

**Krishna Warriar Vs. State**

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**Court :** Kerala

**Decided On :** Sep-18-1952

**Reported in :** 1953CriLJ915

**Judge :** Koshi, C.J. and; Govinda Pillai, J.

**Appellant :** Krishna Warriar

**Respondent :** State

**Judgement :**

Koshi, C.J.

1. This revision is directed against the concurrent decisions of the Second Class Magistrate of Mukundapuram and the District Magistrate, Trichur convicting and sentencing the four petitioners before Court who were accused 1 to 4 In C.C. No. 305/50 for their membership and management of an association declared unlawful by a notification issued under Section 23, Travancore-Cochin Public Safety Measures Act, 1950. The petitioners were active members of the Cochin Communist Party. Besides assisting and promoting the activities of the said party they were also found to have discussed the programme of the party at a meeting held at the residence of P.W. 4. Each of them was accordingly convicted and sentenced to undergo simple imprisonment for six months under Section 24(1) and (2), Public Safety Measures Act, 1950 by the trial Court. The conviction and sentence passed against them have been confirmed on appeal and they hence

move this Court in revision.

2. The sole point urged before us is that Section 23, Travancore Cochin Public Safety Measures Act and the notification issued thereunder are ultra vires the Constitution of India in that they infringed the right to form associations or unions guaranteed to the citizens of India by Article 19(1)(c) of the Constitution and that they transgressed the bounds of permissible legislation sanctioned by Clause (4) of the said article. When this revision petition first came up before us it was directed to be reposted after O.P. 8 of 1951 and CrI. Revn. Petition 66/51 were disposed of. Those matters were disposed of on 10.12.1951 by a Full Bench of which both of us were members. The said original petition and the criminal revision related to one and the same matter, namely, a similar transgression of a notification declaring the Cochin Communist Party unlawful under the law then in force (The Cochin Criminal Law Amendment Act 1124). Section 3 of that enactment corresponds to Section 23, Travancore-Cochin Public Safety Measures Act, 1950. The scope and amplitude of that section were more limited than the present Section 23 and the Full Bench declaring that section and the notification issued thereunder ultra vires the Constitution. The original petition and the revision were referred to a Full Bench by us and in the course of the order we observed as follows:

The new Act, that is the Travancore-Cochin Public Safety Measures Act, 5 of 1950 contains no provision for a judicial review of the declaration nor does it provide for a reference to any Advisory Board. Section 23 of the said Act is a reproduction of Section 16, Indian Criminal Law Amendment Act, 14 of 1908 with words added to widen its scope and amplitude. Section 16, Indian Criminal Law Amendment Act 14 of 1908 has with one voice been condemned by all the three learned Judges constituting the Full Bench in - Row V.G. v. State of Madras : AIR1951 Mad147 as absolutely void. Raja-mannar C. J. said : 'One could not find a better illustration of the exercise of naked arbitrary power than the original Criminal Law Amendment Act. The Government had only to issue a notification on a subjective satisfaction that an association was unlawful and it was infallible and conclusive. It is impossible to say that the restriction imposed by the original Act is in any sense reasonable within the meaning of Article 19(4) of the Constitution.' Words similar, if

not more severe, have been used by the other two learned Judges Satyanarayana Rao and Viswanatha Sastri JJ., in condemning Section 16, Indian Criminal Law Amendment Act (14 of 1908). When the provision in our present law is equally if not more stringent than that existed in the original Criminal Law Amendment Act in India the attempt to sustain the prosecution against the petitioner and his co-accused by distinguishing the Madras case, even if successful, we are afraid, is sure to give too serious and far-reaching consequence. At one stage in the argument a point was raised that Section 23, Travancore-Cochin Public Safety Measures Act 5 of 1950 is void but it was later conceded that that the point did not directly arise in this case.

However as the case raises important and novel questions and even a decision in favour of the State distinguishing the Madras case will inevitably involve implied or indirect condemnation of all existing law we think the proper course for us will be to refer both the petitions for an authoritative decision by a Full Bench of this Court,....

George Chadayammuri v. State of Travancore-Cochin AIR 1952 Trav-C 217 at pp. 220-221 (B). The Full Bench as stated already held that Section 3, Cochin Criminal Law Amendment Act and the notification issued thereunder void under Article 13(1) of the Constitution. In view of that decision the State did not contend that the convictions and sentence passed against the petitioners should be sustained.

3. The Travancore-Cochin Public Safety Measures Act, 1950 is far more retrograde than the Cochin Criminal Law Amendment Act 1124. In giving the decision in AIR 1952 Trav-C 217 (FB)(B) the Full Bench followed in the main the Madras decision in : AIR1951 Mad147 and that decision has since been confirmed by the Supreme Court; - State of Madras v. V.G. Row : 1952 CriLJ966 . The Travancore-Cochin Government had intervened in that appeal before the Supreme Court and an appeal was also preferred against the Full Bench decision in AIR 1952 Trav-C 217 (B). After the Supreme Court gave the decision in V.G. Row's case (A), upholding the decision of the Madras Court our State withdrew their appeal. The Full Bench decision has hence become final. Regard being had to all

these we do not desire to add more words to hold that Section 23, Travancore-Cochin Public Safety Measures Act, 1950 und the notification issued thereunder as ultra vires the Constitution. It will be mere supererogation to repeat what we said in the former case which dealt with a more benevolent piece of legislation. Holding as we do that Section 23 of the impugned Act and the notification declaring the Cochin Communist Party unlawful, ultra vires the Constitution, we quash the conviction and sentence of, the petitioners by the Courts below. Their bail bonds will stand cancelled. Order accordingly.

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