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**(1974) 03 P&H CK 0002**  
**In the Punjab And Haryana At Chandigarh**

Hari Kishan

APPELLANT

Vs

The State of Haryana

RESPONDENT

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**Date of Decision :** 07-03-1974

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 252, 253, 254, 255, 256

**Citation :** (1974) CriLJ 1121

**Hon'ble Judges :** A.D. Koshal, J

**Bench :** Single Bench

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## Judgement

A.D. Koshal, J.—Hari Kishan, aged 33 years, a resident of Adarsh Nagar, Delhi is the petitioner before me. He was convicted on the 14th of April. 1972. by Shri D.R. Goel, Judicial Magistrate 1st Class, Karnal. of an offence u/s 5 of the Telegraph Wires (Unlawful Possession) Act (hereinafter referred to as the Act) for being found on the 26th of October. 1970. in unlawful possession of 20 kilograms of "telegraph wire" without any valid authority and was sentenced to rigorous imprisonment for six months. An appeal filed by him against the judgment of the learned Magistrate was dismissed on the 21st of June. 1972. by Shri N. R. Rao. Additional Sessions Judge, Karnal, and that is why he has come up in revision to this Court.

2. The telegraph wire in question was said to have been recovered in consequence of a statement made by the petitioner in response to interrogation while in police custody on the 26th of October, 1970.

3. The procedure adopted at the trial and culminating in the conviction of the petitioner may well be examined at this stage. The proceedings were initiated by means of complaint Exhibit P. A./2 which is dated the 4th of April, 1971 and bears the signature of the Station House Officer of Butana Police Station in District Karnal. On the 1st of June. 1971. the trial Magistrate framed a charge against the petitioner u/s 5 of the Act to which the petitioner pleaded not guilty whereafter the case was adjourned for evidence to be produced by the prosecution. Six prosecution witnesses were examined in between then and the

11th of January, 1972. and an opportunity was given to the petitioner to cross-examine them. On the date last mentioned the petitioner made a statement to the effect that the case property was "telephone copper wire". The following statement of the prosecuting Sub-Inspector representing the State was then recorded:

In view of the statement of the accused I tender in evidence affidavits of Constables Nanak Chand and Telu Ram Exhibits P. H. and P. J. and close my case.

No evidence was led by the prosecution to prove that the wire alleged to have been recovered from the possession of the petitioner was wire of any particular gauge.

The statement of the petitioner was then recorded in pursuance of the provisions of Section 342 of the Code of Criminal Procedure. One of the questions put to him was:

Q. 3. It is further in evidence against you that the recovered wire he-longs to Telegraph Department. What do you say?" His answer was:

I do not know.

The case was then adjourned for evidence to be produced by the petitioner on whose behalf three witnesses were examined on the 4th of March, 1972, when he closed his case. The learned Magistrate then heard arguments and pronounced judgment in the case.

4. Learned Counsel for the petitioner has raised two contentions. They are:

(1) Proceedings in respect of an offence punishable under the Act can be initiated in view of the provisions of Section 7 thereof only on a complaint made by or under the authority of the Central Government or by an officer specially empowered in that behalf by that Government. These provisions have been complied with in so far as the present case is concerned but then the trial of the petitioner was held in accordance with those provisions of the Code of Criminal Procedure which govern cases instituted on police reports i.e. the provisions of Section 251A of the Code. The Magistrate was duty bound to follow the procedure laid down in Sections 252 to 259 of the Code which govern cases instituted otherwise than on police reports. The error has vitiated the trial.

(2) "Telegraph wire" is thus defined in Clause (b) of Section 2 of the Act:

"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." There is no proof on the record that the gauge of the wire said to have been recovered at the instance of the petitioner was such as to fall within the definition.

Both the contentions are well founded.

5. Sub-section (1) of Section 7 of the Act states:

No Court shall take cognizance of any offence punishable under this Act, save on complaint made by or under the authority of the Central Government or by an officer specially empowered in this behalf by that Government.

It is common ground between the parties that the Station House Officer who signed complaint Exhibit P. A/2 had been specially empowered by the Central Government to make complaints contemplated by the section. Learned Counsel for the parties are also agreed that the jurisdiction of the Court to take cognizance of an offence otherwise than on such a complaint being barred the trial of the petitioner could not be held on the basis of a police report which was not a complaint of that type and that therefore the procedure to be followed in the case of the petitioner's trial was the one indicated in Sections 252 to 259 of the Code. The failure of the trial magistrate to follow the procedure and the adoption by him of the procedure prescribed for trials of cases instituted on police reports vitiates the trial which must be quashed.

6. There is no proof on the record that the wire in question is "telegraph wire" within the meaning of that expression as defined in Clause (b) of Section 2 of the Act. It is true that the petitioner admitted before his statement u/s 342 of the Code of Criminal Procedure was recorded that the wire in question was "telephone copper wire" but that means nothing in so far as his trial is concerned. For wire to be held such as would attract the penal provisions of the Act, it must be proved to be wire of the description given in the definition so that it must be shown to be wire of a gauge described in the definition. It follows that the chief ingredient of the offence of unlawful possession of telegraph wire namely that it was wire of a particular gauge, is missing in the present case. No offence, therefore can be said to have been brought home to the petitioner.

7. In the result the petition succeeds and is accepted. The conviction recorded against and the sentence imposed upon the petitioner are set aside and he is acquitted of the charge.