

(1980) 04 AP CK 0001

Andhra Pradesh High Court

Case No: Criminal Revision Case No. 255 of 1978, Criminal Revision Petition No. 252 of 1978 and Criminal Appeal No. 1050 of 1978

Kediya Vanaspati P. Ltd. and
Others

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision: April 25, 1980

Acts Referred:

- Electricity Act, 1910 - Section 2, 39A(1), 39A(2), 44
- Penal Code, 1860 (IPC) - Section 109, 201, 379, 408

Citation: (1980) 1 APLJ 380 : (1981) 51 CompCas 389

Hon'ble Judges: K. Amareswari, J

Bench: Single Bench

Advocate: C. Padmanabha Reddy and Public Prosecutor, for the Appellant;

Judgement

Amareswari, J.

1. The five accused in C.C. No. 6 of 1977 on the file of the Chief Metropolitan Magistrate, Hyderabad are the petitioner herein.

2. Accused No. 1 is a private limited company in Hyderabad manufacturing vanaspathi. A-2, Banwarilal, is the director of the company. A-3 and A-4 are employees. A-5 is an electrician of the neighbouring village, Madannapet. They were tried on several counts and were convicted for offence under ss. 39 and 44 of the Indian Electricity Act read with ss. 379, 109 and 201, IPC, and sentenced to various terms of imprisonment and fine for theft of electrical energy and for causing disappearance of evidence.

4. In brief, the prosecution is as follows :

On the intervening night of 15th and 16th May, 1975, several officer of the Electricity Board made a surprise visit to the premises of A-1 company for detecting theft of

electrical energy. After reaching the premises at 1-30 a.m. they asked the watchmen to open the gate after disclosing their identity. The watchmen left saying that he would get the permission of his master but never returned. After waiting for some time the team of officers entered the premises through another gate and found the factory working. They found the following incriminating circumstances :

1. Electrical energy was directly being tapped avoiding recording by meter by connecting three wires from incoming Horn Gap Fuses rod to the outgoing jumpers of the metering cubicle.

2. H.G. fuses were found removed and wound on the outgoing side of the H.G. fuse horn of the rod.

3. A.B. (air brake) switch seal and lock were found missing.

5. P.Ws. 1 and 2 (both assistance engineers) of the Electricity Board went to fetch the police and a photographer. In the meantime, about 30 people including A-3 to A-5 surrounded the other officers. A-5, an electrician, proceeded towards the meter cubicle structure to destroy the traces of direct tapping of electrical energy. P.Ws. 4 and 5 attempted to stop him from doing so, but they were firmly caught by the people surrounding them. In the meanwhile, A-5 climbed the meter cubicle structure, removed the evidence of direct tapping, closed the air brake switch and restored H.G. fuses and went away. P.W. 4 gave a compliant to P.W. 13. During the investigation three copper wires, each of the size of 21 inches in length, (M.Os. 1 to 3) and one copper wire (M.O. 4) about 4 feet in length were seized under a panchanama. After investigation was completed A-1 to A-5 were charged under ss. 39 and 44 of the Indian Electricity Act and ss. 379, 109 and 201, IPC.

6. A-4 and A-5 pleaded alibi. A-2, Banwarilal, claimed that he was only a director of the company and he was not in overall charge of the affairs of the company and so he cannot be made liable for any offence. A-3 pleaded complete denial.

7. The Chief Metropolitan Magistrate believed the case of the prosecution and convicted A-1 to A-4 under s. 39 of the Indian Electricity Act, read with s. 379 IPC. A-1 the company, and A-2, the director, were sentence to 2 years rigorous imprisonment with a direction that A-2 should undergo the imprisonment imposed on him as well as the company as a representative of the company. A-1 and A-2 were also sentenced to a fine of Rs. 5,000 each in default to undergo rigorous imprisonment for 3 months. A-3 and A-4 were sentenced to a fine of Rs. 1,000 each in default to undergo 4 months" simple imprisonment. On appeal, the learned Sessions Judge confirmed the conviction under s. 39 of the Indian Electricity Act read with s. 379, IPC, of A-1 to A-4 but reduced the sentence of imprisonment from 2 years to 6 months" rigorous imprisonment in the case of A-1 and A-2 and maintained the fine of Rs. 5,000 and confirmed the conviction and sentence on A-3 and A-4.

8. Under charge No. 2, A-5 was convicted under s. 39 of the Indian Electricity Act read with ss. 379 and 109, IPC, and sentenced to a fine of Rs. 1,000. On appeal, he was acquitted by the learned Session Judge.
9. Under charge No. 3, A-1 to A-4 were convicted under s. 44 of the Indian Electricity Act of injuring the meter by removing the fuses and tapping the electricity energy and all of them were sentenced to a fine of Rs. 500 each default to undergo simple imprisonment for two weeks. On appeal the conviction and sentence were confirmed.
10. Under charge No. 4, A-5 was convicted under s. 44 of the Indian Electricity Act read with s. 109, IPC, and sentenced to a fine of Rs. 100 in default to undergo simple imprisonment for 2 weeks. On appeal, the conviction and sentence were confirmed.
11. Under charge No. 5, A-5 was convicted under s. 201, IPC, for causing disappearance of evidence of direct tapping of electrical energy and sentenced to 4 months" rigorous imprisonment. On appeal, the conviction and sentence were confirmed.
12. Under charge No. 6, A-1 to A-4 were convicted under s. 201, read with s. 109, IPC, for abetting A-5 in causing disappearance of evidence of unauthorised directs tapping of electricity energy. A-1 and A-2 were sentenced to suffer rigorous imprisonment for 3 months with a direction that A-2 should serve the sentence as the managing director of A-1 company and also in his individual capacity. A-3 and A-4 were sentenced to a fine of Rs. 500. On appeal, A-2 was acquitted, the sentence of imprisonment imposed on A-1 was modified to one of fine of Rs. 500 and A-2 as a director of A-1 was asked to pay the fine and in default A-2 to suffer simple imprisonment for 2 months. The conviction and sentence of A-3 and A-4 were confirmed.
13. This revision is against the conviction and sentence imposed on the five accused for various offences mentioned supra.
14. The main contention of Sri C. Padmanabha Reddy, the learned counsel for the petitioners, was that the conviction of A-1 to A-4 under the first charge, namely, s. 39 of the Indian Electricity Act read with s. 379, IPC, cannot be sustained. It was urged that the ingredients of s. 39 of the Indian Electricity Act are not established. The counsel neatly summarized the evidence and the three incriminating circumstances relied upon by the prosecution and contended that the prosecution failed to bring home the guilt of the accused under s. 39 of the Indian Electricity Act and that at best it can be said that an offence under s. 44 of the Indian Electricity Act had been made out.
15. When P.W. 1 and other officers visited the company, they found the following incriminating circumstances :

1. Direct tapping of energy avoiding meter by connecting three wires from the Incoming H.G. fuse rods to the outgoing jumpers of the metering cubicle.
2. H.G. fuses were found removed and wound on the outgoing side of the H.G. fuses horn of the rod.
3. Air Brake (A.B.) switch seal and lock were found missing.

16. M.Os. 1 to 3 are copper wires each of 21 inches in length which were moved from the meters cubicle at the time of writing of the panchanama and M.O. 4, a copper wire of 4 feet length, was found at the meter cubicle at that time. M.Os. 1 to 4 were seized under a panchanama. The case of the prosecution was that M.Os. 1 to 4 were not departmental material and A-5 obliterate the traces of pilferage of prosecution witness and other officers. The pilferage of energy was with the help of 3 rods, M.O. 4, and two other rods, and after A-5 got down from the meter stand, he dropped M.O. 4 in a hurry. It was contended by the learned counsel for the petitioners that the presence of an artificial instrument is not sufficient to draw the presumption of theft of energy under s. 39 of the Indian Electricity Act and the prosecution must establish that those articles were used for extraction of energy and it must also prove that in fact there was dishonest abstraction of electrical energy. In this connection, he relied upon [Ram Chander Prasad Sharma Vs. State of Bihar and Another](#), . As regards the incriminating circumstances, the evidence of P.Ws. 1, 3, and 5, was believed by both the courts below. Their evidence was to the effect that M.O. 4 was one of the wire which was used for direct tapping in the three phase connection. They also stated that M.Os. 1 to 3 do not belong to the department. The abstraction of energy was actually observed by 9 officers, out of whom five figured as witness and the instruments with which the abstraction was done were seized. The presence of A-3 to A-5 was spoken to by all the prosecution witness. On this evidence both the courts found that there was dishonest abstraction of energy.

17. In [Jagarnath Singh Vs. B.S. Ramaswamy](#), , it was held that the word "abstraction" occurring in s. 39 of the Indian Electricity Act should be construed liberally and that if it is proved that the accused are in possession of artificial means for abstraction coupled with other circumstances showing that they are responding for such abstraction, it may lead to the inference that they are guilty. It is try as contended by the learned counsel that the prosecution has not established whether the meter was correctly recording the units of power that is consumed. But, in my opinion, the mere failure to verify the meter cannot be a circumstance to absolve the accused of their liability. As stated earlier, both the courts have concurrently held on an appreciation of the evidence on record that electrical energy was being directly tapped avoiding the recording by the meter and sitting in a revision it is neither possible nor desirable to re-appreciate the evidence as if it were in appeal. I, therefore, reject this contention.

18. It has next submitted that even assuming that charge No. 1 was proved against A-1, A-2, Banwarilal, who is one of the director of the company cannot be held liable as there was no evidence to prove that A-2 was in charge of the company or that the offence was committed with his consent or connivance or due to any negligence on his part. It was urged that A-2, Banwarilal, does not come within the preview of s. 49A (1) or (2) of the Indian Electricity Act. Section 49A is as follows :

"49A. Offence by companies - (1) If the person committing an offence under this Act is a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act, has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purposes of this section -

(a) "company" means any body corporate and includes a firm or other association of individual; and

(b) "director", in relation to a firm, means a partner in the firm."

19. Under this section, which relates to offences committed by a company, persons who are responsible for the conduct of the business of the company are also made liable under certain circumstances.

20. In [Girdhari Lal Gupta Vs. D.H. Mehta and Another](#), , in a case arising under the Foreign Exchange Regulation Act, in interpretation s. 23(c) (1) and (2), the Supreme Court held that "person in charge" must mean that the person should be in overall control of the day-to-day business of the company. In the present case on an appreciation of the evidence on record, both the courts found that A-2 was in overall control of the business of the company. The two agreements, Exs. P-10 and P-11, dated November 8, 1971, and March 2, 1977, entered into by A-2 with the Electricity Board show that the premises of the factory and the premises of A-1 are one and the same, namely, No. 9-2-226, Mir Alam Tank, Hyderabad. He is undoubtedly a consumer as defined by s. 2(c) of the Indian Electricity Act. From Ex. P-10 it is clear that it was A-2 who requested the Board to supply electricity in bulk for

manufacturer of oil and vanaspathy and has undertaken to comply with all the requirements of the Electricity Act of 1910, and the Electricity Supply Act, 1948. The company was one of the petitioners in Writ Petitioner No. 143 of 1975, and A-2 represented the company in the said proceedings. The electricity bills, Exs. D-1 to D-44, are in the name of A-2 and they are in respect of the service connection. It was open to A-2 to have stated that somebody else was in charge of the company. Except a mere denial that he was not in overall control of the company he stated nothing. Having regard to all these factors, both the courts below have found as a matter of fact that A-2 was in overall charge of the company. It is not a case where any evidence was omitted to be considered by the court below nor can it be said that the reasons given by the Sessions Judge and the Magistrate in support of this finding are perverse. Mr. C. Padmanabha Reddy has strenuously contended that A-1 being a company, the prosecution could have proved by cogent evidence that A-2 was in overall charge of the company by producing the bills of the company, the assessments under the sales tax and Income Tax and the correspondence of the company. I do not agree. It would be a herculean task for the prosecution to seize the bills of the company and to produce the Income Tax returns and sales tax assessments of the company as evident from the stout opposition which they encountered at the time when they went to inspect the premises. Even otherwise, the question is whether there is acceptable evidence on record in support of the plea and not to reject the plea on the ground that better evidence could have been produced.

21. The learned counsel for the petitioners relied upon several decisions in support of the proposition that to hold a person responsible for the offences of a company, it must be established that the said person is in overall charge of the company and is responsible for the conduct of the business of the company. There can be no objection to this principle. The question is whether in the present case the prosecution has established that A-2 was in overall charge of the company. Whether a person is in overall control of the company or it is a question of fact which has to be decided with reference to the evidence in that case and in the present case I find that the evidence on record is sufficient to hold that A-2 was in overall charge of the company at the relevant point of time.

22. It is next submitted that A-1 being a company, a juristic person, cannot be sentenced to imprisonment. For this proposition reliance was placed upon [State of Maharashtra Vs. Syndicate Transport Co. \(P\) Ltd. and Others](#), [State of Karnataka v. Rajasthan Pharmaceutical Lab. \[1975\] MLJ \(Cri\) 331](#), [The State of Maharashtra Vs. Joseph Anthony Pereira](#), and [Girdharilal and Others Vs. Lalchand and Others](#).

23. In [Anath Bandhu Vs. Corporation of Calcutta](#), a question arose whether a company which has violated s. 407 of the Calcutta Municipalities Act by adulterating oil can be proceeded against. It was observed that a company cannot be tried where the only punishment is imprisonment because it is not possible to send a limited

company to prison.

24. [State of Maharashtra Vs. Syndicate Transport Co. \(P\) Ltd. and Others](#), relates to a prosecution launched against the company and its directors for the act of cheating committed by one of its shareholders. It was observed that a company cannot be prosecuted for an offence involving a punishment of imprisonment.

25. In [The State of Maharashtra Vs. Joseph Anthony Pereira](#), case arising under the Drugs and Cosmetics Act, the Bombay High Court held that a company in no case can be punished with imprisonment.

26. In [Girdharilal and Others Vs. Lalchand and Others](#), similar view was taken by the Rajasthan High Court.

27. The Delhi High Court had also taken a similar view in [D.C. Goel and Others Vs. B.L. Verma and Others](#). It was observed as follows :

"A company or a firm being a juridical person was not liable to be prosecuted u/s 276B of the Act inasmuch as it could not have been imprisoned."

28. In State of Karnataka v. Rajasthan Pharmaceutical Lab. [1975] MLJ 331 the Karnataka High Court relying upon the decision of the Bombay High Court in [The State of Maharashtra Vs. Joseph Anthony Pereira](#), also took the view that a sentence of imprisonment cannot be imposed on a company.

29. I am in agreement with the view expressed in all these decisions and I hold that the company being a juridical person, a corporeal punishment like imprisonment cannot be imposed.

30. My attention was drawn by the public prosecutor to a decision of the Allahabad High Court in [Laxmi Ratan Cotton Mills etc. Vs. S.K. Bhatnagar](#), in which a contrary view was taken. It was a case arising u/s 276B of the Income Tax Act. The Allahabad High Court took the view that a company as well as its principal officer are liable for conviction for an offence under that section. In coming to this decision, the learned judge relied upon s. 204 of the I.T. Act which casts an obligation on the company to issue notice through the principal officer thereof. Since there was specific statutory provision requiring a company to issue the notice through its principal officer, it was held that the imprisonment imposed on a company for contravention of the provision should have to be undergone by the principal officer. There is no such provision in the India Electricity Act and hence the decision of the Allahabad High Court is distinguishable.

31. From the above discussion, it follows that A-1 company cannot be sentenced to imprisonment. I, therefore, set aside the sentence of rigorous imprisonment for 6 months imposed on A-1 and the consequent direction that A-2 should undergo the sentence imposed on A-1. The sentence of fine of Rs. 5,000 imposed on A-1 is confirmed.

32. It is next contended that since A-1 company cannot be sentenced to imprisonment, A-2, who is vicariously liable, cannot also be sentenced to imprisonment. This argument was advanced on stretching the language of s. 49-A of the Indian Electricity Act which says that the person in charge of the conduct of the business of the company shall be punished "accordingly". I cannot agree with this submission. Under s. 49-A of the Indian Electricity Act, in the case of offences by companies, the company as well as the person in charge of the company can be tried. If the offence is proved, they have to be punished in accordance with the relevant provisions. In the present case, both the company as well as A-2 were tried and found guilty of the offence of theft of electric energy and consequently they are punishable under s. 379, IPC, either by imprisonment or fine or with both. But A-1 being a company, a juridical person, cannot be sentenced to imprisonment. But there is no impediment so far as A-2 is concerned as he is an individual and the word "accordingly" used in s. 49-A of the Indian Electricity Act only means that the person as well as the company shall be punished in accordance with the relevant provisions. I cannot agree with the view taken by the Karnataka High Court in *State of Karnataka v. Rajasthan Pharmaceutical Lab.* [1975] MLJ 331 and the Bombay High Court in [The State of Maharashtra Vs. Joseph Anthony Pereira](#), that if a company cannot be sentenced to imprisonment, a person in charge of conduct of the business of the company also cannot be sentenced to imprisonment. Such an interpretation is not warranted by the language of s. 49A of the Indian Electricity Act. I have, therefore, no hesitation in holding that A-2 being an individual as distinct from company can be sentenced to imprisonment.

33. It is lastly submitted that a sentence of heavy fine would meet the ends of justice. It is state that A-2 was in jail for some time, though for a short period. Having regard to the fact that the offence related to the year 1975 and A-2 was not physically present at the scene of offence and he is made victoriously liable, it seems to me that on the facts of this case, it would meet the ends of justice, if A-2 is made to pay a heavy fine. The sentence of six months" rigorous imprisonment and fine of Rs. 5,000 imposed on A-2 by the lower court is altered into one of fine Rs. 10,000 in default to undergo rigorous imprisonment for 4 months. The fine amount to be paid within 2 weeks from the date of receipt of the order. Bail bonds to be cancelled on such payment.

34. A-5 was sentenced to 4 months, rigorous imprisonment for the charge under s. 201, IPC. Having regard to the fact that A-5 is not an employee of the company and the offer had taken place about 5 years back, the sentence of imprisonment is converted into one of fine and he is sentenced to pay fine of Rs. 1,000 in default to undergo two months" simple imprisonment. Fine to be paid within two weeks from the date of receipt of the order; bail bonds to be cancelled on such payment.

35. For all the above reasons, the criminal revision case is dismissed except to the extent indicated above modifying the sentence imposed on A-1 and A-2 on charge

No. 1 and of A-5 on charge No. 5.

36. Criminal Appeal No. 1050 of 1978.

37. This appeal is preferred by the State against the acquittal of A-2 under s. 201 read with s. 109, I.P.C., for abetting A-5 in causing disappearance of the evidence regarding unauthorised direct tapping of energy and also against the acquittal of A-5 for an offence under s. 39 of the Indian Electricity Act read with ss. 379 and 109, IPC.

38. So far as the acquittal of A-2 is concerned, the learned Session Judge held that there is no evidence about the presence of A-2 at the scene of offence and consequently acquitted him of the charge under s. 201 read with s. 109, IPC. The State was unable to point out any evidence about the presence of A-2 at the scene of offence. If A-2 was not present at the scene of offence, it is difficult to hold that he was guilty of abetting A-5 in causing disappearance of evidence regarding the unauthorised tapping of energy. The reason given by the lower appellate court in acquitting the accused cannot be said to be perverse.

39. The charge against A-5 was for an offence under s. 39 of the Indian Electricity Act read with ss. 379 and 109, IPC. A-5 is not connected with the company. Accordingly to the prosecution, he is a person engaged for the purpose of removing the traces of directed tapping of energy and the evidence is that he came directly to the scene of offence at about 3 a.m. and removed the incriminating material regarding the direct tapping of energy. On this evidence, it cannot be said that he abetted A-1 to A-4 in the act of pilfering of energy. The acquittal of A-5 under this charge needs no interference.

40. There are no merits in this appeal and it is accordingly dismissed.