

Emperor Vs. Sadanand

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Court : Mumbai

Decided On : Feb-05-1931

Reported in : (1931)33BOMLR652

Judge : John Beaumont, Kt., C.J. and ;Murphy, J.

Appeal No. : Criminal Appeal Nos. 14 and 44 of 1931

Appellant : Emperor

Respondent : Sadanand

Judgement :

John Beaumont, Kt., C.J.

1. In this case the accused was charged with having, on November 9, 1930, edited, printed and published articles entitled 'Helping Outlaws' and 'Cease the Trade' in his paper the Free Press Journal and thereby assisted the War Council of the Bombay Provincial Congress Committee in its operations and thereby committed an offence punishable under Section 17(1) of the Indian Criminal Law Amendment Act, 1908. The accused was convicted in respect of the first article entitled 'Helping Outlaws', which is Exhibit A1 in the case, and from that conviction he appeals, and the Crown has applied for enhancement of the sentence passed. He was acquitted in respect of the other article entitled 'Cease the Trade', which is Ex, A2, and from that acquittal the Government appeal.

2. Upon the first appeal the prosecution have to prove, I think, three things. First of all, that the War Council, which is the association alleged to be unlawful and alleged to have been assisted, is in fact an unlawful association. The second thing to prove is that one of the activities of the unlawful association consists in publishing the Congress Bulletin, and the third thing is that the publication of the article A1 in the accused's paper, the Free Press Journal, assisted the operations of the unlawful association.

3. With regard to the first point, it is admitted that the War Council is an unlawful association. With regard to the second point, whether one of the activities of the War Council consisted in publishing the Congress Bulletin, the evidence stands in this way.

4. At the first hearing, Mr. Kothare, Deputy Inspector, C.I.D. was called and he produced a copy of the Free Press Journal which is the journal of the accused. He then says:-

The Congress Bulletin is issued by the War Council of the Bombay Provincial Congress Committee. It is an organ of the War Council.

5. Well, if that evidence had remained uncontradicted it would have been evidence on which the Court could have acted as proving that the Congress Bulletin was an organ of the War Council. In the first instance, Mr. Kothare was not cross-examined by Mr. Taleyarkhan on behalf of the accused, and the case eventually stood over for judgment. Apparently it occurred to the learned Magistrate, when he was writing his judgment, that he had not got in evidence any copy of the Congress Bulletin, from which the article Ex. A1 was alleged to have been reproduced, and he thought that that was an omission which ought to be cured, and he accordingly directed Mr. Kothare to be recalled, exercising in that respect the powers conferred on him by Section 540 of the Criminal Procedure Code. Mr. Taleyarkhan objected at the time, and he has argued in this Court that the learned Magistrate ought not, at that late stage of the proceedings, to have let in any further evidence. But I think the learned Magistrate was right in the course he adopted, The evidence which had been omitted was of a formal character, and, I think, the learned Magistrate was right in seeing that the gap in the prosecution

case was fill-ed up. But Mr. Kothare being recalled, Mr. Taleyarkhan had a right further to cross-examine him, Mr. Kothare, in his evidence-in-chief on this second occasion, said that he produced a copy of the Congress Bulletin, which is Ex. D, containing the article reproduced in the accused's paper and he then said :-

Our men purchase Congress Bulletins every day from vendors. It is sold for one pice. The publisher is Trishula Daru. She was convicted for publishing the Congress Bulletin as a member of the War Council. Satyagraha Committee is the same as the War Council.

Then in cross-examination he said :-

I do not know where the Congress Bulletin is produced. When we raided the Congress House we found a number of copies. I have no personal knowledge by whom it is published. It is published by the Satyagraha Committee as the name of that Committee appears. It is produced by cyclostyle. I have no personal knowledge as to who has published Ex. D.

It seems to me that the effect of that cross-examination is to destroy entirely any weight which might otherwise have been attached to Mr. Kothare's evidence in chief that the Congress Bulletin was an organ of the War Council, because he admits that he has no personal knowledge in the matter at all and he is really relying for his opinion on the statement which appears at the bottom of Ex. D, viz., 'Published by Trishula Daru, for the Satyagraha Committee, Bombay.

6. The learned Advocate General submitted that, having regard first of all to that statement, secondly, to the intrinsic evidence derived from a perusal of Exhibit D, and, thirdly to the fact that the accused in his journal states that the article comes from the Congress Bulletin, the Court ought to infer that the Congress Bulletin is an organ of the War Council. But, in my view, the evidence is not sufficient to justify such an inference. What effect should, be given to a statement on the document itself that it is published by the Satyagraha Committee must depend on whether there was any authority for that statement. There is no direct evidence of authority by the War Council and there is no evidence from which such authority can be inferred, for the police admit that they do not know where or by whom the

document is published, and there is no evidence as to who constitute the War Council, or that the War Council ever heard of the document. Similar observations apply to intrinsic evidence to be derived from the contents of the document. The statement in the accused's paper that the article in question is from the Congress Bulletin is merely a statement of fact. The evidence is that the Congress Bulletin can be bought in the streets of Bombay and anybody paying one pice can see that the article was contained in it. I think, therefore, that the prosecution has failed to establish that the Congress Bulletin is in fact an operation of the War Council.

7. If I am wrong in that, the third question arises as to whether the publication of the article in question amounts to assisting the operations of the War Council. No doubt if the Congress Bulletin is one of the operations of the unlawful association, re-producing the contents of that organ may well assist those operations. But, I think, that the question must depend to a great extent on the nature of the matter reproduced. In the present case the article was merely a criticism-not perhaps of a profound character-upon a letter which had been addressed by the Commissioner of Police to various newspapers in Bombay. It is admitted that there is nothing of a criminal nature in the criticism, and I think it would be fanciful to hold that the mere reproduction in the newspaper of the accused of a criticism upon a letter which had been generally circulated-a criticism of a harmless character-can possibly assist the operations of the unlawful association. I think, therefore, that the appeal of the accused must be allowed, and that being so, the application for enhancement of sentence does not arise, and must be dismissed.

8. With regard to the appeal of the Crown in respect of the article Exhibit A2, that article starts in this way:-

An appeal is being circulated amongst the merchants of Bombay by Mr. Babrekar., President of the War Council in which etc....

and then the effect of the appeal is given, the appeal being to merchants to deal only in Indian cloth. There is no evidence whatever that Mr. Babrekar is, in fact, the President of the War Council. There is no evidence that the War. Council authorised the publication of this appeal. The only suggested objection to the article is that Mr. Babrekar is described as President of the War Council. But even

if he is the President of the War Council, I do not see why he should not express his view on an economic question. The article does not advocate any unlawful action, it only expresses the view of the gentleman, who is stated to be. the President of the War Council that the best economic policy for India is to deal only in Indian goods. That view may be right or wrong but it is a view which may be legally held by anybody. I think, therefore, that the appeal of the Crown fails and must be dismissed.

9. The bail bond entered into by the accused will be cancelled.

Murphy, J.

10. On November 9 last the appellant published what purports to be an extract from the previous day's Congress Bulletin containing comments on a letter said to have been addressed to the editors of newspapers by the Commissioner of Police.

11. The prosecution case is that the Congress Bulletin is the organ of the Bombay War Council or the Satyagraha Committee, an organization notified unlawful, and the accused is, therefore, charged with assisting its operations-being an offence under Section 17(1) of Act XIV of 1903. The Congress Bulletin is a daily sheet issued in cyclostyle and sold for a pice in the streets of Bombay. The editor has not made the necessary declaration under the Press and Registration of Books Act, and it is not known at what place and by whom the publication and circulation is effected, secrecy being maintained for obvious reasons. A copy of the issue of November 8 has been put in and is said to have been purchased on the street by a policeman. The article charged is the central paragraph of that day's sheet and the issue purports to have been by a Miss Trishula Daru for the Satyagraha Committee, this statement being made at the bottom of the single page of which the publication consists. There is no doubt that the Satyagraha Committee is an association notified as unlawful. It has been argued that, assuming the issue of the Congress Bulletin to be one of its operations, the republication of a paragraph from it would not be an act of assistance, for the 'operation' terminated with the editing, cyclostyling and circulation of the sheet. But this is putting a construction on the word 'operations', which confines it to those mechanical acts only, while I think

that, as used in the section, it would include the object of the issue, which, in fact, is propaganda of the unlawful association, and that if the appellant's act in republishing the para. would be an assistance to that propaganda, it would bring him within the section.

12. Mr. Taleyarkhan's main argument has been that there is no evidence that the sheet in question, was published by the War Council, though on its face it purports to have been so published. In the circumstances stated, such evidence would not be procurable, and since the extract in the appellant's newspaper itself says that what was printed was an extract from the Congress Bulletin, I think the fact might be inferred, but the prosecution must, I think, fail apart from this reason.

13. The operations and objects of the War Council to be promoted by the Congress Bulletin are given by the witness for the Crown as the boycott of foreign made cloth and goods and the picketing of liquor shops. The paragraph republished by the appellant is not concerned with these matters, and consists of comments on a passing event, the letter addressed to newspaper editors by the Commissioner of Police. Though its tone is hostile, there is no direct connection between the contents of the paragraph in question and the stated objects, and though the learned Advocate General has argued that the bare mention that it was reproduced from the Congress Bulletin is enough to amount to assistance, I think it is necessary to show more than this in order to make out such a case.

14. The revision application to enhance appellant's sentence must fail on the failure of the main charge.

15. Appeal No. 44 made by Government is against the acquittal on the second charge based on the article called 'Cease the Trade.' The substance of the matter charged is an extract from a leaflet said to have been circulated by 'Mr. Babrekar, President of the War Council.' This is an appeal to refrain from using foreign cloth: The learned Magistrate acquitted the accused on this charge on the ground that there is nothing to show that the appeal was made by the President of the War Council and not by that person in his individual capacity. There is, in fact, no evidence at all about the person mentioned as the author or that such an appeal was ever made by him either as an individual or as president. The second head of

the charge seems to have been lost sight of in the course of the trial. I agree that the appeal must be dismissed.

16. Appeal No. 14 of 1931 will be allowed, appeal No. 44 of 1931 dismissed, and revisional application No. 29 of 1931 rejected.

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