

Kolandayappan and ors. Vs. the State

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Court : Chennai

Decided On : Dec-07-1950

Reported in : (1951)2MLJ29

Appellant : Kolandayappan and ors.

Respondent : The State

Judgement :

ORDER

Govinda Menon, J.

1. Mr. Jayarama Ayyar contends that Section 2A(1) of Madras Act XVII of 1948 is null and void in view of the decision of this Court reported in Kalyanam Veerabadrappa v. The King : (1949)2MLJ663 , where it has been held by a bench of this Court that except Section 3(b) all the other sections have been enacted by the Legislature without proper and due legal competence. Such being the case, the learned counsel contends that the alleged offence committed on the 27th April, 1949, when the Act itself was not in force cannot be considered to be an infringement or infraction of any penal provision of a statute. The learned Public Prosecutor on the other hand invites my attention to Sections 19 and 20 of Madras Act XXIII of 1949 and especially to Sub-section (1) (b) of Section 19 and Sub-section (2) of the same statutory provision. It seems to me that Section 19 of the Madras Act XXIII of 1949 has validated all previous actions or acts or rules or any

other thing done in pursuance of the Madras Maintenance of Public Order Act (XVII of 1948). I therefore hold that the point of invalidity or the non-existence of the statute has no force.

2. On the merits the question has to be decided whether the three petitioners, knowing or having reason to believe that an order for detention of Palanisami had been made, harboured or concealed him. The only finding on which the conviction as regards accused 1, 3 and 4 can be justified is that an unknown man was seen in the morning running away from the shop of accused 4 and when subsequently accused 2's house was searched that unknown man was found hidden there. It transpired that the Unknown person was Palanisami the wanted man for detention. On these materials it is difficult to hold that either accused 1 or accused 3 or accused 4 had harboured or concealed Palanisami. I am aware of the definition of the word 'harbouring' as including the supply to a person with food, money, clothes, etc. Granting that Palaniswami was seen running away from the tea shop of accused 4, it cannot be said that he was supplied with either food or drink there and that the 1st accused, 3rd accused or the 4th accused actively took part in providing such food. It seems to me that accepting the findings of the learned appellate Magistrate as correct, accuseds 1, 3 and 4 cannot be held to be guilty of any offence. Their/convictions and sentences have therefore to be set aside and they will be acquitted.

3. As regards the 2nd accused the matter stands on an absolutely different footing. Palanisami was found concealed in his house wherefrom he was arrested by the Sub-Inspector of Police. It is in evidence that previous intimation had been given to the inhabitants of the village including the 2nd accused that a wanted man by name Palanisami was visiting the village and that any person who had any information about his whereabouts should inform the police about it. Having had such warning beforehand the 2nd accused concealed this Palanisami in his house. The 2nd accused, when he was asked about Palanisami made a pretence of going inside the house and searching and later on returned stating that Palanisami was not there. This conduct itself shows that the 2nd accused knew that Palanisami, a person who had been wanted for detention under Section 2(1)(a) of the Madras Maintenance of Public Order Act I of 1947, as amended by Act XVII of 1948 was

hiding in his house. The conviction of the 2nd accused is therefore correct. The sentence is not excessive. The revision petition is dismissed.

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