

(1954) 05 CAL CK 0009
In the Calcutta High Court
Case No : Criminal Appeal No. 90 of 1954

Laxmi Shaw

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 21-05-1954

Acts Referred:

Telegraph Wires (Unlawful Possession) Act, 1950 — Section 2, 5

Citation : AIR 1955 Cal 104 : (1955) CriLJ 350

Hon'ble Judges : K.C. Das Gupta, J; Debabrata Mookherjee, J

Bench : Division Bench

Advocate : Sudhangshu Kumar Sarkar and Benoy Ch. Gupta, for the Appellant;
J.M. Banerjee, for the Respondent

Judgement

Das Gupta, J.—The appellant was convicted u/s 5 of Act LXXIV of 1950. (The Telegraph Wires (Unlawful Possession) Act, 1950).

2. The prosecution case was that he was on 9-9-1953 in possession of a quantity of telegraph wires which were the property of the Post and Telegraph Department of the Central Government. The accused pleaded not guilty. "Telegraph Wire" has been defined in the Act as

"copper wire of any one of the following gauges commonly used in telegraph lines, namely, one hundred and fifty pounds per mile, two hundred pounds per mile or three hundred pounds per mile."

3. We have no hesitation in agreeing with the learned Magistrate that the evidence given by witness No. 4 and the Court witness as regards the weight of the wire found should be accepted and on the evidence it should be held to have been proved that the wires were "telegraph wires" within the meaning of Section 2(b) of the Telegraph Wires (Unlawful Possession) Act, 1950.

4. The next question is whether by possession of this telegraph wire the accused committed an offence u/s 5 of the Act.

Section 5 of the Act is in these words:

"Whoever is found or is proved to have been in possession of any quantity of telegraph wires which the Court has reason to believe to be or to have been the property of the Post and Telegraph Department of the Central Government shall, unless he proves that the telegraph wires came into his possession lawfully, be punishable with imprisonment for a term which may extend to five years, or with fine, or with both."

There is a proviso to the section with which we are not concerned here.

5. A consideration of the Act makes it clear that the legislature thought it probable that there might be telegraph wires within the meaning of the Act which was not the property of the Post and Telegraph Department of the Central Government. It was in view of this belief of the legislature that it was thought necessary to use the words "Telegraph Wires which the Court has reason to believe to be or to have been the property of the Post and Telegraph Department of the Central Government" in Section 5 of the Act.

6. It was therefore necessary for the prosecution to adduce evidence to induce the Court to believe that the telegraph wires seized were or had been the property of the Post and Telegraph Department. The only evidence on this point on which reliance is placed is the evidence of P. W. 4 that the Wire En. I in this case was the wire of the Telegraph Department and that this wire is not a marketable commodity but is the exclusive monopoly of the Telegraph Department. In cross-examination he admitted that he stated from the gauge that it was property of the Telegraph Department. It is clear from the evidence of this witness who appears to be¹ an Engineering Supervisor of Telegraphs, that in his view anything which fell within the definition of "telegraph wire" in the Act was necessarily the property of the Post and Telegraph Department.

As I have pointed out, the Act itself contemplates that there may be wire within the definition of Section 2 of the Act, which may not be the property of the Post and Telegraph Department. In view of this, it will not, I think, be proper for us to accept the testimony of this witness as regards these wires being the property of the Post and Telegraph Department of the Central Government. It is true that by an amendment of the Act on 30-12-1953, the words "which the Court has reason to believe to be, or to have been, the property of the Post and Telegraph Department of the Central Government" were deleted. The Act thus, amended has however no application to the present case, as the amendment has no retrospective effect.

7. In view of the findings mentioned above I have come to the conclusion that the evidence on the record is not sufficient to sustain the conviction of the appellant. I would accordingly set aside the order of conviction and sentence passed against him and order that he be acquitted Let him be discharged from his bail bond.

Debabrata Mookerjee, J.

8. I agree.