

In Re: C.V. Rajagopalachari

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Court : Chennai

Decided On : Jul-13-1949

Reported in : AIR1950Mad27

Judge : Panchapakesa Ayyar, J.

Acts : Press (Emergency Powers) Act, 1931 - Sections 4, 4(1), 15 and 18

Appeal No. : Criminal Appeal No. 748 of 1948

Appellant : In Re: C.V. Rajagopalachari

Advocate for Def. : Crown Prosecutor

Advocate for Pet/Ap. : Party in Person

Judgement :

Panchapakesa Ayyar, J.

1. This is an appeal by one Mr. C. V. Rajagopalachari who has been convicted by the Chief Presidency Magistrate under Section 18, Press (Emergency Powers) Act 1931 for having published an unauthorised 'news-sheet' entitled 'Save the country from the totalitarianism', which is a pamphlet or tract of four pages without any cover. Copies of this pamphlet or news-sheet, he sent to the Prime Minister of India, the President, Indian National Congress, and also, according to him, to every Minister of the Congress Government in Madras and every prominent

Congressman, besides public men and institutions of standing; and also sent a copy to the 'Baltimore Sun', in the United States of America. He enclosed copies of a prior pamphlet 'Creed and Camouflage in Congress politics' when sending this second pamphlet. He has been sentenced to pay a fine of Rs. 250 and, in default, to rigorous imprisonment for six weeks. After an elaborate discussion, the Chief Presidency Magistrate rejected the appellant's contention that this pamphlet was not a 'news-sheet.' He found that the document in question was not a newspaper and did not contain public news or comments on public news but contained matters covered by Section 4 (1) (d), Press (Emergency Powers) Act, that is, matters which tend directly or indirectly to bring into hatred or contempt His Majesty or the Government established by Jaw in British India or the administration of Justice in British India or any class or section of His Majesty's subjects in British India, or to excite disaffection towards His Majesty or the said Government, and would, therefore, constitute a 'news-sheet.' It is admitted by Mr. Rajagopalachari that he did not take any permission of the Magistrate to publish this pamphlet under Section 15 of the Act. Therefore, the only question that remains to be considered is whether this document will be an unauthorised 'news-sheet' punishable under Section 18. There is no doubt whatever that he made and published this pamphlet. But he contends that he is always publishing pamphlets, and that these will be 'books' and not 'news-sheets.'

2. The main point which falls to be determined when considering this question is whether the matters contained in this document will fall within the purview of Section 4 (1) (d) in which case, the conviction will be correct, as this pamphlet is 'a document other than a newspaper' within the meaning of Section 4 (1), whatever the case be with regard to the sentence. Mr. Rajagopalachari contended that his intention and motive in publishing this document was not to bring into hatred or contempt the Government, or the Congress, or the administration, or any class or section of His Majesty's subjects, or to excite disaffection towards the Congress or the Government or anybody else, but only to make Congressmen think deeply over the principles and policies of Mahatma Gandhi and see that the Congress organization is brought back to a state of strength and sacrifice as in its heydays. His contention is that, to achieve this object, he had to speak out whatever he felt, without fear or favour, and that the fact that he sent copies of the pamphlet to the

Congress President and Pandit Jawaharlal Nehru, who wrote a letter thanking him for it, and to other prominent Congressmen, shows that his motive in writing and distributing it was the same motive as had actuated Mahatma Gandhi and is actuating some other Congress leaders in Madras Province and elsewhere to express strong and fearless criticism of the Congress and the Government. He contended that he was a staunch and veteran congressman and the Secretary of the Civil Liberties Union and a back-bencher democrat. He argued that an intention to bring the Government into hatred or contempt was essential, as in the case of sedition, and relied on the ruling in Public Prosecutor v. Subba Mudaliar, 1937 M. W. N. 176 and Niharendu Dutt v. Emperor, 1942 F. L. J. 47 : A. I. R. 1942 F. C. 22 for this contention, and vehemently urged that the proper thing to do, if the prosecution was confident of its case that the contents of this pamphlet came under Section 4 (1) (d), was to prosecute him for sedition, under Section 124A, Penal Code, and prove it to the hilt, in which event he would have produced books, documents and witnesses galore and proved the case to be misconceived and unsustainable. The learned Crown Prosecutor contends on the other hand, that there is no sedition charge in this case and that, therefore, there is no need to go into the question of the sustainability of a sedition charge based on the contents of this pamphlet, and that the main question here, since the intention to write and publish the pamphlet is proved, is whether the matters in this document tend directly or indirectly to bring the Government, etc., into hatred or contempt, whatever the intention in writing and publishing those matters. I agree.

3. Here, we are not concerned either with the Congress or its alleged pristine purity or present alleged degeneracy, or with any attempts of the appellant or others at purifying it; we are only concerned with the fact whether this pamphlet contains matters falling under Section 4 (1) (d), and whether it will constitute an unauthorised 'news-sheet.'

4. After deep consideration, I agree with the learned Crown Prosecutor's view that the intention or motive in publishing the matters in such pamphlets is immaterial in the case of such prosecutions under Section 18, provided the matter is published intentionally and tends directly or indirectly to bring into hatred or contempt the Government of the day. Sedition is a major offence, and has to be proved strictly;

and there are well known decisions like Niharendu Dutt v. Emperor, 1942 P. L. J. 47 : A. I. R. 1942 F. C. 22, governing the question as to what constitutes 'sedition,' and I may freely admit that, if this were a prosecution for sedition, the evidence on record may be inadequate to convict the appellant. But the matter before me now is different. In my opinion, in prosecutions under Section 18, Press (Emergency Powers) Act, the prosecution need only prove that a document other than a newspaper has been intentionally made and published and that it contains either published news or comments on published news or any matter described in Sub-section (1) of Section 4 of the Act without obtaining the necessary permission of the Magistrate under Section 16. Sub-section (1) (d) of Section 4 does not mention anything about the intention or motive in publishing such words etc., but simply says that the document in question should contain words, signs or visible representations which tend directly or indirectly to bring into hatred or contempt the government established by law, etc. In other words, it is the effect of the contents of the document, the objective aspect, that is covered by Section 4 (1) (d) and not the intention or motive or the subjective aspect, or the mens rea in uttering or publishing those words, which would be material for a prosecution for sedition under Section 121-A, Penal Code. It is significant that Section 4 (1) (d) omits all the provisos found in Section 124A.

5. The next question is whether this pamphlet contains words which tend directly or indirectly to bring into hatred or contempt the Government. After deep consideration, I am of opinion that it does, whatever be the motive or the intention of the appellant. The following passages from the document in question will make this clear. One passage runs:

'Congress Governments have failed to control the prices of commodities. They have not put down rich monopolists, but have given them full scope for looting the people. At the dictation of the rich hoarders, decontrol of prices of food grains and cloth have been effected. The result is the phenomenal rise in the cost of living and the suffering of the poor and the middle classes.'

It is obvious that this passage tends directly or indirectly to bring the Government into hatred or contempt. People already ground down by soaring prices, and 90

per cent. of them unable to understand the cause of the high prices or the economic laws or the laws of trade, will conclude from this passage that the high prices are due to the fault of the Congress Government and that the Congress Government have given full scope to rich monopolists for looting the people, and that they have decontrolled the prices of food grains, cloth etc., at the dictation of rich hoarders. Again, there is another passage, viz.:

'Congress Government have passed emergency laws to detain without trial people who agitate to better the lot of the poor. If anybody protests against the repressive acts of the Government, he is dubbed as Communist or 'fellow traveller'.

In these times, when undoubtedly there are some people who agitate not to better the lot of the poor but to better their own lot, this passage will tend directly or indirectly to bring the Government into hatred or contempt. Yet another passage runs:

'The Congressmen came to power by sacrificing the principles for which many suffered in the past. Now they are hand in glove with the reactionaries. And they are bent upon keeping the power in their hands at any cost. To achieve this object, they will solicit anybody's co-operation and even put God to auction ... In order to hide these facts from the public knowledge, they make the communists the scapegoats.'

This passage too will undoubtedly tend directly or indirectly to bring the Government into hatred or contempt. There is the communist movement; it is an arguable question whether communists are to be detained or not without trial. To say that these are detained and made scapegoats of by the Government in order to hide their lust for retaining power cannot be said to be reasonable criticism or to be even objectively correct.

6. Another passage runs:

'Whatever error our National Leaders may commit, they are immune from criticism. If any dare point out such errors, he is condemned as an unpatriotic rebel and consigned to jail.'

The last words show that the passage relates to Congressmen in Government, as, otherwise, they cannot consign people to jail. This passage too, in my opinion, falls within the scope of Section 4 (1) (d). Still another passage runs :

'Now they are trying to be in power by securing the support of a section of the people by calling them true patriots and giving them lands and jobs and detaining others who refuse to accept the leaders' policy as correct. This policy, if continued, will drive the country to anarchy and chaos and will end in civil war.'

This passage too will come within Section 4 (1) (d), as it too brings the Government into contempt or hatred and will cause grave disaffection among the citizens and may promote the very civil war which the pamphleteer says he wants to prevent, Another passage runs:

'Leaders get angry if any one asks whether they can make India strong and prosperous by constantly quarrelling with Pakistan and by cajoling the Maharajahs by making them Rajapramukhs and by paying huge sums as compensation to parasitic zamindars and inamdars, and playing with communal prejudices. The leaders and their faithful followers refuse to face these facts because they are suffering from communist and communalist phobia. Their anti-communism is only helping the reactionary rich to exploit the helpless poor which is thwarting the path of peaceful progress.'

This passage too, in my opinion, will fall within the scope of Section 4 (1) (d). Even objectively, one cannot agree that the quarrels with Pakistan are all of the India Government's making, or are engineered by the Indian Government, or that the Maharajahs are cajoled by the Government by being made Rajapramukhs (after foregoing their sovereignty) or that zamindars and inamdars are given compensation to serve as parasites and hangers-on and admirers of the Government (when the lands have been taken away from them and only such compensation as is considered reasonable by the Legislature elected by the people is awarded to them).

7. Therefore, the pamphlet, taken as a whole and without tearing any statements made therein out of their context, tends directly or indirectly to bring the

Government (and not merely the Congress) into hatred or contempt, whatever be the intention or the motive of the appellant in publishing such opinions. Whether it is a 'book' or not, it will, therefore, fall within the definition of a 'news-sheet.' No doubt, the appellant has been a congressman for 25 years, from 1st January 1921 to 1st January 1946, and has been also the Secretary of the Civil Liberties Union, and he seems to be fanatically convinced of the truth of his own observations in this document and might, as he contends, have merely followed the footsteps of the greater men inside and outside the Congress in publishing such seething and sweeping criticisms. But a Court of Law is confined strictly to the law governing the facts, and the effect or tendency of the facts contained in the offending pamphlet or document. Politicians exceeding the limits laid down by the law take the risk of being convicted for offences under the law, as they have been all through the ages. Nor can they ask Courts dealing with a particular pamphlet under Section 18 to read all their prior pamphlets to see the purity of their motives and their burning desire to reform the Government of the land.

8. In the end, I confirm the conviction of the appellant. In the peculiar circumstances of the case, and seeing that the definition of 'news-sheet' has not been made clear by any rulings of this Court, and that, according to the learned Crown Prosecutor, even big books will come under the definition 'news-sheet,' and that the accused urges that he never dreamt that his pamphlet would be considered to be a news-sheet and not a book, and that he wrote and sent it to prominent people and papers and institutions as several people, congressmen and others, have written pamphlets and books containing criticisms similar to the document now before me and have not been prosecuted, I reduce the sentence to a fine of Rs. 50 or, in default, one week's simple imprisonment.