

**Om Prakash Vs. State**

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**Court :** Rajasthan

**Decided On :** Jul-12-1972

**Reported in :** 1972WLN449

**Judge :** L.S. Mehta, J.

**Appeal No. :** S.B. Criminal Reference No. 140 of 1871

**Appellant :** Om Prakash

**Respondent :** State

**Judgement :**

**L.S. Mehta, J.**

1. This is a reference, submitted by Mr. S.R. Singhi, Additional Sessions Judge, Churu, recommending that the order of Civil Judge cu-Magistrate First Class, Bhatnagar, dated March 8, 1969, be quashed.

2. The brief facts of this case, as alleged by the prosecution, are that Assistant Engineer, Rajasthan State Electricity Board, Sujangarh, made a complaint to the police station, Sujangarh, on December 29, 1967, that Om Prakash Sadhu Ram, Contractor, broke-open and tampered with the seal of his power-connection meter at Randishar and committed theft of electric energy. He asked the police to take cognizance of the offence under Section 39 of the Indian Electricity Act, 1910

(hereinafter referred to as the Act). On receipt of this report the police investigated the matter and put un a challan against accused Om Prakash in the court of Civil Judge cum First Class Magistrate, Ratangarh. In the course of trial Om Prakash was charged under Section 379, I PC, read with Section 39 of the Act. Against that indictment a revision petition was filed in the court of Additional Sessions Judge, Churu. The learned Additional Sessions Judge has observed that the accused could not have been charged under Section 379, I.P.C. read with S39 of the Act. He should have been indicted only under Section 39 of the Act. Learned Additional Sessions Judge has further pointed out that by virtue of Section 50 of the Act the prosecution could not have been instituted at the instance of the Assistant Engineer, Rajasthan State Electricity Board, Rajasthan.

3. I have heard learned Deputy Government Advocate and I have also looked into the relevant record. I first take up the question o charge under Section 379, I.P.C read with Section 39 of the Act. Section 39 runs as under:

Whoever dishonestly abstracts, consumes, or uses any energy shall be deemed to have committed theft within the meaning of the Indian Penal Code, and the existence of artificial means for such abstraction shall be prime facie evidence of such dishonest abstraction.

The word theft has been defined in Section 378, I.P.C. The relevant portion of Section 378 is reproduced below:

Whoever intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, 13 said to commit theft.

4. Dishonest abstraction of electricity mentioned in Section 39 of the Act cannot be an offence under the Indian Penal Code, for electricity is not considered to be a moveable property Section 378, I.P. C, read by itself even after the enactment of Section 39 of the Act, would not include a theft of electricity. The only way in which it can be said that Section 39 of the Act extended Section 378 of the code is by stating, that it made something, which was not a theft within the ambit of Section 378, I.P.C. a theft within the meaning of that section. The heading 'Criminal

Offences and Procedure' which governs Sections 39 to 60 of the Act shows that the Legislature enacted Section 39 to create an offence. Section 48 and 49 of the Act indicate that in the Legislature's contemplation Sr 39 provided for punishment. That section must, therefore, also have been intended to create an offence to which punishment was to attach vide *Avtar Singh v. State of Punjab* AIR 1965 SC 566. Section 39 of the Act by a legal fiction brings within the ambit of Section 378 of the Code dishonest abstraction of energy within the four-corners of theft, punishable under Section 379, I.P.C. The combined operation of Section 39 of the Act and Section 378 & 39, I.P.C would mean that friction of the former would be penalised by proceeding under the latter. In this view of the matter, the trial court could have framed charge under Section 379 I.P. C read with Section 39 of the Act. The offence of dishonest abstraction, consumption or user of electricity would clearly fall within the mischief of Section 379, I.P. C read with Section 39 of the Act. A reference in this connection may also be made to *State v. Magan Lal Chunni Lal* : AIR1956 Bom354 .

5. I now switch over to the second point raised by the learned Additional Sessions Judge, Churu. Ordinarily criminal law can be put into motion by any person. But the Legislature in order to protect person from being harassed by false complaints for offences under the Act and the rules framed thereunder has made a specific provision under section 50 of the Act. It provides that only the Government or an Electrical Inspector or a person aggrieved may put the law into motion. Section 50 of the Act says that:

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 an (Electrical Inspector), or of a person aggrieved by the same.

7. Here the Assistant Engineer, State Electricity Board, presented a complaint in the name of the Board to the police station, Rajasthan, in respect of abstraction of electrical energy by the accused. Learned Additional Sessions Judge, in the course of hearing the revision petition, expressed the view that the Assistant Engineer was not empowered to file such a complaint. The words 'person aggrieved', occurring in Section 50 of the Act, are significant. The Assistant

Engineer, it appears, was directly incharge of the property of the Rajasthan State Electricity Board located at Sujangarh. A person directly incharge of the property of the Board Will be covered by the description of 'person aggrieved'. As explained by a Division Bench of the Allahabad High Court in Vishwanath v. Emperor : AIR1936 All742 , when an officer of a Company discovers theft of electricity and reports the matter to the police and asks it to make investigation, the prosecution must be deemed to have been launched at the instance of the Company and the Magistrate can take cognizance of it. Similar views find place in another Division Bench case of the Bombay High Court, reported as State v. Magan Lal Chunni Lal (supra). In that case it has been held by his Lordship Shah J. (as he then was) that Section 50 does not require that there should be a complaint by any specified person. Where a person acting for and on behalf of Electricity Supply Company lodges a complaint with the police in respect of unlawful abstraction of electrical energy, subsequent prosecution started on a charge-sheet filed by the police, must be regarded as instituted at the instance of the Company. In this case, the Assistant Engineer, Rajasthan State Electricity Board, Sujangarh, obviously acted for and on behalf of the Board and, therefore, the prosecution must be regarded as regularly instituted at the instance of the person aggrieved, as laid down in Section 39 of the Act. In that view of the matter, the prosecution cannot be regarded as having not been properly instituted.

8. In the result, this reference having no force stands rejected.

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