

In Re: Marutha Goundan Alias Kulla Goundan

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Court : Chennai

Decided On : Nov-30-1950

Reported in : AIR1952Mad504; (1951)IMLJ510

Judge : Govinda Menon, J.

Acts : Madras Prohibition Act, 1937 - Sections 4(1); Hemp Drug Rules, 1936 - Rule 23; Madras Prohibition Supplementary Act, 1941 - Sections 2; Indian Abkari Act

Appeal No. : Cr. Revn. Case No. 1287 and Cr. Revn. Petn. No. 1215 of 1949

Appellant : In Re: Marutha Goundan Alias Kulla Goundan

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : R.V. Raghavan, Adv.

Judgement :

ORDER

Govinda Menon, J.

1. Under the Hemp Drug rules dated 1-2-1936 framed under the Abkari Act, there is Rule 23 which allows any person to be in possession of not more than three tolas of ganja, in the districts of the State of Madras except tn the District of Madras & the Agency tracts of Ganjam Vlzagapatam fe East 'Godavari. The

accused here has been convicted under Section 4(1)(a), Madras Prohibition Act, for being in possession of 1/16 tola of ganja & the lower Cts. have held that he is guilty of the offence with which he is charged. In a F. B. decision in 'Adi Lakshmiammal' in re', : AIR1941 Mad533 it has been held that in so far as the Prohibition Act repeals the provisions of the Madras Abkari Act, they have not been reserved for the assent of the Governor-General or for the signification of His Majesty's pleasure & therefore the Madras Legislature had no power to interfere with the Madras Abkari Act so far as possession of dangerous drug is concerned. In that view, the P. B. held that Section 4(1) (a) as it stands being entirely repugnant to an existing law is completely 'ultra vires' so far as possession of ganja or any other dangerous drug is concerned. At p. 44 of the report, Leach C. J. delivering the judgment of the Bench observed as follows :

'The Hemp Drug rules framed under the statutory authority were notified on 1-2-1936. By Rule 23 a person may have in his possession in Agency Tracts of Ganjam, Vizagapatam and East Godavari any quantity of ganja not exceeding two tolas & elsewhere in the presidency, any quantity exceeding three tolas. Therefore, before the application of the Prohibition Act to the North Arcot district a person there could lawfully possess three tolas of ganja'.

2. As a result of this observation the F. B. set aside the conviction of a person who was found to be in possession of ganja not exceeding three tolas in the District of North Arcot. This decision would have applied in its entirety to the facts of the present case had it not been for the fact that the Madras Prohibition Supplementary Act XI (11) of 1941 rectified the mistake pointed out by the F. B. Madras Act XI (11) of 1941 by Section 2 provided that the provisions of the Madras Prohibition Act in regard to intoxicating drugs shall apply to every intoxicating drug as therein specified although such drug may also be a dangerous drug. In view of this rectifying clause, it cannot be held that the rules framed under the Hemp Drug rules (Sic) are in force after the enactment of the Madras Prohibition Supplementary Act XI (11) of 1941. The conviction of the petitioner must therefore be held to be right. But the sentence of two months Rule I. in the circumstances of the case seems to be excessive for the possession of 1/16 tolas of ganja. It has been brought to my notice that the accused has undergone a period

of ten days sentence prior to his being released on bail. I would therefore reduce the sentence to the period already undergone. Otherwise the petn. is dismissed.

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