

Narendra Kumar Mitra Vs. the State

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Court : Kolkata

Decided On : Jan-09-1959

Reported in : AIR1960Cal151,1960CriLJ332

Judge : S.K. Sen, J.

Acts : West Bengal Premises Rent Control (Temporary Provisions) Act, 1950 - Section 41; ;[Evidence Act, 1872](#) - Section 105

Appeal No. : Criminal Revn. Case No. 1225 of 1957

Appellant : Narendra Kumar Mitra

Respondent : The State

Advocate for Def. : Mukti Moitra, ;Dipti Kana Bose and ;B.C. Ghosh Roy, Adv.

Advocate for Pet/Ap. : J.M. Banerjee, ;N.C. Talukdar and ;Mohanlal Chatterjee, Adv.

Judgement :

ORDER

S.K. Sen, J.

1. This revisional application is directed against the conviction of the petitioner Narendra Kumar Mitra under Section 41 of the West Bengal Premises Rent

Control Act, 1950 and the sentence passed thereunder of a fine of Rs. 60/-, in default simple imprisonment for six weeks. The case of the complainant Phani Bhusan Roy was briefly as follows:

2. Phani Bhusan Roy entered into occupation of one suite of rooms in the ground-floor of the house at 27/12, Baburam Ghosh Road, Tollygunge, at the monthly rate of rent of Rs. 50/- under the petitioner Narendra Kumar Mitra who was the owner of the house. He entered into possession on 13-4-1955. According to the complainant the rent Rs. 50/- was inclusive of charges for the electricity consumed in the suite of rooms tenanted to the complainant. On 3rd October 1955 when the complainant returned home from his office, he found that the electric supply to his suite of rooms had been cut off and on enquiry he found out that this had been done at the instance of the land-lord petitioner. He found on enquiry that actual disconnection had been effected by a mistry, Ramprosad Sarma, who deposed as P. W. 3; and when the complainant went and enquired from Ramprosad Sarma why he had done so, Ramprosad said that he had done so at the order of the landlord petitioner, and if the landlord petitioner gave his consent he would restore the connection. The complainant then took the mistry to the landlord and asked for re-connection, but the landlord refused to grant re-connection and directed the mistry to go away. Accordingly on the same evening there was an information lodged to the police by the complainant, and on the next day the complainant filed a petition of complaint in Court. The landlord petitioner was summoned under Section 41 of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950.

3. The accused petitioner pleaded not guilty at the trial and the defence in the Trial Court was that at the time, namely, on 3-10-1955, the petitioner was ill and confined to bed, and that he did not actually disconnect the supply of electricity or direct any mistry to disconnect the supply of electricity to the suite of rooms let out to the complainant. On behalf of the defence it was suggested that the complainant intended to remove to another flat on the 3rd October 1955 and, therefore, the complainant himself interfered with the meter-board so as to disconnect the electric supply to his suite of rooms, and that in fact, owing to the interference by the complainant with the meter-board the entire electric system of the bouse went

out of order, and the accused petitioner had to call a mistry to put the electric system in order.

4. The learned Magistrate, nowever, rejected the defence case that the landlord petitioner was ill on the day of occurrence and that he had not caused the electric supply to the complainant's room to be disconnected. The learned Magistrate also disbelieved the defence that the complainant had himself interfered with the meter-board and caused dislocation in the electric supply system. The learned Magistrate found that the accused petitioner had called the mistry Ramprosad and directed him to disconnect the electric supply to the complainant's suite of rooms and, therefore, the accused landlord was liable in respect of the offence under Section 41 of the West Bengal Premises Rent Control Act, because without any just and sufficient cause he had cut off an essential supply enjoyed by the tenant in respect of the premises let to him.

5. There was an appeal by the accused which was heard by Sri P. N. Lahiri, Additional Sessions Judge, Alipore. Before the learned Additional Sessions Judge the additional defence was taken that in addition to the rent of Rs. 50/- settled for the suite of rooms let out to the complainant, the electric charges were separately payable at the rate of Rs. 2/- per electric point, and that there being seven electric points in the suite of rooms in the occupation of the complainant, the complainant was liable to pay Rs. 14/- per month for electric charges in addition to the rent of Rs. 50/- per month, but the complainant did not pay any electric charges and wrongfully claimed that the rent of Rs. 50/- was inclusive of electric charges, and that in the circumstances the accused was justified in cutting off the electric supply to the complainant's suite of rooms. The learned Additional Sessions Judge, however rejected that defence and held that even if the electric charges were payable in addition to the same of Rs. 50/- settled as rent and even if charges had not been paid in view of the complainant's claim that the rent settled at Rs. 50/- included the electric charges, that would not provide sufficient justification on the part of the landlord to cut off for electric supply. Accordingly the learned Additional Sessions Judge dismissed the appeal and upheld the conviction. The accused has, therefore, filed this revisional application.

6. Mr. J. M. Banerjee appearing for the accused petitioner has only urged the point of just and sufficient cause. He has urged that the learned Additional Sessions Judge was wrong in holding that the accused did not have any Just and sufficient cause for cutting off the electric supply, and he has urged that it should have been held that the accused had just and sufficient cause in view of the fact that the complainant had refused to pay any charges on account of electricity although such charges were payable by him.

7. As I have already indicated, the defence of justification was not taken in the Trial Court. There the defence was quite different, namely, the complainant himself had tampered with the electric meter-board & caused discontinuance of supply of electricity to the entire house, and that the accused had not taken any step or called any mistry to disconnect the electricity supply to the complainant's suite of rooms. Accordingly, although from the correspondence put in by the parties, it appears that a dispute over the question whether or not the rent included the charges for the electric supply was in existence between the parties, before the Trial Court no evidence was led by the defence to show justification. When the defence is one of justification the burden of proof is, at least, to some extent on the accused. But there was no witness for the defence who tried to prove directly that the electric charges were separately payable by the complainant and that electric charges were not paid by him. Mr. Banerjee has referred to the evidence of D. W. 1 who proved a cheque which was paid by the complainant Phani Bhusan Roy for the part of the first month of tenancy. Phani Bhusan Roy entered into occupation of the rooms on 13-4-1955 and for the days of April falling within his tenancy he paid this cheque. Exhibit A, for Rs. 29/-. Mr. Banerjee's contention is that that sum of Rs. 29/- represents Rs. 25/- for half the month's rent and Rs. 4/- on account of electric charges and that this supports the contention of the defence that the electric charges were separately payable. But there is nothing to show that this sum of Rs. 29/- included electric charges separately. If the tenancy commenced from 13th April then the rent from 13th April to 30th April at Rs. 50/- p.m. would be Rs. 29/- or Rs. 30/-, and, therefore, there is no reason to assume that this sum of Rs. 29/- included any separate charge on account of electric supply. Moreover, according to the defence taken in the Court below. Rupees 14/- per month was payable on account of supply of electricity, and the case that Rs. 4/- only was paid

for the half month's electric supply is inconsistent with that case. In the circumstances, I am unable to find on the evidence that the complainant paid electric charges separately in respect of the portion of April 1955 which fell within his tenancy. Apart from the evidence of D. W. 1, there was no evidence at all to show that electric charges were separately payable. Mr. Banerjee has referred to the fact that the accused petitioner had obtained a decree in respect of arrears of rent and electric charges in addition to the stipulated rent of Rs. 50/-. This decree was not proved in the Trial Court, but a certified copy of a decree has been filed along with the Memorandum of Appeal. The suit was, however, filed long after the institution of the criminal case, and even long after the complainant had given up the suite of rooms in the accused landlord's house and gone elsewhere. The complainant is according to his evidence, vacated the suite of rooms under the accused landlord on the 1st December, 1955. He had instituted the criminal case on 4-10-1955; but the certified copy of the decree showed that the plaint in the Small Causes Court suit was filed on 13-12-1956 and the decree was obtained on 5th April 1957. Moreover it appears from the revisional petition itself that against the ex parte decree a suit has been filed for setting aside the same and the complainant has obtained an order that the suit shall proceed on the complainant depositing the decretal amount. Accordingly, even taking the decree into consideration I am not prepared to hold that it establishes the petitioner's case that electric charges were payable separately. At the trial the evidence did not indicate that the electric charges were payable separately and in fact, the defence of justification was not taken. In the circumstances, I do not see any reason for interfering with the conviction of the petitioner under Section 41 of the Rent Control Act, 1950.

8. Further, even assuming that the landlord petitioner is right in his contention that electric charges are payable in addition to the stipulated sum of Rs. 50/-, it is clear from the evidence on the record that the complainant did not accept that position and he was claiming from the very beginning that electric charges were not separately payable and that is why he tendered rent by money-order stating that the rent included electric charges and on that account the money-order was refused by the landlord petitioner. When there is such a dispute, the landlord could only get it settled in Civil Court as by filing a suit for rent plus electric charges

because it would then be decided finally whether electric charges were separately payable. When the electric charges are disputed, I cannot agree that the landlord could plead justification if he deliberately cut off the electric supply for non-payment of the same not at the very beginning of the tenancy or not as soon as the dispute arose but after the tenant had been in occupation for over five months.

9. Accordingly, this revisional application fails and the Rule is discharged.

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