Emperor Vs. Joseph Abdullahi

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Court : Mumbai

Decided On : Jun-20-1941

Reported in : (1941)43BOMLR839

Judge : John Beaumont, Kt., C.J. and ;Sen, J.

Appeal No. : Criminal Revision Application Nos. 174, 179 and 180 of 1941

Appellant : Emperor

Respondent : Joseph Abdullahi

Judgement :

John Beaumont, Kt., C.J.

1. These are three revision applications in which the accused were convicted under Rule 6(5) of the Defence of India Rules, 1939, the charge against them being that they were found within a prohibited area. They are all Jewish merchants and they all pleaded guilty. In each case the learned Chief Presidency Magistrate merely recorded a plea of guilty, and did not record the plea in the language used by the accused as he should have done, and in each case he inflicted a sentence of three months' rigorous imprisonment. A fourth case came before this Court in the course of the present week, which has not yet been decided, in which the same sentence was imposed by the learned Chief Presidency Magistrate, although in that case the circumstances were quite different.

2. These offences under the Defence of India Rules may obviously differ very much in their gravity, and they cannot be dealt with by any rule-of-thumb sentence. If there is any reason for supposing that a man has entered a prohibited area with a view to obtaining information which might be useful to the enemy, he would deserve a severe sentence. Again, if a man has entered a prohibited area knowing full well that it is prohibited, having climbed over a fence or eluded a sentry or done something of that sort, he would deserve a more severe sentence than a man who has entered a prohibited area without appreciating that it is a prohibited area. The prohibited areas in these case's were areas in the docks, and admittedly some of the entrances into the docks were not guarded, and there was no evidence before the learned Magistrate as to whether any notice was given that these areas were prohibited areas. We are told by the learned Government Pleader on the instructions of the Police Sub-Inspector that notices were put up in English, Marathi and Hindustani, stating that the particular area was a prohibited area. The learned Chief Presidency Magistrate does not seem to have made any inquiries into the antecedents of the accused, and in Revision Application No. 174, we stood the matter over in order that the police might make inquiries, because in that case the accused said that he was a merchant from Aden and was looking for a shipping agent with a view to sending goods by sea to Aden. But he did not make that statement when, he was arrested by the Deputy Inspector, nor has he mentioned the name of the agent for whom he was looking; nor given any particulars of the goods he wished to send, nor the name of the person to whom he was proposing to send them. Therefore, we thought his statement unreliable, and we wanted to know whether there was anything known against him. If there was reason for supposing that he entered the prohibited area for a definitely unlawful purpose, he would deserve a severer sentence than three months.

3. In the other two cases, Revision Applications Nos. 179 and 180, the accused said that they were carpet merchants, and that the police admit. Their case is that in their enthusiasm to sell carpets they had wandered into the dock area which, they say they did not know, was prohibited, and, of course, it is possible that, even if they could read the notices, they omitted to observe them. We think that their cases should have been dealt with more leniently, because we think probably they were within the prohibited area inadvertently, and even if they knew that it was a

prohibited area, there is no doubt on their statement that they were merely trying to dispose of their goods. They we're properly convicted, but we think that the sentence should have been only a fine. As they were given sentences of imprisonment, we propose to reduce the sentences to the period already undergone in the cases of the accused in Revision Applications Nos. 179 and 180.

4. We have felt more doubt in the case of the accused in Revision Application No. 174, because there is no doubt that the accused did make a statement which he could have proved, and he has not done so. At the same time, the police have nothing against him. None of these people had cameras upon them or anything which might suggest that they were seeking to obtain information to which they were not entitled, nor is it suggested that they were in places in which valuable information could be picked up. We think that three months' rigorous imprisonment was rather too severe a sentence in the case of the accused in Revision Application No. 174, though he deserved a more severe sentence than the others for giving what looks like a false excuse. As the accused has already been in jail for more than five weeks, we propose also in his case to reduce the sentence to the period already undergone.

5. But people must clearly understand that if they wander about prohibited areas, they will be liable to be dealt with severely. We are not laying down any rule that sentences of imprisonment shall not be imposed in such cases. At the same time it must be borne in mind that sentencing first offenders for offences of this type to a term of imprisonment is a very good way of manufacturing criminals for the future.