
(1963) 07 BOM CK 0010

In the Bombay High Court

Case No : Criminal Reference No. 19 of 1963

Gopal Sitaram Mahashabde

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 03-07-1963

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 26

Citation : (1963) 65 BOMLR 836 : (1964) MhLj 153

Hon'ble Judges : Shah, J

Bench : Single Bench

Judgement

Shah, J.—In this reference the learned Additional Sessions Judge, Nasik, recommends that the conviction of the accused Gopal Sitaram Mahashabde u/s 26(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act be set aside for the reasons given by him in Ills judgment dated February 13, 1963.

2. It appears that the complainant was one of the tenants of the accused landlord. It was alleged by the complainant that he used to remit rent to the landlord by money order in respect of the premises occupied by him as a tenant, but the landlord failed to give any receipt in respect of any of the rents so remitted by him. There was some correspondence between the complainant and the accused right from January 5, 1961, in this connection. In course of this correspondence the complainant insisted that the accused should send the rent receipts by registered post. The accused, on the other hand, contended that he was not bound to send any such receipts by registered post, but that he was prepared to give him receipts for the rents received by him and that the complainant himself should arrange to get those receipts from him. This controversy between the complainant and the accused continued down to the end of March 1962, yet the landlord would not send any rent, receipt to the complainant by registered post as desired by the tenant. The complainant, therefore, filed a complaint against the accused on May 17, 1962, in the Court of the learned Judicial Magistrate, First Class, at Nasik, charging the accused with

an offence u/s 26(2) of the Rent Act. The accused contended that he had never refused to give the receipts in respect of the rents received by him by money-order as required by Section 26(1) of the Rent Act, that he was not bound to send any such receipts by registered post as required by the complainant and that, therefore, he had not committed any offence u/s 26(2) of the Rent Act. The learned Magistrate was of the view that even if the accused could not send the rent receipts to the complainant by registered post because it involved him in some expense, he should, have certainly sent them under certificate of posting and that since he had not done it, he was guilty of the offence charged against him. In the result, he convicted the accused and sentenced him to pay a fine of Rs. 25 for each of the three months, namely, January, February and March, 1962. Against this order of conviction and sentence, the accused-landlord filed a revision application in the Sessions Court at Nasik. At the hearing of this application, the learned Additional Sessions Judge thought that there was sufficient compliance with the requirements of the Act on the part of the accused since he had signed the acknowledgement coupons attached to the money-orders received by him. He was further of the view that in the present case it was impossible for the accused, to comply with the terms of Section 26(7) of the Rent Act. In other words, the learned Judge thought that since the rents were sent by the complainant to the accused by money-order and receipts in respect thereof were required to be given at the time of receipt of rents, it was impossible for the accused to give such receipts at the time when he received the rents. The learned Judge was further of the opinion that since Section 26(2) of the Rent Act did not require the landlord to do anything more than to "give" the receipts for the rents received by him, he was not bound to send them either by registered post as required by the complainant or under certificate of posting as suggested by the Magistrate. For these reasons, the learned Judge has made this reference to this Court with a recommendation that the order of conviction and sentence passed by the learned Magistrate be set aside.

3. The learned Assistant Government Pleader, Mr. Vaidya, opposed this reference and sought to support the order of conviction passed by the learned Magistrate on the ground relied upon by the latter. Now, Section 26 of the Rent Act runs as follows:

(1) Every landlord shall give a written receipt for any amount at the time when such amount is received by him in respect of any premises to such form and in such manner as may be prescribed.

(2) Any landlord or person who fails to give a written receipt for any amount received by him in respect of any premises shall, on conviction, be punishable with fine which may extend to one hundred rupees.

4. On a true construction of Sub-sections (1) which uses the word "give", it seems to me that the only situation contemplated by the Legislature while enacting this sub-section was that the tenant or his representative should go to the landlord to give his rent in cash and the landlord at the time of receiving the

amount of rent should give a written receipt in the form prescribed by the rules. The sub-section does not contemplate the case of a tenant remitting the rent by money-order. If the Legislature had intended to provide for such a contingency, it could have certainly used some other appropriate word or words in the sub-section with regard to the passing of the receipt by the landlord in respect of the rent so received by him. Since, however, the sub-section uses the word "give", the landlord cannot be expected to "send" the rent receipt to the tenant either by registered post or otherwise. It must be noted that the section is a penal one and, therefore, it has necessarily to be construed strictly. The learned Assistant Government Pleader Mr. Vaidya contended that the word "give" must be construed to meet the other contingency mentioned above as well so as to compel the landlord to "send" the receipt by registered post or otherwise as might be required by the tenant. I am afraid, that contention cannot be accepted. "To give" and "to send" have got different meanings altogether in the English language; "giving" is not "sending," nor is "sending" "giving," nor does the word "give" include what the word "send" means. The two cannot stand together at all. The learned Judge in his reference has relied upon this construction of the section, and, in my opinion, the construction put upon it by him is perfectly justified.

5. The learned Judge has, however, stated that there was substantial compliance with the provisions of the section by reason of the accused-landlord having signed the money-order coupons in acknowledgment of the receipt of the money. I wonder very much how such acknowledgment in the absence of any words showing that the money was received in payment of rent would operate in law as a receipt in respect of rent due from the tenant. The section specifically requires a landlord to give receipt in respect of the rent received by him in the prescribed form. Merely putting one's signature on the money-order form indicating that one has received the money specified in that form cannot amount to the slightest compliance, much less substantial, with the requirements of the section. In other words, it does not partake of any of the elements which constitute the receipt in the prescribed form. In my opinion, therefore, the reference of the learned Judge on this ground cannot be accepted.

6. The learned Judge, further thought that when the landlord received the money-order in respect of rent from the complainant, it was not possible for him to comply with the requirement of the section since even though he might be prepared to give the receipt as required by that section; there was no one to receive it on behalf of the tenant. There is good deal of force in this view of the learned Judge, because obviously, the postman who brings the money-order is not authorised to receive the rent receipt from him on behalf of the tenant sending the money-order. What the section contemplates is that the landlord shall give receipt to the person from whom he receives the amount of rent, and obviously, such person could; not me any other than the tenant himself or his representative. This view of the learned Judge seems to be justified, both on the facts of the case as well as on the construction of Section 26(1) of the Rent

Act.

7. In the result; the Reference is accepted and the order of conviction and sentence passed by the learned Judicial Magistrate is set aside. Fine, if paid, to be refunded to the accused.