

**Harphool Singh Vs. Union of India and ors.**

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**Court :** Punjab and Haryana

**Decided On :** May-31-1984

**Reported in :** AIR1985P& H28

**Judge :** I.S. Tiwana, J.

**Acts :** Indian Telegraph Rules - Rules 421 and 429

**Appeal No. :** Civil Writ Petn. No. 1281 of 1984

**Appellant :** Harphool Singh

**Respondent :** Union of India and ors.

**Judgement** :

ORDER

1. Telephone No. CH-31675 was installed at the request of the petitioner under 'Own Your Telephone' category at his shop No. 31, Kabari Market, Industrial Area, Chandigarh. Business in this shop was being run by the petitioner under the name and style of M/s. Ashok Brothers which according to him, is a family concern of his. Later he started business in another shop, i.e., No. 52 in that market, under the name and style of M/s. mangal Ram & Sons. As per the original partnership deed shown to me., the petitioner is partner in this firm to the extent of 20%. On a request from the petitioner, the telephone was shifted by the respondent-authorities from Shop No. 31 to Shop No. 52 in the year 1981. An extension of this telephone was installed in Shop No. 31 also. Thus, in a nutshell, the stand of the petitioner is that this telephone was being used in these two premises.

2. On 23rd February, 1983, a registered letter dated 17th February, 1983 (Annexure P1) was received by the petitioner informing him that his telephone connection was being disconnected as the same was being used by somebody 'other than actual subscribers which was in flagrant violation of the Indian Telegraph Rules'. The telephone connection admittedly was disconnected on that very day i.e., 23rd February, 1983 itself. The petitioner impugns this action of the respondent-authorities primarily on the grounds, firstly, that no show-cause notice in terms of R. 421, Indian Telegraph Rules, was served on him prior to this disconnection and, secondly, even if the stand of the respondent-authorities saying that such a registered notice (Annexure R3) issued to him on 1st February, 1983 was served on him on 8th February, 1983, as per the certificate of the postal authorities, still the impugned action of the respondent-authorities is not covered by the provisions of R. 429 under which these authorities have purported to act. Having heard the learned counsel for the parties at some length I find that the petitioner deserves to succeed.

3. Without going into the factual contentious submission of the parties as to whether the notice as envisaged by R. 429 of the said Rules was issued and actually served on the petitioner. I find that the action of these authorities is not covered by R. 429 under which the respondent-authorities have admittedly acted. This is how it reads:--

'A subscriber shall not, without the permission of the Telegraph Authority assign, sublet or otherwise transfer the telephone '.

A bare reading of this rule indicates that it envisages a situation where the subscriber excludes himself from the use of the telephone by transferring, assigning or subletting it in favour of somebody else. The respondent-authorities have nowhere identified either in their written statement or in the relevant records which have been produced by their learned counsel as to who is the assignee, sublettee or transferee of this telephone. All that has been mentioned in these records right from the first report dated 14th October, 1982 to the last noting dated 14th February, 1983 is that this telephone was being used by M/s. Mangal Ram & Sons. As already pointed out M/s. Mangal Ram & Sons is a family concern of the petitioner in which besides himself, his mother Nathia Devi and his brother Subhash Chander are partners to the extent of 20%, 40% and 40% respectively. Even in the original application filed by the petitioner with the respondent-authorities on 18th March, 1981 (which forms part of the record produced before me) for the shifting of this telephone from Shop No. 31 to Shop No. 52. it was stated by him that this telephone was installed 'in the name of Ashok Brothers' in Shop No. 31 and that 'since we have shifted to Shop No. 52, Kabari Market, Industrial Area, Chandigarh, it is requested that telephone No. 31675 may kindly be shifted to Shop No. 52'. It was on the basis of this application that the case was processed by the respondent-authorities and after finding that 'the case is genuine and feasible' the telephone was actually shifted to Shop No. 52 on 28th March, 1981. It is, thus, abundantly clear from this factual narration that neither M/s. Mangal Ram & sons is a transferee, assignee or sublettee of the above noted telephone nor was it actually so found by the respondent-authorities. As already pointed out, all that has been recorded by the respondent-authorities in their various noting starting with the report off the S. D. O. concerned dated 14th October, 1982 is that the telephone was being used by M/s. Mangal Ram & Sons. In what capacity this telephone was being used by M/s. Mangal Ram & Sons has nowhere been found by these authorities. Thus, in the absence of any conclusive finding by these authorities that M/s. Mangal Ram & Sons was an assignee, sublettee or transferee of this telephone, the said authorities could not possibly take the impugned action of disconnecting the telephone. Besides all this, the only reason disclosed by the respondent-authorities as per their letter Annexure P-1 for disconnecting this telephone is that the same was being used by somebody 'other than actual subscribers'. If this reason is to be taken as enough of a jurisdiction in law for disconnecting a telephone connection and is to be taken to its logical end then in all probability, every telephone would have to be disconnected as in that situation the use of a telephone even by a family member of the subscriber would provide the respondent-authorities with enough of a ground to disconnect the same.

4. For the reasons recorded above, I allow this petition and direct the respondent-authorities to reconnect or reinstall the telephone at Shop No. 52, Kabari market, Industrial Area, Chandigarh, within a week from today. The petitioner is also held entitled to the costs of this litigation which I determine at Rs. 500/-.

5. Petition allowed.

