

In Re: Ramaswami Chettiar

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Court : Chennai

Decided On : Nov-05-1948

Reported in : (1949)2MLJ335

Appellant : In Re: Ramaswami Chettiar

Judgement :

ORDER

Rajagopalan, J.

1. There need be no dispute about the facts of the case at this stage. The accused-petitioner was a resident of Nochipalayam and on 6th March, 1947, he had in his possession 171/2 bags of paddy. P.W. 1 the Firka Supply Officer, reached the house of the accused at about 8-30 p.m., or possibly a little later. P.W. 1. had come to that village that day to procure the paddy, apparently, the surplus paddy within the meaning of G.O. Mis. No. 467, dated 15th June, 1946, published at page 526 in the Fort St. George Gazette, dated 25th June, 1946, (part II). P.W. 1 had a list with him, the ' D ' list apparently containing the names of the persons from whom P.W. 1 had to obtain that surplus paddy. It was a common ground that the name of the accused was not in that ' D ' list. When P.W. 1 entered the house of the accused and found 171/2 bags of paddy, he asked the accused if the latter had a permit for the possession of those bags. When the accused stated that he had no such permit P.W.1 asked the accused to surrender the entire quantity, but the accused resisted that claim. After recording Exhibit P-1, the

statement the accused made, which, however, he refused to sign, P.W. 1 declared his intention of seizing the stock and went inside the house, apparently, to effect that seizure. P.W. 1 himself explained that what he meant by seizure was ' to seize and remove the stock '. When P.W. 1 went inside the house the accused locked the outer door. P.W. 1 had to stay inside that house till he was released the next morning by the village munsif, P.W.4, who had to open the lock on the front door.

2. The appellant was convicted under Section 342 and Section 186, Indian Penal Code. The conviction under Section 186, Indian Penal Code, cannot be sustained. There is nothing in the G.O. No. 467, dated 15th June, 1946, which I can construe as authorising the Firka Supply Officer to seize any paddy he found in the house of any ryot. As I have already pointed out it was common ground that the name of the accused was not included in the ' D ' list. There was nothing to indicate that any portion of 171/2 bags of paddy which the accused had in his possession was surplus within the meaning of those rules. What exactly P.W.1. meant by a permit was not clear from the evidence on record. No doubt Rule 5 of the rules promulgated in G.O. No. 467 states,

that the officer could seize stocks of such paddy or rice in respect of which he has reason to believe that a contravention of this order has been committed.

What constituted the contravention of an order? Was it possession of surplus as defined by the rules or was it a refusal to surrender that surplus? In the absence of proof that any portion of the 171/2 bags of paddy constituted such surplus P.W. 1 could have no reason to believe that possession of any portion of that stock was in contravention of the order. From the rules that have been brought to my notice, I am unable to gather any authority for P.W.1 to have seized and removed the paddy in the possession of the accused on the night of 6th March, 1947. Quite obviously P.W.1 was not discharging his function as a public servant when he entered the house of the accused that night with the avowed intention of taking away the 171/2 bags of paddy. The conviction and sentence under Section 186, Indian Penal Code, are set aside.

3. The next question is whether the conviction under Section 342, Indian Penal Code, can be sustained. Mr. Jayarama Aiyar for the petitioner relied on

Doraiswami Pillai v. Emperor : (1903)13MLJ285 , which was followed by Govinda Menon, J., in Muni. Reddi v. Emperor : AIR1948 Mad472 , and contended that Section 104, Indian Penal Code, should apply and exonerate the accused of all criminal liability in locking up P.W. 1 Section 99, Indian Penal Code, which bars the right of private defence against an act attempted to be done by a public servant acting in good faith under colour of his office though that act may not strictly be justifiable by law, may not help the prosecution in the absence of proof of good faith. Section 52, Indian Penal Code, lays down,

Nothing is said to be done or believed in ' good faith ' which is done or believed without due care and attention.

Quite obviously, P.W.1, who was new to his job, was not even familiar with the rules, nor was he aware of the exact scope of G.O.No. 456. He had, apparently, no idea of what constituted stock or what constituted surplus stock. But Section 104, Indian Penal Code, will have to be read subject to the provisions of Section 105, Indian Penal Code. The accused had certainly the right of private defence against the trespasser and in law what P.W. 1 committed when he entered the house of the accused with the intention of wrongfully taking the paddy was a criminal trespass--and the accused had a right to eject the trespasser. The right of private defence to the property terminated when the reasonable apprehension of danger to the property terminated. Though Section 105, Indian Penal Code specifies

the right of private defence of property against criminal trespass continues as long as the offender continues in the commission of criminal trespass

it cannot be held that P.W. 1 was guilty of continued criminal trespass; that he had to stay in the house till the morning was not of his seeking. In keeping P.W. 1 locked up far beyond the limits dictated by the need to protect the property and to prevent criminal trespass the accused committed an offence punishable under Section 342, Indian Penal Code.

4. The conviction of the appellant under Section 342, Indian Penal Code, is confirmed. Considering that it was P.W.1 who had put himself in the wrong in the

first instance, I do not think it is necessary to maintain the sentence that was awarded to the appellant. The sentence is reduced to the period of imprisonment already undergone.

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