

In Re: Thammana Ramalingayya

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Court : Chennai

Decided On : Jul-10-1942

Reported in : AIR1942Mad723; (1942)2MLJ357

Appellant : In Re: Thammana Ramalingayya

Judgement :

ORDER

Horwill, J.

1. The petitioner was convicted by the Joint Magistrate of Rajahmundry of an offence punishable under Rule 19(1)(a) and (5) of the Defence of India Rules of sending by post to a destination outside British India (to wit the United States of America instructions for utilising any means of secretly conveying information (namely a Code)'.

2. Two points are raised in this petition. The first is that as the letter was intercepted by the Censor at Bombay (or Madras) the letter was not sent. The second contention is that this Code is not a secret one.

3. I think it correct to say that an article is sent if it is started on its way to its destination. For instance, if A gives a book to a messenger with instructions to give it to B I think it will be correct to say that A sent the book to B even though that messenger was waylaid and the book taken from him. One can say that the book was sent, but that it did not arrive at its destination. Any other interpretation would

make rule 19 almost nugatory; for there would ordinarily be no detection when the missive reached its destination.

4. The Code used by the, petitioner is called Monte Amiata's Telegraphic Code. It is issued by a company registered in Rome known as Monte Amiata S. A. M. Just inside on the fly leaf of the Code-book is printed

This Code is for private use and not for public sale, but only for distribution amongst the correspondents of the Momte Amiata S.A.M.' for use in Commercial intercourse with the quicksilver and cinnabar trades, to which it exclusively refers.

The petitioner was not a client of Monte Amiata S.A.M., nor was his correspondence in any way connected with the quicksilver and cinnabar trades.. If it had been, he might have contended with some reason that this Code was a well-known and recognised Code; but it is certainly not a Code in ordinary use for the business for which the petitioner says he used it. A Code does not cease to be a secret Code because a number of other persons are using it, if it is not generally known or used by persons engaged in the business for which that Code in question is employed.

5. I therefore agree with the Courts below that the petitioner was guilty of the offence with which he is charged. The sentences in this case are ridiculous. For such an offence, an accused person can be punished with imprisonment for a term extending to 3 years or with fine or with both. If the Joint Magistrate or the Sessions Judge thought that it was unnecessary or undesirable to punish the petitioner with imprisonment, there was no necessity to sentence him to imprisonment till the rising of the Court. Even in cases where the alternative of fine is not permissible by law, it is objectionable to sentence persons to imprisonment till the rising of the Court; because it is not a form of imprisonment recognised by law, and it is used to circumvent the provisions of law that require a sentence of imprisonment in jail for a particular term. Where the law permits of a sentence of fine as an alternative, there is no need for a sentence of imprisonment at all if it is thought that the offence does not merit it.

6. As to the quantum of fine,, it may be true, as the learned Sessions Judge seems to think, that the petitioner is entirely innocent of any intention to injure the state during the present emergency; but I do not think it right on that account to impose no punishment at all--which, is what the learned Sessions Judge has done. It must be almost impossible in the majority of cases under this rule to be sure of the accused's innocent motive. Communications with persons outside India even when they were intended to prejudice the state,, would probably not contain in any one letter anything that was obviously injurious. In the first instance, some simple instructions such as the petitioner sent in the present case would: be sent. Further instructions issued from time to time by similar letters, each apparently harmless in itself, might only reveal their true nature when read with the other letters of the series.

7. I therefore change the sentence of the petitioner from imprisonment till the rising of the Court to a fine of Rs. 25.

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