
(1963) 03 AHC CK 0008
In the Allahabad High Court
Case No : Criminal Appeal No. 311 of 1962

State of U.P.

APPELLANT

Vs

Maiku Baldeo Chamar

RESPONDENT

Date of Decision : 27-03-1963

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 417(1), 417(3), 417(5)
Telegraph Wires (Unlawful Possession) Act, 1950 — Section 7, 7(1), 7(5)

Citation : AIR 1963 All 486 : (1963) CriLJ 366

Hon'ble Judges : R.A. Misra, J

Bench : Single Bench

Advocate : Shankar Sahai and S.N. Trivedi, for the Appellant; R.K. Srivastava, for the Respondent

Final Decision : Allowed

Judgement

R.A. Misra, J.—I propose to dispose of these three appeals together because their facts are identical and the points raised in them are the same. Criminal Appeal No. 311 OT 1962 has been filed against Maiku. Criminal Appeal No. 312 of 1962 has been filed against Shakoor and Criminal Appeal No. 313 of 1962 has been filed against Mangrey. The three respondents were prosecuted and tried separately before the Additional Sub-Divisional Magistrate Sitapur on a charge u/s 5 Telegraph Wires (Unlawful Possession) Act, The charge against Maiku respondent in Criminal Appeal No. 311 of 1962 was that on 25th June, 1959 at about 2 P.M., he was found in possession of two Lachhis (weighing 30 seers) of Railway Telegraph Wire while he was going on a rickshaw in Sitapur. Against Shakoor it was alleged that he had with him three bundles of Telegraph Wire when he was arrested near Sah Maholi, police station Kotwali, district Sitapur, at about 9.20 A.M. on 12th May, 1959. Mangrey respondent in Criminal Appeal No. 313 of 1962 was accused of possessing one Coil of Railway Telegraph Wire (weighing 28 seers) at about 3.15 P.M. on 25th June, 1959.

2. By separate judgments, but on the same reasoning, the learned Magistrate

acquitted the three respondents. Dissatisfied with the judgments passed by the learned Magistrate in all the three cases, the State has filed these appeals.

3. The learned Magistrate acquitted the respondents because according to him in all the three cases there was no proper complaint as required by Section 7 of the Tele-graph Wires (Unlawful Possession) Act; hence the prosecution was misconceived and bad in law and the respondents could not be tried and convicted for committing the offence u/s 5 of the aforesaid Act. He did not enter into the merits of the case against any of the three respondents.

4. After hearing the learned counsel for the State and the learned counsel for the respondents and on going through the record of the cases, I am of opinion that the conclusion reached by the learned Magistrate is unsupportable and his judgments must be set aside. Section 7 of

the Telegraph Wire (Unlawful Possession) Act reads:

"7(1) 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.

(2) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class, shall try any offence punishable under this Act."

By virtue of notification No. SRO 1819 of the Ministry of Communication, Post and Telegraph Departments New Delhi dated 15th November, 1951, as published in Government of India Gazette Part II dated 24th November, 1951 in Part II Section 3 at page 2008 (2016) issued u/s 7 of the aforesaid Act quoted above, the Superintendent of Police, Sitapur, has been authorised to make the requisite complaint against persons accused of committing offences under that Act.

5. A reference to the record of the trial Court in each of the three cases shows that proper complaints signed by the Superintendent of Police, Sitapur, were filed before the Magistrate against each respondents in the case relating to him. The complaint filed in the case of Maiku respondent is Ext. Ka-8 which has been proved by P. W. 2 Sri S. N. Shukla in that case. Ext. Ka-2 is the complaint signed by the Superintendent of Police Sitapur, and filed in the casa of Mangrey respondent. This has been proved by P. W. 3 Sri H.N.P. Saksena. A similar complaint Ext. Ka-6, signed by the Superintendent of Police, Sitapur, and proved by Sri S. N. Shukla (P.W. 3) in that case was filed against Shakoor.

It is true that there is no date below the signatures or Superintendent of Police, Sitapur, in each of the above complaints but that, in my opinion, is wholly inconsequential and does not invalidate the complaint. The proceedings in the case actually started in each case after these complaints had been received in the Court of the Magistrate. In each of the three cases relating to the respondents there is a note in the order-sheet dated 21st November 1959 that the respective complaints of the Superintendent or Police, Sitapur, have been received in Court. The proceedings in each case started several months

thereafter, in my opinion, therefore, there was a valid complaint in each of the three cases as required by Section 7 of the Telegraph Wires (Unlawful Possession) Act and the learned Magistrate's opinion to the contrary is wrong. He came to the conclusion that the prosecution was bad for want of proper complaint because he did not properly look into the record and also because he was not aware of and his attention was not drawn by the prosecuting agency to, the notification "pointed out above. The order passed by the learned Magistrate is, therefore, liable to be set aside.

6. The judgment passed by the learned Magistrate acquitting the respondents suffers from another illegality. If the learned Magistrate was of opinion that the prosecution, of the respondents was bad for want of a proper complaint in each case, he could drop the proceedings and release the respondents. He was not justified in recording an acquittal in favour of the respondents. Acquittal follows when the trial is held by a competent Court. If, as held by the learned Magistrate, he was without jurisdiction to take cognizance of the offence because of want of proper complaints, the entire proceedings were void and without jurisdiction, and the learned Magistrate was not empowered to acquit the accused just as he was without power to convict them.

7. A preliminary objection was raised on behalf of the respondents that these appeals are not maintainable and for that reason they must fail. It is pointed out that it, as contended, on behalf of "the State, the cases were instituted against the respondents on the complaint of the Superintendent of Police, Sitapur, the appeals against the acquittal of the respondents could be filed by the Superintendent of Police, Sitapur alone and that too after obtaining the special leave of this Court u/s 417 (3). Criminal Procedure Code and not by the State. It is further pointed out that since the Superintendent of Police, Sitapur, did not apply for special leave and no such leave has been granted, the present appeals filed by the State are incompetent. In my opinion, the objection is without force. Section 417, Criminal Procedure Code reads as below

(1) "Subject to the provisions of Sub-section (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

(2) x x x x *

(3) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in, this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(4) No application under Sub-section (3) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal.

(5) If, in any case, the application under Sub-section (3) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under Sub-section (1)."

On a reading of Sub-sections (1), (3) and (5) of Section 417, Criminal Procedure Code together, it is very clear that the State Government is given a right to appeal to the High Court against any and every order of acquittal passed by a subordinate Court, regardless whether the acquittal has followed a Police prosecution or in a case instituted upon a complaint, except where the acquittal has resulted In a case instituted upon a complaint and the special leave to file an appeal, as required by Sub-section (3) aforesaid, has already "been refused by the High Court. The State Government"s right to file an appeal u/s 417 (1) is fettered in such a case only and in no other. In the present case it is not suggested that the Superintendent of Police, Sitapur, ever applied for such special leave under sub-section (3) or it was refused by the High Court. The present appeals, therefore, by the State Government were quite competent.

8. As a result of the discussion and findings given above, I set aside the order of acquittal passed in favour of the respondents In their respective cases by learned Magistrate and send them back to the District Magistrate, Sitapur, for retrial according to law. The District Magistrate way try the cases himself or he may make them over to any other Magistrate within his jurisdiction competent to try them. The three appeals are allowed.