

The Crown Prosecutor Vs. G. Kothandaramiah

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Court : Chennai

Decided On : Jan-10-1910

Reported in : (1910)20MLJ402

Appellant : The Crown Prosecutor

Respondent : G. Kothandaramiah

Judgement :

1. The appeal is by the Crown against an order of the 2nd Presidency Magistrate acquitting Mr. G. Kothandaramiah, Manager of a journal called the International Police Service Magazine of a charge preferred against him under Section 64 of the Post Office Act. On the 29th October 1908 the accused sent a copy of the Magazine by value payable post to Mr. Webster, Superintendent of Police, Haldwani, signing a declaration to the effect that the article was sent in execution of a bona fide order received by him. Without such declaration being made the Post Office would not, by reason of a rule issued under the Act by the Governor-General in Council, have accepted the V.P. article for transmission to the addressee. Mr. Webster refused to receive the article on the ground that he never gave an order for it and moved for the prosecution of the sender for making a false declaration to the contrary in violation of the Post Offices Act. The Magistrate found on the evidence that the accused had received no order from Mr. Webster to send the V. P. article and therefore the declaration made by the accused was false. He, however, thought that the prosecution must fail because the Post Offices Act itself, that is the section in the body of the Act, does not require such

declaration to be made and therefore the words of Section 64 which says ' whoever being required by this Act to make a declaration, etc.,' cannot sustain the charge because the rule framed by the Governor-General in Council is not part of the Act though properly framed under powers conferred upon the Act.

2. This view is obviously wrong. According to the general canon of interpretation, when a statute empowers the Government or any other authority to frame rules or bye-laws for the purpose of carrying out the objects of the statute, rules or bye-laws so framed must, if within the scope of such powers, be regarded as part of the enactment. And in this case Section 74, Clause 3, of the Act expressly lays down that rules made under the Act shall have effect as if enacted by the Act. Section 35 gives power to the Governor-General in Council to make rules directing the Postal authorities not to receive a V.P. Article for transmission unless its sender makes a declaration that it is sent in execution of a bona fide order received by him and Section 74, Clause (1), gives him power generally to make rules for the purpose of carrying out the objects of the Act. The rule which the accused is said to have violated was made in pursuance of such powers. (See Rule No. 68 Notification dated the 5th of August 1908, Gazette of India, Part I, August 1908, page 747). But it is argued by Mr. Sundara Aiyar who appealed in support of the Magistrate's order that that is not 'requiring" a declaration within the meaning of Section 64. It is somewhat difficult to appreciate the point of this-argument. If it be that the Postal authorities cannot, by an order-passed under the Act, compel a person to make any declaration on the pain, if he refuses to make the declaration, of his being guilty of the offence of disobeying a lawful order within the meaning of the Penal Code, that may be conceded. But that is not the question here. What is clearly required by the Act is that if a person wishes to utilize the service of the Post Office for sending a V. P. article and makes a declaration to obtain such services he shall make a true declaration. If he makes a false declaration, or a declaration which he does not believe himself to be true, he makes himself liable to the penalty prescribed by Section 64.

3. Another branch of Mr. Sundara Aiyar's argument, so far as we are able to follow it, is that Clauses 1 and 2 of Section 74 should be read together and reading them together, he contends that the general power to frame rules conferred by Clause

(1) must be confined to making such rules as are contemplated by Clause (2) and not rules requiring a declaration within the 'contemplation of Section 64. But there is no reason whatever for cutting down in this manner the operation of the general words of Clause (1) of Section 74. Clause (2) of that section is obviously meant to meet such cases for which no penalty is prescribed by any of the sections of the Act itself. Besides, as already pointed out Section 35 expressly authorises the Governor-General in Council to make such a rule as the one in question.

4. It has also been contended before us that upon the facts proved in the case we ought to hold that the declaration made by the accused was either a true declaration or one which he had reason to believe to be true. It is not suggested that Mr. Webster at any time by writing or by word of mouth gave order for the V.P. article or for any previous issue or issues of the magazine to be sent him. But it is urged that since he did not refuse to receive, nor returned by post any of the previous issues sent to him, and received intimation through slips attached to some of those issues and by means of postal cards, that he had been enrolled as a subscriber and that the issue in question would be sent to him as V. P. article and yet made no protest and in fact glanced at some of the numbers of the journal, it should be held that the accused had reason to infer that he had received an order from Mr. Webster to send the V.P. article. Now an order cannot be said to have been received by one person from another to send an article by post unless the latter is shown to have communicated a request or a desire to the former to that effect. The communication of such a request need not perhaps be made by means of words written or spoken and may be inferred from the previous conduct of the addressee. For instance if Mr. Webster had paid for the issue which was sent to him V.P. and continued to receive further issues of the magazine say for about a year and then an issue was sent to him V. P. for the amount of the subscription for that year it might well be that we could infer an order under such circumstances. But Mr. Webster, as his evidence shews, treated the numbers of the magazine which were delivered to him in the same manner as ordinary trade circulars and threw them away. It is true that he did not return the articles nor did he reply to any of the accused's postal cards, but there was no obligation on him to do either of these things. It may be that the accused interpreted Mr. Webster's silence as indicative of willingness on his part to pay for the numbers sent to him.

But even if so, he could not reasonably have thought that he had received an order from Mr. Webster to send the V. P. article. The case of *Gulam Rebhani v. Ring* (1909) 6 A.L.J. 481 referred to by the Magistrate was a very different case. There, there was an order to send the articles in question insured for a certain amount and it was actually sent V.P. but uninsured for a somewhat larger amount. There can be no doubt in this case that the accused has offended against the Post Office regulations and we convict the accused under Section 64 of the Act. The learned Crown Prosecutor tells us that the object of the appeal is to obtain a ruling as to whether the Magistrate's view of the law is correct, and he does not press for a very heavy penalty. We sentence the accused to pay a fine of Rs. 10 (Rupees ten) or in default to 5 (five) days' simple imprisonment.

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