

## CRIMINAL REVISION.

Before *Edgley J.*

A. C. MAJUMDAR

v.

EMPEROR.\*

1940  
June 25.

**Electricity**—*Onus of proving improper use, on whom lies—Indian Electricity Act (IX of 1910), s. 44 (d).*

In a prosecution under s. 44 (d) of the Indian Electricity Act, the onus lies on the prosecution to show that there has been improper use of the energy of a licensee. The latter part of that section does not exonerate the prosecution from discharging such onus, but merely provides that, in case there has been such improper use of the energy, the consumer himself will not be able to avoid the liability by saying that the energy was used by some other person over whom he had no control.

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The material facts of the case and the arguments in the Rule appear sufficiently from the judgment.

*Probodh Chandra Chatterjee* and *Bireswar Chatterjee* for the petitioner.

*Hamidul Huq* for the Crown.

EDGLEY J. The petitioner in this case has been convicted under s. 44 (d) of the Indian Electricity Act. It is contended on his behalf that the judgment of the learned Magistrate contains no sufficient finding to warrant a conviction under this section. With this contention I must agree.

The case for the prosecution appears to have been that the petitioner improperly used three points in his workshop for lighting purposes when he was under a contract with the Electric Supply Company to use the energy supplied through these points for industrial purposes only. The learned Magistrate

\*Criminal Revision, Case No. 458 of 1940, against the order of S. Wajid Ali, Third Presidency Magistrate of Calcutta, dated Mar. 13, 1940.

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seems to have been of the opinion that it might be presumed that he had used the electrical energy improperly, as alleged by the prosecution, because he had made certain connections for the use of electrical energy without the consent of the licensee. In my opinion, he has misread s. 44 of the Indian Electricity Act. This section *inter alia* imposes a penalty for improperly using the energy of a licensee. The onus would, therefore, lie on the prosecution to show that there had actually been improper use of the energy. For example, in the case with which we are now dealing, the onus would lie on the prosecution to show that three of the points in the petitioner's workshop had actually been used for lighting purposes and not for industrial purposes.

The learned advocate for the Crown places some reliance upon the latter part of the section in so far as it relates to cl. (d), which is to the effect that—

If it is proved that any artificial means exist \* \* \*  
 for facilitating such improper use as is referred to in cl. (d) \* \* \*  
 it shall be presumed, until the contrary is proved, that such \* \* \*  
 improper use \* \* \* has been knowingly and wilfully caused by  
 such consumer.

This provision does not exonerate the prosecution from discharging the onus which lies on it to show that there has been improper use of the energy of a licensee, but merely provides that in case there has been such improper use, the consumer himself, as defined in s. 2 (c) of the Act, will not be able to avoid the liability by saying that the energy was used by some person over whom he had no control. From the findings contained in the judgment it is clear that the requisite onus was not discharged in this case. In this view, the conviction cannot be supported. It is, therefore, set aside and this Rule is made absolute.

The fine, if already paid, will be refunded.

*Rule absolute.*

A. C. R. C.