

Kashi Prasad Vs. Rex.

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Court : Allahabad

Decided On : Aug-30-1948

Reported in : 1949CriLJ365

Judge : Kaul and; Kidwai, JJ.

Appellant : Kashi Prasad

Respondent : Rex.

Judgement :

ORDER

1. Kashi Prasad Nigam was convicted by the Sub Divisional Magistrate of Lucknow for two offences under the U. P. Temporary Control of Rent and Eviction Act (in [3] of 1947) and sentenced to a fine of Rs. 25 or in default to undergo rigorous imprisonment for one month under each count. the case has been referred to this Court by the learned Sessions Judge of Lucknow with the recommendation that the applicant's convictions were illegal and might be quashed.

2. The material facts are as follows: Kashi Prasad Nigam is the owner of a house in Lucknow. He let it out to T. P. Nigam. T. P. Nigam informed the Rent Control and Eviction Officer, Lucknow, who exercised the powers of the District Magistrate under Act III [3] of 1947, that he would vacate the house on 30th April 1947. He actually vacated the house on 4th May 1947. Having received this information, the

Rent Control and Eviction Officer passed an order on 6th May 1947, asking Kashi Prasad Nigam to furnish certain particulars with regard to this house. This notice was served upon Kashi Prasad on 23rd May 1947. Kashi Prasad furnished the required particulars and intimated that he had already let out the house to Har Bishun Dayal. On 26th May 1947, the Rent Control Officer issued an order requiring Kashi Prasad to let out the house to one Shyam Behari Lai. When Shyam Behari Lai went to occupy the house he was told by Kashi Prasad that the house had already been let out to Har Bishun Dayal. The order of the Rent Control Officer dated 26th May 1947, was acknowledged by Kashi Prasad on 31st May 1947. He informed the Rent Control Officer that he had let out the house to Har Bishun Dayal. His version was that he had sent a postcard on 6th May 1947-the day after T. P. Nigam vacated the house-informing the District Magistrate that the house had fallen vacant. But as no direction was received by him from the District Magistrate, he had let out the house to Har Bishun Dayal.

3. Under Act III [3] of 1947, the District Magistrate may by an order require a landlord to give intimation of the falling vacant of any accommodation of which he is the landlord and to let out such accommodation to any person nominated by him. Any person who contravenes any of the provisions of any such order is liable to be punished with simple imprisonment or with fine or with both. The postcard which Kashi Prasad Nigam is alleged to have sent to the District Magistrate intimating that his house had fallen vacant could not be traced. It does not appear to have been received by the District Magistrate. A charge sheet was in these circumstances prepared by the Rent Control Officer against Kashi Prasad Nigam for having failed to inform the District Magistrate that his house had fallen vacant and for having let it out without his permission in contravention of Section 7 of the Act, the District Magistrate sanctioned Kashi Prasad's prosecution under Rs. 7 and 9 of the Act, Kashi Prasad was thereupon tried on two counts: 1. That he had failed to inform the Rent Control and Eviction Officer that his house had fallen vacant and so committed a breach of Clause 1, Rent Control and Eviction Order of 1945 and thereby rendered himself punishable under a. 7 of the Act, and (2) that between 1st and 22nd May 1947, he let out his house without the District Magistrate's permission and thereby committed a breach of Clause 3, Lucknow Rent Control Order of 1945,' and rendered himself punishable under Section 7 of

the Order read with Section 9 of the Act. The only witness examined for the prosecution was an inspector of the office of the Rent Control Officer who gave formal evidence in proof of the order issued by the Rent Control Officer. The trying Magistrate 'disbelieved Kashi Prasad that he had sent a postcard and held that he had failed to inform the District Magistrate that the house had fallen vacant. He further held that he let out the house without the District Magistrate's permission.

4. For the purposes of this reference, these findings of the learned Magistrate must be accepted. That the house was let out by Kashi Prasad to Har Bishun Dayal on 22nd May 1947 is not disputed. The question for consideration is whether his conviction for the offences to which reference has been made above, and the sentences passed upon him, can be upheld on the material on record. Under the Defence of India Rules, the Central Government or the Provincial Government, if it appeared to such Government expedient for securing the defence of British India or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community, was empowered by order to provide for preventing the eviction of tenants and sub-tenants from any accommodation or class of accommodation, whether residential or nonresidential, and for requiring Such accommodation to be let either generally, or to specified persons or classes of persons, or in specified circumstances: E. 81 (2)(bb). As the Defence of India Rules did not remain in force after 30th September 1946, the U. P. Government passed Ordinance HI [3] of 1946, to control the rents and letting of residential and non-residential accommodation and to prevent the eviction of tenants therefrom - Subsequently, the U. P. Legislature passed Act III [3] of 1947 to achieve the same object. Under Section 7 of the Act, the District Magistrate may, by general or special order, require a landlord to give intimation of the falling vacant of any accommodation of which he is the landlord, and to let or not to let Such accommodation to any person...Section 9 of The Act provides that every order made under Clause (bb) of sub-r. (8) of Section 81, Defence of India Rules, in respect of any of the matters specified in or under this Act shall, so far as it could validly have been made by the Provincial Government or the District Magistrate, continue in force and be deemed to have been made under this Act until it is superseded or modified by a competent authority under this Act, and all orders made and directions given under any Such order shall continue in force

until super ended or modified by a competent authority.

5. It appears that while the Defence of India Rules were in force, the District Magistrate of Lucknow had on 21st May 1945, in exercise of the powers conferred by Clause (bb) of sub r. (a) of Section 81 of those rules, made an order, para. 3 of which provided as follows:

Except as provided in Clause 5, no person shall let or sub-let the whole or part of any accommodation or occupy or permit such accommodation to be occupied without the previous sanction of the District Magistrate or the Rent Control and Eviction Officer, Lucknow.

By para. 4 of that order every owner and every person occupying any accommodation shall either personally or through his duly authorised agent give notice to the Rent Control and Eviction Officer, Lucknow, that such accommodation- has fallen vacant or is about to fall vacant. Such notice had to be given not later than 15 days after the date, on which the accommodation fell vacant. By para. 6 of the said order, the District Magistrate and the Rent Control and Eviction Officer were-authorized to make an order within 15 days of the receipt of the notice refer, red to in para. 4 that the accommodation be let to any persons be deems tit, failing which the owner or occupier may himself let or sub-let the accommodation to any person. Admittedly, no fresh order to control the letting of houses was passed by the District Magistrate in Lucknow under Act m [8] of 1947. But the order passed by the District Magistrate of Luoknow on 21st May 1945, would appear to have continued in force by virtue of the provisions of Section 9 of act III [8] of 1947.'

6. In Kashi Prasad Nigam's case, the prosecution did not produce any copy of the order passed by the District Magistrate in 1945; nor was any other evidence given of the existence of that order. It seems to have been assumed by the trying Magistrate that such an order existed, It was contended before the learned Sessions Judge, who was moved to revise the order of the Sub divisional. Magistrate that in the absence of legal proof of the existence of any such order regulating the Cutting out of houses, Kashi Prasad Nigam'a conviction could not be upheld. The existence of any order passed by the District Magistrate could not

be assumed. No copy of the order passed by the District Magistrate of Lucknow on 21st May 1945 was on the record of the case, nor was any such order formally proved. It appears that a copy of the order was furnished to the Sessions Judge by the Sub-divisional Magistrate when the former decided to refer the case to this Court and gave the Sub-divisional Magistrate an opportunity to furnish any explanation in connexion with the proposed Reference which he considered proper. The learned Sessions Judge has held that the existence of any such order was not proved in the case. He observed that the order which appears to have been passed under H. 81, Defence of India Rules, by the District Magistrate was not a matter of which the Sub-divisional Magistrate could take judicial notice:

It has got to be proved by the prosecution like any other fact, but in this case there is not a shred of evidence to prove it. No copy of it is on the record and the solitary witness for the prosecution does not say anything about it.

In support of his view, the learned Sessions Judge relied on *Ram Prasad v. King-Emperor*, I. L. R. (1945) 24 Pat. 143 : (A.I.R. (82) 1945 Pat 210: 46 Cr. L. J. 588) and *Puran Mai v. King-Emperor* I. L. R. (1945) 24 Pat. 612 : (A.I.R. (32) 1946 Pat. 76: 47 Cr. L. J. 547). Reference was also made to the observations of the Judicial Committee in *Srinivasmal Bairolia v. King-Emperor* 1947 A. L. J. Rule 497 : (A.I.R. (34) 1947 P. C. 135). The correctness of the view of law taken by the learned Sessions Judge was not challenged before us. We are clearly of opinion that the learned Sessions Judge is right in holding that all such orders must be proved in accordance with the law in every case where a person is charged with the contravention of the order. Kashi Prasad Nigam's conviction therefore for having failed to notify the District Magistrate that his business had fallen vacant cannot be upheld.

7. Nor can Kashi Prasad Nigam be held guilty of having failed to comply with any order passed by the Rent Control Officer. After his house was vacated by T. P. Nigam, the order requiring him to let the house to Shyam Behari Lal was served upon him on 28th May 1947. It is not disputed that he had already let out the house to Har Bishun Dayal on 22nd May. Accordingly, there was on 23rd May 1947 no vacant house which he could let out to Shyam Behari Lal. Even if the order

passed by the District; Magistrate of Lucknow in May 1945, was formally proved in the case, the Rent Control Officer could order Kashi Prasad Nigam -to let out the accommodation to Shyam Behari Lai within 15 days of the receipt of notice that the house had fallen vacant. It is clear that the notice sent by T. P. Nigam that he intended to vacate the house on 30th April 1947, was received by the Rent Control Officer before 6th May, when he asked for certain particulars relating to the house to be furnished by Kashi Prasad Nigam. No order requiring Kashi Prasad to let out the house to Shyam Behari Lai was served upon him (ill the expiry of 15 days from that date. Accordingly, even under the orders of the District Magistrate of Lucknow passed in 1945, it was open to Kashi Prasad Nigam to let out his house to any one and he committed no offence by letting it out to Har Bishun Dayal on 22nd May 1947.

8. It may further be pointed out that under Section 8 of Act III [3] of 1947, the contravention of any of the provisions of that Act or of any order made in pursuance thereof is punishable with simple imprisonment. It does not authorise the Magistrate to pass a sentence of rigorous imprisonment.

9. For the reasons given above we accept the reference made by the learned Sessions Judge and set aside the conviction of and the sentences passed upon Kashi Prasad Nigam. He is acquitted. The fine, if paid, shall be refunded.