

In Re: Charles George Hedinger

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SooperKanoon Citation : sooperkanoon.com/809164

Court : Chennai

Decided On : Dec-13-1915

Reported in : 32Ind.Cas.659

Judge : Coutts Trotter, J.

Appellant : In Re: Charles George Hedinger

Judgement :

ORDER

Coutts Trotter, J.

1. This case was called up, on revision by a Judge of this Court. The facts are these. The accused Mr. C.G. Hedinger is a Swiss gentleman, who was registered as a foreigner in the District Magistrate's office at Calicut where he resided. He has been convicted of two offences alleged to be violations of the direction of the Governor-in-Council contained in a Notification No. 632, dated the 6th of September 1914. By Section 3 of the Foreigners Ordinance, 1914, the Governor-General in Council has power to regulate or restrict in such manner as he thinks fit the liberty of foreigners residing or being in British India; and by Section 8 of the same Ordinance the Governor-General in Council is empowered to delegate his powers under the Ordinance to any civil authority in British India. By Notification No. 907, dated the 22nd August 1914, the Governor-General in Council has delegated his powers under Section 8 of the Ordinance to the Local Government

of the Presidency. The Notification No. 632 is, therefore, intra vires the Ordinance; and the only question is whether the accused has violated its provisions.

2. The facts are not in dispute. On the 5th February he left Calicut and went to Madras, as he says, on a visit of pleasure, stayed two nights at an hotel and returned to Calicut on the third day. On the 10th April he notified the authorities that he was proceeding to Zercaud, but broke his journey for two days at Madras. The District Magistrate held that these acts constituted changes of residence within the meaning of the notification and convicted him. It is contended for the prosecution that the object of this Notification is to enable the Government to know at any given moment where persons of foreign nationality are to be found, if they are not for the time being in the place of registration where their usual residence is. That such a provision, however inconvenient to individuals, would be salutary and necessary in times of national emergency, no one is likely to question. The only other matter for my determination is whether the Notification as framed has achieved what I have assumed to be its object. I am unable to hold that it has. Change of residence seems to me to import something of a more definite character than a mere casual journey involving a couple of nights spent away from home. The matter is one of first impression, for the authorities referred to were cases involving questions of jurisdiction, which, in my opinion, throw no light upon the construction of this Notification. It is not easy to draw the line at any definite point; but wherever it is drawn I think a casual journey of this nature would fall outside it. If the Local Government were minded to say that no foreigner shall travel outside a certain radius from his residence without informing the authorities of his intention to do so and obtaining their permission, it is no doubt within the power conferred upon the Government by the Ordinance and the Notification of the Government of India. But I am unable to read that meaning into the notification actually issued by the Government of Madras, and accordingly I set aside both the convictions and order the fines, if paid by the accused, to be refunded to him.