

(1955) 09 RAJ CK 0003
In the Rajasthan High Court
Case No : Criminal Appeal No. 91 of 1953

The State	Vs	APPELLANT
Dharamveer Kalia		RESPONDENT

Date of Decision : 08-09-1955

Acts Referred:

Wireless Telegraphy Act, 1933 — Section 3, 5, 6

Citation : AIR 1957 Raj 236 : (1957) CriLJ 910 : (1955) RLW 424

Hon'ble Judges : K.N. Wanchoo, C.J.; D.S. Dave, J

Bench : Division Bench

Advocate : L.N. Chhangani, for the Appellant; Mahaveersingh, for the Respondent

Final Decision : Dismissed

Judgement

Wanchoo, C.J.

(1) This is an appeal by the State against the acquittal of Dharamveer Kalia of an offence u/s 6 of the Indian Wireless Telegraphy Act (No. 17) of 1933.

(2) The facts of the case are not in dispute, One Bulidansingh, who was once upon a time a dealer, had three radio sets for which he had a license as an owner. It seems that there was a talk about the purchase of one of these sets between him and the accused Dharamveer Kalia. Consequently, one of the sets covered by the license was taken from the house of Buildansingh, and installed at the house of Dharamveer Kalia for a period of 10 days in October, 1952. This was done in order that Kalia might have a trial of the set, and decide for himself whether it was worthwhile purchasing it.

While the set was at the house of Kalia, the fact was found out, and thereafter a report was made by the Town Inspector that Kalia was in possession of a radio set without a license. It may be mentioned that Kalia was given an opportunity by the Post and Telegraph Department to pay a certain sum as composition. But the stand that he took up was that he was not guilty in the circumstances under

the law; therefore, he did not pay any sum as composition, it may be mentioned that later on in December, 1952, Kalia actually purchased that very set and took out a license for it thereafter.

(3) The only question in these circumstances is whether Kalia committed an offence for being in possession of the radio set from 10-10-52 to 18-10-52. Now Section 6 provides for punishment for any one in possession of any wireless telegraphy apparatus in contravention of the provisions of Section 3. Section 3 lays down that no person shall possess wireless telegraphy apparatus except under and in accordance with a licence issued under this Act, .

The main contention of Kalia before us is that, under Clause (6) of the conditions under which a person may possess a radio set, he is protected, and therefore committed no offence in keeping the radio set with him for this period of nine days. Condition (6), which we are given to understand is printed at the back of every licence issued under the Act, is in these terms :

"Any change of address must be promptly communicated to the Issuing Postmaster and the license returned in order that the necessary amendments may be made thereon. The location of the station may be altered temporarily at the discretion of the licensee, but if it is intended that the station shall leave the original location for a period exceeding three months at any one time, the licensee must inform the issuing Postmaster and return this license for endorsement.

In no case can the set be used at a public place. In case a receiving set is sold or otherwise transferred to another person, the name and address of that person and the date on which the transfer is effected must be reported to the Issuing Postmaster within 3 days."

This clause thus provides four conditions under which the licensee holds the radio set, and it is the second condition with which we are concerned in this matter. The second condition is about the temporary change in the location of the station. What happens when a license is issued is that the licensee is allowed to locate what is called a broad-cast receiving station at the place mentioned in the license.

Now under condition (2) of Clause (6) of the Conditions governing the license, a licensee has got the power to alter the location of the station temporarily, and he has not to inform the Postmaster issuing the licence unless the intention is that the temporary transfer will last for more than three months. As we read this condition, we have no doubt that it gives discretion to the licensee to change the location of the radio set.

In other words, the licensee can use the radio set for purposes of receiving radio broad-cast at a place other than that mentioned in the license, provided he does not intend to keep the radio away from the place mentioned in the license for more than three months at a time. Thus it seems to us quite possible in view of

this condition of the licence for a licensee to lend his radio to a friend for a few days and the friend can use it at his house.

The licensee would then only be changing the location temporarily for a period of less than three months, and he need not inform the Post-master about it. It is only if the intention is to change the location for more than three months that the Postmaster has to be informed. This can all take place so long as the address of the licensee remains the same as is given in the license.

(4) So therefore when it was settled between Kalia and Bulidansingh that Kalia might purchase the instrument, it was open to Bulidansingh to change the location of the station, where the radio set was to work as a receiver, from his own house to another place, and if the intention was not to make this change for a period longer than three months, and if Bulidansingh was not changing his own address, he could give the radio set to Kalia for this purpose.

We have evidence in this case that the radio set remained at the house of Kalia for only nine days. We have also evidence that Kalia had taken it away in order to test it as he wanted to purchase it. We have evidence that later on he did actually purchase it. In these circumstances, what actually happened merely amounted to a temporary alteration of location of the station by Bulidansingh. This he could do if the intention was not to alter the location for more than three months, and he need not have informed the Issuing Postmaster or anybody about it.

(5) In this view of the matter we are of opinion that the accused has been rightly acquitted, though our reasons are different from the reasons given by the Magistrate.

(6) We, therefore, dismiss this appeal.