

State of Bihar

Vs

Mangal Sao

Criminal Appeal No. 222 of 1960

(T. L. Venkatarama Ayyar, J. L. Kapur, K. Subha Rao, Raghuvar Dayal JJ)

29.03.1962

JUDGMENT

SUBBA RAO, J. -

This appeal by special leave against the judgment and order of the High Court at Patna raises the question whether - to use neutral terms - the keeping or using of a radio set by the person without a licence would be an offence under section 20 of the Indian Telegraph Act, 1885 (13 of 1885), hereinafter called the Act.

The respondent is a businessman, having a shop in the city of Patna. In November, 1955 an Inspector of Wireless Telegraph visited his shop and found a radio set being played therein. As he was using the radio without a licence, he was prosecuted, under sections 3 and 6 of the India Wireless Telegraphy Act, 1933 (17 of 1933) and section 20 of the Act. The Judicial Magistrate, Patna City, convicted the respondent under the said sections and sentenced him only under section 20 of the Act to pay a fine of Rs. 200/- and in default to undergo simple imprisonment for three months. On appeal the learned Sessions Judge, Patna, confirmed both the conviction and sentence. On revision, the High Court at Patna set aside the conviction and sentence under section 20 of the Act, but confirmed the conviction under sections 3 and 6 of the Indian Wireless Telegraphy Act, 1933 and sentenced him to pay a fine of Rs. 100/- and in default to undergo simple imprisonment for one month. The State of Bihar has preferred the present appeal against the order of acquittal made by the High Court under section 20 of the Act.

The High Court set aside the conviction under section 20 of the Act on the ground that the use of a wireless receiving set without a licence would not be an offence under the said section having regard to the provisions of section 4 of the Act. Mr. Varma, learned Counsel for the State, canvasses the correctness of that decision.

It would be convenient at the outset to read the relevant provisions of the Act as they stood before amendment by Act 15 of 1961.

Section 3. (1) "telegraph" means an electric, galvanic or magnetic telegraph, and included appliances and apparatus for making, transmitting or receiving telegraphic, telephonic or other communications by means of electricity, galvanism or magnetism.

Section 4. (1) Within India, the Central Government shall have the exclusive privilege of establishing, maintaining and working telegraphs :

Provided that the Central Government may grant a licence, on such conditions and in consideration of such payments as it thinks fit, to any person to establish, maintain or work a telegraph within any part of India.

Provided further that the Central Government may, by rules made under this Act and published in the Official Gazette, permit, subject to such restrictions and conditions as it thinks fit, the establishment, maintenance and working.

(a) of wireless telegraphs on ships within Indian territorial waters and on aircrafts within or above India, or Indian territorial waters, and

(b) of telegraphs other than wireless telegraphs within any part of India.

Section 20. (1) If any person established, maintains or works a telegraph within India in contravention of the provisions of section 4 or otherwise than as permitted by rule made under that section, he shall be punished, if the telegraph is a wireless telegraph with imprisonment which may extend to three years, or with fine, or with both, and, in any other case, with a fine which may extend to one thousand rupees.

Under the said section, if a person establishes, maintains or works a telegraph without a licence in contravention of the provisions of section 4, he would be committing an offence punishable thereunder. The first question is whether a radio receiving set is a "telegraph" within the meaning of the definition given in the Act. This Court had an occasion to consider the scope of the said definition in the context of a Post and Telegraph Wireless Station, which was receiving communications from different cities of the country, in *Senior Electric Inspector v. Laxminarayan Chopra* (A.I.R. 1962 S.C. 159, 161.). After quoting the provisions of section 3(1) of the Act, this Court proceeded to observe :

"The Telegraphy Wireless Receiving Station clearly comes within the definition of "telegraph" in the Telegraph Act. The Telegraph Act was passed in 1885. "Telegraph" then included "an electric, galvanic, or magnetic telegraph and appliances and apparatus.... for telegraphic, telephonic or other communications by means of electricity, galvanism or magnetism". At that time Wireless telegraphy or radio had not been developed In the year 1914, section 3(1) of the said Act was amended and the following words were inserted after the words "apparatus for" : "making, transmitting or receiving". With the result that, after the amendment, receiving of communications by means of electricity was included in the definition. A wireless receiving station certainly receives communications by means of electricity and therefore, it is "telegraph" within the meaning of the said definition.

If a telegraph wireless receiving station is a telegraph as defined in section 3(1) of the Act, a radio set receiving communications should equally be a telegraph within the meaning of the said section; for a radio set receives communications by means of electricity. Wireless transmitter transmits sound as electro-magnetic waves and the said waves are detected and received by the receiving apparatus. We, therefore, hold that a receiving set is a telegraph within the meaning of the Act.

The next question is whether the respondent established, maintained or worked a telegraph within the territories of India in contravention of the provisions of section 4. Section 4(1) consists of a main part and two provisos. The main part of the section confers an exclusive privilege on the

Central Government of establishing, maintaining and working telegraphs. The second proviso enables the Central Government and to make rules to permit the establishment, maintenance and working of wireless telegraphs on ships and aircrafts within a specified area or of telegraphs other than wireless telegraph within any part of India. The first proviso confers a power on the Central Government to grant licence to establish, maintain or work a telegraph within any part of India. There is difference in the phraseology used in the main part and the second proviso and that used in the first proviso. While in the main part and the second proviso the conjunction "and" is placed between "maintaining" and "working", in the first proviso the disjunctive "or" is used. It is not necessary to express our view whether in the main part and the second proviso the three words "establishing", "maintaining" and "working" can be read disjunctively, for we are only concerned with the first proviso which expressly made them disjunctive. Under section 20 of the Act also the disjunctive "or" is used between "maintains" and "works". It is, therefore, clear that under the first proviso to section 4 the Central Government may grant a licence to a person for establishing, maintaining and working a telegraph or in respect of any of them; and if a person either establishes, maintains or works a telegraph without a licence or in contravention of the terms of licence, he would be committing an offence under section 20 of the Act.

It is suggested that neither of the three terms would be appropriate for keeping a radio set or using it. Learned counsel for the appellant argues that keeping or using a radio set would be maintaining or working a radio within the meaning of that section. In the Shorter Oxford English Dictionary the following meaning, among others, is given to the word "maintain"; "to keep in being; to preserve unimpaired; to pay or furnish the means of keeping up of; to keep supplied or equipped; to keep in repair. A person who has a radio set for the purpose of using it must necessarily keep it in good condition and bear the expenditure for so keeping it and for requiring it, if it goes wrong. He can, therefore, appropriately be said to maintain it within the meaning of the section.

The same dictionary gives various meaning to the verb "work". The following are some of them : "to bestow labour or effort upon"; "to manipulate so as to bring it into the required condition"; "to operate upon so as to get into some state or convert into something else"; "to bring or get into some condition by labour or exertion". If a person tunes a radio, he can properly be said to operate upon it or manipulate it for the purpose of receiving the said communications. Such a person works on the radio. We, therefore, hold that a person in possession of a radio for use maintains as well as works it. In this case it has been established that when the Inspector visited the shop of the respondent, the latter was using the radio and therefore was working it.

Reliance was placed by the High Court on a judgment of the Madras High Court in *In Re Pandian* (A.I.R. 1938 Mad. 821.), wherein Pandrang Row, J., appears to accept the contention that the use of a wireless set without a licence is not an offence under section 20 of the Act. The learned Judge observed :

"It is, to say the least, extremely doubtful whether the use of a wireless receiving set without a licence would amount to an offence under section 20, Telegraph Act, which in view of section 4 of that Act could not have been intended to include wireless receiving sets used ordinarily to receive broadcast programmes."

The learned Judge has not expressed a final opinion on the construction of the section. Presumably, he was of opinion that section 4 applies only to a telephone established, maintained and worked by Government or with its permission. With great respect, the learned Judge has omitted to notice the first proviso to section 4 of the Act which takes in a licence of a telegraph for one or other of the

three purposes mentioned therein. In the result, we hold that as the respondent used the radio without a licence, he committed an offence under section 20 of the Act.

We, therefore, convict him under section 20 of the Act also. But in the circumstances of this case, we think that no separate sentence is called for. The sentence already imposed under sections 3 and 6 of the Indian Wireless Telegraphy Act, 1933, is sufficient. In the result, the order of the High Court is modified to the extent indicated.

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