

In Re: Govindasami

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Court : Chennai

Decided On : Jan-29-1962

Reported in : 1963CriLJ128

Judge : Sadasivam, J.

Appellant : In Re: Govindasami

Judgement :

ORDER

Sadasivam, J.

1. Petitioner, Govindaswami, has been convicted under Section 44 (c) of the Indian Electricity Act and Section 379 Indian Penal Code read with Section 39 of the Indian Electricity Act, and sentenced to pay a fine of Rs. 100, in default, simple imprisonment for three weeks for the latter offence alone.

2. Petitioner is running a business called Tamilnad Sound Service at Tirukoilur. He is actually a resident of Karadai village. On 26-11-1959 P.W. 2 (Soundararajan) a wireman in Tirukoilur Electric System, went to the premises of the petitioner to take meter-reading and found the meter was not recording and reported the matter to P.W. 1, Desikachari, Supervisor of the Tiruchi Electricity System at Tirukoilur. On that occasion, the petitioner was present in the shop. On 10-12-1959, a new meter was fixed. On 24-12-1959. P.W. 2 again went to the place and found the meter was not recording the consumption of electricity. He reported the matter to

P.W. 1, who also visited the premises. On 25-12-1959 P.W. 4, Samuel, Assistant Engineer; Tiruchi Electric Supplies, having headquarters at Vriddhachalam, went to Tirukoilur on getting phone message from P.W. 1 and found a wire device behind the meter. He wanted to remove the plaster and trace out the wires; but the petitioner objected to it. Subsequently, P.W. 1 went to the place and had the wire device photographed. On 4-1-1960, P.W. 5, R.K. Srinivasan, Divisional Electric Superintending Engineer, went to the place and detected behind the meter board a wire inside the wall kept for the purpose of preventing the meter from running. Both the Courts below have accepted the evidence of these prosecution witnesses and found that the electric energy was tapped by the use of the wire device, and I see no reason to differ from the said finding.

3. The learned advocate for the petitioner contended that the petitioner is a resident of Karadai village and that there is no proof that he abstracted the electric energy. In my opinion, there is no substance in this contention. I have already pointed out that the petitioner is running Tamilnad Sound Service at the premises in question. The evidence in this case shows that he was present on more than one occasion when the servants of the electric system went to the premises. It cannot be disputed in this case that the meter was under the control of the petitioner. It is clear from what I have stated that there was a connecting wire device to prevent the meter from working properly. On these facts, a presumption arises, under Section 44 of the Act, that the abstraction of electric energy has been caused by the accused as a consumer knowingly and wilfully.

4. The conviction of the petitioner is therefore justified on the evidence in this case.

5. The learned advocate for the petitioner urged that the provisions of Section 50 of the, Indian Electricity Act have not been complied with in this case. The prosecution in this case was started on a charge-sheet filed by the police after making the necessary investigation on the letter, Ex. P. 9, sent by Ananda Rao, the Superintending Engineer, to the police. The argument of the learned advocate for the petitioner is that the Trichi Electric System is controlled by a Board constituted under Section 5 of the Electricity Supply Act and that the complaint should have been filed only by the Government or Electrical Inspector. I am unable

to accept this contention. The section clearly states that the prosecution could be instituted at the instance of the Government or an Electrical Inspector or a person aggrieved by the offence. The Trichi Electric System is not a Government concern though it is controlled by the Government through a Board appointed under Section 5 of the Electricity Supply Act. The persons employed, in that Electric System, namely, P.Ws. 1, 4 and 5, are not Government servants. The Superintending Engineer in charge of the Trichi Electric System is clearly an aggrieved person within the meaning of Section 50, of the Indian Electricity Act.

6. The learned advocate for the petitioner contended that there is nothing in Ex. P-9, to show that the Superintending Engineer applied his mind before he ordered prosecution and hence; the prosecution is invalid. I am unable to accept this contention. Under Section 50 of the Indian Electricity Act, the prosecution should be at the instance of the aggrieved person. ' The section does not require that the letter of request made by a Superintending Engineer or other aggrieved person should satisfy the requirements of a sanction order. A reading of Ex. P. 9 shows that Ananda Rao, Superintending Engineer, was apprised of the theft of electric energy and he authorised the prosecution.

7. The last contention urged by the learned advocate for the petitioner is that the Court should have taken cognizance of this case only on a complaint given by an aggrieved person, and that a charge sheet filed by the police would not. satisfy the requirements of Section 50 of the Indian Electricity Act, The decision in Provincial Government C.P. and Berar v. Yognandam AIR 1944 Nag 380 is clearly against the above-contention. Section 50 of the Indian Electricity Act merely requires that the prosecution should be instituted at the instance of the aggrieved person. The interpretation of the word 'instituted' in Section 211 Indian Penal Code would throw-some light in deciding the last contention. Section 211 Indian Penal Code refers to 'institution' of criminal proceedings as one of the ingredients of an offence under that section. There are two modes in which a person aggrieved may seek to put the criminal law in motion - one by giving information to the police and the other by lodging a complaint before a magistrate. A person who sets the criminal law in motion by making a complaint to the police in respect of a cognizable offence institutes criminal proceedings. I have already pointed out that the charge-

sheet in this case was filed by the police at the instance of the Superintending Engineer, who sent the letter Ex. P-9.

8. For the foregoing reasons, I am unable to uphold any of the objections raised by the learned advocate for the petitioner in respect of the prosecution in this case. The conviction of the petitioner under Section 379 Indian Penal Codes, read with Section 39 of the Indian Electricity Act and Section 44 (c) of the Indian Electricity Act and the sentence of fine of Rs. 100/- imposed in respect of the first offence are correct, and there are no grounds to interfere with the same in revision.

9. The revision petition is dismissed.

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