
(1972) 07 AHC CK 0012
In the Allahabad High Court

Gauri Ram

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 29-07-1972

Acts Referred:

Cattle Trespass Act, 1871 — Section 20
Penal Code, 1860 (IPC) — Section 379, 411
Telegraph Wires (Unlawful Possession) Act, 1950 — Section 2, 5, 7

Citation : (1972) 42 AWR 677 : (1973) CriLJ 6

Hon'ble Judges : Yashodanandan, J; P.N. Bakshi, J

Bench : Division Bench

Judgement

P.N. Bakshi, J.—Gauri Ram was convicted by the Sub-Divisional Magistrate. Robertsganj. u/s 5 of the Telegraph Wire (Unlawful Possession) Act and sentenced to one year's rigorous imprisonment. He filed an appeal which was dismissed by the Temporary Civil and Sessions Judge. Mirzapur on 5.11.1969. Thereafter he has come up in revision to this Court. The revision came up for hearing before the learned single Judge who has referred this case for disposal by a Bench.

2. The case for the prosecution is that the accused was found in possession of six and half kgs. of telegraph wire at 8.25 P.M. on 7.7.1968 in village Ninga in contravention of the provisions of Section 5 of the Telegraph Wire (Unlawful Possession) Act (hereinafter called the Act). That Pratap Singh (P.W. 2), Station Officer of Police Station Chopan received information through an informer on 7.7.1968 that the applicant along with others had gone for cutting the telegraph wire. He collected Bhola (P.W. 3) and Naradmuni (P.W. 4) and proceeded to village Ninga accompanied by a posse of Police constables from the outpost. About half a mile south of village Ninga near the telegraph line they heard the movements of some persons. It was about 8.15 p.m. On lighting their torches they saw five or six persons rolling copper wire. A chase was given to them. All except the applicant escaped. The applicant was caught near poll No, 129/8. On search being taken six and half kgs. of wire was recovered from his Jhola.

Recovery memo Ext. Ka 2 was prepared on the spot in the presence of the witnesses. The accused-applicant -was brought to the Police Station and a case was. registered against him under the aforesaid Act.

3. Bashistha Misra, S.I. II (P.W. 7) conducted the investigation of the case. He interrogated the witnesses, prepared site-plan Ext. Ka 6 of the place where the applicant was arrested with the incriminating article. He took the torch in his possession and prepared its memo Ext. 7. The wire was sent for examination to Shri Ram Mohan Khare (P.W. 1) Assistant Engineer Telephone, Varanasi. On receipt of his report to the effect that the wire in question was telegraph wire. Sheo Narain Singh (P.W 5) the then Station Officer, submitted the charge-sheet against the accused. Sanction for prosecution was duly obtained as required u/s 7(1) of the Act. The Superintendent of Police, Mirzapur was authorised to file the complaint u/s 5 of the Act. The Drosecution in support of its case examined Pratap Singh (P.W. 2) Station Officer Chopan, Bhola (P.W. 3) and Naradmuni (P.W. 4) as witnesses of fact and Sri Ram Mohan Khare (P.W. 1) as the expert of the telephone wire.

4. The accused applicant denied his guilt. According to the applicant he was arrested by the police from his house. Subhan (D.W. 1) and Lalai (D.W. 2) were produced in support of the defence case. In their statement u/s 342 of the Criminal Procedure Code the accused stated that the prosecution witnesses were deposing under the Police pressure. Subhan (D.W. 1) is the neighbour of the accused and Lalai (p.W. 2) is his father. Regarding the time, place and manner of the arrest we have the statement of Pratap Singh (P.W. 2) Station Officer Chopan Bhola (P.W. 3) and Naradmuni (P.W. 4). Pratap Singh has stated that on receiving information from an informer at Obra that some persons had gone to cut wire towards the village Ninga. he collected Bhola and Naradmuni and some Police force and proceeded towards that village. About half a mile south to the village near the telephone line they heard some Ahat. On throwing their torch light they saw five or six persons rolling the wire in spite of a chase being given the miscreants ran away, except the accused, who was caught near Poll No. 129/8 a Jhola was found in the hand of the applicant which contained six and half kgs. of wire. The accused wais brought to the Police Station and an entry was made in the general diary at report No. 8 copy of which is Ext. Ka. 3 Bhola (P.W. 3) and Naradmuni (P.W. 4) are public witnesses. They corroborated the prosecution story in all its material particulars. We have perused the statements of these witnesses but we do not find any contradiction or any other infirmity therein for rejecting their statements. Both the Courts below have relied upon these statements and we are in complete agreement with the finding of fact that the wire in question was recovered from the possession of the accused applicant at the date, time and place as alleged by the prosecution

5. The crucial question, however which has to be decided, is whether the wire in question was "telegraph wire" within the meaning of Section 9(b) of the Telegraph Wire (Unlawful Possession) Act. Section 2(b) of the Act runs as follows:

(b) Telegraph wire means any copper wire the gauge of which, as measured in terms of pounds per mile is between 147 and 153 or between 196 and 204 or between 294 and 306.

The case for the prosecution is that the statement of (P.W. 1) Sri Ram Mohan Khare, Assistant Engineer Telephone, who has been produced as the expert witness, fully establishes that the wire in question was "telegraph wire" We shall, therefore, scrutinise his statement. Sri Ram Mohan Khare received the wire in dispute on 30.8.1968 in a seal packet through constable Badruddin. He opened the sealed packet and measured its diameter. The measurement Was 2.82 m.m. He then examined the colour and lustre of the wire. Thereafter he arrived at the conclusion that the sample of wire which he had examined was copper wire, In his examination-in-chief Sri Ram Mohan Khare has stated thus:

Maine sealed packet ko khola to usme do tar mila unka diameter napne par 2.82 m.m. mila. Taronke rang lustre aur diameter se gyat hua ki ve tar ke coils 200 pound prati meel tambe ke tar ke tukare hain. Yeh telegraph wire hai aur is Telegraph Wire Unlawful ke antargat aata hai.

The witness when subjected to cross-examination stated as follows:

Tar jo gaya tha uski density nahi nikali thi. Density se nahi mulum hota ki kaun kaun se alloy mile hue hai, Maine tar ke rung aur uske chamak aur gauge se taya kiya ki wah tar pure copper hai, 200 pound prati meel tambe ka tukara hai. Maine koi bhi metallurgical test nahi kiya aur na uske karane ke avasyakata thi. Usi teen bato se taya kiya kiye pure copper wire telegraph hai. Iska koi scientific test nahi hai, aur na maine kiya. Agar telegraph wire me aur koi dhatu mill hogi to uska gauge Vary kar jata hai aur isliye van apne department ka tar nahi rah jata

On the basis of this statement it was urged by the counsel for the State that the prosecution has succeeded in proving that the wire recovered from the, possession of the accused applicant was telegraph wire belonging to the department within the meaning of the Act. We were however, not satisfied how a mere look at the colour and lustre of the wire coupled with, the measurement of the gauge could lead to a conclusion that the wire in question was copper wire. As such we summoned Sri Ram Mohan Khare before us so that he could satisfy us on this question. We questioned Sri Khare regarding the test which he had performed in arriving at the conclusion that the sample of wire tested by him was telegraph wire. According to his statement before us Shri Khare claimed to have first measured the diameter of the wire by means of micrometer screw gauge. Having thus ascertained the guage of the wire Shri Khare claims to have taken recourse to the Line Construction Code of the posts and Telegraph Department. By comparing the gauge of the wire in the table provided in that Code he found that the gauge of the wire tallied with 200 pounds per mile copper wire of the department. He then examined the colour and lustre of the wire and came to the conclusion that it was telegraph wire of the weight of 200 pounds per mile

belonging to the Posts and Telegraphs Department. Sri Khare thus repeated the same Version before this Court which he had given before the Sessions Court. He did not throw any further light on the question at issue. We were not at all satisfied with his statement and, therefore, we summoned. Shri C.R. Chakravarti. Assistant Engineer, Lines and Wires and Cables Officer, of the Senior Electrical Engineer. Calcutta (West Bengal). The statement of Shri Chakravarti has been very frank and has dispelled some of the doubts which we had regarding the proper test necessary for coming to a conclusion Whether a particular wire is copper wire, within the meaning of the Act. Sri Chakravarti stated as follows:

In our department in order to test as to whether a particular sample is copper wire of the Posts and Telegraphs Department or not we measured the diameter of the wire with the aid of a micrometer screw gauge, the weight and we find out the resistance of the wire. On the basis of these data we can conclude as to whether the wire is of the Posts and Telegraphs Department or not. In this particular case, it appears that Mr. Ram Mohon Khare on account of his experience by examining the wire visually on account of its lustre and colour concluded that it was copper wire. After measuring the diameter, ha could definitely work out that one mile copper wire would weigh 200 lbs. Copper wire of this weight and diameter is wire of the Posts and Telegraphs Department.

From the above statement of Sri Chakravarti it appears to us that in the case before us even though according to his statement three tests are carried put by his department, namely (a) measurement of diameter; (b) taking of weight and (c) finding out the resistance of wire. Sri Ram Mohan Khare depended solely upon his vast experience and ocular ability to conclude that the wire in question was a copper wire, within the meaning of the Act. To clarify matters further we questioned Shri Chakravarti and asked him if it was necessary that all the three tests, mentioned above must be conducted before a final opinion can be given that a particular wire is copper wire or whether the same could be determined by undertaking any one of the above mentioned three tests. His reply was that "it is necessary that all the three tests must be conducted before it can finally be held that the wire is copper wire as is prohibited under the Act." This answer given by the witness has put an end to the entire controversy in the case. The tests which ought to have been conducted as per statement of Sri C.R. Chakravarti have not been so conducted in the case before us. A mere visual appreciation of the colour and lustre of the wire coupled with the measurement of the diameter is in our opinion not sufficient to establish that the wire in question was copper wire which came within the prohibited category of telegraph wire as defined in Section 2(b) of the Act. Our observation should by no means be construed to mean that we are laying down any particular mode of testing the genuineness or otherwise of the copper wire belonging to the telegraph department. That is not the matter with which we are concerned. It is for the department to lay down its tests All that we have decided in the present case is that the tests conducted herein are not sufficient to establish that the wire in question was copper wire, the possession of which is prohibited and punishable under the said Act.

6. As the last report counsel for the State has submitted that even if the offence is not proved under the Telegraph Wire (Unlawful Possession) Act yet the accused-applicant can be convicted for the minor Offence u/s 379/411 of the Indian Penal Code. Counsel for the accused argues that the minor offence which has been made culpable u/s 238 of the Criminal Procedure Code must be one under the same Act of which the major offence has not been proved. We have examined this argument carefully. We do not agree with the contention of the counsel for the applicant for the simple reason that the word "offence" has been defined in Section 4(o) of the Criminal Procedure Code which reads as follows:

(0) "Offence" means any act or omission made punishable by any law for the time being in force.

It also includes any act in respect of which a complaint may be made u/s 20 of the Cattle Trespass Act 87 (1 of 1871).

On a perusal of Section 238 of the Criminal Procedure Code, we find that "when a person is charged with an offence consisting of several particulars a combination of some only of which constitutes a complete minor offence and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence though he was not charged With it." Section 238 of the Criminal Procedure Code does not lay down any limitation on the definition of the word "offence" The said word as mentioned above has been defined in Section 4(0) of the Act. The definition applied to "any act or omission" punishable by any law "for the time being in force." As such we do not find any justification in law for accepting the submission of counsel for the accused applicant. What is a minor offence would depend upon the sentence which is provided by law for that offence. An offence u/s 379/411 is punishable by three years" rigorous imprisonment while an offence under the Telegraph Wire (Unlawful Possession) Act is punishable by five years" rigorous imprisonment. In that sense the offence u/s 379/411 of the Indian Penal Code would certainly be a minor offence. But there is vet another difficulty in our way. The difficulty is that while mere possession is punishable under the Telegraph Wire (Unlawful Possession) Act dishonest possession alone is punishable u/s 379/411 of the Indian Penal Code. A person may in good faith have purchased an article which may ultimately be found to be stolen. If he can give a reasonable explanation for his possession he cannot be found guilty u/s 379/411 of the Indian Penal Code. But if the same person was being prosecuted for an offence under the Telegraph Wire (Unlawful Possession) Act, his explanation is of no consequence. Even though his possession might be innocent and honest he would still be guilty under the Telegraph Wire (Unlawful Possession) Act. Thus we find that the ingredients of the offence u/s 5 of the Telegraph Wire (Unlawful Possession) Act are different to the ingredients of the offence u/s 379/411 of the Indian Penal Code. As such in the absence of a charge u/s 379/411 of the Indian Penal Code we are unable to convict the accused under this section.

7. Having thus considered the entire evidence on the record and the questions of

law that have arisen in this case we are of opinion, that the guilt of the accused has not been established for the offence for which he had been charged namely, an offence under Sections of the Telegraph Wire (Unlawful Possession) Act. We, therefore, acquit the accused and set aside the conviction and the sentence imposed upon him. The accused is on bail. He need not surrender, His bail bonds are hereby cancelled.