

(1969) 03 CAL CK 0005
In the Calcutta High Court
Case No : Criminal Rev. No. 345 of 1967

Baleswar Ojha

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 06-03-1969

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 200
West Bengal Premises Tenancy Act, 1956 — Section 31

Citation : 75 CWN 801

Hon'ble Judges : N.C. Talukdar, J

Bench : Single Bench

Advocate : Padmabindu Chatterjee, for the Appellant;

Judgement

N.C. Talukdar, J.—This Rule is against an order dated the 21st January 1967, passed by Shri K. K. Sarkar, Additional District Judge, Alipore 24 Parganas in R. C. Appeal No. 52 of 1966, dismissing the appeal from an order dated the 24th June 1966, passed by Shri B. N. Bhattacharya, Rent Controller, Alipore, 24 Parganas in R. C. Case No. 51 of 1962/T. 16 of 1962 holding the opposite party petitioner guilty u/s 31 of the West Bengal Premises Tenancy Act 1956, and directing him to pay a fine of Rs. 60/- in default to undergo simple imprisonment for ten days and further ordering a restoration of the electric connection within seven days from the date of the order. The facts leading on to the present Rule may be put in a short compass. The applicant opposite party No. 2 Lalit Kumar Sinha, is a tenant in respect of one room on the first floor of a two storeyed house at Canning Town belonging to the opposite party petitioner, who is the landlord of the said premises, at a rental of Rs. 251-per month inclusive of the electric charges. The relationship between the landlord and the tenant has been a chequered one and while the tenant filed an application for fixation of fair rent before the Rent Controller, the landlord also started an ejectment suit. The applicant's case further is that the landlord defaulted to pay the electric charges as a (result whereof the electric connection to the room occupied by the tenant was cut off by the authorities, Hence the present case was started u/s 31 of the

West Bengal Premises Tenancy Act, 1956, before the Rent Controller, Alipore, 24 Parganas, The case of the landlord petitioner, inter alia, is that the electric supply is not comprised in the tenancy, the rent of the premises being Rs. 21- and the electric charge being Rs. 4-per month, that the tenant used to consume electricity much above the agreed terms as a result whereof the electric charges went up heavily to the serious prejudice of the landlord who had to foot the bill and ultimately he being unable to pay the excessive charges due to the tenant's highhandedness, the electrical authorities cut off the connection because of the resultant non-payment. Podr wilinesseis were examined on behalf of the applicant tenant and two on behalf of the landlord opposite party before the Rent Controller who as a result of the enquiry was pleased by his order dated the 24th June 1966 to find the landlord petitioner guilty u/s 31 of the West Bengal Premises Tenancy Act, 1956, and saddled him with a fine of Rs. 601 - in default to undergo simple imprisonment for ten days and further directed him to restore the electric connection of the room belonging to the tenant within seven days from the date of the said order. On appeal, Shri K. K. Sarkar, Additional District Judge, 11th Court, Alipore, 24 Parganas, by his order dated 21.1.1967 dismissed the appeal and upheld the order passed by the Rent Controller. These orders have been impugned and form the subject-matter of the present Rule.

2. Mr. Padmabindu Chatterjee, Advocate appearing on behalf of the landlord petitioner in support of the Rule, has made a three fold submission. The first contention of Mr. Chatterjee is that the electricity in question being not comprised in the tenancy of the Opposite Party, the provisions of section 31 of the West Bengal Premises Tenancy Act 1956, are not attracted to the facts of the present case and as such the ultimate order that was passed by the Rent Controller and affirmed by the Additional District Judge is unwarranted and untenable. The second contention of Mr. Chatterjee is that even if the electricity be taken to have been comprised in the tenancy of the opposite party No. 2, the landlord petitioner having not wilfully interfered with the said supply. The penalty enjoined u/s 31 of the West Bengal Premises Act, 1956, is not applicable and the orders impugned are wholly unwarranted and untenable. The third and the last submissions of Mr. Chatterjee is that the procedure that has been followed by the Rent Controller is a procedure which is not in accordance with law or with any procedure enjoined by law and the resultant proceedings have been vitiated thereby. In this context Mr. Chatterjee has catalogued two distinct instances of purported illegality, namely, the non-examination of the tenant applicant on oath in accordance with the provision of Section 200 of the Criminal Procedure Code, which applied to the present case and secondly the sentence of seven days" simple imprisonment in default of the payment of fine that was ultimately passed by the Rent Controller. No body appeared on behalf of the tenant opposite party No. 2.

3. Having heard Mr. Chatterjee, Advocate appearing on behalf of the landlord petitioner and on going through the evidence and the connected materials on record, I find that the first contention as raised by him is ultimately not tenable.

The evidence on record in general and that of exhibit I series in particular establishes beyond reasonable doubt that the electricity was comprised in the tenancy, and, therefore, section 31 of the West Bengal Premises Tenancy Act, 1956, was applicable to the facts of the instant case. Mr. Chatterjee has urged in this context that the sum of Rs. 251/- was really split up into two different parts, Rs. 21/- being payable on account of the rent of the premises and Rs. 4/- being charged for electricity, as borne out by the oral evidence. However, oral evidence cannot be allowed to override the clear and cogent documentary evidence in the instant case, establishing that the rent of the premises in question did comprise electricity. The first contention of Mr. Chatterjee, therefore, fails.

4. There is much force, however, behind the second submission of Mr. Chatterjee. The gravamen of the provisions enjoined u/s 31 of the West Bengal Premises Tenancy Act, 1956 is wilful interference with the electric supply by the landlord in the absence whereof, the penalty enjoined in the said section would not be attracted. The Rent Controller has not considered whether the evidence on record did establish the agreed limit of consumption of electricity by the tenancy, in the absence whereof it was difficult to determine whether the landlord exceeded the bounds. The Court of appeal fairly conceded that there is nothing satisfactory in the evidence as to what was the agreed limit of consumption of electricity by the tenant. In view of such a finding, it is passing strange that the learned Additional District Judge proceeded to find against the case of the landlord petitioner that the, charge on account of consumption of electricity became excessive due to the caprices of the tenant opposite party No. 2. A failure on the part of the courts below to find as to what the agreed limit was has resulted in a failure of justice. If the consumption of electricity was excessive and deliberately made by a defaulting tenant, there is no reason as to why the landlord would go on footing the bill and if he failed for circumstances beyond his control, the said failure cannot be deemed to be a deliberate act on his part to take the law in his own hands resulting in the cutting of the electric connection to the prejudice of the tenant opposite party No. 2. The evidence on record does not furnish any basis for the ultimate finding that was arrived at by the court of appeal that the landlord had no right to take the law in his own hand and cut the electricity. In the first instance the landlord did not take the law in his own hand and secondly even on the findings arrived at by the Additional District Judge himself there was no actual cutting of the electric connection by the landlord himself as alleged. I hold, therefore, that the evidence on record does not establish beyond reasonable doubt the factum of any interference with the supply or service comprised in the tenancy of the premises in question on the part of the landlord petitioner. I uphold accordingly the second contention of Mr. Chatterjee and on this count alone the Rule should succeed. In view of the above mentioned finding arrived at by me that the provisions enjoined in section 31 of the West Bengal Premises Tenancy Act, 1956 are not attracted to the facts of the present case as borne out by the evidence on record, and consequently the sentence of fine and the direction for restoration are unwarranted and untenable.

I need not determine the other point relating to the procedure, raised by Mr. Chatterjee.

In the result, I make the Rule absolute, set aside the impugned orders passed by the court below, and I direct that the fine, if paid, is to be refunded.