

## APPELLATE CRIMINAL.

Before Mr. Justice Benson and Mr. Justice Abdur Rahim.

THE CROWN PROSECUTOR, APPELLANT,

v.

G. KOTHANDARAMIAH, ACCUSED.\*

1909.  
December  
22,

1910.  
January  
10.

*Post Office Act VI of 1898, ss. 35, 64, 74—Rules framed under Act, infringement of, falls within s. 63—General power to frame rules conferred by s. 74, cl. (1) not confined to such rules as are contemplated by s. 74, cl. 2.*

Rules framed by the Governor-General in Council under section 74, clause (1) of the Post Office Act regarding the declaration in the case of articles sent by value payable post form part of the Act under section 74 (3) and infringement of such rules is punishable under section 64. Section 35 also enables the Governor-General in Council to make such rules.

The general power to make rules conferred by section 74, clause (1), is not confined to making such rules as are contemplated by clause 2.

APPEAL under section 417 of the Code of Criminal Procedure against the judgment of acquittal passed on the accused in Calendar Case No. 5538 of 1909 by C. Gahan, Second Presidency Magistrate, Georgetown, Madras.

The facts of this case are sufficiently set out in the judgment.

The Crown Prosecutor for appellant.

*P. R. Sundara Ayyar* for accused.

JUDGMENT.—This appeal is by the Crown against an order of the Second Presidency Magistrate acquitting Mr. G. Kothandaramiah, manager of a journal called the "International Police Service Magazine" of a charge preferred against him under section 64 of Post Office Act. On the 29th October 1908 the accused sent a copy of this magazine by value payable post to Mr. Webster, Superintendent of Police, Haldwani, signing a declaration to the effect that the article was sent in execution of a *bonâ fide* order received by him. Without such declaration being made the Post office would not, by reason of a rule issued under the Act by the Governor-General in Council, have accepted the value payable post article for transmission to the addressee. Mr. Webster refused to receive the article on the ground that he never gave an order for it and moved for the prosecution of the sender for making a false declaration to the contrary in violation of the Post Office Act. The Magistrate found on the evidence that the accused had received

\* Criminal Appeal No. 486 of 1909.

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no order from Mr. Webster to send the value payable post article and therefore the declaration made by the accused was false. He, however, thought that the prosecution must fail "because the Post Office Act itself, that is, the sections in the body of the Act do not require such a declaration to be made, and therefore the words of section 64 which says " whoever being required by this Act to make a declaration, etc.," cannot sustain the charge because the rule framed by the Governor-General in Council is not part of the Act though properly framed under powers conferred by the Act. This view is obviously wrong. According to general canons of interpretation when a statute empowers the Government or any other authority to frame rules or by-laws for the purpose of carrying out the objects of the statute, rules or by-laws so framed must if within the scope of such powers be regarded as part of the enactment. And in this case section 74, clause 3 of the Act expressly lays down that rules made under the Act shall have effect as if enacted by the Act. Section 35 gives power to the Governor-General in Council to make rules directing the Postal authorities not to receive a value payable article for transmission unless its sender makes a declaration that it is sent in execution of a *bonâ fide* order received by him and section 74, clause (1), gives him power generally to make rules for the purpose of carrying out the objects of the Act. The rule which the accused is said to have violated was made in pursuance of such powers. (See Rule No. 68, notification, dated the 5th August 1908, Gazette of India, Part I, August 1908, page 747). But it is argued by Mr. Sundara Ayyar who appeared in support of the Magistrate's order that that is not "requiring" a declaration within the meaning of section 64. It is somewhat difficult to appreciate the point of this argument; if it be that the Postal authorities cannot by an order passed under the Act compel a person to make any declaration on the pain if he refuses to make the declaration of his being guilty of the offence of disobeying a lawful order within the meaning of the Penal Code, that may be conceded. But that is not the question here. What clearly is required by the Act is that if a person wishes to utilise the services of the post office for sending a value payable post article and makes a declaration to obtain such services he shall make a true declaration. If he makes a false declaration or a declaration which he does not believe to be true he makes himself liable to the penalty prescribed by section 64.

Another branch of Mr. Sundara Ayyar's argument, so far as we are able to follow it, is that clauses 1 and 2 of section 74 should be read together and, reading them together, he contends that the general power to frame rules conferred by clause (1) must be confined to making such rules as are contemplated by clause (2), and not rules requiring a declaration within the contemplation of section 64, but there is no reason whatever for cutting down in this manner the operation of the general words of clause (1) of section 74. Clause (2) of that section is obviously meant to meet such cases for which no penalty is prescribed by any of the sections of the Act itself. Besides as already pointed out section 35 expressly authorises the Governor-General in Council to make such a rule as the one in question.

It has also been contended before us that upon the facts proved in the case we ought to hold that the declaration made by the accused was either a true declaration or one which he had reason to believe to be true. It is not suggested that Mr. Webster at any time by writing or by word of mouth gave order for the value payable post article or for any previous issue or issues of the magazine to be sent to him. But it is urged that since he did not refuse to receive nor did he return by post any of the previous issues sent to him and received intimation through slips attached to some of those issues and by means of postal cards that he had been enrolled as subscriber and that the issue in question would be sent to him as a value payable post article and yet made no protest and in fact glanced at some of the numbers of the journal it should be held that the accused had reason to infer that he had received an order from Mr. Webster to send the value payable post article. Now an order cannot be said to have been received by one person from another to send an article by post unless the latter is shown to have communicated a request or desire to the former to that effect. The communication of such a request need not perhaps be made by means of words written or spoken and may be inferred from the previous conduct of the addressee. For instance, if Mr. Webster had paid for the issue which was sent to him value payable post and continued to receive further issues of the magazine, say for about a year and then an issue was sent to him value payable post for the amount of subscription for that year it might well be that we could infer an order under such circumstances. But Mr.

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Webster as his evidence shows treated the numbers of the magazine which were delivered to him in the same manner as ordinary trade circulars and threw them away. It is true that he did not return the articles nor did he reply to any of the accused's postal cards but there was no obligation on him to do either of these things. It may be that the accused interpreted Mr. Webster's silence as indicative of willingness on his part to pay for the numbers sent to him. But, even if so, he could not reasonably have thought that he had received an order from Mr. Webster to send the value payable post article. The case of *Ghulam Rabbani v. King-Emperor*(1) referred to by the Magistrate was a very different case. There there was an order to send the article in question insured for a certain amount and it was actually sent value payable post but uninsured for a somewhat larger amount. There can be no doubt in this case that the accused has offended against the post office regulations and we convict him under section 64 of the Act. The learned Crown Prosecutor tells us that the object of this appeal is to obtain a ruling as to whether the Magistrate's view of the law is correct, and he does not press for a heavy penalty. We sentence the accused to pay a fine of Rs. 10 (Rupees ten) or in default to 5 (five) days' simple imprisonment.

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## APPELLATE CRIMINAL.

*Before Mr. Justice Benson and Mr. Justice Sankaran-Nair.*

ALAGIRISAMI NAICKEN

v

EMPEROR.\*

*Criminal Procedure Code V of 1898, ss. 337, 339—No true and full disclosure where witness subsequently recants his previous statement—On trial after withdrawal of pardon, if pardon pleaded in bar, jury to determine whether pardon forfeited.*

A person who has accepted a tender of pardon under section 337 of the Criminal Procedure Code and made a true and full disclosure before the inquiring Magistrate, may be recalled and examined by such Magistrate; and his pardon will be forfeited if he resiles from such former statement.

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(1) 6 All. L.J., 481.

\* Criminal Appeal No. 697 of 1909.