
(1976) 01 AHC CK 0029
In the Allahabad High Court
Case No : Criminal Revision No. 2112 of 1972

Ramu Alias Ram Bharose

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 12-01-1976

Acts Referred:

Telegraph Wires (Unlawful Possession) Act, 1950 — Section 5, 7

Citation : (1976) 01 AHC CK 0029

Hon'ble Judges : K.C.Agrawal, J

Final Decision : Dismissed

Judgement

K. C. Agrawal, J.

This, revision has been filed by Ramu alias Ram Bharose challenging his conviction under Sections 5, 7 of the Telegraph Wires (Unlawful Possession) Act, 1950 and sentencing him to six month R. I.

The facts of the case are that on February 7, 1970 the applicant and one Sadho were apprehended when they were coming with a Bori on their head. On seeing the Police the two accused tried to run away. Thereupon an alarm was raised by the police party and with the help of the witnesses the applicant was caught. On search being made, 16 coils long copper telegraph wire weighing 36 kilogram (Ex. 1) was recovered from the Bori. A recovery memo was prepared in the presence of the witnesses. Thereafter, the wire recovered from their custody was placed in a closed and sealed bundle. It was thereafter sent to the expert for purposes of the examination who gave his report (Ex. Ka. 5.) stating that the wire found from the custody of the applicant and Sadho, was telegraph wire. Thereafter, the applicant was chargesheeted for the offence under Section 5/7 of the Telegraph Wires (Unlawful Possession) Act, 1950 (hereinafter referred to as the Act).

The applicant pleaded not guilty and denied the recovery of telegraph wire from his possession. He alleged that he had been arrested from his house on the

ground that he was harbouring a wanted criminal Sukhbasi in his house.

The Magistrate found the applicant guilty of the offence mentioned above and, therefore, sentenced him to six months" R. I. Aggrieved by the judgment of the Magistrate the applicant preferred an appeal before the Sessions Judge. The learned Sessions Judge also being of the same opinion dismissed the appeal and maintained the conviction and sentence of the applicant. Feeling aggrieved the applicant has come up to this Court.

The first point raised by the learned Counsel for the applicant before me was that a visual appreciation of the colour and luster of the wire coupled with the measurement of the diameter is 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, and, therefore, the conviction of the applicant was bad in law. In order to appreciate the submission made by the learned Counsel for the applicant reference may be made to the definition of the words "telegraph wire" defined in Section 2(b) of the Act. The said definition runs as follows ;

"Section 2(b)Telegraph wire means any copper wire the gauge of which, as measured in terms of pound per mile is between 147/1533 or between 196/206 or between 294/306."

The case of the prosecution, however, is that the statement of H. K. Khare, who had examined the wire, found from the custody of the applicant fully establishes that the wire in question fulfilled the requirements of the aforesaid definition and that being so, the applicant was rightly convicted of the offence charged. It appears that H. K. Khare, was examined as P. W. 4 before the Magistrate and on the application of the accused applicant dated June 14, 1972 made under Section 540 Cr.P.C. Sri H. K. Khare was again examined and crossexamined. The statement made by H. K. Khare shows that he had examined the wire by a physical test and not by a chemical test. He further deposed in his statement that the diameter of the wire was also measured. In his statement made on the reexamination before the lower appellant court Sri H. K. Khare stated that he had not only examined the colour and luster of the disputed wire but had compared the same with standard wire as well and on comparison of the wire he found that the wire in dispute was one which fell within the definition of Section 2 (b) of the Act. The learned counsel for the applicant, however, pointed out that in a similar situation this High Court in *Gauriam v. State of U. P.* (1972 A.W.R. 677.), held that a mere look at the colour and luster of the wire coupled with the measurement of the gauge could not lead to the conclusion that the wire in question was copper wire. It is no doubt true that in the aforesaid case the Division Bench of this court held a mere visual appreciation of the colour and luster of the wire coupled with the measurement of the diameter was not sufficient to establish that the wire in question was copper wire which came within the prohibited category of wire, it is, however, worth of being noted that in the instant case. H. K. Khare (P. W. 4) has very clearly stated in his examination

made on being recalled by the appellate court that he had compared the disputed wire with the standard telegraph wire and on comparison he found that the wire in question was copper wire which came within the prohibited category. The statement made by H. K. Khare thus show that he had come to the conclusion about the wire in question being telegraph wire not only by making a mere visual appreciation of the colour and luster of the wire and measurement of it, diameter but also by comparison of the wire found from the custody of the applicant with the standard wire. He stated that he had put in 30 years of service. With the experience of 30 years of service it cannot be said that it was not possible for a man possessing expertise knowledge to come to the conclusion that the wire was telegraph wire falling in the prohibited category. In Gauri Ram's case (supra) itself the Bench said that the observations made by them in that case by no means be construed to as otherwise of the copper wire. In that connection they further stated that all that they had decided in that case was that the tests conducted were not sufficient to establish that the wire in question was copper wire. In the present case, however, reading the statement as a whole of the Government expert as well as after examining the report it appears to me that it is not possible to hold that the two courts below committed any error of law in finding that the wire found from the custody of the applicant did not fulfil the requirements of Section 2(b) of the Act. As said by the Supreme Court in S. C. Batra v. State of U. P. (A. I. R. 1974 S. C. 639.), it is really for the court of fact to decide whether upon a consideration of the totally, of the facts in a case, had been satisfactorily established that the objects recovered from the possession of the accused included liquor of prohibited strength. In my opinion the courts below did not commit any error of law in holding, on the basis of the evidence brought on the record, that wire, in question was copper wire which came within the category of telegraph wire. The report of the expert clearly shows that the copper wire was 300 pound per mile and had a diameter of 3.50 mm. It may further be noted that H. K. Khare, P.W. 4 was not even confronted with the question as to how could he arrive at the width of the copper wire. As this was not done, it is not possible to draw any adverse inference against the expert without giving him an opportunity to explain. The first point therefore, fails.

The second point urged by the learned counsel for the applicant was that as one of the accused who was caught along with the applicant had been acquitted of the charge in another Sessions trial, therefore, the applicant was also entitled to be acquitted. The submission made had no substance.

In the result the revision fails and is dismissed. The applicant is on bail. He shall surrender forthwith to serve out his remaining sentence. His bail bonds are discharged.