

In Re: Public Prosecutor

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Court : Chennai

Decided On : Dec-15-1943

Reported in : AIR1944Mad320

Appellant : In Re: Public Prosecutor

Judgement :

Leach, C.J.

1. This is an application by the Provincial Government for an order expunging from the judgment of the Sessions Judge of Chittoor certain remarks made by him in Criminal Application No. 52 of 1943. The appellant was a village shopkeeper. On 9th October 1942, he was discovered to have in his possession nine bags of paddy weighing 18 maunds, and seven bags of rice weighing 17 1/2 maunds. He had no licence. A licence was required for the storage of more than twenty maunds. As he had stored grains in excess of 20 maunds, he was prosecuted under the Food Grains Control Order, which became law on 22nd June 1942. He was fined Rs. 50 and the 16 bags of grains, valued at Rs. 300 were forfeited to the Government. He did not challenge the validity of his conviction; but he appealed against the order of forfeiture. The appeal was allowed because the offence has been committed on 9th October 1942, and the power to forfeit had not been conferred upon Magistrates until 5th February 1943, when an amendment was made in Rule 81 (4), Defence of India Rules, in order to give such power. The appeal was rightly allowed, but the Sessions Judge did not confine himself to the legal question involved. In the course of his judgment he said:

Moreover, not all breaches of a new law of this sort should be prosecuted as a matter of course. Where the breach is due to ignorance of the law and not to deliberate, evasion of the law, the sensible course would be to give merchants a caution and a reasonable opportunity to obtain a licence. A new order designed to help the public should be ushered in with consideration and tact coupled with firmness. The co-operation of the public in enforcing these new orders is best gained by such a reasonable policy. On the other hand, to impose severe penalties for unwitting infringement in the early days of the order is calculated to alienate co-operation and to create the unpleasant impression that officials take a positive pleasure in hunting non-officials. That is deplorable. Officials and the laws which it is their duty to enforce are intended to help and not to hinder or to alienate the public.

This is the passage which the Court is asked to expunge. We have no doubt that in a pro-per case the Court has power to expunge a part of a judgment of a Court subordinate to it; but it will only take such action when the words objected to are not relevant to the case and are of a scandalous or very improper nature. In *Panchanan Banerji v. Upendranath Battacharjee* : AIR1927 All193 , Sulaiman J. (as he then was) said that he saw no reason why the inherent power of the Court should not comprise a power to order a deletion of passages which are either irrelevant or inadmissible and which adversely affect the character of persons before the Court. We agree, but the observations of the Sessions Judge of Chittoor do not affect the character of any particular person. They are more in the nature of a homily, although perhaps not a well chosen one. In *In Re: Advocate-General, Punjab* A.I.R. 1939 Lah. 174, Din Mohammed J. said, Courts are not expected to play to the gallery, nor to invoke the press in a manner which is liable to be misunderstood and may land the administration in general in an awkward situation. These observations are not out of place here. It would have been far better if the learned Sessions Judge had confined himself to the case before him and had omitted the observations complained of, but it is a different matter to say that they are of such a nature that the Court should expunge them from the record. The Court must carefully guard against doing anything which might tend to restrict the free expression of judicial opinion on a matter before the Court. While we consider that the homily should not have been indulged in and we do not agree

with all the Sessions Judge has said, we do not think that this is a case which calls for expunction. The application is dismissed.

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