

APPELLATE CRIMINAL

Before Mr. Justice Bavdekar and Mr. Justice Chainani.

HAJI MAHOMED HAJI ALLI MAHOMED (ORIGINAL ACCUSED),
APPELLANT *v.* STATE.*

1952
Jan. 9

Bombay Rents, Hotel and Lodging House Rates Control Act (LVII of 1947) s. 24 (4)—Landlord cutting off or withholding essential supply or service enjoyed by tenant—Criminal complaint filed by tenant—Whether tenant obliged to approach Civil Court for restoration of such supply or service before filing Criminal complaint.

There is nothing in s. 24 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, which makes it obligatory on a tenant to approach a Civil Court for the restoration of the essential supply or service before filing a criminal complaint against the landlord for cutting off or withholding such supply or service.

V. G. Sayadiants v. State,⁽¹⁾ referred to.

CRIMINAL Appeal against the order of conviction and sentence passed by V. M. Gehani, Presidency Magistrate, 13th Court, Ballard Pier, Bombay.

The appellant, Haji Mohomed Haji Alli Mohomed (Accused No. 1) was one of the trustees of a trust, which owned a building in Bombay. He put up an unauthorised construction on the ground floor near the stair case and let it to the complainant. The complainant's case was that the premises were let to him on his agreeing to pay Rs. 12 as rent and Rs. 7 for consumption of electricity. The complainant further alleged that when the premises were let to him, accused No. 1 gave him an electric connection from his own meter. The electric connection was cut off on or about March 1, 1951. The complainant then filed a criminal complaint against the appellant and an electrician, who had actually cut off the connection under the instructions of the appellant, under s. 426 read with s. 114, Indian Penal Code. After recording evidence of the complainant and two other tenants of the same building, the trying Magistrate framed two charges against the accused. The first charge was under s. 24 (4) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. The second charge was under s. 426, Indian Penal Code. The appellant in his written statement did not deny that he had cut off the

* Criminal Appeal No. 1288 of 1951.

⁽¹⁾ (1949) Cr. Rev. Application No. 707 of 1949 decided by Weston and Shah JJ., on September 29, 1949 (unrep.)

electric connection. He, however, raised various defences, those material to the report being that the complainant was not his tenant; that in any case the tenancy was unlawful, as no intimation about it had been given to the authorities concerned as required by the Bombay Land Requisition Act, 1948; and that he could not be convicted under s. 24 (4) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, as the complainant had not first approached a Civil Court for a direction for the restoration of the service under Sub-section (2) of s. 24 of this Act. The trying Magistrate did not accept any of these contentions. He came to the conclusion that the complainant was a tenant of the appellant, and that the appellant had, without just or sufficient cause, cut off electric supply. He, therefore, convicted the appellant under s. 24 (4) of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947, and s. 426, Indian Penal Code, and imposed on him a fine of Rs. 201.

1952
 HAJI
 MAHOMED
 v.
 STATE
 Chainani J.

Accused No. 1 appealed to the High Court.

A. A. Peerbhoy, with V. H. Kamat, for the appellant.

B. G. Thakor, Assistant Government Pleader for the State.

CHAINANI J. [After narrating facts, His Lordship proceeded.] Mr. Peerbhoy, who appears for the appellant, has raised three points in this appeal. The first point is that the conviction of the appellant under s. 24 (4) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, is wrong and cannot be maintained, as the complainant had not approached a civil Court for the restoration of the service under sub-s. (2) of s. 24 of this Act. Sub-section (1) of s. 24 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, provides that no landlord shall, without just or sufficient cause, cut off or withhold any essential supply or service enjoyed by a tenant in respect of the premises let to him. Sub-section (2) states that a tenant may, if the landlord has contravened the provisions of sub-s. (1), make an application to the Court for a direction to restore such supply or service. Sub-section (3) empowers the Court to make an order directing the landlord to restore such supply or service, if the Court finds that it was cut off or withheld by the landlord without just or sufficient cause. Sub-section (4) states that any landlord, who contravenes the provisions of sub-s. (1), shall, on conviction, be punishable with the punishment

1952
 HAJI
 MAHOMED
 v.
 STATE
 Chainani J.

specified in this sub-section. In *V. G. Sayadiants v. State*⁽¹⁾ Mr. Justice Shah in the course of his judgment observed as follows:

“Under the scheme of s. 24, ordinarily a tenant, if he finds that an essential supply or service is either cut off or withheld by his landlord, is entitled to go to the Court of Small Causes and to make an application for restoration of the essential supply or service, and the Court of Small Causes would deal with the question whether there existed just or sufficient cause and pass the necessary orders. Thereafter if the landlord fails to carry out the directions of the Court of Small Causes, there is a penalty provided in sub-s. (3) of s. 24, to which the landlord would render himself liable, and also he would be liable to be proceeded against under sub-s. (4) of s. 24. Excepting in very exceptional circumstances, it would not be expected that a criminal Court would be called upon to consider whether a landlord has, without just or sufficient cause, cut off or withheld any essential supply or service enjoyed by the tenant in respect of the premises let to him.”

These observations have been relied upon on behalf of the appellant and it has been urged that a tenant cannot file a complaint against his landlord under sub-s. (4) of s. 24 for cutting off or withholding any essential supply or service, unless he has first applied to the Small Causes Court for a direction for the restoration of such supply or service. There is no substance in this contention. Sub-sections (2) and (3) of s. 24 make provision for the restoration of the essential supply or service, which has been wrongfully cut off or withheld. But in order to protect the tenants from harassment, the Legislature has gone further and has made it an offence to cut off or withhold any essential supply or service without just or sufficient cause. Sub-section (4), therefore, provides for punishment for wrong done to a tenant, while sub-ss. (2) and (3) enable the tenant to have restored to him the essential supply or service, which he previously enjoyed. There is also nothing in the section which makes it obligatory on a tenant to approach a civil Court for the restoration of the essential supply or service before filing a criminal complaint. If the intention of the Legislature had been that a landlord should not be prosecuted, until a civil Court has first determined whether the essential supply or service has been cut off or withheld without just or sufficient cause, sub-s. (4) would have been worded differently. Even in the judgment of Mr. Justice Shah, from which I have quoted a passage above, it was recognised that in some cases

⁽¹⁾ (1949) Cri. Rev. Appl. No. 707 of 1949, decided by Weston and Shah JJ., on September 29, 1949 (unrep.).

at least a criminal Court would have to decide whether the landlord had or had not, without just or sufficient cause, cut off or withheld the essential supply or service previously enjoyed by his tenant. We do not, therefore, think that Mr. Justice Weston and Mr. Justice Shah intended to lay down that a complaint under sub-s. (4) cannot lie, unless an application has first been made to a civil Court for the restoration of the essential supply or service under sub-s. (2) of s. 24. The argument that the learned Magistrate could not convict the appellant under sub-s. (4) of s. 24 of the Bombay Rents, Hotel and Lodging House Rates Control Act, because the complainant-tenant had not first approached the Small Causes Court for the restoration of the supply of electric energy, cannot, therefore, be accepted.

[The rest of the judgment is not material to the report.]

Conviction and sentence affirmed.

K. B. S.

FULL BENCH
APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice, Mr. Justice Gajendragadkar, and Mr. Justice Dixit.

DUNDAPPA VIRUPAXAPPA KALLOLGI AND OTHERS *v.* ANNAJI VARDAJI AND OTHERS.*

1952
Jan. 17

Civil Procedure Code (Act V of 1908), s. 73—Rateable distribution—One decree against debtor himself and another decree against his legal representatives—Whether Judgment-debtor is same in both decrees—“Same judgment-debtor,” meaning of—Liberal interpretation of expression.

A decree passed against M and sought to be executed against his legal representatives after his death and another decree obtained against M's legal representatives in a suit filed against M during his lifetime but continued against his legal representatives after his death, are both decrees passed against the 'same judgment-debtor' within the meaning of s. 73 of the Code of Civil Procedure, 1908.

Similarly, a decree passed against M and sought to be executed against his legal representatives after his death and another decree passed against the legal representatives of M in a suit filed against them

* Second Appeal No. 201 of 1947 with S. A. No. 202 of 1947.