

Vikas Pahwa Vs. State

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Court : Delhi

Decided On : Apr-11-1996

Reported in : 1996IIAD(Delhi)549; 63(1996)DLT2; 1996(37)DRJ443; 1996RLR275

Judge : Jaspal Singh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; [Electricity Act, 1910](#) - Sections 49A

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 2424 of 1994

Appellant : Vikas Pahwa

Respondent : State

Advocate for Pet/Ap. : S.S. Gandhi and; Hanu Bhaskar, Advs

Judgement :

Jaspal Singh, J.

(1) On April 3, 1989 M/s. Wootz Steels Pvt. Ltd. was found to be consuming electricity from the electric meters which were giving defective reading and on which the seals were found to be fictitious. This led to the registration of a case, subsequent investigation and ultimate challenging of the accused. The learned Metropolitan Magistrate took cognizance, summoned the accused and then

framed a charge under section 39/44 of the Indian Electricity Act read with section 379 of the Indian Penal Code. It is this order which the accused had found unpalatable. Hence this petition.

(2) MR.GANDHI, the learned counsel for the petitioner, has been mercifully brief. To my pleasant surprise so also has been the counsel for the respondents. Mr.Gandhi has drawn my attention to section 49A of the Indian [Electricity Act, 1910](#) and since his argument revolves around that provision let me take the liberty of reproducing it. This is how it runs:

'49-A.Offence by companies

(1)If the person committing an offence under this Act is a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

PROVIDED that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2)Notwithstanding, anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director or manager, secretary or other officer of the company such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.'

(3) What does Mr.Gandhi say on the basis of the provisions cited above? He says that there is nothing on the record to show that the petitioner happens to be the Director of-the Company or that he was in charge, and was responsible to the company for the conduct of the business of the company. He further submits that there is nothing on the record to show that the alleged offence has been

committed with the consent or connivance of, or was attributable to any neglect on the part of the petitioner. He thus says that the petitioner could not be prosecuted.

(4) I have repeatedly gone through the record. Attentively and minutely. I find nothing which may go to suggest even obliquely that the petitioner is the Director of the company. But then let us take it that he is the Director. I have not been able to discern any material which may go to suggest, directly or indirectly, that he was in charge of and was responsible to the company for the conduct of the business. I must say that I have also failed to discern any material which may go to show that the alleged offence was committed with the consent or connivance of, or was attributable to any neglect on the part of the petitioner. I confess being myopic. Age seems to have taken its toll. But then even the learned counsel for the parties young in age and bright of eyes, have failed to discern any such material. How can, under the circumstances, the roping in of the petitioner be justified? As if all this was not enough I have failed and so also the counsel for the parties to find any material which might implicate the petitioner in the theft of electricity. This being the position the charge framed against the petitioner must fail. In short thus, the petition succeeds with the result that the charge as framed against the petitioner is hereby quashed.

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