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JAHANGIR
CURSETJEE
v.
KASTUR
PANNAJI

Beaumont C. J.

I must make the rule absolute with costs, and dismiss the plaintiff's suits with costs, but this is without prejudice to any right the plaintiff may have to prove for his debt in the insolvency.

Rule made absolute.

J. G. R.

APPELLATE CRIMINAL.

Before Mr. Justice N. J. Wadia and Mr. Justice Macklin.

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April 6

M. A. BHAGWATI, APPELLANT (ORIGINAL ACCUSED No. 2) *v.* EMPEROR.*

Indian Electricity Act (IX of 1910), ss. 2 (n), 44 (b) and 26 (5)—Indian Electricity Rules, 1937, r. 31 (1) and r. 122 (a)—Removal of meter from the old position to a new position—Company's service line extended—Laying additional line was laying "works" within the meaning of s. 44 (b)—Seals broken open—Fixing the meter in new position—Act amounting to an offence under r. 31 (1).

The accused who was an electrical contractor and engineer was charged under s. 44 (b) of the Indian Electricity Act, 1910, and r. 31 (1) read with r. 122 (a) of the Indian Electricity Rules, 1937. It was alleged by the prosecution that the accused removed the meter from the old position in which it was placed, after breaking open the seals placed on the meter by the company to a new position about thirty feet further away and extended the Company's service line from where it had originally ended at the meter to the place where it entered the meter in its new position. It was held by the Magistrate that the accused was guilty under s. 44 (b) and r. 31 (1) read with r. 122 (a) and convicted him. Accused having applied in revision to the High Court, it was contended that the act of the accused did not amount to an offence under s. 44 (b) of the Act inasmuch as the new wiring which he laid did not connect up any work belonging to the licensee Company with any other work belonging to the Company, and that s. 26 cl. (5) permitted a consumer to break the seal and as r. 31 was in conflict with the section, the section ought to prevail.

Held, overruling the contention, that s. 44 (b) did not require that the "works" laid or connected up with any other "works" belonging to the licensee Company, must also be works belonging to the licensee and therefore the accused in laying the additional line from the former position of the meter up to its new position was laying "works" within s. 44 (b) and as he laid for the purpose of connecting it with the works belonging to the licensee, namely the old supply line which terminated at the original position of the meter, his act amounted to an offence under s. 44 (b).

Held, further, that r. 31 did not deal with cases which s. 26 (5) contemplated and therefore the act of the accused in carrying out the work of removing the meter

*Criminal Revision Application No. 11 of 1939.

from its old position to its new one after breaking open the seals which had been placed by the Company upon the meter amounted to an offence under r. 31 (1) of the Indian Electricity Rules.

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CRIMINAL APPLICATION for revision against the conviction and sentence passed by I. N. Mehta, Presidency Magistrate, 3rd Court, Bombay.

Offence under s. 44 (b) of the Indian Electricity Act.

One Shamaji Valji (accused No. 1) was the owner of a building situate at Kolbhat Lane. Before Shamaji purchased this building, the B.E.S.T. Co. Ltd. had been supplying electrical energy to this building and the service line was laid by the Company in an enclosed recess in the wall in an open verandah on the ground floor of the building. This open verandah was subsequently converted into a shop and the tenant did not like the service line and the meter board inside the shop. Shamaji thereupon made a requisition dated March 4, 1937 to the Company requesting them to shift the service line and the meter board to a new position in the same building. An estimate of Rs. 112 was sent by the Company. This estimate was considered excessive by Shamaji and his electric contractor, M. A. Bhagwati (accused No. 2); accused No. 2 had an interview with the assistant manager of the Company and asked for a reduction of the estimate which the Company refused to make. Thereupon Shamaji (accused No. 1) wrote a letter to the Company on September 21, 1937. In this letter he stated as follows: "Under your condition 5 (e) you undertake to move meter boards for Rs. 10 provided we do the alteration in the wiring. If, therefore, you cannot be reasonable in this matter, I hereby give you 48 hours notice under s. 44 of the Indian Electricity Act and a similar notice under r. 29 of the Indian Electricity Rules that I shall break your seals, disconnect the meter and reconnect them in the new position." The Company by its reply dated September 22, 1937 drew Shamaji's attention to r. 31 of the Indian Electricity Rules, 1937 and warned him that in case meter

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or cutout seals were interfered with in any way he would be prosecuted. The Assistant Engineer of the Company found that the seals of the old cutouts near the old service line were broken and that the meter board had been shifted to a new position and new service line laid connecting with the old service. The accused were therefore prosecuted under s. 44 (a) of the Indian Electricity Act and r. 31 of the Indian Electricity Rules, 1937.

The Presidency Magistrate, 3rd Court, Bombay, held both the accused guilty under s. 44 (b) and under r. 31 (1) read with r. 122 (a) and convicted them and sentenced accused No. 1 to pay fine Rs. 50 on the first charge and Rs. 25 on the second charge and accused No. 2 to pay fine Rs. 100 on first charge and Rs. 50 on the second charge. His reasons were as follows :—

“ The next question is whether this work of extending the service line from the old position to the new position or connecting the meter board in its new position by taking a service line from there to the old position and joining it with the old service cutout would fall under s. 44 (b) of the Act or under s. 44 (a) of the Act. My opinion is that such work falls under s. 44 (b) of the Act.

It is contended for accused that the work done was of shifting a meter board from one position to another and this could be done having regard to s. 26 (cl. 5) by giving 48 hours' notice in writing.

But the work done was not merely shifting one meter or meters from their old position and joining them with a service line of the Company at the place where it was shifted. There was no service line existing at the new position where the meter board was shifted and for this purpose the accused had to put a new service line connecting it with the old service line which terminated at the old cutout in the old position as shown in Ex. K. It is common ground that a service line terminated at the incoming terminus of the meter and in its old position it terminated at the old cutout whose seal was broken and from where the meter board was removed. In extending a new line from that old cutout and taking it about ten yards and connecting it with the meter board by placing a new cutout, accused made the service line terminate at the new cutout. The work done by accused, therefore, does not consist of merely shifting a meter from one place where a service existed to a new place where there was already a service line of the Company but putting a new service line by extending the old one after breaking the Company's seal of the old cutout.

Under cl. 6 (2) of Schedule to the Act, the licensee i.e. Company is to maintain the service line. The work may be done by a private licensed contractor and the consumer pays for it but the licensee is responsible for its maintenance and, therefore, the work cannot be done without the Company's consent.

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The work done by the accused, in this case, therefore, does not fall under s. 26 (cl. 5) and s. 44 (a) of the Act, and, therefore, the notice given by accused No. 1 (*Ex. E*)^{M. A. BHAGWATI} dated September 21, 1937 was entirely misconceived. The whole correspondence shows that up to a certain stage accused realised the true position that the work should be got done by the Company or with the Company's consent but later on it seems under accused No. 2's wrong advice, it was thought fit to take the law in one's own hands. For that purpose even the amended r. 31 was not read and reference was made to r. 29 of the old Rules. v.
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In doing the work, the Company's seals of the old cutout were broken and that is proved. In his letter accused No. 1 has threatened to break Company's seals and has done so. Rule 31 does not allow breaking of seals of the Company in any case. Old r. 29 allowing breaking of Company's seal after giving 48 hours' notice to Company is altered. It is clear that on September 21, 1937, r. 31 was in force and, therefore, accused are clearly guilty for breach of this rule, accused No. 2 for breaking the seal as work was done under his orders and supervision and accused No. 1 agreeing to accused No. 2 doing so. This amounts to an offence under r. 122 (b) and (a). It was contended for the defence that r. 31 was *ultra vires*. This contention is baseless. Rules are made by Government under s. 37 of the Act and r. 31 would fall under cl. 2 (e) and (f) of s. 37 and comes in Chapter IV headed 'Conditions of supply by licensee'."

The accused No. 2 applied in revision to the High Court.

G. C. O'Gorman and *P. A. Mahale*, with *S. A. Kher*, for the Petitioner.

R. A. Jahagirdar, Government Pleader, for the Crown.

K. A. Somji and *Vimadalal*, with Messrs. *Craigie, Blunt and Caroe*, for the complainant.

N. J. WADIA J. This is an application in revision against a conviction of the accused by the Presidency Magistrate, Third Court, Bombay, under s. 44 (b) of the Indian Electricity Act and r. 31 (1) read with r. 122 (a) of the Indian Electricity Rules, 1937. The applicant, accused No. 2, is an electrical contractor and Engineer. Accused No. 1, who is not before us, was the owner of a building in Kolbhat Lane. The Bombay Electric Supply and Tramways Company had been supplying electricity to the building, and on March 4, 1937, the first accused, the owner of the building, sent a requisition to the Company asking for an estimate for the work of shifting the meter board from its old position on the verandah to a new position. The

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Company sent an estimate of Rs. 112. This estimate was considered excessive by both the accused, and on May 21, 1937 another letter was sent to the Company who repeated their former estimate. Accused No. 2 the Contractor then had an interview with the Assistant Manager of the Company and asked for a reduction of the estimate which the Company refused to make. Accused No. 1 then wrote a letter to the Company on September 21, 1937, in which he stated that as they were not prepared to be reasonable, he gave them forty-eight hours' notice under s. 44 of the Indian Electricity Act and a similar notice under r. 29 of the Indian Electricity Rules that he would break the seals, remove the meter board and reconnect it in the new position. The accused then got the meter board removed to the new position, accused No. 2 doing the work as contractor. The Company thereupon prosecuted them under s. 44 (a) of the Act and r. 31 of the Indian Electricity Rules, 1937. The learned Magistrate has held that both the accused were guilty under s. 44 (b) and under r. 31 (1) read with r. 122 (a) and has convicted them. Accused No. 2 has applied in revision.

Section 44 (b) of the Act provides that whoever lays or causes to be laid, or connects up any works for the purpose of communicating with any other works belonging to a licensee, without such licensee's consent shall be liable to a certain penalty. The case of the prosecution was that the accused removed the meter from the old position in which it was placed, after breaking the seals placed on the meter by the Company, to a new position about thirty feet further away, and extended the Company's service line from where it had originally ended at the meter to the place where it entered the meter in its new position. The learned counsel for the applicant contends that the act of the accused does not amount to any offence under s. 44 (b) of the Act inasmuch as the new wiring which he laid did not connect up any work belonging to the licensee Company with any

other work belonging to the Company. Section 44 (b) does not require that the "works" laid or connected up with any other "works" belonging to the licensee must also be "works" belonging to the licensee. In fact it is obvious that the section could not mean that since it would be impossible for anybody but the licensee to lay a new work belonging to the licensee. "Works" as defined in s. 2 (n) of the Act includes electric supply-lines. Under r. 35 of the Indian Electricity Rules, 1937, read with s. 19A of the Act the point at which the supply of energy by a licensee to a consumer shall be deemed to commence, where the amount supplied is ascertained by meter, is the point at which the conductor enters the meter. "Electric supply line" is defined in s. 2 (f) of the Act as meaning a wire, conductor or other means used for conveying, transmitting or distributing energy. The supply line therefore up to the point at which it enters the meter comes within the meaning of "works" as defined in s. 2 (n). That being so the applicant in laying the additional line from the former position of the meter up to its new position was laying "works" within the meaning of s. 4 (b), and he laid that line for the purpose of connecting it with other works belonging to the licensee, namely the old supply line which terminated at the original position of the meter. His act therefore in our opinion clearly amounted to an offence within the meaning of s. 44 (b).

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In carrying out the work of removing the meter from its old position to its new one the accused broke open the seals which had been placed by the Company upon the meter and his act clearly amounted to an offence under r. 31 (1) of the Indian Electricity Rules. That rule provides that a licensee may affix one or more seals to any meter placed upon a consumer's premises in accordance with r. 40 and no person other than the licensee shall break any such seal. It is contended that s. 26, cl. (5) permits a consumer to do this; that r. 31 conflicts with this section, and

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where there is a conflict between a rule and a section of the Act the section ought to prevail. Section 26 (5) does not deal with the breaking of the seals placed on a meter. Section 26 (1) deals with the providing of meters and cl. (5) says that a consumer shall not connect any meter referred to in sub-s. (1) with any electric supply line through which energy is supplied by a licensee, or disconnect the same from any such electric supply line, without giving to the licensee not less than 48 hours' notice in writing of his intention. The clause deals with a case of connecting a new meter with the Company's supply line. Clause (1) provides that the consumer is not bound to take the Company's meter and may provide his own, and in a case of that sort there would be no question of breaking the seals of the meter since no seals would be placed by the Company on the meter till after it had been connected. Rule 31 therefore does not deal with cases which s. 26 (5) contemplates. The rule deals with the tampering with the seals placed on a meter which is already working. There is therefore no conflict between r. 31 and s. 26, sub-s. (5), and the applicant's act clearly did not fall within the purview of s. 26 (5). He did not merely connect a new meter with the existing supply line of the Company, but removed a meter which had already been sealed by the Company, by breaking open its seals, and altered its position by extending the supply line of the Company and then fixing the meter in a new position. His act in our opinion clearly amounted to a breach of r. 31. The conviction of the accused both under s. 44 (b) and r. 31 (1) read with r. 122 (a) was therefore correct.

The application is dismissed and the rule discharged.

Rule discharged.

J. G. R.