

(1971) 04 OHC CK 0013
In the Orissa High Court
Case No : Criminal Reference No. 166 of 1970

The State	Vs	APPELLANT
Khira Sahu		RESPONDENT

Date of Decision : 19-04-1971

Acts Referred:

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

Citation : (1971) 37 CLT 562

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

Bench : Single Bench

Advocate : Government Advocate, for the Appellant; None, for the Respondent

Judgement

R.N. Misra, J.—This is a reference made by the learned Sessions Judge, Cuttack recommending the enhancement of sentence of the opposite party who has been convicted u/s 5 of the Telegraph Wires (Unlawful possession) Act, 1950 by Shri B.D. Sethi, Magistrate, First Class, Cuttack but has been sentenced to pay a fine of Rs. 200/- only with a default sentence attached thereto.

2. In spite of notice, the opposite party has not chosen to enter appearance in this Court.

3. In the circumstances, there is no challenge to the conviction. In order to satisfy myself about the propriety of the conviction I have read through the evidence of the prosecution witnesses as also of the defence witnesses examined on behalf of the opposite party. The conviction of the opposite party cannot be disputed in view of the evidence of the prosecution witnesses.

4. It is somewhat surprising that the learned Magistrate while convicting the opposite party u/s 5 of the Act thought that a sentence of fine of Rs. 200/- would be appropriate. On the question as to what would be the adequate sentence for an offence u/s 5 of the Act, authorities of this Court are plenty. In Banchhanidhi Patra v. State 1959 C.L.T. 254, in which this Court enhanced the sentence of fine into one of substantive imprisonment it was stated:

In my opinion, a substantive sentence of imprisonment is necessary in the circumstances of this case. The Petitioner is not an in-experienced youth, but a mature man of 54 years of age. The law relating to unlawful possession of telegraph wires was in force since 1950 and drastic amendment was introduced by the amending Act of 1953 mainly because theft of telegraph wires was found to be rampant in some of the States, including Orissa. Though the law provides for an alternative sentence of fine only, to be imposed in certain circumstances, the maximum sentence for the offence of unlawful possession of telegraph wires was fixed as five years rigorous imprisonment. This shows that the Parliament intended that an offence u/s 5 of the Act should be considered graver than a mere offence of theft.

A sentence of six months rigorous imprisonment along with fine was considered adequate.

The matter came to be examined again before his Lordship the Chief Justice in the case of *Kanduri Kasta and Anr. v. The State* 28 C.L.T. 185, While enhancing the sentence from one months rigorous imprisonment and a fine of Rs. 100/- to one of substantive imprisonment of six months. His Lordship indicated:

On the question of enhancement of sentence there can be no doubt that the sentence of one month's rigorous imprisonment and fine of Rs. 100/- only on each of the Petitioners is grossly inadequate. Thefts of telegraph wire have become very rampant on account of the High price of copper and offenders should the given deterrent sentences with a view to effectively check this type of crime.

In an appeal against acquittal this Court in *State of Orissa v. Udaya Padhan and Ors.* 1965 C.L.T. 1022, stated:

Theft of copper wires has become rampant and despite vigilance on the part of the Government, it has been difficult to prevent it. The case calls for deterrent punishment and thought that the substantive imprisonment of two years would be appropriate.

5. While these precedents were in the field, it is unfortunate that the learned Magistrate awarded a small sentence of fine of Rs. 200/- only while sustaining the conviction u/s 5 of the Act. The position in regard to theft of telegraph wires has certainly become more rampant than it was during the period when the question was examined in this Court between 1959 and 1965. Keeping these circumstances in view I think it proper that the sentence in this case should be enhanced to six months' rigorous imprisonment and the fine already imposed should also be sustained along with the default sentence. Steps be taken to apprehend the opposite party immediately to run the sentence as awarded in this case.

6. The reference is accepted.