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M. Ramamurthy Vs. State of Mysore

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Court : Karnataka

Decided On : Feb-04-1954

Reported in : AIR1954Kant164; AIR1954Mys164

Judge : Balakrishnayya and ;Mallappa, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 292 and 293; Code of Criminal Procedure (CrPC) , 1898 - Sections 242, 243 and 537

Appeal No. : Criminal Revn. Petn. No. 242 of 1953

Appellant : M. Ramamurthy

Respondent : State of Mysore

Advocate for Def. : Adv. General

Advocate for Pet/Ap. : C.B. Srinivasa Rao, Adv.

Judgement :
ORDER

1. This is a revision petition against the judgment of the Principal Sessions Judge, Bangalore, in Criminal Appeal No. 75 of 1953 confirming the conviction under Section 292, I. P. C., but modifying the sentence passed by the Additional First Class Magistrate, Bangalore, in C. C. No. 10 of 1952-53.

2. The petitioner-accused is the editor of a monthly journal known as 'Kama Kala'. The prosecution case is that the accused-petitioner is distributing and has put into circulation this monthly journal which contains obscene writings and pictures. Eleven copies of the journal of different months have been exhibited in the case and three witnesses were examined for the prosecution and according to them the journal contains obscene writings harmful to youngmen and women. On the other hand, the accused has examined two witnesses of whom one is Dr. Put-tanna, a retired Surgeon and who was the Principal of the Medical College and the other gentleman is the well-known author Sri Devadu Narasimha Sastry. The Doctor is of opinion that there is nothing obscene in the pamphlets and that it is fit to be prescribed as a text book in Medical Colleges and Schools. Sri Devadu Narasimha Sastry is of opinion that he has no hesitation in placing these pamphlets in the hands of children of sufficient age.

3. We have been taken through some portions of the pamphlets and before considering the question whether they are obscene it may be useful to state that what has to be considered as obscene or indecent has changed from time to time and may not exactly be the same in different countries. What is tolerated in one country may be considered as bordering on obscenity in another country. It may also be stated that there has been a difference of opinion as to whether young men and women have to be educated on questions of sex and if so, to what extent. Though the tendency in recent times is to consider that young men and women should know something of sex, the orthodox view is still that such a knowledge is dangerous. The intention however of Legislature is not to prohibit knowledge of sex being spread on scientific lines. What however is objectionable according to law is that a person should not take advantage of the curiosity of young men and women to know something of sex and make money out of publications that will have the effect of depraving their minds.

4. The' Indian Penal Code has not defined what is meant by 'obscene'. In 'Manual of Law terms and phrases' by K. J. Aiyar 'obscene' is defined as follows:

'This term is intended in law to denote what is an offence to public moral and decency. The offences against public moral and decency are (1) selling,

distributing, importing, or printing for sale, or hire, or publicly exhibiting any obscene book, pamphlet, paper, drawing, painting, representation or figure; (2) Having in possession any obscene book for sale or exhibition; Sections 292 and 293, I. P. C.'

The test of obscenity according to what has been laid down by Cockburn C. J. in -- 'R. v. Hicklin', (1868) 3 QB 360 (A), which is invariably relied on in most of the later authorities on the point is,

'whether the tendency of the matter charged as obscene is to deprave and corrupt those whose minds are open to immoral influences and in whose hands a publication of this sort may fall.'

He also observed that the publication must be regarded as obscene if it is

'calculated to produce a pernicious effect in depraving and debauching the minds of the persons into whose hands it might come.'

5. As observed in -- 'Emperor v. Harnam Das', MR 1947 Lah 383 (B):

'Where the book in question was a serious work intended to give advice to married people, and particularly husbands, on how to regulate the sexual side of their lives to the best advantage, that is to say, with a view to promoting their health and mutual happiness.

Held; Such books when properly written serve a useful purpose. Such books are published on a large scale and widely circulated in all civilised countries including Britain and the United States of America. If such books are effectively to fulfil their intended purpose it is obvious that they must be written in fairly plain language in order to be understood, and, it cannot be said that the publication of such books should be banned altogether because of the danger, against which it is undoubtedly very difficult to provide effective safeguards, that they may fall into the wrong hands.'

6. It may be added that works of art are never considered as obscene. Then again as observed in -- 'Sukanta Halder v. The State', : AIR1952 Cal214 (C):

'The Courts have, more often, restricted the use of the term obscenity to sexual immorality only. Such matters as would tend to stir in persons, into whose hands such matter is ordinarily expected to reach, sex impulse which lead to sexually impure and lustful thoughts, are declared as obscene, attracting the jurisdiction of the Court to ban out such publications. The true test is not to find out what depraves the morals in any way whatsoever but what leads to deprave only in one way, viz., by exciting sexual desires and lascivious thoughts.'

Another point that may arise for consideration is whether a book can be called obscene if it produces depraved thoughts on any young person. It may be that a young person may be so sensuous in nature that his feelings will be roused by a look at the diagram of sex organs in a medical book. There may be persons whose feelings are not roused under any circumstances. It is not the effect of the publication on such persons the Courts have to take note of. It is the effect of the publication on the mind of an ordinary young person that has to be considered in deciding whether it is obscene or not. As observed in the above authority:

'The effect produced on an ordinary member of the society or a particular class of readers for which a particular publication may be meant has to be ascertained. It is neither a man of wide culture or rare character nor a person of a depraved mentality should be thought of as being the readers of such literature. The standard of readers is neither one of exceptional sensibility nor one without any sensibility whatsoever.'

7. As regards appreciation of evidence in cases of this kind,

'whether the book is obscene is a matter in which the Court is entitled to rely on its own judgment as well as the evidence of witnesses In support of this finding of fact,'

as observed by Jack J. in -- 'Kailash Chandra v. Emperor', AIR 1932 Cal 651 (D).

8. In this case some oral evidence has been adduced and the Courts below have rightly applied their mind and found that the journal contains material that would corrupt and deprave the minds of young persons. It would but be fair to say that

the journal contains some useful matter to young men and women, but on the whole there are a good number of passages that would have an undesirable effect on the minds of young men and women. What the author clearly refuses to answer to imaginary or real questions put to him, he publishes in the form of questions stated to have been put to him in letters. Pictures of naked men and women are printed to attract youngsters. No better purpose than this could be thought or for the Introduction of a large number of such portraits exhibiting different postures of naked persons. Taken as a whole it is difficult to differ from the findings of the Courts below. It is true that some passages contain useful matter that may be read by young men but as observed by Hayward J. in--'Rahimatalli v. Emperor', AIR 1920 Bom 402 (E):

'It Is necessary of course, to take into consideration the whole pamphlet and not merely to look to passing references which might give no real indication of its true intention. But on the other hand it is equally necessary not to be misled by the length of perfectly unexceptional and proper passages into missing the sting, however short and pungent, lurking in the pamphlet.'

9. It is contended that the intention of the accused is to instruct the young and not to deprave their minds. But Blackburn J. in -- '(1868) 3 QB 360 (A), took the rule of law to be. as stated by Lord Ellenborough in -- 'Rex v. Dixon', (1814) 3 M & S 11 (F) in the shortest and clearest manner

'it is a universal principle that when a man is charged with doing an act of which the probable consequence may be highly injurious the intention is an inference of law resulting from the doing of the act.'

As observed in 'AIR 1932 Cal 651 (D)':

'Where a man publishes a work manifestly ob-scene he must be taken to have intended the inevitable consequences;'

and as observed by Mitter J. in the above case:

'The object which the writer has in view is immaterial. If the publication is an obscene publication it would be no defence to say that the law was broken for

some wholesome and salutary purpose.'

10. The oral evidence of the Doctor, Puttanna, and Sri Devadu is no doubt in favour of the accused but it is unfortunate that the prosecution has not concentrated on the above portions of the pamphlets and questioned the witnesses as to their view on these portions. Even the P. Ws. have not not been questioned with reference to these portions of the publication. It is this weakness in the evidence that leads us to ascertain what definite case the accused has been asked to meet. It is found that no question under Section 242, Cr. P. C., has been put at all. Even after the P. Ws. were examined he had not been questioned particularly with reference to the objectionable passages and we are of opinion that this has prejudiced the accused to a considerable extent. The question for consideration is whether the conviction under these circumstances has to be upheld.

As was pointed out in -- '16 Mys OCR 231 (G)' under Section 242, Cr. P. C., a Magistrate trying a summons case is required at the very outset to state to the accused the particulars of the offence and to ask him to show cause why he should not be convicted. The particulars must be stated in such detail as to give the accused full information regarding the case which he has to meet. It may here be stated that this is a decision of a Bench. It is no doubt true that this case has been distinguished in -- '2 Mys LJ 223 (H). That is a case decided by a Single Judge. The omission was regarded as a mere irregularity and in view of certain points referred to in that decision it was considered that the accused was not prejudiced and the conviction was upheld.

In a later decision it is pointed out that the omission amounts to an illegality. That is a decision of a Bench of two Judges and it has been held in that decision, -- '7 Mys LJ 144 (I)', that in a summons case, the procedure prescribed in Section 242, Cr. P. C., is mandatory. The Court should bring to the notice of the accused persons, the particulars of the offence they were accused of, and their plea should be recorded under Ss, 242 & 243, Cr. P. C. Mere examination of the accused under Section 342, Cr. P. C., after prosecution witnesses had been examined, will not cure the initial illegality in the omission to follow the provisions of Section 242

when renders the trial void. The weakness ot the oral evidence as it stands and the inadequacy of questions put under Sections 242 and 342, Cr. P. C., make us feel that the conviction cannot be upheld on this count.

11. The petitioner appears to be young man of some intelligence. He has faced the trial. This case has been hanging on from 10-6-52 when the charge sheet was filed. He had filed an appeal and has come up to this Court in revision. We have been assured that the publication of 'Kama Kala' was stopped from the date on which the charge sheet was placed. It may be added that it has been brought to our notice that this is the first case launched in Mysore under Section 292, I. P. C. Considering all the circumstances of the case, we do not think that it is necessary to remand the case and order a re-trial. The revlsion petition is therefore allowed and the conviction and sentence are set aside.

12. Conviction & sentence set aside.

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