SWAMI ARUNAGIRI-NATHAR'S APPEAL

:(o):

Sentence Reduced From One Year To 4 Months

:(o):

CHIEF JUSTICE SAYS TRIAL JUDGE'S SENTENCE "NOT CALLED FOR"

Petitions Of Mr. C. D. Nayagam And Mr. C. N. Annadurai Dismissed

(Before the Chief Justice & Abdur Rahman. J.)

Their Lordships delivered separate but concurring judgments in the appeal preferred by Swami Arunagirinathar against his conviction by the Third Presidency Magistrate for an offence under Section 7 (1) A of the Criminal Law Amendment Act read with Section 117 of the Indian Penal Code and the sentence of one year rigorous imprisonment awarded to him.

Their Lordships overruled the contention of the appellant's Counsel that the Act was not now in force and that it was not in force in the Madras Presidency and that the abetment of an offence under Section 7 (1) A did not constitute an offence punishable by law. Their Lordships, however, held that the sentence of one year rigorous imprisonment was not called for and reduced it to one of four months.

The Chief Justice, in the course of his judgment, observed that the appellant (Swami Arunagirinathar) was charged with three offences under Section 7 (1) A of the Criminal Law Amendment Act read with Section 117 of the Indian Penal Code and had been sentenced on each charge to one year's rigorous imprisonment, the sentences to run concurrently.

Their Lordships also dismissed the petitions of Messrs. C. N. Annadurai and C. D. Nayagam to quash proceedings pending against them in the Presidency Magistrate's Court for similar offences.

Referring to the wordings of Section 7 (1) A of the Criminal Law Amendment Act, and Section 117 of the Indian Penal Code, His Lordship observed that under the former anyone who, with intent to causing a person to do any act which he has a right to do or to abstain from doing it, would be guilty of an offence and render himself liable to punishment. The Criminal Law Amendment Act, 1932, for the first time added to the list of crimes what was colloquially known as 'Picketing'. It was not necessary, His Lordship added, to enquire into the circumstances, which led to this addition. The addition was made and that sufficed so far as the present case was concerned. Nor was the Court called upon to enquire into the policy of the application of the Act. All that the Court had to consider was whether the facts alleged by the prosecution would bring the offence within the section. If the proved facts constituted an offence within the meaning of the section, then the Court must apply it and could not enter upon a discussion whether other means existed of vindicating the law.

The Chief Justice then briefly reviewed the facts of the case and observed that the Government order relating to the teaching of Hindustani "aroused a great deal of resentment in parts of the country" and as a result, one Anti-Hindustani League was established. His Lordship referred to the holding of public meetings, calling for volunteers by the League and the arrangements made for carrying on of "Satyagraha" and observed that the appellant was in charge of the movement after Sivananda Adigal was arrested. The appellant addressed three public meetings on the 10th, 13th and 14th June last. The case for the prosecution was that at these meetings, the appellant incited the hearers to picket the house of the hon. Mr. C. Rajagopalachariar, the Premier, with a view to compelling him to take steps to withdraw the order which the Government had issued with regard to the teaching of Hindustani in schools. From the 1st to the 29th June, the Premier's house was picketed by bodies of volunteers and the picketing was sustained and "certainly more than peaceful." The appellant was charged with the offences under Section 7 (1) A of the Criminal Law Amendment Act read with Section 117 of the Indian Penal Code.

After stating the three charges against the appellant, His Lordship observed that after a lengthy enquiry, the Third Presidency Magistrate found the appellant guilty and sentenced him to undergo rigorous imprisonment for one year on each of the charges, the sentences to run concurrently.

The Legal Aspect

In the Court below and in this Court, His Lordship continued, a number of legal arguments were advanced on behalf of the appellant and they were as follows: (1) The Criminal Law Amendment Act is no longer in force, it having been repealed by the Act of 1937; (2) the Criminal Law Amendment Act, 1932, is invalid because the Governor-General had not taken the steps contemplated by the first clause of sub-section 2 of Section 67-B of the Government of India Act, 1919; (3) the extensions of the Criminal Law Amendment Act, 1932, to the province of Madras had not been properly notified but even if it had been so notified, the notification had lost its validity; (4) even if Section 7 (1) A of the Criminal Law Amendment Act, 1932, is in force, the Act does not apply to picketing of the house of the Premier: (5) There can be no offence of abetment of an offence under Section 7 (1) A of the Criminal Law Amendment Act.

The Criminal Law Amendment Act, 1932, was passed by the Indian Legislature, His Lordship continued, and was made to extend to the whole of British India, British Baluchistan and the Santal Parghanas. As it originally stood, the Act was to remain in force for three years from its commencement on the 19th December 1932. On the 26th December 1932, the Government of Madras notified the application of the Act to the Presidency of Madras but owing to an error in the notification, it was re-notified on the 4th January 1933, the notification being published in the Fort St. George Gazette of the 10th January. In 1935, the Bill which was afterwards enacted into the Criminal Law Amendment Act, 1935, was introduced in the Indian Legislature. Certain sections of the Act of 1932 were repealed, but Section 7 was not repealed. The section which limited the Act to three years was repealed. The Bill was introduced in the Assembly on the 2nd September, 1935, rejected by the Assembly on the 12th, passed by the Council of State on the 28th and certified by the Governor-General on the 4th October under power vested in him by Section 67-B of the Government of India Act, 1919. By Act XX of 1937, the Act of 1935 was repealed but provision was made in the former Act to prevent the repeal affecting the validity of amendments made by the Act of 1935. Further, the General Clauses Act XIX of 1935 was amended to provide expressly that such repeal would not affect the original Act.

Referring to the first legal argument raised by counsel for the appellant, the Chief Justice observed that in view of the provision made in the General Clauses Amending Act, 1936, and Section 4 of the Criminal Law Amendment (Repealing and Amending Act), Act of 1937, it was not open to the appellant to contend that the Act of 1932 had been repealed.

Referring to the second contention of the appellant, that the Act of 1932 was invalid because the Governor-General did not "follow the procedure contemplated in Section 67 B-2 of the Government of India Act, 1919, the Chief Justice observed that the argument of the appellant's counsel ignored the proviso to the section. Under the proviso, the Governor-General had power to bring the Act into operation if, in his opinion, a state of emergency existed in the country warranting such action. It was not suggested that His Majesty in Council disallowed the Act certified by the Governor-General. It was a fact that the Governor General in exercise of his powers under Section 67-B brought the Act into operation on the 17th December 1932. What was required was that the Governor General should exercise his power. The question whether the power should be exercised was one for the Governor General alone to decide; he was the sole judge of such matters. The Governor General exercised the power and the enactment became the law of the land.

In regard to the contention of the appellant's counsel that the Act was not in force in Madras, the Chief Justice observed that the notification of the Government of Madras in December 1932 applied the Act to the province of Madras. The fact that it was not renotified in 1935 would not affect its application to the presidency. The Act was still legal and His Lordship added that he had no hesitation in holding that the Act as it now stood had been validly notified.

His Lordship then dealt with the contention of the appellant's counsel that the Act could not be applied to picketing of public servants and that it must be deemed to apply only to picketing of private individuals. It was conceded that for the purpose of deciding the question of application of the Section, there was nothing in the Act to indicate that public servants whose houses were picketed could not claim the remedy under the section. All that the Act required was that before a person was convicted under section 7, the offender should loiter at or near a place, where the person resided, worked or carried on business or happened to be, with intent to cause that person to abstain from doing or to do what he had a right to do or abstain from doing. The explanation to the section stated that encouragement of indigenous industries or advocacy of temperance without commission of any of the act mentioned in this section would not come within the scope of the section. The section clearly applied to picketing. Because a person held a public office, the law did not allow him to be molested even for political purposes. He was just as much entitled to the protection of the law as anyone else. His Lordship observed that he could see no justification for the plea that the offence contemplated in the section, when committed in respect of a public servant, whether high or low, should go unpunished.

With regard to the contention that there could be no abetment of an offence under Sec. 7 (1) A, His Lordship added that it was admitted that if the Criminal Law Amendment Act, 1932 was to be deemed to be a special law within the meaning of the Indian Penal Code, then there could be abetment of an offence under Section 7 (1) A of the Criminal Law Amendment Act, 1932. His Lordship observed that he was in complete agreement with the opinion expressed in Ratanlal's "Law of Crimes", page 78 that the 'special laws' contemplated in Section 41 were laws such as Excise, Opium and Cattle Trespass Acts, which created fresh offences. The Act of 1932 dealt with picketing and made it an offence in certain circumstances. The Act applied to a particular subject, namely, picketing and therefore abetment under the Act was an offence. His Lordship held that the appellant had been lawfully charged with abetment.

Dealing with the merits of the appeal, His Lordship observed that it had been proved that the appellant's speeches of the 10th, 13th and 14th June last had been taken in shorthand. The Shorthand Sub-Inspector was not cross-examined as to the accuracy of the transcript. No evidence was let in to show that the statements were not made by the appellant. In fact, no attempt was made to refute the evidence. It had also been proved that the meetings were attended by large numbers of people and there was no doubt the appellant did incite his hearers to loiter in front of the house of the Premier with a view to compel the Premier to take steps to change the Government Order. The Premier was entitled to say that he would not change or repeal the order which embodied the policy of the Government in regard to the language and he could not be compelled by the means adopted by the appellant and his supporters to change the order. The evidence showed further that for nearly a month picketers assembled in considerable numbers in front of the Premier's house and loitered there within the meaning of Section 7 for the purpose of compelling him to do something which he had the right to abstain from doing. The action of the people who assembled in front of the Premier's house was not entirely confined to loitering; but for the purposes of the present case, His Lordship did not think it necessary to go beyond "loitering." The offence with which the appellant had been charged, His Lordship held, had been proved and the appellant was rightly convicted of abetting. He had abetted an offence which fell within the four corners of Section 7 and had rendered himself liable to punishment.

The Sentence Reduced

It was argued, His Lordship continued, that the punishment awarded by the trial judge was excessive. Inasmuch as this constituted the first offence of the appellant and the circumstances of the case were somewhat unusual. His Lordship considered that the sentence of twelve months rigorous imprisonment was not called for. The crime was a serious one and imprisonment was called for. His Lordship, however, thought that in the circumstances of the case, the sentence should be reduced from one of twelve months' rigorous imprisonment to one of four months and it was to be applied to each charge, the sentences to run concurrently.

His Lordship Mr. Justice Abdur Rahman then delivered judgment agreeing with the Chief Justice and holding that the legal objections raised by the Counsel for the appellant were devoid of any force and must be overruled. His Lordship in the course of the judgment discussed at length the legal aspect of the case.

Mr. Nayagam's Petition Dismissed

With regard to the other two petitions to quash proceedings pending against Mr. C. N. Annadorai and Mr. C. D. Nayagam, Their Lordships observed that the reasons given in the appeal applied also in the case of the two petitions and in that view Their Lordships dismissed the petitions.

Mr. S. Muthia Mudaliar submitted that in view of the age of the appellant, the Court might convert the sentence into one of simple imprisonment.

Mr. Justice Abdur Rahman: The Jail doctor will take care of him.

Mr. Muthia Mudaliar submitted that since the appellant was an old man, he might not be able to do hard labour involved in rigorous imprisonment.

Mr. Justice Abdur Rahman: It is for the Jail authorities to see what kind of labour he can do.

—(Hindu).