applicant. The point urged before us is a legal one. It is said that the Magistrate should not have taken cognisance of the case because under Section 50, Electricity Act, no prosecution shall be instituted against any person for an offence against the Act except at the instance of the Government or the Electric Inspector or the person aggrieved by the same. In this case it was the police who instituted the prosecution. There are really two questions. One is whether an offence of this nature can be described as an offence against the Electricity Act, and the second is what meaning is to be given to the phrase 'at the instance of.' The learned

Sessions Judge was of opinion that the offence was not an offence against the Act because it was one punishable under the provisions of Section 379, I.P.C. We think that this would not have been an offence under Section 379, I.P.C., if it had not been for the provisions of Section 39, Electricity Act. It was therefore an offence which was created by that section and we are of opinion that the Legislature intended Section 50 to apply to an offence of this nature. We therefore hold that there could be no prosecution except at the instance of the person aggrieved, that is of the Electric Company. Upon the other point we think that the phrase 'at the instance of' has purposely been introduced so as to make the provision a very general one.

2. If it had been the intention of the Legislature that no case should 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,' and we think that the Legislature meant only that a prosecution should not be instituted by some independent busy-body who had nothing to do with the matter. In this case the police instituted the prosecution in form, but there can be no doubt that the Electric Company desired that the applicant should be prosecuted for the offence. The officers of the Company discovered the theft and they reported it to the police and asked the police to make an investigation. We feel that there can be no real doubt that they intended that a prosecution should follow according to the result of the investigation. They made further reports to assist the police, and their officers came into Court and gave evidence. We are satisfied that the prosecution was really at the instance of the Electric Company, although they may not have made the immediate complaint on which the Magistrate took cognizance of the offence. We consider that there is no ground for interference in revision. We reject the application.