

## **Hari Charan Halwasiya And Ors. vs State on 18 September, 1950**

**Equivalent citations: AIR1951ALL442, AIR 1951 ALLAHABAD 442**

ORDER

Chandiramani, J.

1. This is an application in revision against the order of Shri T. Prasad, Additional Sessions Judge, Lucknow, dated 22-5-1950.

2. It appears that the three applicants, H. C. Halwasiya, D. P. Halwasiya and B. P. Halwasiya, were convicted by the City Magistrate of Lucknow under Section 8, U. P. (Temporary) Rent Control and Eviction Act, 1947. It is said that the applicants were tenants of a house in Mohalla Narhai, Lucknow, which they had reserved for the purposes of their staff from whom they never charged any rent and whom they allowed to occupy the premises as long as they were in the service of the applicants. It is said that one Mr. Roy used to live in that house in Narhai as employee of the applicants, that when he left, the premises were given to another employee, Bhattacharya but without the orders of the Rent Control and Eviction Officer and thereby a breach had been made of the order of the District Magistrate dated 8-3-1949. The defence was that the applicants were not landlords within the meaning of the Rent Control and Eviction Act and in these circumstances there had been no breach of any provisions of the Act or of the order of the District Magistrate, The City Magistrate did not accept the defence at all and sentenced the applicants each to a fine of Rs. 25/- and Shri Bhattacharya, although convicted, was let off after an admonition. The three applicants thereupon went up in revision to the learned Additional Sessions Judge. He thought that an appeal lay and not a revision in this case and therefore he dismissed the application for revision. It would appear that an application was put before the learned appellate Court that in case the revision was found to be incompetent it might be treated as an appeal. The learned Judge heard some arguments about it but there are no express orders and it may be taken that this application was rejected.

3. The applicants have come up in revision to this Court and have urged that the view of the learned lower Court that an appeal lay is completely wrong, that even if it had thought that an appeal lay, their prayer that the revision application should be treated as an appeal should have been accepted and the appeal then disposed of on merits and that on merits the order of the City Magistrate is entirely illegal. I have heard the learned counsel and am satisfied that this application must be allowed. It is not disputed that the applicants are themselves tenants of that house in Narhai in which they allowed Shri Bhattacharya to live as their employee. It is also not disputed that no rent whatever was charged from Shri Bhattacharya for occupation of the premises. In these circumstances relationship of landlord and tenant as contemplated under the Rent Control and Eviction Act is not established. Clearly the three applicants have committed no offence whatever. On this ground alone this application will succeed.

4. The learned Additional Sessions Judge has held that from the order of the City Magistrate an appeal lay. He has given no reason whatever for holding that an appeal lay. There was clearly before him the case of the three applicants each of whom had been fined less than Rs. 50/-. None of the sentences was clearly appealable. I am informed by the learned counsel for the State that because Shri Bhattacharya was let off on admonition probably that order has been treated as one giving rise to the appeal. The U. P. First offenders Probation Act (VI [6] of 1938) does not confer any right of appeal against an order made under Section 3. The order in the present case against Shri Bhattacharya was passed under Section 3 of the Act. We shall therefore have to see whether under Criminal P. C. any appeal is provided. The learned counsel for the State has been unable to point out to any provision in the Code which gives a right of appeal when on conviction, as in the present case, the order against one is one of admonition, and other accused got non-appealable sentences of fine. Clearly, therefore, no appeal lay and the view of the learned Additional Sessions Judge that an appeal lay was wrong.

5. The result, therefore, is that I allow this application, aside the conviction and sentences of the applicants and direct that the fine, if paid, shall be refunded.