

In Re: K.V. Murthi

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SooperKanoon Citation : sooperkanoon.com/424500

Court : Andhra Pradesh

Decided On : Aug-06-1957

Reported in : 1958CriLJ143

Judge : Chandra Reddy, J.

Appellant : In Re: K.V. Murthi

Judgement :

ORDER

Chandka Reddy, J.

1. The accused was convicted by the 3rd Class Bench Magistrate, Bandar, under Sections 249, 321 (9) read with Section 313 of the District Municipalities Act and sentenced to a fine of Rs. 5/- with a default imprisonment of two days. The case against the accused was that he was running a coffee hotel without obtaining the requisite licence.

While not denying this, the plea of the accused was that he could not be required to obtain a licence as the Frenchpet in which he was carrying on the business was not included within the Municipality of Bandar by a notification as required by Section 4 of the District Municipalities Act, that a notification under Section 249 requiring the obtaining of a licence was also not published, that the prosecution was premature, as he was given some time for paying the amount and that the prosecution was launched before the expiry of that date. All these objections were

overruled and the petitioner was convicted and this was confirmed on appeal by the First Class Magistrate, Masulipatnam.

2. In this revision case, the same contentions are repeated before me. The substantial question for determination here is whether the failure to comply with the terms of Sub-section (3) of Section 4 of the District Municipalities Act has vitiated the prosecution. Section 4 which occurs in Chapter II dealing with creation and abolition, of Municipalities recites:

4 (1) The State Government may by notification declare their intention

a) to constitute as a municipality any town, village hamlet, bazaar, station or other local area or any group of the same in the immediate neighbourhood of one another; or

b) to exclude from a municipality any local area comprised therein and defined in such notification; or

c) to include within a municipality any local area in the vicinity thereof and defined in such notification.

It is not clear whether the notification contemplated by Section 4 (1) has been issued. But, that does not seem to affect the validity of the inclusion of the area known as Frenchpet within the Municipal limits of Bandar. In 1948, an Order was promulgated by the Governor-General in exercise of his power under Section 2D0 of the Government of India Act the following of: which are the contents:

290(1) Subject to the provisions of this section, His Majesty may by Order in Council

a) create a new Province;

b) increase the area of any Province;

c) diminish the area of any Province;

d) alter the boundaries of any Province: Provided that, before the draft of any such order is laid before Parliament, the Secretary of State shall take such steps as His Majesty may direct for ascertaining the views of the Federal Government and the Chambers of the Federal Legislature and the views of the Government and the Chamber or Chambers of the Legislature of any Province which will be affected by the Order, both with respect to the proposal to make the order and with respect to the provisions to be inserted therein.

2. An Order made under this section may contain such Provisions for varying the representation in the Federal Legislature of any Governor's Province the boundaries of which are altered by the Order and for varying the composition of the Legislature of any such Province, such provisions with respect to apportionments and adjustments of and in respect of assets and liabilities, and such other supplemental, incidental and consequential provisions as His Majesty may deem necessary or proper.'

3. The Proviso under this Sub-section and the provisions of Sub-section (3) are not material for the present discussion. Thus Section 290 of the Government of India Act empowers the Governor-General to create a new province, increase the area of any province and diminish the area and alter the area of any province. The Governor-General has merely increased the area of the then State of Madras by including the Frenchpet in the town of Bandar.

That order also recited that all the enactments for the time being in force in the town of Bandar must be deemed to have been in force and shall always be deemed to have been extended and enforced in the town included by the preceding paragraph. By virtue of this Order, Frenchpet is regarded as having been a part and parcel of the Municipality. Having regard to the terms of Section 290 of the Government of India Act, the vires of the order cannot be questioned now.

While bringing this area into the domain of the existing province and also the town, there should be a provision that all the laws in force in the town must be extended to that place and this was done by the Order cited above. By reason of it, the District Municipality is extended to the Frenchpet also. The necessity to issue a

notification to declare the 'intention of the Government would arise only in regard to an area which has been excluded before and which is sought to be included for the first time.

That rule cannot apply to the area previously known as Frenchpet which became merged into Bandar town and brought into the Municipality by operation of the Governor-General's Order. It has also to be remembered that this case arises only subsequent to the promulgation of the Order cited above. This view of mine gains support from *Masulipatnam Municipal Council v. Mahalakshamma* .

4. Consequently, the failure to publish the notification declaring the intention of the Government to include this area within the Municipality does not render the inclusion an invalid or an ineffective one, and that the Frenchpet also is governed by the District I Municipalities Act. Hence the accused did not derive any protection from the area in which the offence was committed being Frenchpet, and he is guilty of violation of the rules relating to licences.

5. The second point is devoid of any merit as it was found that such notification was issued by the Municipality. The third one also is equally unsustainable. The Courts below: found that no time was given to the petitioner for paying the licence fee and that the prosecution was not premature. The conviction is, therefore, confirmed and it cannot be said that the sentence is excessive. On the other hand the Bench Magistrates have erred on the side of leniency. Conviction and sentence are therefore confirmed.