

(1955) 12 BOM CK 0039

Bombay High Court

Case No: Criminal Appeal No. 1167 of 1955

State

APPELLANT

Vs

Maganlal Chunilal
Bogawat

RESPONDENT

Date of Decision: Dec. 6, 1955

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 103, 537
- Electricity Act, 1910 - Section 20, 20(1), 39, 44, 50
- Penal Code, 1860 (IPC) - Section 378, 379

Citation: AIR 1956 Bom 354 : (1956) CriLJ 701

Hon'ble Judges: Vyas, J; Shah, J

Bench: Division Bench

Advocate: Govt. Pleader, for the Appellant; R.W. Adik, for the Respondent

Judgement

This Judgment has been overruled by : [Avtar Singh Vs. State of Punjab](#), AIR 1965 SC 666 : (1965) CriLJ 605 : (1965) 1 SCR 103

Shah, J.

Manganlal Chunilal Bogawat is carrying on business In Ahmednagar as a tailor. The town of Ahmednagar is served by the Ahmednagar Electric Supply Co. Ltd., by supplying electric energy for lighting purposes and for motive power for mechanical and other uses: The Ahmednagar Electric Supply Co. Ltd., has its head office to Bombay and has a local Manager stationed in Ahmednagar.

The Company supplies electric energy to consumers for lighting purposes as well as for motive power for other uses. The accused Bogawat had obtained two separate connections in his shop with the service of the Company. One was a connection for lighting purposes and the other was for use as motive power and heating.

On 8-1-1953, two employees of the Company, Pardeshi and Bhingardive went to the shop of Bogawat at about 7-15 p.m. and checked the two meters which were fixed one above the other, one for the lighting circuit and the other for the motive power circuit. They noticed, that all the lights in the shop were on. The meter for lighting service was not in motion and the main switch for lighting service was on the off position. They also noticed that the meter for the motive, power service was in motion and the main switch for that service was on and that the electric iron was not being used. It became apparent to the employees of the Company that the motive power circuit was being used for lighting purposes by means of some temporary connection. Panchas were accordingly seat for and a panchnama was made.

Thereafter intimation was sent to the head office, at Bombay and having obtained the sanction of the head office a complaint was lodged before the police that Bogawat had committed an offence u/s 44(d), Indian Electricity Act and u/s 379, Indian Penal Code read with Section 39, Indian Electricity Act. The police investigated the complaint and submitted a charge-sheet against Bogawat in the Court of the Judicial Magistrate, First Class, II Court, Ahmednagar.

2. Before the learned Judicial Magistrate on behalf of the prosecution the Local Manager Mr. Gore, two checkers Pardeshi and Bhingardive who visited the shop of Bogawat on 8-1-1953, Naik and Kachardas the two panchas and two other witnesses were examined besides the investigating officers Mehendale and Honap.

After discussion of some evidence the Judgment proceeds:-- The learned Magistrate accepted the evidence of Pardeshi and Bhingardiwe and of the Panch Naik who officiated at the time of the panchanama and held that the accused Bogawat had abstracted energy for lighting purposes through me motive power meter and he had used it improperly. The learned Magistrate, however, acquitted the accused because in his view Pardeshi and Bhingardiwe were not authorised to enter the shop of the accused Bogawat and "inasmuch as their entry into the shop was illegal and unauthorised, the whole structure of the prosecution case must fall".

The learned Magistrate was of the view that Pardeshi and Bhingardiwe had not been given authority in writing by Gore, the Local Manager, to enter the shop of Bogawat, and that the authority which was produced in Court as given by Mistry, Superintendent of the Company, who had no power to give the authority u/s 20(1), Indian Electricity Act and that before entering the premises, Pardeshi and Bhingardiwe had not Informed the accused Bogawat of their intention to enter the premises and, therefore, there was a material defect in the procedure followed for checking up of the lighting system, and the entire proceeding of the two checkers must be regarded as illegal. The learned Magistrate observed:

"The result is that the lodging of the complaint becomes illegal and consequently the Prosecution cannot stand. Due to this technical defect the accused has got to be

given an acquittal, though morally he does not seem to deserve the same."

Against the order of acquittal, the State of Bombay has preferred an appeal to this Court.

3. Mr. Adik, who appears on behalf of the respondent Bogawat, has taken us through the evidence of Pardeshi, Bhingardiwe and the two Panchas Naik and Kachardas. Our attention has also been invited to the panchanama. It appears that the Panch Kachardas Gundecha was persuaded to resile from the statement made by him in his examination-in-chief and also in the panchanama which bore his signature.

The evidence of Pardeshi and Bhingardiwe, which we have summarised, appears to be consistent and there is no reason why that evidence should not be accepted, especially when the learned trial Magistrate, who saw those witnesses, has accepted their testimony. The learned Magistrate observed after considering the evidence:

"On the whole, the evidence of Pardeshi, Bhingardiwe and Naik proves beyond doubt that the accused abstracted energy for lighting purpose....."

Certain discrepancies and infirmities were pointed out by the learned Advocate but, in our view, the discrepancies are not on any material points and the alleged infirmities do not affect the substantial structure of the evidence of these two witnesses. It was submitted that Pardeshi and Bhingardiwe were both subordinates of the Manager and the Superintendent Mistry and that they were bound to support them.

It was further alleged that Mistry had been on cross terms with Bogawat and he had initiated the proceedings against the accused. There is no evidence in support of the contention that Mistry was an enemy of the accused Bogawat. Reliance was sought to be placed upon the evidence of Shivanna Puppala photographer, who was examined as a prosecution witness, to support the contention that Mistry and Bogawat were on cross terms.

But the only thing that Shivanna Puppala stated was that about a month or a month and half prior to the date on which he took a photograph, he was having tea in a canteen known as Sarosh Canteen and that at that time accused Bogawat and Mistry were talking loudly. The witness was, however, unable to say if "it was some Takrar or what".

It is difficult to accept that two persons talking loudly in a canteen must be quarrelling. The suggestion that there was enmity between Mistry and the accused Bogawat has, in our judgment, been set up in order to make out a defence that some one was interested in lodging a false complaint against the accused Bogawat.

4. It was submitted that at the time of the making of the "panchanama" independent persons of the locality were not procured and that the plug pins were

not taken possession of and a regular "panchanama" dealing with all the details, which were noticed, was not made. Evidently that was not a "panchanama" made u/s 103, Criminal P.C.

Even if we ignore the "panchanama" there remains the evidence of Pardeshi and Bhingardiwe who appear to be independent persons and against whom nothing is suggested on behalf of the accused which would justify us in discarding their testimony. AS we have already observed, the learned trial Magistrate has believed the evidence that it was the accused who had abstracted energy out of the motive power circuit.

It also appears from the conduct of the accused in pulling out the plug pins at the time when the "panchanania" was being made he was aware that it was the motive power circuit which, was being utilised for lighting purposes. It may be that the accused may not have technical knowledge about electric wiring connections. But It is evident from the record of the Company that for the month of December 1952 the accused was charged by the company only for 8 units consumed for lighting purposes and for 56 units consumed for motive power.

From the record produced by the company it appears that the consumption for lighting purposes was exceptionally low and the consumption for motive power purposes was exceptionally high. That also shows that the accused must have knowledge that the lighting system in his shop was connected with the motive power meter.

We are, therefore, unable to accept the submission of Mr. Adik that it was on account of ignorance on the part of the accused Bogawat that the plug which was intended to be used for motive power purposes was mixed up with the plug which was intended to be used for lighting purposes. The offence appears to have been committed deliberately with a view unlawfully to abstract energy.

It is clear from the record that the charge made for energy supplied for motive power purposes is at one third the rate at which energy supplied for lighting purposes is charged. With a view to pay for energy consumed for lighting purposes at a lower rate the accused appears to have manipulated the electric mains so as to enable him to obtain electricity from the motive power circuit for lighting purposes.

5. Several technical contentions were sought to be raised by Mr. Adik in support of the order of acquittal passed by the trial Court. It was contended that there was no proper complaint before the Magistrate and that the Magistrate had no jurisdiction to entertain the proceedings and convict the accused.

It was also contended that Pardeshi and Bhtngardiwe having no authority u/s 20, Indian Electricity Act to enter the premises of the accused Bogawat, their entry was unauthorised and therefore the "panchanama" made by them was illegal and the evidence collected after unlawfully entering the shop of the accused cannot be

availed of for recording a conviction against the accused.

It was further contended that there was no complaint properly authorised u/s 50, Indian Electricity Act for prosecuting the accused. In our view there is no substance in any of the contentions raised. Section 50, Indian Electricity Act provides :

"No prosecution shall be instituted against any person for any offence against this Act or any rule, licence or Order thereunder, except at the instance of the Government or an Electric Inspector, or a person aggrieved by the same."

Evidently Section 50 provides that prosecution against a person when he is alleged to have committed, an offence under the Act, or any rule, license or order thereunder, must be "at the instance of the Government or an Electric Inspector or of a person aggrieved by the same." Mr. Adik contended that in this case as a complaint was made by Gore, the Local Manager, to the police and the police submitted a charge-sheet, the prosecution could not be regarded as one instituted at the instance of the Government or an aggrieved person.

Mr. Adik contended that the Company not having filed a complaint in Court the prosecution on a charge-sheet filed by the police was incompetent. In our view, that contention cannot be accepted. The Act provides that prosecution for offences against the Act, rules, licence or orders thereunder can be instituted only at the instance of the Government or an Electric Inspector or a person aggrieved by the same.

We have on the record an intimation received from the Company's head office at Bombay to Gore the Manager asking him to lodge a complaint in respect of the unlawful abstraction of energy by the accused Bogawat. It was in pursuance of that intimation that Gore lodged a complaint before the Police.

The Legislature has by Section 50 not provided that before proceedings can be instituted against a person charged with having committed an offence under the Electricity Act, or any rule, license or order thereunder, there should be a complaint by any specified person. If the proceedings have been commenced at the instance of the Government or the person specified in Section 50, the prosecution must be regarded as proper. Ordinarily the Criminal law can be put into motion by any person.

But the Legislature with a view to protect persons from being harassed by false complaints for offences under the Indian Electricity Act and the rules thereunder has made a provision u/s 50 that only the Government or an Electric inspector or a person aggrieved by an offence may put the law into motion. In the present case Gore, who acted for and on behalf of the Company, having put the law into motion, the prosecution must be regarded as instituted at the instance of the Company.

6. The two offences charged against the accused Bogawat were u/s 44(d), Indian Electricity Act and u/s 379, Indian Penal Code read with Section 39, Indian Electricity

Act. The complaint having been filed by Gore at the instance of the Company the prosecution must be regarded as properly instituted.

Even assuming that there is some substance in the contention raised by Mr. Adik that the prosecution was not properly instituted for an offence under the Indian Electricity Act, that grievance cannot apply to the charge u/s 379, Indian Penal Code read with Section 39, Indian Electricity Act. The offence charged against the accused was in substance an offence of theft of electrical energy and punishable u/s 379, I.P.C.

Section 39 of the Indian Electricity Act penalises dishonest abstraction, consumption or use of energy as if that abstraction, consumption or use was theft within the meaning of the Indian Penal Code. In other words, Section 39, Indian Electricity Act extends the operation of Section 379, I.P.C. The offence of abstraction of energy is, therefore, an offence or theft under the Indian Penal Code.

It is not an offence under the Indian Electricity Act, or any rule, license or order thereunder and no complaint was required to be filed u/s 50 and it was not necessary that proceedings in respect of that offence should be instituted at the instance of the persons specified.

In support of the contention that an offence u/s 379, IPC read with Section 39, Indian Electricity Act is an offence under the Indian Electricity Act, our attention was invited to a judgment of the Allahabad High Court reported in [Vishwanath Vs. Emperor](#), . It was held in that case that

"an offence of theft of electricity is an offence u/s 379, I.P.C. because of Section 39, Electricity Act, and Section 50 applies to such an offence and there can be no prosecution except at the instance of the person aggrieved, that is of the electric company."

With respect, we are unable to accept that view. The offence of abstraction of energy which is defined in Section 39, Electricity Act is expressly made an offence punishable u/s 379, I.P.C. and is not made an offence under the Electricity Act or any rule, license or order thereunder, and Section 50, Indian Electricity Act does not apply to prosecution for offences under the Indian Penal Code.

The proceedings, therefore, having been properly instituted, there was no bar to the jurisdiction of the learned Magistrate to try the case for the offence of theft in any event.

7. We are unable to agree with the trial Magistrate that there was any illegality in the trial by reason of the alleged irregularity of the entry into the shop of the accused Bogawat by Pardeshi and Bhingardiwe. In the view we take it is unnecessary for us to investigate the question whether there was proper authorisation by the Company to Pardeshi and Bhingardiwe to enter the premises of the accused Bogawat. u/s 20, Sub-section (1), Clause (a),

"A licensee or any person duly authorised by a licensee may, at any reasonable time, and on informing the occupier of his intention, enter any premises to which energy is or has been supplied by him, for the purpose of inspecting and testing the electric supply-lines, metres, fittings, works and apparatus for the supply of energy belonging to the licensee."

It appears that in this case the authorisation produced is signed by Mistry, the Superintendent, and not by the Company. It also appears that some addition in pencil has been made therein. Mistry has not been examined before the learned trial Magistrate and the authority which Gore says he gave to Pardeshi and Bhingardiwe is not produced.

For the purpose of this argument we may hold, therefore, that there was no authority given to Pardeshi and Bhingardiwe u/s 20, Indian Electricity Act to enter the premises of the accused Bogawat and test and inspect the electric line. But Pardeshi and Bhingardiwe having entered the premises, however irregularly they might have entered, and having noticed the unlawful abstraction of energy by the accused Bogawat and having made a report thereof to the Company, a prosecution could lawfully be instituted against the accused Bogawat for that unlawful abstraction of energy."

The jurisdiction of the Magistrate depends upon the prosecution being instituted at the instance of the Government or an Electric Inspector or a person aggrieved. Once the prosecution is so instituted the Magistrate is entitled to try the case, however irregularly the investigation might have been carried on.

It is settled law that irregular investigation by a police officer does not affect the validity of a trial even if the evidence collected at such irregular investigation is led before the Court at the trial. That principle would also apply to an enquiry and investigation made by an employee of an Electricity Company under the Electricity Act.

8. In our view, the learned Magistrate was in error in holding that because the entry of Pardeshi and Bhingardiwe was irregular, the proceedings could not be lawfully instituted before the Magistrate. The learned Magistrate was, therefore, in our judgment, in error in acquitting the accused on the sole ground of irregularity of investigation.

We set aside the order of acquittal passed by the learned trial Magistrate and convict the accused Bogawat of offences u/s 44(d), Indian Electricity Act and u/s 379, Indian Penal Code and sentence him to pay a fine of Rs. 500/-and in default of payment of fine to suffer rigorous imprisonment for six months.

9. Appeal allowed.