

Durga Dutt Khemka Vs. the State

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Court : Kolkata

Decided On : May-19-1950

Reported in : AIR1951Cal2,54CWN916

Judge : Das Gupta and ;Lahiri, JJ.

Acts : West Bengal Premises Rent Control Act, 1948 - Section 41; ;[Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 4(1)

Appeal No. : Criminal Revn. No. 265 of 1950

Appellant : Durga Dutt Khemka

Respondent : The State

Advocate for Pet/Ap. : Suresh Chandra Talukdar and ;Nikhil Chandra Talukdar, Adv.

Disposition : Revision allowed

Judgement :

Das Gupta, J.

1. This rule was obtained by the petitioner against his conviction under Section 41. West Bengal Premises Rent Control Act, 1948.

2. The prosecution case was that the complainant Keshardas Chowdhury was a sub-tenant under this petitioner, and that the petitioner without just and sufficient cause disconnected; the electric line from which Keshardas gets his supply of electricity.

3. Mr. Taluqdar has drawn our attention to the fact that in what has been treated as the petition of complaint under Section 41, West Bengal Premises Rent Control Act, 1948, there was really no prayer for any action against this petitioner from which it could be said that this was a petition of complaint under the Code of Criminal Procedure. In this petition Keshardas describing himself as the complainant stated that he was a subtenant under the accused, mentioned some disputes between him and the present petitioner as regards rent, stated that in August, 1949, this petitioner once disconnected the line, and stated finally that on 1-11-1949,, the petitioner disconnected this line. The prayer that was made was in these words:

'The petitioner therefore most humbly prays that Your Honour be pleased to issue an order on O/C Barrabazar P. S., to see that the connection is restored and give a warning to the accused to refrain from, harassing the petitioner in this illegal way, or any other order as to Your Honour appears to be just and proper.'

Complaint has been defined in Section 4(h), Criminal P. C. in these terms:

' 'Complaint' means the allegation made orally, on in writing to a Magistrate, with a view to his taking; action under this Code, that some person, whether known or unknown, has committed an offence, but it does not include the report of a police officer.'

4. From the prayer that was made in the petition of Keshardas, I am of the opinion that Mr. Taluqdar is right in his contention that there was no proper complaint made under the Code of Criminal Procedure. Consequently, the action taken by the learned Magistrate in taking cognizance of the case, issuing process, and finally convicting this petitioner was improper and illegal.

5. For these reasons, I would set aside the order of conviction and sentence passed by the learned Magistrate.

6. This Rule is made absolute. The petitioner will be discharged from his bail-bond.

Lahiri, J.

7. I agree.

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