

Hargyan Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Jan-31-2003

Reported in : 2003CriLJ2936; 2003(3)MPLJ171

Judge : S.S. Jha and ;P.C. Agarwal, JJ.

Acts : [Electricity Act, 1910](#) - Sections 39 and 50; Electricity (Amendment) Act, 1986; [Indian Penal Code \(IPC\), 1860](#) - Sections 379

Appeal No. : Criminal Revn. No. 96 of 1992

Appellant : Hargyan

Respondent : State of Madhya Pradesh

Advocate for Def. : Padam Singh, Addl. Govt. Adv.

Advocate for Pet/Ap. : K.N. Gupta, Adv. for M.P.S.E.B. and ;J.P. Gupta, Sr. Adv. as Amicus Curiae;Deepak Shrivastava, Adv.

Judgement :

S.S. Jha, J.

1. This reference which has been made to resolve the controversy arising out of conflicting decision of the Single Bench of this Court. Conflicting views have arisen on the point whether a complaint for an offence under Section 379, IPC read with

Section 39 of Indian Electricity Act is maintainable on the complaint of Electrical Inspector or an officer of the Electricity Board is also competent to file the complaint.

2. The only question involved in the case is whether under Section 50 of the Indian Electricity Act, prosecution can be lodged on the complaint of the officers of M. P. Electricity Board.

3. For the purpose of examining the controversy it is necessary to examine the provision of Section 50 of the Indian Electricity Act which deals with institution of prosecution. Section 50 of the Act is reproduced hereinbelow:

'Section 50-- Institution of prosecutions.-- 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 a State Electricity Board or an Electrical Inspector, or of a person aggrieved by the same.'

It may be mentioned here that this act was amended in the year of 1986 and prior to amendment Section 50 stood as under :

'Institution of prosecutions-- No prosecution shall be instituted against any person for any offence against this Act or any Rule, license or Order thereunder, except at the instance of the Government or an Electrical Inspector, or of a person aggrieved by the same.'

The question involved in the case is whether prosecution can be instituted against any person for an offence under the Electricity Act or any Rule, licence or Order thereunder, except at the instance of the Government or Electrical Inspector or Electricity Board or of a person aggrieved by the same.

4. Counsel for the petitioner submitted that no cognizance can be taken on the complaint of theft at the instance of the officer of the Electricity Board, unless they are authorised by the Electricity Board. In the present case on failure to prove that the Junior Engineer was competent to lodge F.I.R., entire prosecution is bad in law and conviction of the petitioner deserves to be set aside.

5. On the other hand, counsel for the Electricity Board submitted that the word 'person aggrieved' in Section 56 of the Electricity Act has a very wide connotation. The term 'person aggrieved' cannot be construed narrowly. He submitted that it is electricity Board which supplies the electricity and if there is any electricity theft, it is the electricity board which is a person aggrieved by the act of theft. Therefore, being person aggrieved complaint can be lodged by any of the Officer-Incharge of the particular area. If any officer is deployed to look after the affairs of the electric supply or other work of the Board then he is a competent person to lodge complaint which shall be on behalf of Electricity Board. Any officer who is lodging the complaint will fall in the category of Principal Officer of the Electricity Board. He submitted that the complaint at the instance of Junior Engineer of Electricity Board is maintainable as he was Incharge of particular area where during the course of his duty he has detected the theft and the officer detecting the theft is an officer competent to file complaint. He also referred to resolution No. 19.4 passed in the meeting of M.P. Electricity Board held on 28-1-1977, wherein powers were delegated to the authorities and the officers to lodge complaint on behalf of electricity Board. Resolution is reproduced below :--

'19.4 Authorisation in favour of Field Officer of the Board in regard to filing of Complaints and prosecution therefor.

Decided that for the purpose of having the prosecution instituted by the Board as 'an aggrieved person' under Section 50 of the Indian [Electricity Act, 1910](#) against the persons committing any offence against the said Act or any Rule or Order made there under, the following officers of the Board, namely the Superintending Engineers, Divisional Engineers, Assistant Engineers and Officer Incharge, are hereby given the requisite authority to act for and on behalf of the Board within the jurisdiction of their respective areas and that the prosecutions so instituted by any of such officers, both in respect of pending cases as well as the cases which may hereinafter arise, shall be deemed have been instituted for and on behalf of the Board and at the instance of the Board as an aggrieved person within the meaning of Section 50 of the Indian [Electricity Act, 1910](#).'

6. Shri J.P. Gupta, Senior Advocate has appeared as Amicus Curiae and submitted that the word 'person aggrieved' should be construed very widely. It cannot be considered in narrow sense. He submitted that an honest consumer of the electricity is also a person aggrieved. Rates of electricity charges have been increased and extra burden is being imposed by the Electricity Board upon the consumers. He, therefore, submitted that even a consumer of electricity is also a person aggrieved. Shri Gupta, submitted that on account of technicalities no person involved in commission of theft of electricity can go scot free.

7. In the case of *Suleman v. State of M.P.*, reported in 1980 Jab LJ 117, it is held while considering the scope of Sections 39 and 50 of the Electricity Act and Sections 378, 379 of IPC, it is held that dishonest abstraction of electricity mentioned in Section 29 of the Electricity Act cannot be made an offence under the Indian Penal Code. The dishonest abstraction by virtue of Section 39 of the Electricity Act is a theft within the meaning of the Penal Code. Section 50 contemplates a prosecution either at the instance of the Government or at the instance of the Electrical Inspector. Even if a prosecution is launched by police as apparently it could be launched by police, as this is a cognizable offence, it could only be initiated on the report of the Electrical Inspector or under orders of the Government. In another single Bench judgment in the case of *Jhalkan Singh v. State of M.P.*, reported in 1981 Jab LJ 560 : (1981 Cri LJ 1230), it is held that the aggrieved person viz. the officer incharge of the Electricity Circle had initiated the complaint on the strength of which the State has prosecuted the accused and it was held that the prosecution was found to be properly instituted and there is no, illegality or irregularity in the procedure, in the matter of trial of accused.

8. In the case of *State of M.P. v. Tunda*, reported in (1995) 2 MPWN (SN) 52, it is held that F.I.R. should be lodged by any officer under the State Government or by the Electrical Inspector. Asstt. Engineer has no jurisdiction to file the complaint and held that no cognizance can; be taken on the F.I.R. lodged by the Asstt: Engineer of the Electricity Board. In the case of *State of M.P. v. Atmaram*, reported in 1980 Cr LR (MP). Note No. 123, it is held that in the case of theft of Electricity, Asstt. Engineer is an aggrieved person and prosecution instituted at his instance is valid. Conflicting views are also taken in the cases of *Sardar Singh v. State of M.P.*,

reported in 1986 MPWN, SN 183, Shankarlal v. State of M.P., reported in 1988 (1) MPWN SN 143, Surendra Singh v. State of M.P., reported in 1991 Vol II MPWN SN 20, State of M.P. v. Kumer Singh, reported in 1991 (1) MPWN SN 80 and State of M.P. v. Ramsingh, decided in Criminal Revision No. 84/1987 by Hon'ble Chief Justice Shri U.L. Bhat. Wherein it is held that the complaint is maintainable.

9. It may be pointed out that even in subsequent judgment affect of amendment in Section 50 of the Indian Electricity Act was not taken note of. The word 'or State Electricity Board' was inserted by Act No. 31 of 1986. However, the Courts were holding that the complaint can be initiated only at the instance of Electrical Inspector had missed the amendment in Section 50 of the Electricity Act. The importance of word 'person aggrieved' occurring in Electricity Act under Section 50 of the Electricity Act 1910 was considered in the case of Ram Chandra Prasad Sharma v. State of Bihar, reported in AIR 1967 SC 349 : (1967 Cri LJ 409). In this case prosecution was launched at the instance of a person holding power of attorney of an Electricity Supply Company and prosecution was at the instance of 'person aggrieved' within the meaning of Section 50. In para 10 of the judgment it is held that the prosecution was commenced with a charge-sheet submitted by the police to the Judicial Magistrate. The offences were investigated into by the police after the first information report was launched with them by one Bhattacharya. What is, contended is that information given by him could not entitle the police to submit the charge-sheet. It is also said that submission of a charge-sheet 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 charge-sheet 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 Electricity Supply Company. The Electricity Supply Company being a body corporate and must act only through its directors or officers. In the evidence of Ramaswami that he held a general power of attorney from the Electricity Supply Company and he was specifically empowered thereunder to act on behalf of the Electricity Supply Company 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 Section 50 must, therefore, be held to be untenable.

10. Similarly in the case of *A.R. Antulay v. Ramdas Srinivas Nayak*, reported in AIR 1984 SC 718 : (1984 Cri LJ 647), the question of private complaint lodged in respect of offence committed by public servant and its cognizance by the Special Judge was considered. In para 6 of the judgment, wherein it is held that it is a well settled recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The scheme of the Criminal Procedure Code envisages two parallel and independent agencies for taking criminal offences to Court and considering the numerous statutory provisions it was held that, who brings an act or omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a straight jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception. To hold that such an exception exists that a private complaint for offences of corruption committed by public servant is not maintainable, the Court would require an unambiguous statutory provisions and a tangled web of argument for drawing a far fetched implication, cannot be a substituted for an express statutory provision. It was held that the complaint at the instance of individual is maintainable and he is also a person aggrieved.

11. In the case of *State of Karnataka v. Adimurthy alias B. Moorthy*, reported in AIR 1983 SC 822 : (1983 Cri LJ 1077), the Apex Court while considering the scope of Section 50 of the Electricity Act and Karnataka Electricity Board Manual held according to the plain English language, the ordinary meaning of the phrase 'at the instance of' in the collocation of words 'No prosecution shall be instituted except at the instance of in Section 50 must, in the context in which it appears, mean 'at the behest of, or at the solicitation of'. The word 'instance' as a verb means 'to urge, entreat urgently importune'. The meaning of the phrase 'at the instance of' as given in the Dictionary at the urging or suggestion of'. 'Instance' does not imply the same degree of obligation to obey as does 'command'. That is

also the legal sense in which the phrase 'at the instance of' in Section 50 of the Act has been understood. It is clear upon the terms of Section 50 that it nowhere requires that the authorization should be by a notification published in the Official Gazette.

12. In the case of Avtar Singh v. State of Punjab reported in AIR 1965 SC 666 : (1965 (1) Cri LJ 605), it is held that the dishonest abstraction of electricity is an offence against the Indian Electricity Act and not under Penal Code. In para 9 it is held that it is for the prosecution to establish that the prosecution has been initiated at the instance of person aggrieved.

13. Under the Electricity Supply Act undertaking Act 1948 it is the State Electricity Board which supplies the electricity to the consumers at a price fixed.

14. Thus, from the aforesaid discussion, it is clear that an Electricity Board is a person aggrieved within the meaning of expression 'person aggrieved' occurring in Section 50 of the Act. Prosecution started at the instance of Asstt. Engineer or any person Incharge of the affairs of the Electricity Board was the prosecution started at the instance of the Electricity Board, where electricity is generated and distributed by the Company or Electricity Board. Such Company or Board is the person aggrieved by the offence and where the complaint for theft of electric energy is filed by the Asstt. Engineer or any other officer authorised by the Board and police after investigation submits charge-sheet then this is not an irregularity. The said, Electricity Board is a person aggrieved by the theft of electricity and where an officer of the Board whom powers have been delegated to file a complaint before the Police, then complaint is maintainable. By the amendment in Section 50, the said Electricity Board has been included as a person at whose instance the prosecution may be instituted. In the case of State of M.P. v. Atmaram, (1980 Cri LR (MP) Note No. 123) (supra) it is held that Asstt. Engineer is a aggrieved person can lodged F.I.R. whether he authorised or not.

15. Considering the social menace of theft of electricity resulting into unwarranted power failure causing inconvenience to public at large. The offender cannot be allowed to escape on account of technicalities. The legislative intent is clear and specific. Legislature on learning that the offenders are being acquitted when

complaint is lodged by the officers of the Electricity Board decided to amend the said Electricity Act and as per Section 50 the complaint can be lodged at the instance of Electricity Board. But, mere word Electricity Board will not be sufficient, it is the word person aggrieved which requires to be considered. An officer of the Electricity Board, who is incharge of the area detects the theft of electricity is duty bound to lodge the complaint with the police and at that time he will be a person aggrieved. During performance of his duties if he detects some electricity thefts or dishonest abstraction, abstraction of any of the energy, then the officer of the said Electricity Board is competent to file a complaint on behalf of the said Electricity Board and the complaint cannot be thrown out on the technicality that the complaint was not lodged by a competent person. Such complaint at the instance of the officer of the Electricity Board who is incharge to look after the affairs of the Electricity Board in a particular area will be maintainable and on such complaint police can initiate investigation and is competent to file challan if on investigation the allegation is found to be correct. Therefore, we hold that the complaint can be lodged by any of the officer of the Electricity Board appointed at a particular place to look after supply of the Electricity. The Board is also competent to authorise an officer to lodge complaint by passing a resolution.

16. We have given our anxious thoughts the arguments advanced by Shri J.P. Gupta, Senior Advocate, amicus curiae. Since theft of electricity is a social menace and the consumer of electricity is suffering on account of such dishonest abstraction of electricity, therefore, the consumer is also a person aggrieved. If consumer is a person aggrieved then he is also competent to lodge F.I.R. and the prosecution at the instance of such consumer is also maintainable. We have also mentioned that if such theft are detected and prosecution agency lacks in performing his duties then the person aggrieved is also liable to file complaint before the Court which shall be examined and determined by the Court in accordance to law.

17. Such complaint cannot be thrown out. The laws made are to be implemented and they cannot be annulled on the ground of technicalities and should be enforced.

18. The word person aggrieved cannot be construed narrowly. It has a wide connotation and considering the case in broad prospective wherein illegal extraction of electricity affects the society it is held that any officer of the Electricity Board who finds the theft of electricity in his area of work is competent to lodge F.I.R. and any challan or charge-sheet on the basis of such complaint is maintainable and the complaint cannot be thrown out at the threshold and we also hold that a consumer of electricity is also a person aggrieved and prosecution can be initiated at his instance. Accordingly we hold that the law held down in the case of State of M.P. v. Tunda (supra), (1995 (2) MPWN (SN) 52), Suleman v. State of M.P., (1980 Jab LJ 117), is not a good law. The view taken in the case of State of M.P. v. Atmaram, (1980 Cri LR (MP) Note No. 123) (supra) and in the case of Jhalkan Singh v. State of M.P., (1981 Cri LJ 1230) is correct. The reference is answered accordingly. File be placed before the single Judge according to roster for the decision of revision on its merits.

P.C. Agarwal, J.

19. I entirely agree with my Brother Hon'ble Shri Justice S.S. Jha but want to add few words for further elucidation.

20. The meaning of expression 'or/of a person aggrieved by the same' could not be confined to merely State Electricity Board and/or officers appointed or designated by that Board to institute the prosecutions. The expression surely encompassed within its meaning persons who were directly affected or aggrieved by the offence. My learned brother Hon. Justice Jha has rightly held that consumers of electricity were certainly entitled to institute the prosecution. However, when prosecution was instituted by State Electricity Board, it could be instituted only by those officers who were authorised by the said Board and not by other officers not so authorised. Certainly, in this view the contrary views taken were with respect incorrect.

21. Intention of the Parliament is crystal clear from the amendment in Section 50 of the Electricity Act by addition of a 'State Electricity Board' among the category of authorities authorised to initiate the prosecutions' and retention of words 'or/of

person aggrieved of the same' in the provision. It is manifest that the Legislature intended that besides by the State Electricity Board, 'other persons aggrieved by the same' are also authorised to instituted the prosecutions. Before amendment, the State Electricity Board or Officers authorised by such Board were only sought to be authorised to institute a prosecution being person aggrieved of the same. In that view of the matter, the M.P. State Electricity Board had passed a Resolution and had authorised certain of its officers to institute prosecution on its behalf or behest. Certainly, a Public Corporation cannot act directly. It has to act through its Officers or servants. Thus, the prosecutions by the Board had to be instituted Or initiated by some Officers of the Board specifically authorised by that Board.

22. However, after amendment in Section 50 of the said Act and addition to words 'or/of person aggrieved by the same', it is clear that persons other than the State Electricity Board, can certainly instituted or initiate prosecution under the provision. The only condition is that such person must be aggrieved. Certainly, the, consumers of electricity are directly affected by electricity theft in the form of increased tariff, disturbance in supply, loadshed, extra charges due to maintenance of vigilance staff and the like. Thus, the clear and simple language of the provision encompasses, the consumer of electricity within expression 'persons aggrieved by the same.' Thus, prosecution initiated or instituted by the consumers are also lawful and valid within the meaning of the provision.

By the court.

23. In view of our conclusions which concur in result though for different reasons the reference is answered accordingly. The matter be placed before single Judge for decision of the revision petition accordingly.

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