

In Re: V. Bhuvaraha Aiyangar

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SooperKanoon Citation : sooperkanoon.com/795132

Court : Chennai

Decided On : Oct-31-1941

Reported in : (1941)2MLJ1014

Appellant : In Re: V. Bhuvaraha Aiyangar

Judgement :

ORDER

Alfred Henry Lionel Leach, C.J.

1. On the 1st October, 1941 the petitioner delivered a speech at a meeting held in open air at Negapatam and in the course of it made statements which it is alleged constituted offences specified in the rules framed under the Defence of India Act. A police officer was present at the meeting and it is said that he made notes of the petitioner's statements. On the 16th October, the police filed in the Court of the Joint Magistrate of Negapatam a first information report in which the statements alleged to have been made by the petitioner on this occasion were set out. Immediately after the report had been presented the petitioner was arrested and a charge sheet prepared in which it was alleged that the petitioner had committed offences under Rule 34(6)(e)(g)(k) and (p) read with Rule 38(1)(a). Rule 38(1)(a) states that no person shall, without lawful authority or excuse, do any prejudicial act. Sub-rule (6) of Rule 34 indicates what is meant by a 'prejudicial act'. Clause (e) of that sub-rule says that it is a prejudicial act to bring into hatred or contempt, or to excite disaffection towards His Majesty or the Crown Representative or the Government established by law in British India, or in any other part of His

Majesty's dominions. Clause (g) states that it is a prejudicial act to cause fear or alarm to the public or to any section of the public. Clause (k) provides that it is a prejudicial act to influence the conduct or attitude of the public or of any section of the public in a manner likely to be prejudicial to the defence of British India or to the efficient prosecution of war. Clause (p) says that it is a prejudicial act otherwise to prejudice the efficient prosecution of the war and the defence of British India, or the public safety or interest. The statements alleged to have been made by the petitioner would appear to come within these rules.

2. On the 20th October, the petitioner applied for bail, but his application was rejected by the Joint Magistrate by reason of the provisions of Rule 130-A and the Sessions judge agreed with the Joint Magistrate when a similar application was made to him. The petitioner asks this Court in the exercise of its revisional powers to set aside the orders of the Joint Magistrate and the Sessions Judge and grant him bail.

3. The basis of the petition is the allegation that Rule 130-A (b) is ultra vires the Central Government. The rule reads as follows:

Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no person accused or convicted of a contravention of these rules shall, if in custody, be released on bail or on his own bond, unless--

(a) the prosecution has been given an opportunity to oppose the application for such release; and

(b) where the contravention is of any such provision of these rules as the Central Government may by notified order specify in this behalf, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such contravention.

If Clause (b) contains a valid provision the Court must be satisfied that there are reasonable grounds for believing that the accused is innocent before releasing him on bail. It is said that this provision contravenes the fundamental principle of English law that a person is presumed to be innocent, until it is proved that he is

guilty and that the Defence of India Act and the rules framed thereunder do not permit of a departure from the provisions of the Code of Criminal Procedure with regard to bail applications.

4. With regard to the first contention, it is to be observed that neither the Act nor the rules indicate any attempt to depart from the principle of English justice that a person is presumed to be innocent until he has been proved to be guilty. Rule 130-A merely indicates that where a person is accused of an offence under the rules the Court may not liberate him on bail pending the trial, except when it has reasonable ground to believe that he is innocent. When the Court comes to decide the case it must acquit the accused if the prosecution has failed to establish the charge.

5. Examination of Section 2 and Section 3 leaves no doubt in our minds that Rule 130-A is *infra vires*. Sub-section (1) of Section 2 states that the Central Government may, by notification in the Official Gazette make such rules as appear to it to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community. Sub-section (2) says that without prejudice to the generality of the powers conferred by Sub-section (1), the rules may provide for, or may empower an authority to make orders providing for, all or any of certain specified matters. The fact that the specified matters do not include bail applications does not mean that the Central Government cannot make rules with regard to bail applications if it considers that in the public interest it is necessary to do so. The general power conferred by Sub-section (1) is left entirely unaffected by what is stated in Sub-section (2). Moreover, Sub-section (3) (1) of Section 2 says that the rules made under Sub-section (1) may further provide for the arrest and trial of persons contravening any of the rules. This provision in itself appears to be wide enough to cover Rule 130-A without any recourse to Sub-section (1). If power is given to make rules with regard to the trial does this not imply power to make rules with regard to the custody of the accused pending trial? But even if it does not the scope of the general powers conferred by Sub-section (1) remains unaffected.

6. Mr. Bhashyam Aiyangar has laid great stress on Section 14 which reads as follows:

Save as otherwise expressly provided by or under this Act, the ordinary Criminal and Civil Courts shall continue to exercise jurisdiction.

This section has been inserted because power is given to the Provincial Government in Chapter III, which embraces Sections 8 to 13, to constitute special tribunals to try offences under the rules framed by the Central Government by virtue of its powers under the Defence of India Act. Special tribunals have not been set up and all offences under the Defence of India Act are still tried in the ordinary Criminal Courts. That does not, however, mean, that trials in the ordinary Criminal Courts are not subject to the special provisions of the Act. Section 3 states that a rule made under Section 2, or an order made under such a rule, shall have effect notwithstanding anything inconsistent therewith is contained in an enactment other than the Defence of India Act or in an instrument having effect by virtue of an enactment other than the Act. In respect of offences which come within the rules framed under the Defence of India Act that Act governs all other statutory provisions and therefore the provisions of the Code of Criminal Procedure with regard to bail do not here apply if Rule 130-A is *infra vires*, which we hold it to be.

7. It is conceded that in placing the Defence of India Act in the statute book the Central Legislature acted within its powers. Therefore the Joint Magistrate and the Sessions Judge acted in accordance with law in rejecting the petitioner's application for bail. In the first information report and the charge sheet grave charges are alleged against the petitioner by a responsible police officer and at the stage at which the applications for bail were made it was impossible for the Magistrate or the Sessions Judge to be satisfied that there were reasonable grounds for believing that the petitioner was not guilty of a contravention of the rules, and that is the position now. Therefore the petitioner is not entitled to ask the Court to release him on bail. In these circumstances the petition will be dismissed.