

In Re: G. Alavandar

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Court : Chennai

Decided On : Oct-24-1956

Reported in : AIR1957Mad427

Judge : Ramaswami, J.

Acts : [Press and Registration of Books Act, 1867](#) - Sections 3 and 12; [Constitution of India](#) - Article 19 and 19(1)

Appeal No. : Criminal Revision Case No. 885 of 1955 (Criminal Revision Petition No. 839 of 1955)

Appellant : In Re: G. Alavandar

Advocate for Def. : V.V. Radhakrishnan, Adv. for Public Prosecutor

Advocate for Pet/Ap. : A. Madhavan, Adv. for Row and Reddi

Disposition : Revision dismissed

Judgement :

Ramaswami, J.

1. This criminal revision is directed against the conviction and sentence of the learned Fifth Presidency Magistrate, Madras, in C. C. No. 10098 of 1955.

2. The facts are: The revision petitioner, Alavandar, is the keeper of the Jana Sakthi press at No. 38 Mount Road, Madras-6. It was found from two pamphlets entitled 'Madras Preparatory Committee 5th World Festival of Youth and Students for Peace and Friendship' and its Tamil equivalent, that the petitioner had failed to print on them the name of the printer and the press as required under Section 3 of the [Press and Registration of Books Act, 1867](#), and Rule 2 of the rules framed under Section 20 of the said Act, Therefore the Chief Presidency Magistrate filed a complaint under Section 12 of the aforesaid Act.

3. The statement of this Alavandar was that he was the keeper of the Jana Sakthi press, that the pamphlets in question were printed at the said press, that the name of the printer and the person as required under Section 3 of the Press and Registration of Books Act and Rule 2 of the rules have not been printed and that the omission to print the name of the printer and the place of printing was due to oversight. But he pleaded not guilty as he contended that Section 3 of the impugned Act was inconsistent with the fundamental right guaranteed under Article 19(1)(a) to all citizens, viz., the right to freedom of speech and expression. The learned Magistrate who was requested to make a reference under Section 432(2), Cri. P. C., declined to do so on the ground that first of all there was no restriction of the right to the freedom of speech and expression and secondly, that even if there was such a restriction. It was a reasonable restriction imposed in the interests of the general public and saved by Article 19(6) of the [Constitution of India](#). Therefore, he found the accused guilty and sentenced him to pay a fine of Rs. 4. Hence this revision.

4. Act XXV of 1867 as amended by Act XIV of 1922 is an Act for the regulation of printing presses and newspapers, for the preservation of copies of books printed in British India, and for the registration of such books. The preamble states:

'Whereas it is expedient to provide for the regulation of printing presses and of periodicals containing news, for the preservation of copies of every book printed or lithographed, in British India, and for the registration of such books.'

Section 3 with which alone we are concerned here states: -

'Every book or paper printed within (British) India shall have printed legibly on it the name of the printer and the place of printing; and (if the book or paper be published) (the name) of the publisher and the place of publication.'

An omission to comply with Section 3 is punishable under Section 12 of the said Act. In order to understand Section 3, we must also bear in mind Section 4, which states:

'No person shall, within (British) India, keep in his possession any press for the printing of books or papers, who shall not have made and subscribed the following declaration before the Magistrate within whose local jurisdiction such press may be:

'I. A. B., declare that I have a press for printing at....'

And this last blank shall be filled up with a true and precise description of the place where such press may be situate.'

5 The object and scope of Sections 3 and 4 appear to be a double-motivated one. The first is that the executive authorities shall note where the press is situated and the second is that they shall know who is the person in charge. A removal or the premises clearly deprives the executive authorities of their knowledge as to the location of the press. But the same cannot be said where there is a change in the personnel of the keeper of the press: *Raghubar Singh v. Emperor*, (A).

The Act does not require a new declaration in cases where a press, as to which the printer has made the declaration prescribed by Section 4 is changed to another locality within the same local jurisdiction as the former place. There is no clause in Section 4 of the Act corresponding to the provisions of Section 5 requiring a new declaration as often as a change of place takes place: *Bawa Narain Singh v. Empress*, 9 Pun Re Cr 1889 (B). The further object of this section seems to be that members of the public who might be slanderously or defamatorily attacked can always resort to the civil Courts for their remedies against the publication of such slanderous and defamatory matter.

This would not be possible if the printers and publishers are able to shroud themselves in a cloak of anonymity and carry on their nefarious cloak and dagger business without any possibility of their being successfully discovered. That is why it has been held when a newspaper printed and published bearing the following words 'Printed and published at Cochin for the Malabar Economic company at the company's Goshi Vilasam press' were held not to satisfy the requirements of the Act. Printers and publishers cannot be allowed to select for themselves the description to be used in professing to comply with the provisions of the Act but they must use the descriptions prescribed by the Act: *Emperor v. Hari*, 1 Bom Cr C 70 (C); *Queen Empress v. Hart Shenoy*, ILR 16 Mad 443: 3 Mad LJ 201 (D); *Crown V. Bhawani Das* 6 Pun Re Cr 1909: 2 Ind Cas 878 (E).

5a. In other words, the intention of Section 3 requiring that the name of the printer and the place of printing and the name of the publisher and the place of publication should be printed legibly on every book or paper was to inform the public who the responsible printer or publisher was and to convey that information on the face of the paper. The word 'publisher' has been used in the Act in a restricted sense and does not include the vendor of the newspaper or book: *Queen Empress v. Banka Patni*, ILR 23 Cal 414 (F). Section 12 read with Section 3 clearly indicates that such persons are not included in publishers.

But a man who causes a book to be printed and offers it to the public for sale is a publisher within the meaning of Section 3 and Section 12 of the Act: *Empress v. Joti Prasad*, 1887 All WN 95 (G) (for a good commentary on this 1867 Act, see *Rai Bahadur G.K. Boy's law relating to Press and Sedition* page 70 and follows).

6. The provisions of the Act have to be viewed against the background of the freedom of speech and expression guaranteed under Article 19(1)(a) of the [Constitution of India](#).

7. Article 19(1)(a) guarantees freedom of speech and expression. The word 'speech' means a formal discourse in public, while the word 'expression' represents generally an utterance of one's thoughts or feelings, whether by word of mouth, writing, printing, picture or in any other manner. Freedom of expression includes not only the freedom of Press, but the expression of one's ideas by any

visible representation, such as by gestures and the like. Freedom of speech obviously includes freedom of discussion and has been interpreted to include all that may be said to be covered by 'freedom of expression'.

'The freedom of the journalist' in England as their Lordships of the Privy Council observed in *Arnold v. King Emperor*. 41 Ind App 149: AIR 1914 PC 116 (H),

'is an ordinary part of the freedom of the subject, and to whatever lengths the subject in general may go, so also may the journalist, but, apart from statute law, his privilege is no other and no higher. The responsibilities which attach to his power in the dissemination of printed matter may, and in the case of a conscientious journalist do, make him more careful; but the range of his assertions, his criticism or his comments, is as wide as and no wider than, that of any other subject.'

8. The Constitution of the United States specifically guarantees the freedom of the Press on the recognition of the special importance of the Press as an organ of publicity. But though the first Amendment does not itself lay down any qualifications to the liberty of the press guaranteed therein English system and usage have been cited constantly as furnishing grounds for limiting and as a means of interpreting the right.

9. The [Constitution of India](#) follows the law of England in so far as it omits to mention freedom of the Press specifically in the guarantee of fundamental rights. The omission of reference to the liberty of the Press was merely due to the fact that express mention of the liberty of the press was considered unnecessary: *Brij Bhushan v. State of Delhi* : 1950 CriLJ1525 . The freedom of the press in India is no higher than that of a citizen and no privilege attaches to press as distinguished from the members of the public. *State v. Ahmed*, AIR 1954 Hyd 175 (J). The freedom of speech and press are the same, involve the same legal principles and the same public interests. The press in its historic connotation comprehends every sort of publication. The liberty of the press is not confined to newspapers and periodicals: It necessarily embraces handbills and literature, such as pamphlets and leaflets (*Jamison v. State of Texas*, (1943) 87 Law Ed 869 (K); *Lovell v. Griffin*, (1938) 82 Law Ed 949 (L)) which have proved most effective instruments in

the dissemination of opinion: *Schneider v. Irvington*, (1939) 84 Law Ed 155 (M)

10. But this freedom of speech and expression is not an unqualified fundamental right conferred upon the citizens of the Republic. In no country is there any absolute freedom of speech or expression: *Sihnu v. Lachman Dass United Public Works v. Mitchell*, (1846) 91 Law Ed 754 (O). The right is not absolute and unlimited at all times and under all circumstances, *Whitney v. California* (1925) 11 Law Ed 1095 (P); *Stromberg v. California*, (1931) 75 Law Ed 1117 (Q); *Kodacs v. Cooper*, (1948) 93 Law Ed 513 (R); *Termienalls v. Chicago*, (1947) 92 Law Ed 1132 (S) and does not give immunity to every possible use of language: *Chaplinsky v. State of New Hampshire*, (1942) 86 Law Ed 1031 (T); *Schenck v. U. S.* (1919) 63 Law Ed 470 (U); *Frohwerk v. U. S.* (1919) 63 Law Ed 561 (V). In *Gitlow v. State of New York*, (1923) 69 Law Ed 1138 (W) Sandford J. observed:

'It is a fundamental principle, long established that the freedom of speech and of the press, which is secured by the Constitution, does not confer an absolute right to speak or publish without responsibility whatever one may choose, or an unrestricted licence that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom. Reasonably limited this freedom is an inestimable 'privilege in a free Government; without such limitation, it might become the scourge of the republic. That a State in the exercise of its police power, may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime, or disturb the public peace is not open to question. And for yet more imperative reasons, a State may punish utterances endangering the foundations of organised Government and threatening its overthrow by unlawful means. These imperil its own existence as a constitutional State. Freedom of speech and press.....does not protect disturbances of the public peace or the attempt to subvert the Government. It does not protect publications prompting the overthrow of government by force, the punishment of those who publish articles which tend to destroy organised society being essential to the security of freedom and the stability of the State. By enacting the present statute the State has determined, through its legislative body, that utterances advocating the overthrow of organised Government by force, violence and unlawful means, are so inimical to the general welfare and involve

such danger of substantive evil, that they may be penalised in the exercise of its police power. We cannot hold that the present statute is an arbitrary or unreasonable exercise of the power of a State unwarrantably infringing the freedom of speech or press; and we must and do sustain its constitutionality.'

See also the leading decision of *Near v. Minnesota*, (1931) 283 US 697 (X).

11. Similarly, in the words of Blackstone 'The liberty of the press..... consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matters when published' (Blackstone Commentaries Vol. 17, pages 151-152). (12) As Dicey puts it:

'The simplest way of setting forth broadly the position of writers in the Press is to say that they stand in substantially the same position as letter writers.'

The liberty of the press is a mere application of the principle that no man is liable to be punished or condemned in damages except for a breach of law. Any person may publish what he pleases without obtaining any previous licence subject to the law of libel. To quote Lord Ellenborough:

'the law of England is the law of liberty, and consistently with this liberty we have not what is called an imprimatur; there is no such preliminary licence necessary but if a man publishes a paper he is exposed to the penal consequences as he is in every other act, if it be illegal.'

Bex v. Cobbett, (1804) 29 St Tr 49 (Y); see also *the King v. Dean of St. Asaph*, (1789). 100. ER 657 (Z). In the words of Lord Mansfield:

'The liberty of the press consists in printing without any previous licence subject to the consequences of law'.

13. Both American and Indian standard text books of the Constitution indicate that this is the sum total of freedom of the press: (1) American: Cooley on Constitutional limitations Vol. II, p. 883 (8th Edn.): Wills on Constitutional law page 489 and foll; Rottschaffer on Constitutional law (Horn. book series) Section 313, p. 756 and foll; (2) (Indian) Chaudhri Constitutional Rights and Limitations. Vol. I,

page 447 and foll; AIR Commentaries on the Constitution of India, Vol. I, Note 27 and foll; page 398 and foll; Basu [Constitution of India](#), 2nd Edn. page 98 and foll; N.R. Raghavachariar, the [Constitution of India](#), page 59 and foll; Aggarwala Fundamental Rights and Constitutional Remedies, Vol. I. page 284 and foll.

14. To sum up, liberty of the press as now understood and enjoyed, is of very recent origin. It is not mentioned in the English Petition of Rights. The term itself means only the liberty of publication without the previous permission of the Government, i.e., neither Courts of Justice, nor any other Judges whatever are authorised to take notice of writings intended for the press, but are confined to those which are actually printed. The same idea is incorporated in the American Bill of Rights.

There is no licensing or censorship of literature of any kind in times of peace, but the guarantee does not exempt the press from the ordinary law of civil and criminal libel, contempt of court, obscenity. or in respect of acts of violence against the State and organised Governments. Thus the freedom of speech and expression in substance is freedom from any provision which even indirectly amounts to censorship. Courts have in general construed freedom of press so as to preserve the fundamental values intended to be protected by the Constitutional provisions protecting them : 1950 CriLJ1525 Srinivasa Bhat v. State of Madras : AIR1951 Mad70 . In re Bharati Press, AIR 1951 Pat 12 (Z2); Amarnath v State of Punjab, AIR 1951 Punj 18 (Z3); Mrs. Pattammal Arumugam v. Chief Presidency Magistrate, Egmore, Madras : AIR1951 Mad950 .

15. Thus it will be noticed that the impugned Section 3 does not in any way restrict the freedom of expression. On the other hand, to maintain unimpaired that freedom of expression but at the same time to prevent that freedom from degenerating into licence without remedy both for the State as well as individual citizen in regard to defamatory, seditious, blasphemous, obscene and contempts of Courts, the State in the exercise of its police powers, insists upon the furnishing of the information set out above.

There is no allegation in general or even a suggestion in the present case where the printer and publisher has apologised for omitting the particulars by oversight,

that this provision has in any way impaired the freedom of expression. Healthy public presses conducting their affairs above board constitute the bulwark of the State; and decreative and anonymous presses working underground constitute a menace to Society. The arms which a publisher and printer should carry must be those of a warrior and not that of an assassin. The cloak and dagger type of publishing and printing has no place in our Sovereign Indian Republic where our fundamental rights have been guaranteed by the Constitution and the citizens are:

Men who their duties know

But know their rights and knowing dare maintain

.....

And sovereign law that States collected will over thrones and globes elate
Sits empress crowning good, repressing ill.

16. There is no substance in the contention raised and which has been rightly rejected by the learned Magistrate, This revision case is dismissed.

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