

**Ramesh Chander Vs. State**

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**Court :** Delhi

**Decided On :** Jul-24-1997

**Reported in :** 1997IVAD(Delhi)712; 1998CriLJ579; 68(1997)DLT257; 1997(42)DRJ607

**Judge :** Anil Dev Singh, J.

**Acts :** [Electricity Act, 1910](#) - Sections 39

**Appeal No. :** Criminal Revision Appeal No. 237 of 1995 and Criminal Miscellaneous Appeal No. 4026 of 1996

**Appellant :** Ramesh Chander

**Respondent :** State

**Advocate for Pet/Ap. :** Mahinder Pal,; Mukta Gupta and; B.C. Pandey, Advs

**Judgement :**

**Anil Dev Singh, J.**

(1) This revision is directed against the order of Shri S.P. Garg, Metropolitan Magistrate, dated 4th May, 1995. By the impugned order the learned Metropolitan Magistrate framed charge against the petitioners under Sections 39/44 of the Indian Electricity Act (for short 'the Act').

(2) The case against the petitioners is that their factory premises were inspected by the Enforcement Staff of the Desu on 14th September, 1991, when it was discovered that the half seals of all the meters and both revit seals were tampered with. On 1st October, 1992, i.e., after 14 months an Fir was lodged which was registered under Section 39/44 of the Act read with Section 379 of the Indian Penal Code. A charge sheet was filed against the petitioners for the offences punishable under the aforesaid sections.

(3) As stated above, the learned Metropolitan Magistrate on 4th May, 1995, framed charge against the petitioners under Sections 39/44 of the Act. The charge is to the following effect. : @SUBPARA = 'That on 14.7.91 during inspection by Desu staff the half seals of all the meters in name of M/s Pooja Cables Industries in 735-A, Jheel Khurenja belonging to all of you were found tampered and thereby you committed offences punishable u/s 39/44 Indian Electricity Act and within my cognizance.'

(4) Learned counsel for the petitioners submitted that no offence is made out against the petitioners under Sections 39/44 of the Act. He pointed out that there was no material on record to show dishonest abstraction of electricity by the petitioners. On the other hand, learned counsel for the respondents submitted that since the meter was found tampered with, the learned Metropolitan Magistrate rightly framed charges against the petitioners under Sections 39/44 of the Act.

(5) I have considered the rival contentions of learned counsel for the parties. In order to arrive at a conclusion whether the charge under Section 39 has been rightly framed, it will be advantageous to refer to Section 39 of the Act. The said section reads as follows : @SUBPARA = '39. Theft of energy.- Whoever dishonestly abstracts, consumes or uses any energy shall be punishable with imprisonment for a term which may extend to three years, or with fine which shall not be less than one thousand rupees, or with both; and if it is proved that any artificial means or means not authorised by the licensee exist for the abstraction, consumption or use of energy by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of energy has been dishonestly caused by such consumer.'

(6) Thus it appears to me that for framing a charge under the above section, the prosecution must, prima facie, establish dishonest abstraction, consumption or use of the energy. In the instant case, the charge talks of discovery of tampered seals of electric meters by the Enforcement Staff on inspection of the petitioners' factory. The mere existence of the tampered meters is not enough to attract the provisions of Section 39 of the Act. There is no presumption of dishonest abstraction, consumption or use of electric energy on discovery of tampered meters. The presumption under Section 39 will arise if artificial means were employed to abstract, consume or use energy. The Supreme Court in the case of Ram Chandra Prasad Sharma and others v. State of Bihar and another, : 1967 CriLJ409 , held that the presence of a perfected artificial means which will render abstraction of energy possible has to be established by the prosecuting agency. Taking cue from this decision of the Supreme Court, it must be held that simply saying that the meter has been tampered with and that it was under the control of the accused, would not be enough for the purposes of framing a charge under Section 39 of the Act.

(7) In Jagarnath Singh v. Krishna Murthy and another, Air 1967 Sc 947, the Supreme Court held that existence of a tampered meter, does not amount to 'such an artificial means for the abstraction of electricity' as would make it an offence under Section 39 of the Act.

(8) Reverting to the case in hand, the charge does not even say that the abstraction was dishonest. In order to frame a charge under Section 39 of the Act, there must be material on record to, prima facie, show dishonest abstraction, consumption or use of energy. Learned counsel for the respondents has not been able to point out any circumstance coupled with the tampered seals indicating dishonest intention of the petitioners as contemplated by Section 39 of the Act.

(9) Having regard to the aforesaid discussion and keeping in view the above referred decisions of the Supreme Court, I am of the opinion that no prima facie case has been made out against the petitioners under Section 39 of the Indian Electricity Act and Section 44, which is a penalty provision. Accordingly, the charge framed against the petitioners is hereby quashed.

(10) The matter is disposed of.

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