
(2007) 07 RAJ CK 0054
In the Rajasthan High Court

Satish Chand Singhal

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 16-07-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 287, 425
Prevention of Damage to Public Property Act, 1984 — Section 3
Telegraph Act, 1885 — Section 25, 25A

Citation : (2007) CriLJ 4132

Hon'ble Judges : Raghvendra S. Chauhan, J

Bench : Single Bench

Judgement

R.S. Chauhan, J.—The petitioner has challenged the order dated 7-3-1998 passed by the Civil Judge (Jr. Division) & Judicial Magistrate, Kathumar, District Alwar whereby the learned Magistrate has taken cognizance for offence u/s 3 of the Damages to Public Property Act, 1984 ("the Act of 1984" for short) and u/s 25 and 25A of the Indian Telegraph Act, 1885 ("the Act of 1885" for short).

2. The brief facts of the case are that on 5-11-1997 the complainant, Mr. Vijay Singh Solanki, submitted a written report at Police Station, Kherli wherein he claimed that on 3-11-1997, around 1.15 in the afternoon, Satish Chand Singhal the petitioner before this Court, tried to repair the telephone wires of his Telephone No, 20304. In the process of repair, he pulled the telephone wire over the KV-11 wires, In this process, the two wires touched each other. Consequently, there was damage to the wires and damage caused at the Telephone Exchange as 384 numbers went dead. As a result of this incident, the Department has suffered a huge loss. On the basis of the said report a formal FIR, FIR No. 302/97, was chalked out for offences u/s 287 of the IPC, Section 25 and 25A of the Act of 1885 and the investigation commenced. After a thorough investigation, the police submitted a negative Final Report ("F.R." for short). The notices were issued to the complainant and his statement and the statement of his witnesses were recorded by the learned Magistrate. Both complainant and his witnesses reiterated the contents of the FIR. After thoroughly discussing the

contents of the FIR, the contents of the negative F.R. and the statement of the complainant and his witnesses recorded by the Court, vide order dated 7-3-1998 the learned Magistrate took cognizance as stated above. Hence, this petition before this Court.

3. Dr. P.C. Jain, the learned Counsel for the petitioner has raised three contentions before this Court : firstly that the incident is said to be of 3-11-1997 and yet the FIR was not lodged till 5-11-1997. Thus, there is an inordinate delay of two days in lodging of the FIR. Moreover, no one would take such a risk of pulling a telephone wire over the KV-11 wires. Hence, the story narrated by the complainant seems to be a figment of his imagination. Secondly, that the definition of "mischief as defined in Section 425 of IPC imports an element of intention. However, in the facts narrated by the complainant the intention is not obvious. Thus no case of "mischief is made out against the petitioner. Thirdly and lastly the offences contained u/s 25 and 25A of the Act of 1885 are mutually exclusive to each other. Therefore, the cognizance under both the sections could not be taken simultaneously by the learned Magistrate.

4. On the other hand, Mr. B.K. Sharma, the learned Public Prosecutor, has supported the impugned order.

5. We have heard both the learned Counsels for the parties and have perused the record and have examined the impugned order.

6. Section 425 of the IPC defines "mischief as under:

425. Mischief- Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief.

Explanation 1.- It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.- Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

7. A bare perusal of this provision clearly reveals that either intention or knowledge is required for the offence of mischief. Explanation - 1 clearly states that it is not essential for the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. In fact it is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not. Thus, for the offence of mischief it is sufficient that the offender knows that by his act he is likely to cause wrongful loss or damage

to the public or to any person.

8. Section 2-A of the Prevention of Damage to Public Property Act, 1984 (the Act of 1984" for short) defines the word "mischief as having the same meaning as u/s 425 of the IPC. Therefore, the definition mentioned above would have to be read for the purpose of the Act of 1984. Section 3 defines the definition of mischief causing damage to public property. Section 3 reads as under:

3. Mischief causing damage to public property .- (1) Whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in Sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.

(2) Whoever commits mischief by doing any act in respect of any public property being -

(a) any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy;

(b) any oil installation;

(c) any sewage works;

(d) any mine or factory;

(e) any means of public transportation or of telecommunications, or any building, installation or other property used in connection therewith.

Shall be punished with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine.

Provided that the Court may, for reasons to be recorded in its judgment, award a sentence of imprisonment for a term of less than six months.

9. Section 3(2)(e) clearly states that whoever does mischief to any means of public transportation or of telecommunication, or any building, installation or other property used in connection therewith shall be punished with rigorous imprisonment for a term which shall not be less than six months, but which may extend to five years and with fine. Hence any act which the offender knows to likely to cause damage of any means of telecommunication or to any installation is prima facie punishable u/s 3 of the Act of 1984.

10. On the other hand, Section 25 of the Act of 1885 states as under:

25. Intentionally damaging or tampering with telegraphs - If any person, intending-

(a) to prevent or obstruct the transmission or delivery of any message, or

(b) to intercept or to acquaint himself with the contents of any message, or

(c) to commit mischief,

damages, removes, tampers with or touches any battery, machinery, telegraph lines, post or other thing whatever, being part of or used in or about any telegraph or in the working thereof, he shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

11. Thus, Section 25(c) of the Act of 1885 makes it an offence for any person who commits mischief with telegraph lines etc.

12. Section 25A deals with injury to or interference with a telegraph line or post, is as under:

25A. Injury to or interference with a telegraph line or post.- If, in any case not provided for by Section 25, any person deals with any property and thereby willfully or negligently damages any telegraph line or post duly placed on such property in accordance with the provisions of this Act, he shall be liable to pay the telegraph authority such expenses (if any) as may be incurred in making good such damage, and shall also, if the telegraphic communications by reason of the damage so caused interrupted, be punishable with a fine which may extend to one thousand rupees:

Provided that the provisions of this Section shall not apply where such damage or interruption is caused by a person dealing with any property in the legal exercise of a right if he has complied with the provisions of Section 25A.

13. A bare perusal of Sections 25 and 25A clearly reveal that Section 25A deals with those situations or circumstances which are not provided for by Section 25. Thus, Section 25A carves out a separate entity from Section 25. Hence, both the sections are, indeed, mutually exclusive to each other.

14. A bare perusal of the impugned order clearly reveals that the learned Magistrate has given cogent reasons for disagreeing with the negative F.R. submitted by the police. The statement of the complainant and of his witnesses, prima facie, indicate that the petitioner while trying to repair the telephone wires had touched the KV line thereby damaging the line and the installations at the Telephone Exchange. A person with the slightest intelligence would of course know that live wires carrying electricity are dangerous objects to play with and in case two wires were to meet the damage caused to property and life would be immense. Thus, even at the preliminary stage the knowledge can be attributed to the petitioner. Therefore, the petitioner had the knowledge that he is likely to cause damage or a wrongful loss to the property. Hence, his case falls within the definition of mischief contained in Section 425 of IPC. From this premise it follows that his case is also covered u/s 3(2)(e) of the Act of 1984. Likewise his action also falls u/s 25 of the Act of 1885. Since the offence u/s 25A is mutually exclusive of offence u/s 25, the learned Magistrate could not have taken cognizance of offence u/s 25A of the Act of 1885.

15. In the result, we partly allow this petition and modify the cognizance order.

While this Court maintains the cognizance for offence u/s 3 of the Act of 1954 and Section 25 of the Act of 1885, this Court quashes the cognizance of offence u/s 25A of the Act of 1885. The order shall stand modified accordingly.