

In Re: Sundara Mudaliar and ors.

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Court : Chennai

Decided On : Jan-14-1937

Reported in : AIR1937Mad535; (1937)1MLJ473

Appellant : In Re: Sundara Mudaliar and ors.

Judgement :

ORDER

Pandrang Row, J.

1. The petitioners, eight in number, were charged and convicted by the Second Class Magistrate, Mudukalathur, of an offence punishable under the second part of Section 188, Indian Penal Code. The case against them was that they took part in a procession in Abiraman village on 9th August, 1935, at 9-45 P.M., without taking a license as required by an order promulgated by the District Superintendent of Police, Ramnad, under Section 30(2) of the Indian Police Act early in May 1935. The main defence of the petitioners was that they had no knowledge of this order of the District Superintendent of Police and they examined a number of defence witnesses to the effect that they also-the defence witnesses-had no knowledge of the order. The trying Magistrate did not however definitely find whether the petitioners had or had not knowledge of the order in question, but merely remarked that the defence witnesses were interested. In appeal, the Joint Magistrate of Ramnad was of opinion that the only point for him to decide was whether the accused had knowledge of the order. He was of opinion that mere

proof of publication of the order by tom-tom is not sufficient to lead to the inference that the accused had knowledge of the order so far as the charge under Section 188(2), Indian Penal Code, was concerned. He thought however that such knowledge was not required to be proved in respect of an offence punishable under Section 32 of the Indian Police Act. In other words, he drew a distinction between Section 188, Indian Penal Code, and Section 32 of the Indian Police Act, so far as the element of knowledge as an essential ingredient of the offence is concerned. There is really no foundation for this distinction, as will be seen from the decision of the Calcutta High Court in *Debendranath Mandal v. Emperor* I.L.R. (1930) Cal. 879. It is seen from this decision as well as from another decision of the Calcutta High Court, *Ramdas Singh v. Emperor* I.L.R. (1926) Cal. 152, that knowledge of the order is a necessary ingredient of both offences, namely, the offences punishable under Section 188, Indian Penal Code and Section 32, Indian Police Act. It must therefore be said that the modification ordered by the Joint Magistrate of the conviction under Section 188, Indian Penal Code, into one under Section 32 of the Indian Police Act cannot be supported in law. There being no clear finding that any of the petitioners, the accused in the case, had knowledge of the order the disobedience of which is charged against them, their convictions cannot be sustained. They are accordingly set aside and the sentences imposed upon them are also set aside and they are acquitted of the offences charged against them. The fines, if paid, must be refunded to them.