

In Re: Chinnavan Rowther Alias Sahul Hamid

In Re: Chinnavan Rowther Alias Sahul Hamid

SooperKanoon Citation : sooperkanoon.com/791104

Court : Chennai

Decided On : Mar-21-1944

Reported in : AIR1944Mad479

Appellant : In Re: Chinnavan Rowther Alias Sahul Hamid

Judgement :

Leach, C.J.

1. The petitioner was charged in the Court of the Additional First Class Magistrate of Dindigul with having attempted to smuggle rice from the District of Madura to the State of Travancore in violation of a notification issued by the Additional District, Magistrate of Madura, dated 18th February 1943, prohibiting the export of rice to places outside the Madura District. The Magistrate found the charge to have been proved and sentenced the petitioner to undergo rigorous imprisonment for a period of six months. An appeal to the Sessions Judge was dismissed. The accused has now applied to this Court to revise the order of the Sessions Judge. He does not challenge the findings of fact. He confines his case to the contention that the notification issued by the Additional District Magistrate prohibiting the export of rice from the Madura District did not apply in the circumstances. He maintains that he could only have been charged under an earlier notification issued by the Provincial Government, and as this had not been done the prosecution was illegal. Rule 81 (2), Defence of India Rules, empowers the Provincial Government so far as appears to it to be necessary or expedient for securing the defence of British India or the efficient prosecution of the war or for

maintaining supplies and services essential to the life of the community by order to provide inter alia for regulating or prohibiting the transport of articles or things kept for sale. Section 2 (5) , Defence of India Act, states that a Provincial Government may by order direct that a power or duty which by rule made under Sub-section (1) is conferred or imposed on the Provincial Government shall, in such circumstances and under such conditions as may be specified, be exercised or discharged by an officer or authority, not being an officer or authority subordinate to the Central Government. Rule 81 (4) says that if a person contravenes an order made under the rule he shall be punishable with imprisonment for a term which may extend to three years or with fine or both. Rule 121 provides that a person who attempts to contravene, or abets, or attempts to abet, or does any act preparatory to, the contravention of any of the provisions of the rules or of any order made thereunder, shall be deemed to have contravened that provision, or, as the case may be, that order.

2. By an order dated 13th June 1942, the Governor of Madras, in exercise of the powers conferred by Sub-rule (2) of Rule 81, Defence of India Rules, passed an order prohibiting a person on or after 1st July 1942 from transporting paddy or rice from the Province of Madras to any place outside the province except under and in accordance with the terms and conditions of a permit issued by the special officer for prices, Madras, or any other officer specially authorised by the special officer in this behalf. An exception was made in the case of a person transporting paddy or rice not exceeding three maunds in weight for private consumption. On 27th July 1942 the Provincial Government delegated its powers conferred by Rule 81 and certain other rules to all Additional District Magistrates and Sub-Divisional Magistrates within their respective jurisdictions. In pursuance of this delegation the Additional District Magistrate of Madura on 18th February 1943 notified the following order made by him:

No persons shall export any amount of paddy or rice, however small, from any place in Madura District to places outside its limits except under a permit issued by the Collector of Madura, or by an officer authorised by him.

The case for the petitioner is that he could not be charged under the notification issued by the Additional District Magistrate of 18th February 1943, but only under the notification issued by the Provincial Government on 13th June 1942, because he was engaged in transporting rice out of the province into an Indian State, not from one district of the Madras Presidency to another. We are unable to accept this argument. It has not been suggested that Rule 81, Defence of India Rules, is in any way ultra vires, nor is it suggested that the legislative authority had no power to insert Sub-section (5) of Section 2 in the Act. It has in fact been accepted that the Provincial Government has all the powers conferred by Rule 81 and that it has the power of delegation. It has in this case delegated to the Additional District Magistrate its power of controlling the transport of paddy and rice to places outside the district. The Additional District Magistrate has passed an order prohibiting the export of paddy or rice from the Madura district without a permit issued by the proper authority. The validity of this order is not, or cannot be, called in question. A person offends against it if he removes or takes any steps towards the removal of paddy or rice from the district without a permit. The petitioner offended against this order. He was caught in an attempt to transport rice from a place in the district to a place outside the district. It matters not whether he intended to take it to the State of Travancore or to either of the adjoining districts of Tinnevely or Ramnad. It was not necessary to mention the State of Travancore in the charge; and the fact that it was mentioned does not in any way change the position. The Additional District Magistrate of Madura was lawfully authorised to prohibit the transport of rice or paddy from that district without a permit and the petitioner contravened that order. The question whether the Provincial Government could in this case have itself taken action under its own notification does not arise and therefore does not call for discussion. As we hold that the notification of the Additional District Magistrate of 18th February is intra vires of his powers, the petitioner has been rightly convicted. Consequently his petition will be dismissed.