

(1938) 05 MAD CK 0007
In the Madras High Court

In Re: A.S. Pandian

Date of Decision : 06-05-1938

Acts Referred:

Citation : AIR 1938 Mad 821 : (1938) 48 LW 330 : (1938) 2 MLJ 281

Hon'ble Judges : Pandrang Row, J

Bench : Division Bench

Judgement

Pandrang Row, J.—The petitioner was convicted of being in possession of a wireless receiving set without a licence under Sections 3 and 6

of Act XVII of 1933 and also of working the same without a licence u/s 20 of Act XIII of 1885 and sentenced to pay a fine of Rs. 60 under the

Wireless Telegraphy Act and a fine of Rs. 75 under the Indian Telegraphs Act in respect of the same wireless receiving set. These fines were

reduced on appeal by the Sessions Judge to Rs. 20 and Rs. 25 respectively; it will thus be seen that even in the appellate Court the separate

sentences were retained. It is, to say the least, extremely doubtful whether the use of a wireless receiving set without a licence would amount to an

offence u/s 20 of the Indian Telegraphs Act which in view of Section 4 of that Act could not have been intended to include wireless receiving sets

used ordinarily to receive broadcast programmes. In my opinion there is no justification for a separate conviction u/s 20 of the Indian Telegraphs

Act or for a separate sentence under that section. The conviction and sentence u/s 20 of the Indian Telegraphs Act are therefore set aside.

2. It is argued that even the conviction under Sections 3 and 6 of the Wireless Telegraphy Act cannot stand because actually a licence had been

issued by the Postmaster to take effect from a date earlier than the date on which the petitioner is said to have been in possession without a licence.

It is not however possible to say that the licence issued subsequently by the Postmaster has the effect of converting what was possession without a licence into possession with licence, or in other words gives a sort of a pardon in respect of an offence already committed. It is not in accordance with the spirit of the law that any official should have the power to convert what is an offence into what is not an offence by the mere issue of a licence subsequent to the event. I am therefore of opinion that this conviction cannot be objected to successfully. At the same time there is justification for the complaint that even the reduced fine of Rs. 20 is excessive in the circumstances of the case. The offence was trivial and technical. The petitioner is apparently a respectable man who has been taking out licence for some years before the offence and it would appear that the delay in paying the licence fee was due to the fact that he was not quite satisfied with the wireless set which he had purchased and wanted either to get it put right or to exchange it for another set. It was in these circumstances, namely, because he had not made up his mind which set he should have permanently that he did not pay the licence fee in time. The learned Judge also says that there could have been no intention in this case to evade payment of the fee or defraud the revenue. In these circumstances it would have been quite sufficient to impose only a nominal fine. I therefore reduce the fine from Rs. 20 to Re. 1. The excess fine, if paid, must be refunded.