

**Narasingha Choudhury Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/533379](http://sooperkanoon.com/533379)

**Court :** Orissa

**Decided On :** Sep-21-1990

**Reported in :** 71(1991)CLT717; 1991CriLJ1025

**Judge :** L. Rath, J.

**Acts :** [Indian Electricity Act, 1910](#) - Sections 28 and 41

**Appeal No. :** Criminal Revision No. 596/86

**Appellant :** Narasingha Choudhury

**Respondent :** State

**Advocate for Def. :** H.K. Jena, Adv.

**Advocate for Pet/Ap. :** S.D. Das, Adv.

**Disposition :** Revision allowed

**Judgement :**

ORDER

**L. Rath, J.**

1. The petitioner was convicted Under Section 41 of the Indian Electricity Act for having violated the provisions of Section 28 of the Act and was sentenced to fine of Rs. 1000/-, in default to undergo SI for three months. His appeal against the

conviction and sentence having failed, he has preferred this revision. The allegation which the petitioner faced during the trial was that he had taken electric connection from his rice mill to a godown, cow-shed and an electric motor for which he had no authority. Both the courts found the charge to be proved and hence convicted the petitioner.

2. The sole submission urged by Mr. Das, the learned counsel appearing for the petitioner, is that neither Section 28 nor Section 41 has any application to the facts of the case and that accepting the prosecution case in toto to be true, no offence under the Sections is made out. Section 28, so far as is relevant, provides that a person other than a licensee shall not engage in the business of supplying energy to the public except with the previous sanction of the State Government and in accordance with such conditions as the State Government may fix in this behalf and that any agreement to the contrary shall be void. Section 41 prescribes a penalty for contravention of Section 28 and provides that any person who engages in the business of supplying energy in violation of Section 28 is punishable with fine which may extend to three thousand rupees, and in the case of a continuing contravention, with daily fine which may extend to three hundred rupees. The essence of illegal conduct to which exception is taken Under Section 28 is that the person who is not a licensee must have engaged in the business of supplying energy to the public. 'Business' involves the concept of a commercial activity and hence the act complained of must be supply of energy to the public by way of a commercial activity. Since it is the admitted case of all the witnesses that the petitioner had taken connection from his rice mill to his own godown, cow-shed and the electric motor, both the ingredients of Section are conspicuously absent as the petitioner was not involved in any business of supplying energy and that too, to the public. Section 41 being a penalty Section for violation of Section 28, no offence can be said to have been committed so as to be punishable since Section 28 itself has no application.

3. The learned Addl. Govt. Advocate has not been able to show any other provision under which the act complained of against the petitioner is punishable or if it becoming an offence. In that view of the matter, it must be held that no case was made out by the prosecution of an offence having been committed by the

petitioner and hence his conviction and sentence are set aside.

4. In the result, the revision is allowed.

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