

Rattan Chand  
and another  
v.  
Bhagirath Ram  
and others  

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Dulat, J.

considered as evidence of an agreement to sell, then the practical consequence would be that in every case an unregistered sale-deed would be made the basis of a suit to enforce the sale itself or, at any rate, to claim damages for breach of agreement. I am unable to see any harm in the ensuing situation, for obviously if a person has agreed to transfer his property to another, there is no reason why he should not be compelled to do so and the fact that certain forms have not been observed, may be sufficient answer to an allegation of a completed transaction, but is no answer to the grievance that an agreement to sell has been broken and damage caused by such breach. In my opinion, therefore, the correct view in the present case would be that the plaintiff-appellant is entitled to show on the basis of the unregistered sale-deed that there was an agreement to sell the land in question to him. This the plaintiff-appellant has succeeded in proving. The breach of the agreement is admitted and is no longer in dispute. Nor is the quantum of damage in doubt. The plaintiff-appellant is, in the circumstances, entitled to a decree, and I would, therefore, allow this appeal, set aside the decree of the District Court and restore the decree granted to the appellant by the trial Court with costs throughout.

Mahajan, J.

D. K. MAHAJAN, J.—I agree.

B.R.T.

REVISIONAL CRIMINAL

Before H. R. Khanna, J.

SHIV DAYAL,—Petitioner.

versus

THE STATE,—Respondent.

Criminal Revision No. 569 of 1962:

1962

Oct., 4th

*Electricity Act (IX of 1910)—S. 39—Tampering with meters with intent to dishonestly abstract, consume or use electric energy—Whether amounts to theft simpliciter*

*under S. 379, I.P.C. or to an offence under S. 380 I.P.C. Code of Criminal Procedure (V of 1898)—S. 337—Pardon—Whether can be tendered to an approver when the offence charged is under S. 379, I.P.C.*

*Held*, that section 39 of the Indian Electricity Act, 1910, makes dishonest abstraction, consumption or use of electric power punishable and provides that the aforesaid acts shall be deemed to constitute the offence of theft as defined in the Indian Penal Code. The section being a penal provision of law has to be construed strictly and it is not permissible to extend the operation of the section and infer that if there is a dishonest abstraction, consumption or use of electric power in a building, the offence would be more serious type of theft which is punishable under section 380 of the Penal Code. What the section contemplates is that certain acts would constitute the offence of theft simpliciter and by a process of extension the courts cannot spell out of the section a more serious offence which the Legislature has not provided therein.

*Held*, that the punishment for the offence under section 379, Indian Penal Code, does not extend beyond three years and fine. The punishment provided for the offence under sections 44 and 47 of the Indian Electricity Act, 1910, consists of fine only. Consequently no pardon can be granted to a person and he cannot be turned an approver in the case of theft of electricity.

*Case reported under section 438 Cr. P.C. by Shri Muni Lal, Additional Sessions Judge, Karnal, with his letter No. 74/R.K., dated 14th April, 1962, for revision of the order of Shri H. L. Sikka, M.I.C., Karnal, dated 23rd January, 1962, ordering that the statement of the approver is relevant.*

MAKHAN LAL AND R. SACHAR, ADVOCATES, for the Petitioner.

SURJIT KAUR, ADVOCATE, for ADVOCATE-GENERAL, for the Respondent.

#### ORDER OF THE HIGH COURT

KHANNA, J.—This judgment will dispose of thirteen Criminal Revisions. Nos. 569 to 581 of 1962. In all these revisions the learned Additional Sessions Judge, Karnal, has recommended that the

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order of Magistrate, I Class, Karnal, be set aside and it be directed that Jaggu Ram is not approver for the purpose of these cases and that the proceedings before the Magistrate are not inquiry proceedings and that he should proceed with the trial of these cases in accordance with law.

The facts giving rise to these cases are that on a complaint made by the Superintending Engineer of Punjab Electricity Board, Karnal, the police Karnal prosecuted the petitioners in these cases along with Om Parkash and Ram Singh for offences under sections 380 and 120-B, Indian Penal Code, and 39, 44 and 47 of the Indian Electricity Act, 1910. The petitioners in some of the cases run oil expellers with power and in the remaining cases run flour mills with power. They had obtained an industrial connection for running the said expellers and mills, and meters for calculating the units of electricity consumed had been installed in the said premises. It is stated that with the help of and in conspiracy with Ram Singh, Om Parkash and Jaggu Ram, the petitioners tampered with the said meters and thus caused wrongful loss to the electricity department. Jaggu Ram was tendered pardon and he was cited as an approver in the list of witnesses. At the commencement of the proceedings an objection was raised on behalf of the petitioners before the learned Magistrate that Jaggu Ram could not be examined as an approver because the offence even on the showing of the prosecution was of theft punishable under section 379, Indian Penal Code. The learned Magistrate overruled the objection and held that the offence alleged to have been committed fell under section 380, Indian Penal Code, and that Jaggu Ram could be examined as an approver.

On revision the learned Additional Sessions Judge held that the offence, if any, fell under

section 379, Indian Penal Code, and as such Jaggu Ram could not be tendered pardon and cited as an approver under section 337 of the Code of Criminal Procedure.

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I have heard Sarvshri M. L. Jain and Rajinder Sachar on behalf of the petitioners and Miss Surjit Kaur on behalf of the State, and they have all supported the recommendations of the learned Additional Sessions Judge. Section 39 of the Electricity Act reads as under:—

“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.”

A perusal of the above provision of law goes to show that any person who dishonestly abstracts, consumes or uses electricity shall be treated in the same way as if he had committed the offence of theft. It is not essential to bring a case under section 39 of the Indian Electricity Act, 1910, to prove that all the ingredients of theft as defined in section 378, Indian Penal Code, are present because the words used in section 39 are “shall be deemed to have committed theft”. The section makes dishonest abstraction, consumption or use of electric power punishable and provides that the aforesaid acts shall be deemed to constitute the offence of theft as defined in the Indian Penal Code. The section being a penal provision of law has to be construed strictly and it is not permissible to extend the operation of the section and infer that if there is a dishonest abstraction, consumption or use of electric power in a building, the offence

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would be more serious type of theft which is punishable under section 380 of the Penal Code. What the section contemplates is that certain acts would constitute the offence of theft simpliciter and by a process of extension the courts cannot spell out of the section a more serious offence which the Legislature has not provided therein. I may in this connection refer to two cases decided by Calcutta and Bombay High Courts. In *Rash Behari Shah v. Emperor* (1), the accused were alleged to be parties to a criminal conspiracy to commit theft by dishonest consumption or user of electrical energy and to have in consequence of that conspiracy committed theft of electricity in certain cinemas and other places. The trial Court in that case convicted the accused under section 39 of the Electricity Act read with section 380, Penal Code. The High Court in appeal altered the conviction to that under section 379, Indian Penal Code. In *State v. Maganlal Chunilal Bogawat* (2), the accused were alleged to have abstracted electric energy in their shops. It was held that the offence of the accused fell under section 379 of the Indian Penal Code. Following these authorities I am of the view that even if the allegations of the prosecution were accepted, the petitioners can be said to have entered into a conspiracy for the commission of the offence under section 379, Indian Penal Code, and to have committed an offence under that section and not under section 380, Indian Penal Code. The punishment for the offence under section 379, Indian Penal Code, does not extend beyond three years and fine. The punishment provided for the offences under sections 44 and 47 of the Indian Electricity Act, 1910, consists of fine only. According to section 337 of the Code of Criminal Procedure pardon can

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(1) A.I.R. 1936 Cal. 753.

(2) A.I.R. 1956 Bom. 354.

be granted to a person and he can be turned an approver only in the case of offences triable exclusively by the High Court or Court of Sessions or offences punishable with imprisonment which may extend to seven years or some specified offences with which we are not concerned in the present cases. As the petitioners are alleged to have committed offences the punishment of which does not extend beyond three years and which are not triable exclusively by the High Court or Court of Session, the question of tendering pardon to Jaggu Ram and turning him an approver did not arise.

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I, accordingly, accept the recommendations of the learned Additional Sessions Judge and direct Jaggu Ram be not treated an approver for the purpose of these cases and that the learned Magistrate should proceed with the trial of these cases in accordance with law.

B.R.T.

CIVIL MISCELLANEOUS

Before Shamsheer Bahadur, J.

THE DELHI MOTOR TRUCKS OWNERS UNION

AND OTHERS,—*Petitioners.*

*versus*

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ No: 225 of 1961.

*Punjab Gram Panchayat Act, 1952 (V of 1953)—S. 82—Levy of tax by Gram Panchayat on each truck-owner using the strip of land falling within its jurisdiction—Whether valid—Such a tax—Whether a tax on profession or discriminatory or invalid because no mode of collection has been prescribed.*

1962  

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Oct., 15th