

R. Saigal Vs. Emperor

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Court : Allahabad

Decided On : Mar-05-1930

Reported in : AIR1930All401

Appellant : R. Saigal

Respondent : Emperor

Judgement :

Boys, J.

1. This is an application under Section 99-B, Criminal P. C, by which the applicant takes objection to orders of the Local Government under Section 99A, Criminal P. C, declaring every copy of a book and of the advertisement thereof forfeited to His Majesty.

2. The book is entitled 'Bharat men Angarezi Rajya.' The author is one Sriyut Sundar Lal, B.A., ex-editor of the 'Karmayogi' and the 'Bhavishya.' The book is written in Hindi.R. Saigal is the printer and publisher, and it was published at the Fine Art Printing Cottage, 28, Elgin Road, Allahabad. In the advertisement of the book it is described as a:

compilation from the English books 'Rise of Christian Power in India,' 'The consolidation of the Christian Power in India,' and 'Ruin of Indian Trade and Industries' of the well-known historian Major Baman Das Basu, I.M.S., and from

other authentic historical works.

3. The applicant before us is the printer and publisher R. Saigal, whose case has been put before us by Dr. Katju. The author Sundar Lal, has, so far as we are informed, taken no objection to the orders of Government passed under Section 99-A, and has not appeared before us in any way, or made any representation to us personally or through counsel.

4. The following facts are undisputed before us. The first advertisement of the book in question appeared in the November issue of the year 1928 of the 'Chand' magazine. The advertisement appears to have been of a two-fold nature: a brief one page advertisement such as is common in regard to many books, and a large fuller advertisement extending to a number of pages and containing a synopsis of many but not all of the chapters in the book.

5. On 10th December 1928, this November issue of the 'Chand' was declared under Section 99-A, Criminal P.C. to be forfeited, but there was no particular reference to the advertisements with which we are now concerned.

6. On 18th March 1929, the book was published and the publisher proceeded to issue copies. On 19th March 1929, a police officer called at the office of the publisher and informed him that the Superintendent of Police desired to see him. On 20th March 1929 at this interview the Superintendent of Police informed the publisher that the advertisement of the book had been proscribed. He also warned the publisher that he would proceed to the publication of the book itself at his own risk. The publisher then informed the Superintendent of Police that the book had already been published two days previously.

7. Two days later, on 22nd March 1929. an officer of the Criminal. Investigation Department informed the publisher that the book had been proscribed. The notifications proscribing the advertisement and the book are dated respectively 15th March 1929, and 22nd March 1929, and both appeared in the Gazette of 23rd March 1929.

8. It is against these notifications that the present application is directed.

9. At the commencement of the hearing before us the questions on whom the onus of proof lies and who has the right to begin were incidentally touched upon but no adequate reason was suggested why we should not follow the procedure adopted in *Emperor v. Baijnath Kedia* : AIR1925 All195 , and we found ourselves in complete agreement with the proposition there stated that the question of onus of proof is, after both parties have been fully heard, of very little or no practical importance and further we think that it is manifestly most convenient that the Government Advocate should begin and state the case in support of the Local Government's orders.

10. To deal first with the order of forfeiture in regard to the advertisement. Every document of this description must be dealt with on its own merits. We have carefully examined every word of the lengthy synopsis of the book contained in the advertisement. A summary is made of a number of chapters. The advertisement is silent as to some others. Taking isolated phrases, it is possible to pick out some that standing by themselves might be read as having a bearing on the present British rule, but taking the advertisement as a whole we think that even those phrases must be read as bearing only on the undesirable feature of the administration by the East India Company. We shall hold later in regard to the book itself that there are in it *passim* passages having reference to the Government prevailing at the present day. But none of those passages appear in the abstract made for the purpose of advertisement and more particularly, we find in the advertisement no reference to the ideas which are given special prominence in the concluding chapter of the book. We do not think therefore that taking the advertisement strictly by itself as it existed at the time the order of forfeiture was passed, there is sufficient material in that advertisement to form the basis of an order of forfeiture under Section 99-A, Criminal P. C. Again we must emphasise, as indeed must be obvious, that we are speaking of this particular advertisement alone. It of course far from follows that the mere fact that the document is only an advertisement of a forthcoming book is sufficient to protect it from forfeiture under Section 99-A, Criminal P.C.

11. It has been suggested for the Local Government that the advertisement must be read in the light of the subsequent book. It is manifest that in some cases while

a document may not strictly speaking by itself disclose seditious intent, it may be read in the light of other documents whether prior or subsequent in date and the seditious nature of the document in question may be apparent from those other documents. An illustration of this is to be found in the case of *Queen Empress v. Balgangadhar Tilak* [1898] 22 Bom. 112. Where an article has appeared in a paper the intention and the effect of that article may be gathered not only from the article itself but from other articles connected therewith appearing prior or subsequent to the date of the article in question. But manifestly the case of an advertisement may be quite different. The intention of an advertisement of a forth coming book is clearly primarily merely to further the sale of the book, It is a step in preparation in furtherance of the sale of the book which is to appear in the future. But it is not possible to read provision for this into Section 124-A.I.P.C., or Section 99-A, Criminal P.C. It is of course possible to contend that the advertisement is very intimately connected with the book and it might reasonably be considered desirable to make provision for declaring forfeited all documents connected and intimately associated with a book that has been found to be seditious but there is no such provision in the law which this Court have to administer.

12. We therefore hold that the contents of the advertisement did not themselves afford sufficient basis for the order of forfeiture and it is hereby set aside.

13. Before leaving this we are constrained to add that we think that the advertisement itself and standing by itself was very near the border line. Two views of it were reasonably possible but two views being reasonably possible, the applicant must have the benefit of that which is most favorable to him.

14. We now come to consideration of the book itself. A passing complaint was made by Dr. Katju suggesting that the Government had not given the book due consideration before it was prescribed. We have ourselves given it the very fullest consideration as must be manifest from the fact that the arguments and the placing of the book before us have occupied this Court for over seven days. We have had before us and counsel have also had before them full translation made of the whole book by Government and those translations have been accepted as fair by both the counsel before us, though, as was inevitable here and there,

reference has been necessary to the original and one of us familiar with Hindi has followed the text of the original book while the translated extracts were being read. Dr. Katju has in his painstaking argument been handicapped to this extent that he has not had the assistance of the author. We have already noted that it is the publisher who has made application to this Court. We are assured that he has no interest other than financial in this book at all. We have no explanation before us of why the author has treated with indifference the prescription of his book. But the fact remains that he has not made any attempt to justify it. Dr. Katju has urged that the book must be judged as a whole with its introduction and acknowledgment or dedication and we agree with him. In the case of a lengthy book such as this extending to nearly 1,700 pages of print it might be unfair, generally speaking, to pick out a sentence which might have found its way into the book by inadvertence and condemn the whole book on account thereof. We have therefore considered the whole book with its introduction and acknowledgment or dedication and drawn our conclusions from its general trend and not only from isolated passages.

15. It is contended for the applicant that the book was written and published in furtherance of the interest of vernacular education. If this were the sole motive there can be no doubt that it would be a laudable object and the last thing that anybody would desire would be to place obstruction in the way of that purpose, but whether or no that may have been one of the objects we are concerned with the means by which it was proposed to attain that object and the question whether there was or was not another illegal purpose as well.

16. It has been contended that the fact that the book was published at a price of Rs. 16 is an indication that no seditious purpose was intended; that a book at such a price could not possibly be intended to reach the multitude. There is no force in this contention. It is part of the applicant's case that 2,000 copies of the book have been printed at very great expense and it is impossible to suppose that this was done except in the hope of reaching a very wide market whether through individuals or through libraries.

17. It has been contended that it is not usual for historians to be impartial. It may be conceded that most students of history have formed some opinion of the

circumstances with which and of the characters with whom they deal and such partiality is obviously not in itself criminal or even culpable but there is manifestly a vast difference between this and the deliberate setting out of only one side of the case. It is at least the duty of a historian to make an endeavour to be impartial and not to make a presentation only of the evil deeds of those with whom he is dealing. In the book before us even institutions like those of railways are set out as merely unmitigated engines of oppression of the Indian and the country of India. Even the Penal Code is described as follows:

The object of this law (the Penal Code) was to impoverish Indians, to demoralise them, to create in them the habit of dishonesty and litigation and to ruin them utterly.

18. It would serve no useful purpose and merely prolong this judgment to wholly unnecessary lengths were we to endeavour to reproduce in detail the passages to which we have been referred throughout this book and the arguments in reference to these passages. It is not necessary or desirable for us to do more than to state our definite and clear conclusions. We are fully satisfied:

(a) that the book that we have to consider can in no sense be regarded as merely 'history' of the times with which it deals.

(b) That the book is not merely a compilation from other books but contains numerous passages which state the author's own views and his own ideas of the purpose to which Indians of the present day should direct themselves and of the means by which that purpose, the destruction of British rule in India, should be carried out. We may add that even if it was a mere compilation in the strictest sense of the term that would not be an adequate answer to the present charge.

(c) That there is passim propaganda directed to show that the evil state of affairs existing during the days of the East India Company continues to the present day. In the acknowledgment at the commencement of the first volume we find the phrase:

In the introduction I think it necessary to present before the reader an account of the invasions of India before British advent, specially of the condition of India at the time of the coming of the British so that it may be easy for them to apprise correctly the beneficial or harmful consequences of British rule over their country, and again,

It is to be hoped that this humble effort may help some fellow countrymen to ponder seriously over the deplorable condition of the country and its real remedies.

19. In the Introduction we find:

On the basis of these statements by supporters of the British rule and by concealing from us the real form of the British rule we are assured that the British administration is a very great blessing for India and that all our future progress and peace in the country depends upon the continuance of British rule.

20. And again:

We should also like fully to examine... what were the causes and methods which led to the establishment of British rule in India what were its effects on India and what are the means by which it may be hoped to secure deliverance from it in future

21. In Chap. 35:

It has, however, always been seen that the proportion in which the rights and aspirations of the people in England have increased the fetters to subject India have tightened. It is also natural because the interest of the rulers and the ruled always clash under an alien Government Prosperity of England lies in the impoverishment of India and the awakening of the latter means danger to the former. The more the rights of the people of England will increase the more will the number of those who practically rule over India multiply and the more will increase the dependence and indigence of the country.

22. In Chap 51 of the book, in speaking of the proclamation of 1st November 1858 the author says:

Since then the British rulers in India have in practice never cared a bit for the pledges contained in it.

23. In his concluding remarks he says:

The detailed history of the 70 years following the rebellion is outside the scope of this book but the tale is the same.

24. The tale to which reference is made is explained at p. 1655 of the book:

Another question which arises is what would have happened if the rebellion of the year 1857 had not at all taken place. An account of the company's administration and of the means employed and the acts done by it from 1757 to 1857 has been given in this book. It is impossible and useless to repeat that tale of woe.

25. We invited Dr. Katju to tell us, in reference to his defence that Major Basu's books were the foundation of the present book, whether there was any idea of a tale of woe continuing to the present time in Major Basu's books and he was unable to say that any such could be found. The quotations that we have given, and these might be multiplied, are ample to show that the book is in no sense merely a history, though of course, it contains historical facts, but it teems with propaganda directed to the elimination of British rule.

(d) That the intention of this book was and the effect of it is and must be to excite disaffection towards the present Government. Even if the book was limited to a criticism of the East India Company it would not necessarily follow that it was not a book calculated to create disaffection towards the present Government but in view of the actual nature of the book that is not a proposition which it is necessary now for us to consider further.

(e) That in the great majority of the cases in which we have been invited to examine the authorities on which particular statements are alleged to be based and in which we have succeeded in tracing the alleged authority we have found

that authority more or less misquoted, always in the direction of exaggeration or embroidery of the evidence and conclusion stated by the author in the direction of increasing the gravity of the charges made, or the clearness of the evidence by which it is endeavoured to support those charges.

(f) That generally speaking there is nothing but black in the picture painted of any Englishman or any British measure and nothing but white in the picture of anybody else. This is in truth admitted by Dr. Katju to be a fact and his only answer on behalf of his client is that the present book is based on those of Major Basu. In this connexion too we have the picture in the introduction of a 'Peaceful invasion by Mahomedans of India and the statement that they only furthered their own interests and those of Islam by peaceful persuasion,' the intention manifestly being to predispose Mahomedans to the more ready acceptance of the teaching in the rest of the book. Further it is to be noted that where anything is actually said in criticism of other than Englishmen it is only with the object of having a peg on which to hang immediately a more severe criticism of Englishmen any institutions established by Englishmen.

(g) That there is no force in the argument that all that is aimed at by this book is furtherance of the idea of replacing the present form of Government by Dominion Status. This argument put forward by Dr. Katju at a late stage of the case after it had been brought home to him by repeated reference to passages in the book that his original contention that the book was only a history of the East India Company was wholly untenable. Even if this were the object of the book, it might still be directed against the Government established by law, it is necessary to enter into this, for there is not, in fact, throughout the book a hint of the idea of Dominion Status or a hint that the author only desired to displace the present form of Government by Dominion Status. One conclusion and one only is possible from the very full consideration that we have had to give during these seven days to the book that the author aimed at the entire severance of the British connexion with India, and at bringing into contempt and hatred the Government established by law in British India.

26. Finally we have to consider the question of costs. This is of considerable importance to both parties for owing to the necessity of translating a very lengthy book the expenses incurred have been considerable, amounting to no less than Rs. 3,000 and this a part altogether from the question of the fees paid by either side. In view of our finding that the order relating to the advertisement must be set aside and the order relating to book maintained we have no difficulty whatever in holding that it will be reasonable to order that nine-tenths of the costs incurred by Government who have been successful as regards the book should be payable by the other side, but in the comparatively small matter of the advertisement the Government should bear its own costs, that is, the remaining tenth. The question, however, on what basis we should determine the amount of the costs is not so easy of solution. In the present Criminal Procedure Code it is laid down in Section 99-F that

every High Court shall, as soon as conveniently may be, frame rules to regulate the procedure in the case of such applications, the amount of the costs thereof and the execution of orders passed thereon, and until such rules are framed the practice of such Courts in proceedings other than suits and appeals shall apply so far as may be practicable, to such applications.

27. The present application was filed on 10th May 1929. At that date no rules had been framed under Section 99-F, Criminal P.C. Similar provision to that which we have quoted was formerly contained in the Press Act. The rules framed as under that Act, however, are no longer in force and no steps were taken immediately to frame any rules under Section 99-F. The rules framed under the Press Act were revived in the shape of rules under Section 99-F in December 1929. Even those rules we notice do not make any reference to exhibits filed on behalf of the opposite party but only to exhibits attached to the petition or filed by the applicant. We have, however, to consider what was the situation at the time the present application was filed and in accordance with Section 99-F the petitioner should have been guided by the 'practice of the Court in proceedings other than suits and appeals.' The proceedings under Section 99-F are sui generis but the particular exclusion by Section 99-F of the practice in 'suits' and the very provision for an order for the payment of costs suggest that regard is intended to be had to the

practice in miscellaneous civil proceedings.

28. As to what that practice is neither side gave us any assistance. The language of the Court is English and wherever there is any relevant provision made it is always, to the effect that the person filing an exhibit must cause to be translated by a competent translator of this Court all such exhibits as he may desire to file.

29. Now in the matter of this petition the petitioner was directly alleging that there was nothing in his book which was seditious and, strictly speaking it was incumbent on the petitioner to file with his petition a copy of the book and a translation thereof. He did not do so. The translation in fact was made by the opposite party, the Local Government. It has been admitted on the part of the applicant that it is a fair translation, It is not a case where it would have sufficed to translate a few selected passages; the whole book had to be considered. If neither side had a translation made we should undoubtedly have had to postpone the case until a translation had been made.

30. After the translation had been made by the Local Government at its expense both sides took advantage of it to read whole chapters to us.

31. The broad facts stand out, therefore, that the petitioner ought to have the translation made and that it was made and made satisfactorily, by the Local Government. Under circumstances we think that there can be no doubt that the only equitable course is to direct that the Local Government be recouped for such expenses as they have properly incurred in the proportion that we have already named. The only material question then remaining is whether the sum of Rs. 3,000 stated by the Local Government to be the cost of translating the book is excessive or not. That figure is supported by an affidavit. No materials are given us by the applicant, after three days to consider the matter, to show that the sum of Rs. 3,000 is excessive. Left without any assistance we have endeavoured to ascertain for ourselves what would be the appropriate figure. So far as we have been able to ascertain Rs. 3,000 is just about the sum that, either party would have paid if, in accordance with the principle we have mentioned, the book had been translated by a qualified High Court translator. We have so far referred to the cost of translation but the figure named by the Local Government includes also the cost of

typing of five copies running to something over 1,200 pages for each copy and there is further the typing of some 300 pages of selections from the book. The expense was incurred because the applicant took no steps to have the translation made and we have had no materials given to us to find it excessive. Even on the basis of broad principle alone it appears to us reasonable that the costs of the other side so far as they may be found to have been reasonably incurred should be paid by the person to whose action the incurring of those costs was due.

32. On the question of legal fees we are given no reason for departing from the practice hitherto of allowing the fees of the Government Advocate at the rate of Rs. 200 per diem for the seven and half days, namely, Rs. 1,500.

33. In conclusion we set aside the order declaring the forfeiture of the advertisement, we maintain the order declaring the forfeiture of the book and we direct that the petitioner do pay to the Local Government nine-tenths of the sum of Rs. 3,000 expenses of translation etc: and nine-tenths of Rs. 1,500 fees of the Government Advocate, i.e., a total of Rs 4,050.