In Re: P. Ramarathnam

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Court : Chennai

Decided On : Feb-14-1964

Reported in : 1965CriLJ285

Judge : Kailasam, J.

Appellant : In Re: P. Ramarathnam

Advocate for Pet/Ap. : Mr. G. Gopalaswami

Judgement :
ORDER

Kailasam, J.

1. The VII Presidency Magistrate found that the petitioner printed the obscene picture on 12-7-1962 and that the publication is grossly indecent, convicted him under Section 292-A I. P. C. and sentenced him to a fine of Rs. 200 in default R. I. for three months.

2. Mr. G. Gopalaswami, learned Counsel for the petitioner, submitted that the conviction cannot be sustained on the ground that the prosecution has not established that the petitioner had the necessary mens rea for constituting an offence under Section 292-A I. P. C. Learned Counsel contended that, before a person could be convicted for printing a grossly indecent or scurrilous matter, the prosecution must prove that be Intended to print that grossly indecent or scurrilous

matter. In support of his contention, he relied on Explanation II to the section where it is provided that, in deciding whether a person has committed an offence under this station, the court shall have regard to any evidence offered or called by or on behalf of the accused person as to his intention in committing any of the acts specified in this section. The explanation only permits an accused to adduce evidence to prove his intention in committing any of the acts specified in the section. The liability under Section 292-A I. P. C. is absolute and any person who prints or causes to print any grossly indecent or scurrilous matter is liable to punishment under this section. But under Explanation II he is entitled to adduce evidence for establishing that he had a different intention. In support of his contention, learned Counsel referred to 3. decision of this Court in Rajagopal Rao v. State : AIR1951 Mad714 . In that case the accused was in jail at the time of publication of the article and on the date of the publication of it he had no control over the press.

The learned Judge, relying on the decisions in Ramaswami v. Lokanatha ILR 9 Mad 387, Hari-sarvothama Rao v. Emperor ILR 32 Mad 835 held that the observations in the decisions were authorities for the proposition that, though a declaration might be prima facie evidence that he was the printer and publisher of the article, it was open to the accused to prove that he was not in fact the publisher and at the time it was published he could have had no hand in it. I respectfully agree with the view expressed by the learned Judge. The burden is on the printer to establish that, though he had declared himself to be a printer, he had nothing to do with the printing. The decision cited by learned Counsel is not authority for the proposition contended by him that it is for the prosecution to establish that the printer Intended to publish grossly indecent or scurrilous matter. In this case it is admitted that the petitioner declared himself to be a printer and continued to be a printer on the date of the publication. He examined himself as D. W. 1 and stated that he was the general manager in charge of the administration and accounts of the paper, but that he did not know anything about the publication of the picture in question. I am unable to accept this statement of the printer. It is just made for the purpose of escaping the consequences of his act. The prosecution has clearly established that it was the petitioner who was printer on the date of the publication of the picture in Dinathanthi on 12-7-1902, There can be

no doubt the petitioner knew about the printing of the obscene picture.

3. It is next contended by learned Counsel that the lower court was in error in holding that the publication was grossly indecent. A look at the picture would show that the publication is grossly indecent, and I have no hesitation in agreeing with the view expressed by the lower court,

4. It is then submitted by learned Counsel that Section 292-A I. P. C. makes punishable grossly indecent or scurrilous publication, and in that manner interferes with the citizen's right to propagate his view and carry on his trade. No citizen Is entitled to publish grossly indecent and scurrilous publications and the restriction against publishing indecent or scurrilous matter is a reasonable one which cannot be questioned. There is no substance in the contention about the validity of the section and is obviously put forward as a last resort, as there are no merits in the case.

5. The criminal revision petition fails and is dismissed.