

Laxmanlal Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Aug-29-1984

Reported in : 1985CriLJ1133; 1985MPLJ125

Judge : N.K. Singh, J.

Appellant : Laxmanlal

Respondent : State of M.P.

Judgement :

ORDER

N.K. Singh, J.

1. This revision is directed against the Order dated 3-12-1981 made by the Judicial Magistrate First Class, Sabalgarh, rejecting the preliminary objection raised in this behalf by the petitioner-accused and framing charge against him in respect of the offences relating to the abstraction and theft of electrical energy punishable under Section 39 of the Electricity Act, 1910, and Section 379 of the Indian Penal Code.

2. The facts, relevant for the disposal of this revision, in a nut-shell, are, that on 30-10-1980 Assistant Engineer, M. P. Electricity Board, Sabalgarh, detected that the petitioner having his field at village Bamsoli had unauthorisedly secured a connection directly from the electric line and was running a 5 H.P. motor in his field with the electrical energy so obtained. Accordingly, the Assistant Engineer seized

the unauthorised connecting installation under a seizure memo and made a written report in respect of the matter to S.O.P.S. Rampurkala, whereupon the police completed the investigation in regard to the matter and put up the charge sheet against the petitioner, before the trial Court.

3. An objection was raised on behalf of the petitioner-accused before the trial Magistrate that the prosecution against him having not been instituted at the instance of the Government or an Electrical Inspector or of a person aggrieved, it was not maintainable, and as such, the petitioner was entitled to be discharged. As appears from the Order dated 3-12-1981, passed by the learned Magistrate, the cases State of M.P. v. Hiralal (Cri Appeal No. 453/72, decided on 10-9-1976 reported at Note 249 of 1976 M.P. Weekly Notes, and Suleman v. State of M.P. 1980 Jab LJ 117 of this Court were cited on behalf of the defence, while the case Jhalkansingh v. State of M.P. 1981 Jab LJ 560 : 1981 Cri LJ 1230.... was cited on behalf of the prosecution. The learned Magistrate, relying on the later case, has overruled the objection raised on behalf of the petitioner accused and has proceeded to frame the charge against him in respect of the offences described in para 1 above.

4. Having considered the arguments raised on this behalf by the learned Counsel for the parties, Shri Sachindra Dwivedi, on behalf of the petitioner, and Kumari Shanti Shrivastava Panel Lawyer, on behalf of the State, I am of the opinion that this revision has to be allowed. Reliance has been placed on : 1965 CriLJ605 Avtar Singh v. State of Punjab) in the cases, State of M.P. v. Hiralal and Suleman v. State of M.P. (1980 Jab LJ 117) (supra) in order to hold that the prosecution not launched at the instance of the Government or the Electrical Inspector or the person aggrieved was not maintainable. In the case of Jhalkansingh v. State of M.P. 1981 JLJ 560 : 1981 Cri LJ 1230 relied on by the learned trial Magistrate, reliance has been placed on : 1967 CriLJ409 (Ramchandra Prasad Sharma v. State of Bihar), but the case against the petitioner accused is clearly distinguishable. In so far as in the Supreme Court case, the prosecution had been launched at the instance of an Officer who held a general power of attorney for the P.E.S. Co. and had specifically been empowered thereunder to act on behalf of the Company in all legal proceedings and, therefore, it was held that the

prosecution was launched at the instance of the person aggrieved. However, in the instant case, there is nothing whatever in the papers relied on by the prosecution to indicate that the Assistant Engineer, M.P. Electricity Board, Sabalgarh, who lodged the report with the police, held any such power of attorney or authority to launch the prosecution on behalf of the M.P. Electricity Board. In the absence of such material, on the record, it is obvious that the prosecution against the petitioner accused in the instant case is not maintainable. It was on the basis of similar reasoning that the prosecutions Jaunted by the Electrical Supervisors in the cases State of M.P. v. Hiralal and Suleman v. State of M.P. : 1980 Jab LJ 117 (supra) were held to be incompetent and not maintainable.

5. Accordingly, the revision is allowed. The impugned Order dated 3-12-1981 passed by the learned trial Magistrate framing the charge and the proceedings against the petitioner accused before him are quashed and the petitioner is hereby, discharged.

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