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JAGARNATH SINGH

v.

B. S. RAMASWAMY

September 22, 1965

B [K. SUBBA RAO, J. R. MUDHOLKAR AND R. S. BACHAWAT, JJ.]

Indian Electricity Act (9 of 1910), ss. 39 and 44 and Indian Electricity Rules, 1956, r. 138—Scope of—

C Consequent on the discovery of an abnormal waste of electrical energy, investigations were started and it was found that the meter of the appellant, who was an industrial power consumer, had been tampered with. The seal on the meter cover was broken, a sealing nut was loosened exposing a stud hole, and it was thus possible to retard the rotation of the inside disc. The appellant was charged with offences under ss. 39 and 44 of the Electricity Act, 1910 and r. 138 of the Electricity Rules, 1956 and was convicted by the High Court.

In appeal to the Supreme Court,

D HELD: (i) In the absence of proof that he used all reasonable means to ensure that the seal should not be broken, the liability of the appellant was absolute under r. 138, and so, he was rightly convicted. [886 H]

E (ii) The exposure of the stud hole was an artificial means for preventing the meter from duly registering the energy supplied, and since the appellant, having custody or control of the meter did not rebut the presumption under s. 44 that he wilfully and knowingly prevented the meter from duly registering he was rightly convicted under that section. [887 C-E]

(iii) But the High Court was in error in holding that the exposure of a stud hole on the meter cover without more, was an artificial means of abstraction and was *prima facie* evidence of dishonest abstraction by the appellant, under s. 39.

F The effect of the last part of s. 39 is that the existence of the unauthorised means for abstraction is *prima facie* evidence of dishonest abstraction. By tampering with the meter and causing it to record less than the units actually passing through it, a consumer may take unrecorded energy without paying for it and such unauthorised taking would be abstraction. A meter with an exposed stud hole, without more, is not a perfected instrument for unauthorised taking of energy and cannot be regarded as an artificial means for its abstraction. The existence of artificial means for preventing the meter from duly registering, gives rise to the presumption, that the meter was prevented from duly registering, only for purposes of s. 44, but that presumption cannot be imported into s. 39. [888 A-B, C, E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 76 and 130 of 1963.

H Appeals by special leave from the judgment and order dated the April 5, and 25, 1963, of the Patna High Court in Criminal Appeals Nos. 5 and 6 of 1961 respectively.

Akbar Imam and D. Goburdhan, for the appellant (in Cr. A. No. 76 of 1963). A

D. Goburdhan, for the appellant (in Cr. A. No. 130 of 1963).

Avadesh Nandan Sahay and S. P. Varma, for respondent No. 1 (in both the appeals).

The Judgment of the Court was delivered by B

Bachawat J. The two connected appeals raise common questions of construction of ss. 39 and 44 of the Indian Electricity Act, 1910 and Rule 138 of the Indian Electricity Rules, 1956. The appellants in both appeals have been convicted under ss. 39 and 44 of the Indian Electricity Act, 1910 and rule 138(b) of the Indian Electricity Rules, 1956. The appellant in Criminal Appeal No. 130 of 1963 has also been convicted under s. 201 of the Indian Penal Code. C

The Patna Electric Supply Co. Ltd. supplied electrical energy in Patna, Patna City and Dinapur to about 22,000 consumers, of whom about 900 were industrial power consumers. The normal wastage of energy in course of transmission was 15 to 16 per cent of the units generated. In 1958, the Chief Inspector of the Company noticed an extra abnormal loss of about 8 per cent which could not be due to wastage in transmission and suspected extensive theft of the Company's electrical energy. Vigorous investigations were started, and after surprise raids and inspections, it was discovered that the meters of several consumers had been tampered with. Both the appellants are industrial power consumers at Dinapur. The Inspectors found that the meters of both the appellants had been tampered with. In respect of both meters they found a seal on the meter cover broken and a sealing nut loosened exposing a stud hole on the meter cover. Through the exposed stud hole it was possible to insert a thin wire, dust or moisture inside the meter and thereby to retard the rotation of the inside disc. In due course, complaints were filed against the appellants. D

Rule 56(2) of the Indian Electricity Rules, 1956 requires that the consumer shall use all reasonable means in his power to ensure that no seal affixed to his meter is broken otherwise than by the supplier. If the seal is broken in contravention of r. 56, even the consumer who has not himself broken the seal is punishable under R. 138 with fine, unless he proves that he used all reasonable means in his power to ensure that the seal should not be broken. In the absence of such proof, the liability of the consumer in respect of the breakage of the seal is absolute under r. 138(b). The E

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- A appellants were rightly convicted of the offence under r. 138(b).
We may now read the relevant part of s. 44 :—

“44. Whoever—

- B (c)....prevents any such meter....from duly registering;.....and if it is proved that any artificial means exist.....for prevention as is referred to in clause (c)....and that the meter is under the custody or control of the consumer, whether it is his property or not, it shall be presumed, until the contrary is proved, that such.....prevention....has been knowingly and wilfully caused by such consumer.”

- C The exposure of the stud hole permits the insertion of foreign material inside the meter retarding the rotation of the inside disc, and is thus an artificial means for preventing the meter from duly registering the energy supplied. For purposes of s. 44, the existence of such an artificial means raises the presumption that the consumer, in whose custody or control the meter is, wilfully and knowingly prevented the meter from duly registering. To raise this presumption, it is not necessary to prove also that the consumer was responsible for the artificial means or that the meter was actually prevented from duly registering. The appellants did not rebut the presumption, and were rightly convicted under s. 44.

- E The High Court also convicted the appellants of the offence under s. 39. It held that the exposure of the stud hole was an artificial means of abstraction of energy and was *prima facie* evidence of dishonest abstraction by the consumer. Section 39 reads :

- F “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 *prima facie* evidence of such dishonest abstraction.”

- G Whoever abstracts or consumes or uses electrical energy, dishonestly commits a statutory theft. The theft may be proved by direct or circumstantial evidence. Direct evidence of the theft is rarely forthcoming. To facilitate proof of the theft, the section provides that the existence of artificial means for such abstraction is *prima facie* evidence of such dishonest abstraction. We think that the word “abstraction” should be construed liberally and in the context of s. 39 it means taking or appropriation. Energy may be dishonestly abstracted by artificial means or unauthorised devices. For instance, energy before it passes through a consum-

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er's meter may be abstracted from the main of the electric company by an unauthorised wire connecting the main with a private terminal; the connecting wire is the artificial means for abstraction. Again, by tampering with the meter and causing it to record less than the units actually passing through it, the consumer may take the unrecorded energy without paying for it. The tampering of the meter and the taking of the unrecorded energy are unauthorised by the contract with the electrical company, the unauthorised taking is an abstraction and the crippled meter is a artificial means for abstraction. A B

The effect of the last part of s. 39 is that the existence of the unauthorised means for abstraction is *prima facie* evidence of dishonest abstraction by some person. The special rule of evidence goes no further. The prosecution must prove *aliunde* that the accused made the abstraction. The fact that the accused is in possession and control of the artificial means for abstraction coupled with other circumstances showing that he alone is responsible for the abstraction may lead to the inference that he is guilty of the dishonest abstraction. C D

An exposure of a stud hole on the meter cover is an artificial means for preventing the meter from duly registering. For the purposes of s. 44, the existence of this artificial means gives rise to the presumption that the meter was prevented from duly registering, but this presumption cannot be imported into s. 39. A meter with an exposed stud hole, without more, is not a perfected instrument for unauthorised taking of energy, and cannot be regarded as an artificial means for its abstraction. To make it such an artificial means, the tampering must go further, and the meter must be converted into an instrument for recording less than the units actually passing through it. A check meter affords an easy method of proving that the consumer's meter is recording less than the units consumed and is being used as an artificial means for abstraction of the unrecorded energy. To bring home the charge under s. 39, the prosecution must also prove that the consumer is responsible for the tampering. The evidence adduced by the prosecution must establish beyond doubt that the consumer is guilty of dishonest abstraction of energy. E F G

In the cases under appeal, the High Court was in error in holding that the exposure of a stud hole on the meter cover without more was an artificial means of abstraction and was *prima facie* evidence of dishonest abstraction by the appellants. The question still remains whether the conviction of the appellants under s. 39 can be sustained upon the materials on the record. H

- A** In Criminal Appeal No. 76 of 1963, the prosecution proved that a seal on the meter cover was broken and a sealing nut was loosened exposing a stud hole on the meter cover. But the prosecution proved nothing else. No foreign material was found inside the meter. No attempt was made to verify that the meter was recording less than the units actually consumed. The prosecution
- B** failed to prove that the appellant abstracted, consumed or used any energy without paying for it. The appellant was charged with throwing acid on the meter and attempted to remove the evidence of tampering, but this charge was not pressed in the High Court. In this state of the evidence, the appellant is entitled to the benefit of the doubt and the conviction under s. 39 cannot be sustained.
- C** In the result, Criminal Appeal No. 76 of 1963 is partly allowed, and the conviction and sentence under s. 39 of the Indian Electricity Act read with s. 379 of the Indian Penal Code are set aside. The convictions and sentences under s. 44 of the Indian Electricity Act and r. 138(b) of the Indian Electricity Rules are affirmed.
- D** In Criminal Appeal No. 130 of 1963, the prosecution proved that a seal on the meter cover was broken and a sealing nut was loosened exposing a stud hole on the meter cover. The tampering was discovered on July 1, 1958. Soon thereafter, the Company's Inspectors made several attempts to inspect and check the meter. The appellant did not permit the inspection and the checking.
- E** After the seizure of the meter, it was discovered that acid had been thrown on it with a view to destroy the evidence of the tampering, and there is ground for believing that this was done by the appellant or with his connivance. There is reason to believe that the checking of the meter, if permitted by the appellant, would have disclosed that after the tampering the meter was recording less than the
- F** units actually consumed, and was used as an artificial means for abstraction of the unrecorded energy. The materials on the record show that the appellant was responsible for the tampering. Moreover, the High Court has recorded the finding that the recorded consumption immediately before the discovery of the tampering was lower than the normal consumption. We are satisfied that the
- G** appellant abstracted and consumed electrical energy dishonestly, that is to say, without the intention of paying for it, and the conviction under s. 39 should be sustained. We think also that the appellant was rightly convicted of the offence under s. 201 of the Indian
- H** Penal Code.

In the result, Criminal Appeal No. 130 of 1963 is dismissed.

Cr. App. 76 of 1963 Partly allowed.

Cr. App. 130 of 1963 dismissed.