

Govind Vs. State

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Court : Madhya Pradesh

Decided On : Jul-12-2001

Reported in : 2001(4)MPHT188

Judge : Mr. N.K. Jain, J.

Acts : [Indian Electricity Act, 1910](#) - Sections 39; Indian Electricity (Amendment) Act, 1986; Code of Criminal Procedure (CrPC) , 1974 - Sections 29 and 386; [Indian Penal Code \(IPC\), 1860](#) - Sections 379

Appeal No. : Criminal Revision No. 359/2001

Appellant : Govind

Respondent : State

Advocate for Def. : Shri A. Upadhyay, P.P.

Advocate for Pet/Ap. : Shri Suresh Garg, Adv.

Disposition : Criminal revision allowed

Judgement :

ORDER

N.K. Jain, J.

1. 1. The judgment impugned is passed in appeal (Cr. Appeal No. 7/97) by. Addl. Sessions Judge, Narsingharh, where by the learned A.S.J. while affirming applicant's conviction under Section 39 of the Indian Electricity Act read with Section 379, IPC, has set aside the sentence of 6 months RI, passed by Judicial Magistrate Second Class, Narsingharh in Criminal Case No- 392/99 and instead sentenced the accused-applicant to pay fine Rs. 10,000/- and in default to undergo 4 months SI.

2. Having heard learned counsel for the applicant and the PP for the respondent-State in my judgment, not only the judgment passed by the Appellate Court below, but also the one of the Trial Magistrate should be quashed.

3. The offence under Section 39 of the [Indian Electricity Act, 1910](#) as substituted by the Act No. 31 of 1986 is now punishable with imprisonment for a term which may extend for 3 years or with fine, which shall not be less than Rs. 1,000/- or with both. Earlier to this Amendment 1986 the offence of theft of energy was punishable with the aid of Section 379, IPC, which was triable by any Magistrate. Now, Section 39 as substituted by the said Amendment constitutes distinct offence which is punishable as aforesaid. The Act of 1910 does not provide as to by which Court the offence is punishable. Under the circumstance, the residuary clause contained in Part-II of 1st Schedule of the Cr.PC, 1973 shall apply and which provides that the offence against other laws like the one in hand, if punishable with imprisonment for 3 years and upward, but not less than 7 years, shall be triable by Magistrate of the 1st Class. It is only when such an offence is punishable with imprisonment for less than 3 years or with fine only that it can be tried by any Magistrate. As already pointed out the offence under Section 39 of the Act, 1910 is punishable with imprisonment which can extend upto 3 years. The offence was, thus, triable only by a Magistrate of the 1st Class and the Magistrate IIInd Class, Narsingharh, who tried the offence had no jurisdiction to try it. The entire trial held by the Magistrate and the judgment passed by him was, thus, without jurisdiction and is liable to be quashed.

4. There is yet another infirmity noticed in the judgment of the Appellate Court below. The learned A.S.J. while affirming the applicant's conviction has set aside

the imprisonment of 6 months awarded against him by the Trial Magistrate and instead passed sentence of fine Rs. 10,000/- against him. This was contrary to the bar contained in Section 386, Cr.PC providing for the powers of the Appellate Court. It is true that a sentence of fine Rs. 10,000/- can be passed for the offence under Section 39 of the Act, but a Magistrate 2nd Class trying any offence can not pass any sentence of fine more than Rs. 1,000/- as provided by Section 29 of the Code. 2nd Proviso to Section 386 provides that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal. So even if the Magistrate Second Class had jurisdiction to try the offence in question, the Appellate Court below could not have passed the sentence more than the one which could be passed by the Trial Magistrate for that offence. On this count also the judgment passed by the Appellate Court is liable to be quashed.

5. Accordingly, I allow this revision, set aside the judgment passed by both the Courts below (JMSC & ASJ, Narsingharh). The trial proceedings held by the JMSC, Narsingharh shall also stand quashed. Normally, I would have ordered for retrial of the accused-applicant by the Court of competent jurisdiction, however, it is noted that the offence in question was committed way back on 24-11-91 and the applicant has already suffered ordeal of protracted trial for all these 10 years and has been in prison for nearly 20 days. Under these circumstances and having regard to the directions made by the Hon'ble Supreme Court in the case of Common Cause, (1996) 4 SCC 33 = (1996) 6 SCC 775 and Rajeev Gupta, (2000) 10 SCC 68, I do not consider it expedient to order his retrial.

6. Accordingly, it is directed that the applicant shall stand discharge. The amount of fine, if recovered from him, shall be refunded to him immediately.

7. Criminal Revision allowed.