

In Re: Puvanur Athamu and ors.

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Court : Chennai

Decided On : Jul-18-1924

Reported in : AIR1925Mad239

Appellant : In Re: Puvanur Athamu and ors.

Judgement :

ORDER

1. This revision case has been presented very long after the conviction and a preliminary objection is taken that many of the petitioners had the right of appeal and have not chosen to exercise it, within the time allowed by law. We have been asked in their cases to treat the Criminal Revision Petition as an appeal; but considering the length of time, which has elapsed since the conviction in October 1921, we are not prepared to do so.

2. Ordinarily, this Court will not permit a Criminal Revision Petition to be heard, when the petitioner has had an opportunity of appealing and has not exercised it. But in the present case, where the effect of not allowing the revision case, in the case of these who might have appealed and did not, would be to sustain a sentence of 8 and 10 years' imprisonment in their cases; whereas for reasons to be given, we are of opinion that, in most of these cases, only the conviction under Section 143, Indian Penal Code, can stand in law, under which the sentence was only 6 months' rigorous imprisonment, we think it right to hear the case, under our general powers of revision and if necessary to interfere.

3. The main question for decision is whether an offence under Section 126, Indian Railways Act, or Section 7(c), Martial Law Regulation, is an 'offence' as that word is used in Section 149, Indian Penal Code. A Bench of this Court has already held *Aydross v. Emperor* A.I.R. 1923 Mad. 187 that it is not. We have heard a further argument from Mr. Ethiraj, for the Public Prosecutor, regarding the correctness of this decision. He urges that as the word 'unlawful assembly' in Section 141, Indian Penal Code, will cover an assembly, whose common object is to commit an offence under Section 126, Indian Railways Act (vide Section 40, Indian Penal Code) the same phrase in Section 149 must import that offence into Section 149 also. But we consider that a criminal statute has to be rigidly interpreted and that Section 40 in terms clearly implies that in Section 149 the word 'offence' only covers offences punishable under the Indian Penal Code. With the reasons for such a provision we are not concerned.

4. We therefore follow the above ruling-It will apply in these cases to all the petitioners, except accused Nos. 2, 8, 9, 12, 35 and 38, against whom there is specific evidence of acts under Section 126, Indian Railways Act, and Nos. 1, 18 and 25 said to be dead.

5. In the case of all the petitioners, except accused Nos. 1, 2, 8, 9, 12, 18, 25, 35 and 38, we cancel the conviction under Section 126, Indian Railways Act and Section 7(c) of the Martial Law Regulation ; namely, in the case of 1. Koyassan Marakkarakath Mamrnad 2. Eravath Athuthi, ;3. Kalathingal Moideen, 4. Kuruparangadi Kokka, 5. Choyil Sayidali, 8. Manukadavath Kun-hayammad, 9. Karuthiathil Kadirkutti, 10. Vellakodakathu Marakkaruthi, 11. Mullaveetil Veeran, 12. Kalathingal Mohi-deen Koya, 13. Nalath Marakkar, 14. Puthelath Koyakuiiti, 15. Marrali Kun-hayammad, 16. Kalathingal Veerangunhi 17. Thekkumparumbath Moideen, 18. Thekkumparambath Mamrnad, 19. Mul-lambalath Kunbayukku, 20. Thondivil Koya, 21. Puttan Veetil Marakkaruthui, 22. Kunveerikal Veeran, 23. Thoudiyil Alikoya, 24. Kizhimbattil alias Thondivil Pakru, 25. Mammadkunhi Molla's son Pokker, 26. Thamburankandi Veeran, 27. Paramalparkum Moideenkutty's son Bnikutti, 28. Moideenkutti's son Alavi and 29. Nundoli Kunhayan accused Nos. 4 to 7, 10, 11, 13 to 17, 19 to 24, 26 to 34, 36, 37 and 39. That under Section 143, Indian Penal Code, stands. The petition is dismissed, as regards the case of

accused 2, 8, 9, 12, 35 and 38. These accused will go back to all to serve out their sentences. The bail bonds of the others will be cancelled, as they have already served the sentences passed under Section 143, Indian Penal Code.

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