

Kissan Singh and ors.

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Court : Chennai

Decided On : Mar-05-1943

Reported in : AIR1943Mad514; (1943)1MLJ416

Appellant : Kissan Singh and ors.

Judgement :

ORDER

Horwill, J.

1. This petition relates to a pamphlet written by the first accused and signed by the second and third accused. The fourth accused in the lower Court was the printer. All the accused were convicted. The fourth accused, who was sentenced only to pay a fine did not appeal to the Sessions Judge. The other three accused appealed, but their appeal was dismissed. They are the petitioners in this Court.

2. The charge against the petitioners was that of making a prejudicial pamphlet punishable under Rule 38 (5) of the Defence of India Rules read with Rule 34 (6) (e). The pamphlet purports to be addressed to the workers of Coimbatore. It begins by referring to the repressive measures taken by the Government all over the country, to lathi charges, and to an incident in Coimbatore where fire was opened on some mill workers resulting in the death of some of them. The pamphlet urged a non-official enquiry, and increase in wages, and other concessions, including payment of compensation to the relatives of the persons

who were shot dead. The pamphlet then goes on to indulge in a political discussion of the Government's repressive measures all over the country, to the imprisonment of the leaders of the Congress Party--the Congress being described as the country's life nerve. It stresses the necessity for the formation of a national Government to wage war against Fascist Japan. So far the pamphlet cannot be said to be very objectionable for it sets out with moderation and restraint only what can be seen almost daily in a more virulent form in the press. Later on, the pamphlet goes on to say that the reason why the Government is afraid to introduce a national Government is that the national, army which would drive away Fascist Japan would then turn round and destroy the Government. It urges the workers to return to work and unite in demanding a national Government for the prosecution of the war and the turning out the present Government.

3. The petitioners were charged under Rule 34 (6) (e) of the Defence of India Rules for an act intended or likely ' to bring into hatred or contempt or to create disaffection towards the Government established by law in British India' The pamphlet would no doubt come within this sub-clause if it were strictly construed; but the learned appellate Judge found it difficult to uphold the conviction under that clause because of the decision of the Federal Court in *Niharendu Dutta Majumdar v. King-Emperor* (1942) 5 F.L.J. 47 : 55 L.W. 344 in which it was said that every irresponsible talk ' cannot be treated as a prejudicial act likely to bring into hatred or contempt or to excite disaffection towards His Majesty or the Crown representative or the Government established by law in British India.' The principle laid down in that decision--as in many others--is that reasonable criticism of the Government is permissible, provided that it does not transgress certain bounds. It was not the intention of the Act to stifle reasonable criticism of the Government intended to bring about by constitutional means what the writers believed to be beneficial. If Rule 34 (6) (e) were strictly construed, then any criticism of the Government would be punishable. The learned Sessions Judge, while referring to the judgment of the Federal Court above referred to, thought that the speech might well prejudice the prosecution of the war. Undoubtedly it would, as all adverse criticism of the Government is likely to do; but if the accused could not be convicted of a prejudicial act within the meaning of Rule 34 (6) (e), it is difficult to see how they could be convicted under Rule 34 (6) (k); for the ground for

convicting them under Rule 34 (6) (k) would be because criticism of the Government was likely to excite disaffection against it. As the pamphlet was on the whole moderate and more reasonable than much of what is published in the daily papers, I think the petitioners should have been given the benefit of doubt and acquitted.

4. The petition is allowed, the conviction set aside, and the release of the petitioners ordered.

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