

(2012) 07 JH CK 0077

Jharkhand High Court

Case No: Criminal M.P. No. 1260 of 2008

Subhash Kumar

APPELLANT

Vs

State of Jharkhand and Another

RESPONDENT

Date of Decision: July 26, 2012

Acts Referred:

- Electricity Act, 2003 - Section 126, 135, 138, 181, 50
- Penal Code, 1860 (IPC) - Section 379

Citation: AIR 2013 Jhar 61 : (2013) 1 AJR 313 : (2012) 3 JCR 563 : (2012) 4 JLR 548

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: M.S. Mittal, for the Appellant; R. Sanchita, APP, for the State and Ajit Kumar, for the J.S.E.B., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.R. Prasad, J.

This application has been filed for quashing of the first Information report of Hazaribagh Sadar P.S. case No. 688 of 2008 (G.R. No. 2529 of 2008) registered under Sections 126, 135 and 138 of the Indian Electricity Act, 2003 as well as u/s 379 of the Indian Penal Code. It is the case of the prosecution that when inspection was carried out in the Cold Storage of the petitioner on 25.7.2008, number of seals of the meter were found to be tampered with. Hence, case was lodged putting allegation that recording of correct consumption was affected by tampering of the seals and thereby offence of theft of electricity has been committed. On such allegation, first information report was registered as Hazaribagh Sadar P.S. Case No. 688 of 2008 under Sections 126, 135 and 138 of the Indian Electricity Act which is under challenge.

2. Mr. Mittal, learned Sr. counsel appearing for the petitioner submitted that for mere tampering with the seals of the meter, one cannot be held liable for the offence of the electricity theft as under the provision of the Electricity Act, 2003, one can be prosecuted for the offence of electricity theft when it is found that there is dishonest abstraction of electrical energy by artificial means or by means not authorized by the Board. In the instant case, it has never been the case of the prosecution that the consumer was found abstracting electrical energy by artificial/illegal means and hence, it can never be presumed that there was dishonest abstraction simply for the reason that seals were found tampered with. This was subsequently clarified through Regulation framed by Jharkhand State Electricity Regulatory Commission in exercise of power conferred by clause (x) of sub-section (2) of Section 181 read with Section 50 of the Electricity Act, 2003 known as "Electricity Supply Code" which clearly postulates that breakage of seal does not amount to theft unless corroborated by consumption pattern of consumer.

3. Here, in the instant case, the prosecution has never come forward with the case that on account of tampering with seals, consumption of the electrical energy was found to be less than what was used to be consumed earlier. In such situation, the prosecution of the petitioner is wholly unwarranted and hence, the first information report is fit to be set aside.

4. In this regard Learned Counsel has referred to a decision rendered in a case of Kamaljeet Singh v. Bihar State Electricity Board and others, by the Patna High Court as reported in 2010 (3) PLJR 514.

5. As against this. Mr. Ajit Kumar, Learned Counsel appearing for the Electricity Board submitted that inspecting team when did find breakage of number of seals of the metering box, the inspecting team came to the conclusion that the consumer had intentionally, unauthorizedly and dishonestly tampered with the seals with mala fide intention to suppress actual recording of the metering system and as such, the petitioner in terms of the definition of theft, as defined u/s 135 of the Electricity Act, can certainly be said to have committed offence u/s 135 of the Electricity Act.

6. It was further submitted that so far Electricity Code upon which reliance has been put by the Learned Counsel appearing for the petitioner is concerned, that has been made effective with effect from 1.9.2010 whereas the case had been lodged prior to that date and as such, the petitioner cannot derive any advantage out of it.

7. Thus, it was submitted that the order taking cognizance never warrants to be interfered with and more so, when the trial has begun.

8. Having heard Learned Counsel appearing for the parties, it does appear that the stand which the petitioner has taken is that even if seals were found to be tampered with, no offence is made out u/s 135 of the Electricity Act, in absence of any allegation that any artificial means or means not authorized by the Board was used for abstraction of electric energy whereas the stand of the Board is that on finding

several seals being tempered with, inspecting team have come to the conclusion that it had been intentionally done to recording.

9. In the context of the conflicting stand taken on behalf of the parties, one needs to take notice of the provision as contained in Section 135 of the Electricity Act which reads as follows:

135. Theft of Electricity.--(1) Whoever, dishonestly--

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier, as the case maybe; or

(b) tampers a meter, installs or uses a tempered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise result in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity; or

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorized, so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use--

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six time the financial gain on account of such theft of electricity;

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or

generating station:

Provided also that if it is proved that any artificial means or means not authorized by the Board of licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonest caused by such consumer.

....

....

10. On perusal of the aforesaid provision, it does appear that one may be held guilty for the offence of theft if he is found to have indulged himself in the act/acts mentioned in clause (a) to (e) of sub-section (1) of Section 135 of the Electricity Act.

11. Sub-clause (b) of sub-section (1) of Section 135 does stipulate that if one tampers meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration of electric current, he can be said to have committed offence of electricity theft

12. It never suggests that for constituting offence of theft of electricity the tampered meter which was being used should be associated with any device or method which interferes with accurate or proper registration of electric current. The person who uses current reversing transformer, loop connection or any other device or method which interference with accurate or proper registration can also be said to have committed offence of theft of electricity. Thus, it is quite evident that apart from the person who tampers meter or uses the tampered meter that person, who uses artificial means, as stated above, can be said to have committed offence of theft of energy in terms of Section 135 of the Electricity Act. Both the clauses as discussed above seem to have been kept in different compartment which gets clarified from 3rd proviso to sub-section (1) of Section 135 which does stipulate that if one uses artificial means or means not authorized by the Board, he would be presumed to have committed offence unless contrary is proved whereas proviso is silent over the matter when one uses tampered meter or tampers with meter.

13. In such situation, it is hard to accept the submission advanced on behalf of the petitioner that mere tampering with the seal of the meter would never constitute offence of theft of electricity. Where law is stringent liberal interpretation of the provision may defeat its objectives.

14. In this regard, I may refer to a case of [Prakash Kumar @ Prakash Bhutto Vs. State of Gujarat](#), wherein the Hon"ble Supreme Court has observed as follows:

The more stringent the law, the less is the discretion of the Court. Stringent laws are made for the purpose of achieving those objectives. This being the intendment of

the legislature, the duty of the Court is to see that the intention of the legislature is not frustrated. If there is any doubt or ambiguity, the rule of purposive construction should be taken recourse to, to achieve the objectives.

15. In that view of the matter, submissions advanced on behalf of the petitioner that Electricity Code takes the tampering with the seal of the meter out of purview of the definition of theft is to be rejected also for the reason that the aforesaid regulation came into force after institution of the present case. Under the circumstances, I do not find any merit in this application. Hence, this application stands dismissed.