

In Re: Dondapati Ellappa and ors.

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Court : Chennai

Decided On : Jan-29-1943

Reported in : AIR1943Mad464; (1943)1MLJ267

Appellant : In Re: Dondapati Ellappa and ors.

Judgement :

Mockett, J.

1. The appellants were convicted before Mr. W.O. Newsam sitting at Chittoor as a Special Judge under Ordinance No. II of 1942. They were charged with various offences under the Defence of India Rules. In short, they were charged with sabotage of the railways by removing rails and fishplates on the permanent way. I am not concerned in any way with the facts. They were convicted and sentenced each to five years' rigorous imprisonment except in the case of accused 4, who was sentenced to five years' simple imprisonment. They have appealed against their conviction to this High Court and the Public Prosecutor takes the point that no appeal lies. I am quite satisfied that the point is a good one.

2. The ordinance makes provision for the present emergency for the trial of criminal offences and it has constituted certain special tribunals. There are Special Judges and Special Magistrates and Summary Courts as stated in Clause 3. The offences which these tribunals respectively may try are set out in subsequent clauses. Under Clause 7 the powers of a Special Judge are stated to be that he

may pass any sentence authorised by law. Clause 8 is as follows:

If in any proceedings before a Special Judge a person convicted is sentenced to death or to transportation for life, or to imprisonment for a term of seven years or more or though no person is so sentenced, the Special Judge certifies that in his opinion the case has involved questions of special difficulty whether, of law or fact, or is one which for any other reason ought properly to be reviewed,

the proceedings shall be submitted for review by a person nominated in this behalf by the Provincial Government which person shall be chosen from the Judges of the High Court having jurisdiction over the area for which the Special Judge is appointed, and the decision of that person shall be final.

In this case the person nominated must necessarily be a Judge of the High Court of Judicature of Madras. Mr. Newsam as a Sessions Judge was appointed as a Special Judge. I find no difficulty in understanding the meaning and intention of Clause 8. It states that in the case of a death sentence or sentence of transportation for life or to imprisonment for seven years and in cases in Madras where the Special Judge thinks that there are questions of special difficulty, the proceedings will be reviewed by a person nominated by the Provincial Government and chosen from the Judges of the High Court of Madras. It is unnecessary to discuss in detail the sections immediately following. It is enough to say that they deal with Special Magistrates and their powers. Clause 13 provides for an appeal against a sentence of transportation or imprisonment for more than two years passed by a Special Magistrate and of the following clauses, Clause 15 deals with the Summary Courts, and Clause 19 provides for an appeal from the Summary Court to certain Magistrates named in the clause. Clause 6 deals with the procedure before the Special Judges and provides generally that the procedure prescribed in the Code for the trial of warrant cases shall be followed. Sub-clause (2) says,

In matters not coming within the scope of Sub-section (1), the provisions of the Code, so far as they are not inconsistent with this Ordinance, shall apply to the proceedings of a Special Judge, and for the purposes of the said provisions the Court of the Special Judge shall be deemed to be a Court of Session.

Having, as briefly indicated, provided 'for tribunals and procedure both by way of original trial and by way of appeal, Clause 26 is as follows,

Notwithstanding the provisions of the Code, or of any other law for the time being in force, or of anything having the force of law, by whatsoever authority made or done, there shall, save as provided in this Ordinance', be no appeal from any order or sentence of a Court constituted under this Ordinance and, save as aforesaid, no Court shall have authority to revise such order or sentence, or to transfer any case from any such Court, or to make any order under Section 491 of the -Code or have any jurisdiction of any kind in respect of any proceedings of any such Court.' The marginal note to that clause is ' Exclusion of interference of other Courts.

3. Rao Bahadur V. T. Rangaswami Aiyangar has argued that in spite of these provisions, it cannot be said that the right of appeal from a Special Judge has been expressly taken away, that the right of appeal being precious for the liberty of the subject cannot be taken away by implication and that whatever the framers of the Ordinance may have intended, they have in fact not achieved their purpose of preventing an appeal from a conviction by a Special Judge being heard by the High Court in the ordinary manner under the Criminal Procedure Code. As this is a matter of considerable importance, I listened for some time and with all attention to Mr. Rangaswami Aiyangar's arguments. But I have not the slightest doubt that it is as clear as it can possibly be that Ordinance No. II of 1942 expressly deprives a person convicted before a Special Judge of the right of appeal in the ordinary way. The necessary meaning of the wording of Clause 8 must be that the right of appeal is abrogated and that only in certain cases can convictions be reconsidered at all and that too not by the High Court as such but by a persona designata by the Provincial Government, namely, the High Court Judge sitting under the provisions of the Ordinance. But Clause 26 makes any argument by inference unnecessary, because that clause expresses comprehensively and as clearly as is possible the intention of the Ordinance to exclude every form of appeal by any person convicted under this Ordinance, unless such appeal is expressly provided for and examples of those are to be found in Clause 13--appeal from the Special Magistrate--and Clause 19--appeal from a Summary Court. There is no appeal from a Special Judge. Instead, the provisions with regard to review are provided in

Clause 8 and then only in certain cases. In this particular case, the sentence being less than seven years, it will be seen that the provisions of Clause 8 are not applicable for the purpose of review by the Judge chosen for that purpose by the Provincial Government. I am told that there is no previous decision on this point. That may well be because the provisions of the Code and the Ordinance are so clear that no one has thought of arguing otherwise.

4. In the result, I hold that no appeal lies which disposes of what is now before me purporting to be an appeal.

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