

Philip Spratt and anr. Vs. Emperor

Philip Spratt and anr. Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/456465

Court : Allahabad

Decided On : Nov-20-1933

Reported in : AIR1934All207

Appellant : Philip Spratt and anr.

Respondent : Emperor

Judgement :

ORDER

Bennet, J.

1. This is an application on behalf of two convicted persons Philip Spratt and Muzaffar Ahmad asking that certain books should be returned to them. These persons were convicted under Section 121-A, I.P.C., in what is known as the Meerut Conspiracy Case by the Sessions Court, and their convictions were upheld in appeal by a Bench of this Court. The application now made is headed under Section 517 and Section 520, Criminal P.C., and it sets forth in para. 3 that the Sessions Judge passed an order on 6th October 1933, that as the books formed part of the record they could not be returned to the petitioners. Learned Counsel argued that at that time the learned Sessions Judge may have thought that an appeal would be made to the Privy Council and therefore that he should not order the books to be returned. Be that as it may, it is necessary for me to see now whether under Section 517, Criminal P.C. these books or any of them should be

returned. It has been announced now that the accused persons do not intend to make any appeal to the Privy Council, Section 520 merely relates to an appeal against an order under Section 517, Criminal P.C. That section is Sub-section (1) as follows:

When an inquiry or a trial in any criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of any property or document produced before it or in its custody or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

2. Now no authority has been produced by learned Counsel for the proposition that any property or document in regard to which an offence appears to have been committed or which has been used for the commission of an offence should be returned by a criminal Court to the person who has been convicted. It appears to me that this is the criterion to apply. If the books in question have been used for the purpose of committing the offence of Section 121-A, I.P.C., then they ought not to be returned to the accused, but if they have not been used for that purpose then they should be returned. As regards the books Nos. 6 to 10, these were produced by the accused in their defence. They were not books on which the prosecution relied for proof of the offence, nor did the prosecution allege that these books had been used in the commission of the offence. Therefore I order that these books Nos. 6 to 10 should be returned to the two petitioners. The books Nos. 1 to 5 stand in a different category as they are books which have been produced by the prosecution. The affidavit sets out that these books were, along with others, seized from the possession of the two petitioners on 20th March 1929, in Calcutta and that other books out of the 200 or more which were then seized have been returned. The prosecution relied on these five books as they were made exhibits and the affidavit sets out the numbers of the exhibits given by the prosecution of these five books. The judgments of the Sessions Court and of this Court in appeal do not specifically refer to these five books as exhibits in the place where the accused Spratt is dealt with, and as there were thousands of exhibits and the judgment of the Sessions Court consists of 676 printed folio pages, I do not consider it necessary for me to examine the judgment to see in what particular place these five books have been treated as exhibits. This Court in appeal

convicted Spratt under Section 121-A, I.P.C. and also convicted Muzaffar Ahmad under the same section. In regard to Spratt it is stated in the judgment of the Court reported in the special number of the A.L.J. at p. 841:

There is a mass of evidence to show that he was sent out of this Communist Party to India to work as an agent in order to carry out the policy and the programme of the Communist International. There can also be no doubt that throughout the period of his stay in India he was actively busy in the furtherance of this object. The learned Sessions Judge has traced his whole career during his stay in India, but we do not think it necessary to do so. It is clear that he was the moving spirit in organising Workers and Peasants Parties in India and in giving a lead to the other Communists. Numerous documents were recovered from his possession at the time of his arrest.

3. The opening sentences in this passage are taken from the final paragraph of the Session's judgment dealing with Spratt which is as follows on O.P. 826, which is at p. 326, Vol. 2 of the printed copy:

To sum up, I am quite satisfied from the evidence that Spratt, accused, was sent out to India by the Communist International through the agency of the Communist Party of Great Britain to work as an agent and carry out the policy of the Communist International formulated with a view to bringing about a revolution in India. I am equally satisfied that throughout the whole period from the time of his arrival in India up to the date of his arrest on 20th March 1929 the whole of his activities were directed and the whole of his energies given to the business of forwarding the work for which he came.

4. This Court therefore adopted the finding of the learned Sessions Judge in regard to the activities of this accused Spratt. In pp. 315 to 326 those activities are set forth, and it appears, among other things on p. 321, that he wrote articles on 'Russia and India' and 'the Power of Labour.' Now of the i.e. books in question four are books dealing with Russia, being as follows:

The Joint Situation in Russia.

Lenin by Marcu.

Trado Unions in Soviet Russia.

Illustrated History of Bussian Revolution.

5. It is obvious that these works would be books which would supply the material on which the accused could write the articles on Russia, which are among the activities of which he had been found guilty. Similarly the remaining book 'Capital' Vol. 1 by Karl Marx is a book on which he could rely for his articles on 'The Power of Labour' and other articles in favour of a communistic revolution. It appears to me therefore that the five books in question are books which in the language of Section 517, Criminal P.C., the accused has used for the commission of the offence a Section 121-A, I.P.C. I consider that that is which has been found by this Court in appeal, the judgment of which is based on the exposition by the learned Sessions Judge of the activities of this particular accused. Under these circumstances I consider that these books should not be returned to the accused persons. I, therefore, refuse the application as regards items 1 to 5 and I grant the application as regards items 6 to 10.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com