

In Re: Appukutti Chettiar

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SooperKanoon Citation : sooperkanoon.com/804575

Court : Chennai

Decided On : Jul-28-1944

Reported in : AIR1945Mad23

Appellant : In Re: Appukutti Chettiar

Judgement :

ORDER

Happell, J.

1. The petitioner in this criminal revision case was convicted by the Sub-Divisional Magistrate of Kollegal of an offence Under Rule 81(4), Defence of India Rules and sentenced to pay a fine of Rs. 50. The learned Sub-Divisional Magistrate also directed that a cart load of chillies which was the subject-matter of the offence should be confiscated. The propriety of the conviction is not now canvassed but it is contended that the order of confiscation is illegal. On 16th July 1943, the Collector of Coimbatore made an order Under Rule 81(2), Defence of India Rules, in these terms:

On and after 19th July 1943, no person shall export chillies by road or rail from any place within the limits of the Coimbatore District to any place outside the limits of the said district within the Madras province except under and in accordance with the terms of a permit from the Collector of this district or any other officer specially authorized by him in this behalf.

2. It was for attempting to export chillies from out of the Coimbatore District in contravention of this order that the petitioner was convicted. Rule 81(4) provides the punishment for a contravention of any order made Under Rule 81. It states:

If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both, and if the order so provides any Court trying such contravention may direct that any property in respect of which the Court is satisfied that the order has been contravened shall be forfeited to His Majesty.

3. The Collector's order of 16th July 1943 did not provide for the confiscation of the chillies in respect of which the order might be contravened. An amendment to the order of 16th July providing that the Court might order confiscation was issued by the Collector of Coimbatore on 29th June 1944. The offence, however, with which this case is concerned was committed on 12th October 1943 so that on that date the Court under the provisions of Rule 81(4) had no power to order the confiscation of chillies exported in contravention of the order of 16th July 1943. The Magistrate did not refer to any provision of law which authorized him to make the order of confiscation, but the learned Public Prosecutor argues that he had authority to make the order under the provisions of Section. 517, Criminal P.C., which will apply to property before the Court in cases under the Defence of India Rules in the absence of express language to the contrary. Learned counsel for the petitioner, on the other hand, points to the terms of Section 3, Defence of India Act, which provides that,

any made Under Section 2 and any order made under any such rule, shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect for virtue of any enactment other than this Act

and argues that if Rule 81(4) is read with this section, it is clear that full effect must be given to the provisions of Rule 81(4) notwithstanding that Section 517, Criminal P.C., is inconsistent therewith. In support of his contention learned counsel has referred me to a decision of a Bench of the Bombay High Court in Emperor v. Gulamali A.I.R. 1941 Bom. 412. In that case, it was held, having regard to the

provisions of Section 3, Defence of India Act, that the Chief Presidency Magistrate of Bombay had no jurisdiction to make an order confiscating a sum of Rs. 8900 lawfully seized by an officer of customs under the Defence of India Rules, which under Sub-rule (6) of Rule 90B has to be disposed of in such manner as the Central Government may by general or special order direct notwithstanding the provisions of Section 517, Criminal P.C. The case, is a stronger one than the case now under consideration, since the question really was whether an order made by a Magistrate Under Section 517, Criminal P.C., displaced an order otherwise validly made by a Customs Officer under the Defence of India Rules. It was, however, definitely stated that having regard to the provisions of Section 3, Defence of India Act, the rule prevailed over Section 517, Criminal P.C. In *Narasimha Chettiar v. Emperor* A.I.R. 1944 Mad. 125 Kuppuswami Ayyar J. held that an order of confiscation of the coins in respect of which an offence had been committed Under Rule 90 (3) could properly be made Under Section 517, Criminal P.C. Rule 90(3), however, makes no reference at all to confiscation, and the basis of the decision is that the operation of Section 517, Criminal P.C., is not excluded merely because Section 2, Sub-section (3), Clause (iii), Defence of India Act, enables the Government to make provision for confiscation. Rule 81(4), unlike Rule 90(3), does make provision for confiscation, and the clear meaning of the rule is that the property in respect of which the offence is committed may be forfeited by order of the Court 'if the order so provides' but not otherwise. Section 517, Criminal P.C., is, therefore, inconsistent with Rule 81(4) and if it is invoked to enable a Magistrate to exercise powers which Rule 81(4) does not give him, Rule 81(4) will not have effect as contemplated by Section 3, Defence of India Act. In my opinion, the Magistrate had no jurisdiction to pass an order confiscating the property Under Section 517, Criminal P.C. The order of the Magistrate confiscating the chillies is set aside, and the sale price of the chillies now in deposit in the Magistrate's Court' will be handed over to the petitioner. The conviction of the petitioner and the sentence of fine imposed on him are confirmed.