

State Vs. Raghunath Prasad

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Court : Allahabad

Decided On : Oct-16-1956

Reported in : AIR1957All273

Judge : V. Bhargava and ;Sahai, JJ.

Acts : [Wireless Telegraphy Act, 1933](#) - Sections 3 and 6

Appeal No. : Criminal Appeal No. 1309 of 1956

Appellant : State

Respondent : Raghunath Prasad

Advocate for Def. : S.K. Verma, Adv.

Advocate for Pet/Ap. : Deputy Govt. Adv.

Disposition : Appeal dismissed

Judgement :

V. Bhargava, J.

1. This appeal has been filed by the State against an order of acquittal of the respondent, Raghunath Prasad, for an offence punishable under Section 3/6 of the Indian [Wireless Telegraphy Act, 1933](#).

2. The facts of this case, as found by the learned magistrate, are that Raghunath Prasad respondent had a broadcast receiving set for which he held a licence which was valid upto 31st December, 1952, On 13th October, 1952, he transferred that set to one Nathu Lal Agarwal. The case of the respondent was that that transfer was an out and out sale of the radio set but the case of Nathu Lal Agarwal was that the ownership in the set was not transferred to him but it was only pawned with him.

The transaction has been described in this case by the prosecution witnesses and the learned magistrate, who tried the case, as a mortgage of the radio set. Under that transaction, the radio set passed from the possession of the respondent to the possession of Nathu Lal Agarwal. Nathu Lal Agarwal obtained a licence for possession of that set for the year 1953-54, though it appears that his licence was obtained on 1st May, 1953 and not with effect from 1st January 1953, when the licence of Raghunath Prasad expired, nor with effect from 13th October, 1952, when Nathu Lal Agarwal obtained possession of that set.

Raghunath Prasad was prosecuted on the allegation that, though he had mortgaged the radio set with Nathu Lal Agarwal, he had continued to be in 'mediate possession of the set'. The learned magistrate held that Raghunath Prasad was not in possession of it and, consequently, acquitted Raghunath Prasad.

3. We have heard learned Deputy Government Advocate and we are unable to see how Raghunath Prasad could be said to possess the radio receiving set after the 13th of October, 1952. It is true that, according to the facts found, he continued to retain an interest in that set in as much as he was entitled to get back possession on payment of the amount of money which had been advanced to him by Nathu Lal Agarwal.

This, however, does not mean that, while the set was in possession of Nathu Lal Agarwal, Raghunath Prasad was also in possession of that set. It appears that, in putting forward this case, the prosecution have Completely overlooked the difference between the words 'possession' and 'ownership'. Sections 3 and 6 of the Indian [Wireless Telegraphy Act, 1933](#), mention possession' but do not mention

'ownership'.

A licence is (required' only by a person who possesses a radio set and not by a person who owns it. There can be cases where a person may both own and possess a radio set in which case he would be required; to take the licence. There may be another case where one person may own the set and another may possess it. In that case, the person who possesses the set, must take the licence whereas the -owner, if he ceases to be in possession of the radio set, does not require a licence.

There may also be cases where a radio set may be in joint possession of more than one person and one of them may be the owner of it; in that case, each one of those persons may require a licence. For a licence to be required, however, the ingredient that is essential is possession over the radio set. In this case, Raghunath Prasad had no possession. Admittedly, the set was in possession of Nathu Lal Agarwal and Raghunath Prasad was only entitled to get back possession after paying the amount of money taken by him from Nathu Lal Agarwal.

If and when he got back possession, he would again be liable to take the licence. While he was not in possession of the radio set, he could not be called upon to hold a licence for the set merely on the ground that he had retained certain ownership rights in the radio set. Clearly, therefore, the acquittal of Raghunath Prasad was fully justified.

4. The appeal fails and is dismissed.

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