

## Devi Charan Gupta Vs State and Another

**Court:** Delhi High Court

**Date of Decision:** July 8, 1999

**Acts Referred:** Electricity Act, 1910 " Section 39, 44  
Penal Code, 1860 (IPC) " Section 379

**Citation:** (1999) 5 AD 443 : (1999) 80 DLT 801 : (1999) 4 RCR(Criminal) 547

**Hon'ble Judges:** M.S.A. Siddiqui, J

**Bench:** Single Bench

**Advocate:** Keshav Dayal, Ravinder Dayal and Arun Beriwal, for the Appellant; M.S. Butalia and Jasmeet Singh, for the Respondent

**Final Decision:** Allowed

### Judgement

M.S.A. Siddiqui, J.  
Heard.

2. This revision is directed against the impugned order dated 16th March, 1998 passed by Shri Rajinder Kumar, Metropolitan Magistrate, Delhi

framing a charge against the petitioner under Sections 39/44 of Indian Electricity Act read with Section 379, IPC.

3. Shown on verbiage, facts giving rise to the petition are as under:

On 1st September, 1989, factory premises belonging to M/s. India Wires General Mills (P) Ltd., 55 Najafgarh Road Industrial Area, New Delhi

was inspected by officials of respondent No. 2 and it was discovered that full seal of meter terminal box was tampered with. On 13.9.1989 Shri

S.K. Katyal, E. No. 2953 A.E. Zone 1301 D.E.S.U. (D) M.T.N, lodged a written report at the police station as a result whereof F.I.R. No. 578/

89 was registered under Sections 39/44, I.E. Act read with Section 379, IPC at Police Station, Moti Nagar, Delhi. On completion of investigation,

the petitioner was charge-sheeted for the offences punishable under the aforesaid sections. By the impugned order the learned Magistrate framed a

charge under Sections 39/44 of Indian Electricity Act read with Section 379, IPC. Feeling aggrieved, the petitioner has come up in revision before

this Court.

4. Learned Counsel for the petitioner has strenuously urged that the allegations made in the FIR and the material collected during investigation by

the investigating agency do not constitute any offence and so the learned Magistrate has committed patent illegality in framing the impugned charge

against the petitioner. Reliance was placed on the decision of this Court in Ramesh Chander Vs. State, , which is an authority for the proposition

that mere existence of the tampered meter is not enough to attract the provisions of Section 39 of the Indian Electricity Act as there is no

presumption of dishonest abstraction, consumption or use of electric energy on mere discovery of a tampered meter. The presumption u/s 39 will

arise if it is found that some artificial means were employed to abstract the electrical energy. It is significant to mention that the impugned charge has

been framed on the sole basis of discovery of tampered meter terminal box. In my opinion, the case in hand is squarely covered by the ratio of the

decision of this Court in Ramesh Chander (supra). That apart, there is not even an iota of legal evidence on record to show or suggest that any

artificial means were employed by the petitioner to abstract the electrical energy. Taking cue from the decision rendered by the Apex Court in Ram

Chander Prasad Sharma Vs. State of Bihar and Another, , it must be held that simply saying that the meter had been tampered with would not be

enough for the purpose of framing a charge under Sections 39/44 of Indian Electricity Act read with Section 379, IPC. Consequently, I hold that

the learned Magistrate has committed a patent illegality in framing the impugned charge against the petitioner.

5. For the foregoing reasons, the petition is allowed and the impugned charge framed against the petitioner under Sections 39/44 of Indian

Electricity Act read with Section 379, IPC is quashed.

The petition is disposed of accordingly.

Record of the Trial Court be sent back forthwith.