

In Re: Etakandan Kunhokker

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Court : Chennai

Decided On : Jul-19-1923

Reported in : 76Ind.Cas.187; (1923)45MLJ473

Appellant : In Re: Etakandan Kunhokker

Judgement :

Ramesam, J.

1. This matter relates to the 3rd accused in Special Case No. 379 of 1922 on the file of the Ordinance Special Magistrate, Malabar. He was charged with others for an offence under Section 395, I.P.C. The case was ultimately withdrawn against him and he was acquitted. But, a warrant of commitment under Regulation II of 1819 was issued and he was detained in custody under it. Thinking he was convicted, he appealed to this Court. Our brothers Ayling and Odgers, JJ., who heard the appeal dismissed it as incompetent but, entertaining doubts as to the applicability of Regulation II of 1819 to a case of this nature, they ordered notice to the Public Prosecutor to show cause why a writ of Habeas Corpus should not be issued.

2. We are indebted to the arguments of Mr. K.V. Krishnaswami Iyer who appeared for the accused amicus curiae and of the Public Prosecutor who appeared to show cause.

3. In *Queen v. Amir Khan* (1871) 9 B L.R. 36 it was held that commitment under the analogous Bengal Regulation III of 1818 was not a judicial proceeding. Regarding a similar commitment under Regulation II of 1819, as an executive Act of Government, the question is whether it is legal in this case and we can issue a writ of Habeas Corpus for the release of the committed person.

4. Mr. K.V. Krishnaswami Iyer's contentions are:

(1) As the accused has not been convicted, the Order of the Government does not apply. The Government order does not expressly refer to convicted persons only, nor as we read it, can it be so confined by implication. No doubt the District Magistrate's Circular has not construed the Government Order but we are not dealing with the District Magistrate's Circular but the Government Order.

(2) He next contends that, once Judicial Proceedings are started the Regulation becomes inapplicable. We do not agree with this construction of the Regulation. We are of opinion that even after proceedings are started against a person and before they are finished, it is open to the Government to withdraw them and take action under the Regulation.

(3) It is next contended that the reasons mentioned in the preamble, on account of which action can be taken by the Governor-in-Council under Section 2 of the Regulation do not exist in this case. We think that the statement in the warrant that such reasons exist in the opinion of the Governor-in-Council is sufficient and conclusive (see Section 2, Clause 3) and it is not open to us to consider the correctness of the statement.

5. I may add it is not for us to consider the propriety of the application of the Regulation on the ground that the accused is a lad of ten or eleven. The rule must be discharged.

Wallace, J.

6. The real point for decision in this case is whether the fact that a judicial proceeding has already been started against an individual deprives the Governor-

in-Council of the power of taking proceedings against him under Regulation II of 1819. For the appellant reliance is placed on the wording of the preamble and of Section 2 of the Regulation. As to the language of the preamble, I think the words 'When such proceeding may for other reasons be inadvisable' wide enough to cover a case like the present where a Judicial Proceeding has been instituted and has even proceeded as far as a finding by the Judge that the appellant was guilty, but where a formal conviction and sentence have not been passed, since such conviction and sentence were considered inadvisable by the Governor-in-Council for reasons stated in the G.O. Public Memorandum No. 471, dated 21-7-1922. The question of the propriety of these reasons of State policy cannot in my opinion, be opened in this Court.

7. As to Section 2 of the Regulation, I am unable to see how it applies. The point of time when ulterior proceedings of a Judicial nature are not immediately under contemplation is the point of time when the Governor-in-Council decides that the individual should be placed under personal restraint. In a case like the present, when the Governor-in-Council has decided that further Judicial Proceedings are 'Unadvisable' and has decided to issue a warrant of commitment under Section 2 he, ipso facto, has abandoned all idea of ulterior proceedings of a Judicial nature. I cannot see therefore how the wording of Section 2 stands in the way of the issue of a warrant.

8. I see nothing in the proceedings of the Governor-in-Council which violates the terms of the Regulation, or which is contrary to any other Law. There is no ground therefore for this Court to issue a writ of Habeas Corpus.