

**In Re: Sojoni Kanta Das**

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**Court :** Kolkata

**Decided On :** Jan-03-1930

**Reported in :** AIR1930Cal244

**Appellant :** In Re: Sojoni Kanta Das;In Re: India in Bondage : Her Right to Freedom

**Respondent :** ;

**Judgement :**

Rankin, C.J.

1. This is an application by Sojini Kanfca Das under Section 99-B, Criminal P.C., in respect of a book entitled 'India in Bondage : Her right to Freedom' of which he is the printer and publisher. On 13th August 1929, the Government of Bengal declared every copy of this book to be forfeited to His Majesty under Section 99-A of the Code. The present application is to set aside that order on the ground that the book did not contain any seditious matter or any matter the publication of which is punishable under Section 121-A, I.P.C. Our duty is to come to a finding under Section 99-D, Criminal P.C., namely, if we are not satisfied that the book contains seditious or other matter of such a nature as is referred to in Sub-section 1, Section 99-A, our duty is to set aside the order of forfeiture.

2. The book would appear to have been first published in December 1928 and again in May 1929. The name of the author is given as Jabez T. Sunderland. From

certain passages in the book it would appear that it is addressed to an American audience and the author writes as an American. The book, however, was printed in India and it is only with its publication in India that this Court can be concerned. The general thesis or argument of the book is that Great Britain has no right to rule in India; that British rule in India is unjust, tyrannical and highly evil in its effects - is a crime against humanity and a menace to the world's freedom and peace. The main purpose of the book is to remove the impression, said to be widespread in America, that British rule in India has been and is a great and almost unqualified good. The author claims to be well qualified to deal with this matter by reason in particular of the fact that he has paid no less than two visits to India - one in the years 1895-96 and again in 1913-14. He claims to have read the Indian periodical press extensively during his visits and to have been a regular subscriber since 1896 to no fewer than 7 Indian newspapers. Accordingly the reader is informed with great thoroughness and persistency that any signs of prosperity to be noticed in India are not signs of the prosperity of the Indian people but only of the English; -that the all-overshadowing fact connected with the history of India in recent years has been the succession of famines and the consequent plague epidemics. That in fact there is always famine, in the sense of starvation on a wide scale somewhere in the land. That the people of India are growing speedily poorer. The causes of India's impoverishment are set forth as being heavy taxation, the destruction of her manufactures as a result of British rule, the enormous and wholly unnecessary cost of her Government and in particular the heavy military expense of Government. These things are set forth as being the evils of foreign rule and the only remedy for them is said to be self-rule. It further appears, according to the author, that England's position in India works much injustice to the United States of America:

When our Government desires to communicate upon any matter officially with India, it must be done round about by way of the British Ambassador, the official not of India, but of the nation that is holding India in bondage.

3. A chapter is devoted to the 'Arrogance of the British India'; another is devoted to the denunciation of the legal system in India, the information of the author being that its 'law system' was framed for India by Macaulay. This it appears (the

reference would seem to be to the Indian Penal Code) is of a nature degrading to the Indian people. Its main features are said to be that the Judge and the prosecutor is the same man, that so many of the Judges are foreigners, generally Englishmen, who have little acquaintance with the Indian people; that Englishmen are often appointed Judges who have no knowledge of law; that the legal system is very costly. But the gravest charge of all against the British legal system in India is given as partiality and favouritism towards Europeans. So too, the kind of peace which British rule has brought to India is explained to have been worse than war. 'The British have made a graveyard and they call it peace.' Again, the British Government is responsible for India's 'opium curse':

the British have fostered the opium evil and organized it for purpose of revenue. It has done this hypocritically, pretending that it is fulfilling the wishes of the Indian people.

4. The like is said, at length, of India 'drink curse.' Of caste in India, it is said:

The truth is the caste which is the most galling of any to the Indian people, and which they most desire to see reformed or removed, is that of their arrogant foreign lords and masters, who with some honourable exceptions, treat them as serfs.

5. Of Hindu-Mahomedan riots it is explained that the responsibility for them is primarily on the British who

have employed the policy of fostering divisions among the people, knowing well that divisions always weaken a nation and render it easier to hold in subjection.

6. Again, as to the military protection which the British give to India a chapter is devoted to showing that

The only protection the British give India in return for the crushing military burden that she is compelled to bear is the infinite injustice and wrong of subjection, bondage, exploitation, loss of freedom, deprivation of the place which she has a right to occupy among the great nations of mankind.

7. Another chapter describes the British rule in India as worse than that of the Moghul Emperors because it is a government of 'foreigners and transients,' India being a

plundered nation in the hands of constant plunder with the plunderer carried away clean out of the hind

8. It does not seem to me to be necessary in this judgment to illustrate further the character and contents of the book, nor do I propose to select for quotation the more extreme or rhetorical passages, or the passages which display at its worst the author's animus against the Government at present established by law in British India.

9. The question being whether we are satisfied or not satisfied that the book contains seditious matter the publication of which is punishable under Section 124-A, I.P.C., the only reasonable answer in my opinion is that there is in this book ample to satisfy any Court of justice that the terms of that section have again and again been contravened. The book appears to me to be a sustained attempt to bring into hatred or contempt and to excite disaffection to wards the Government established by law in British India. The disapprobation expressed of the measures of Government or of the administrative or other actions of Government is motivated throughout by a desire to excite hatred, contempt and disaffection.

10. The Advocate General has referred us to the statement by Strachey, J., in *Queen Empress v. Bal Gangadhar* [1897] 22 Bom. 112 at p. 137 of the meaning of Section 124-A, P.C., as it then stood:

A man may criticize or comment upon any measure or act of Government, whether legislative or executive, and freely express his opinion upon it... He may express the strongest condemnation of such measures and he may do so severely and even unreasonably, perversely and unfairly. So long as he confines himself to that, he will be protected by the explanation. But if he goes beyond that and, whether in course of comments upon measures or not, holds up the Government itself to the hatred or contempt of his reader as for instance by attributing to it every sort of evil or misfortune suffered by the people or dwelling adversely on its foreign origin and

character or imputing to it base motives or accusing it of hostility or indifference to the welfare of the people then he is guilty under the-section and the explanation will not saves him.

11. Of this book it can hardly be doubted that its leading features are accurately described in the latter portion of the passage just cited. It proceeds indeed upon well worn lines every evil and misfortune, be it the 'drink curse' the 'opium curse,' famine or anything else, is attributed to the English Government whose foreign origin and character is insisted on upon every page. The baseness of its motives is the ever ready explanation of its policy.

12. In these circumstances Mr. B.C. Chatterjee, counsel for the applicant, contended before us that the criticism, of Government was both elaborate and severe but that nevertheless the book does not offend against Section 124-A by reason of the fact that it appears from certain passages therein that it is no part of the author's purpose to advocate that India should become entirely independent of the British Empire. Thus in one passage the author says:

Hero lies India's only hope. She must be come an absolutely independent nation with No. connexion with Great Britain, or else, remaining in the Empire, she must be given the place of a real partner not that of a subordinate under a partner's name,) a place of as true freedom and of an perfect equality with the other partners in the Empire as that of Australia, or New Zealand or South Africa or Canada

13. In other passages, moreover, the book contains criticism of the present form of Government as being contrary to England's own interests and its continuance as the kind of policy which cost her the American colonies and which, if persisted in must cost her India also. In the preface or 'foreword,' there is a passage in which the author disclaims enmity to Great Britain and states that what he advocates for India he believes to be for England's good as well as that of India. It appears that this position is maintained, so far as the author-is concerned, by asserting that there are two Englands one which he likes to think of as the true one and the other which he describes as 'this evil and as I believe dangerous England' and 'this imperialistic, might-makes-right England' which:

unless held in cheek will make India a smouldering volcano of unrest.

14. On tire whole it seems to mo to be quite true to say that it is no part of the purpose of the book to argue that all connexion with Great Britain should be abrogated. So long as the author is engaged in denunciation, he has little interest, so far as I can discover, in any particular proposals for reform and the book does not seem to be an argument in favour of any special type of constitution. This circumstance, however, has little bearing upon the question whether the book infringes Section 124-A. It is not necessary for our present purposes to consider whether the advocacy of any particular policy or any particular kind of constitution would necessarily, and of itself, be within the terms of the section. Though there may be policies or doctrines the advocacy of which is otherwise illegal no such question need be considered in this case. The words of the section are:

brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards His Majesty or the Government established by liw in British India.

15. No interpretation can be given to these words which would render it poossible to hold that the book does not offend against the section.

16. Mr. Chatterjee suggested that there was room for a distinction between the fact and the form of British Government of India and contended that the attempt, if any, to excite hatred and contempt was in this book directed solely against the particular form of Government now obtaining and was thus innocent under the section. The words used by the legislature are 'the Government established by law in British India.' The section does not contemplate the probability of attempts being made to excite hatred and contempt against abstractions, but uses a clear phrase for a definite thing, and it would be altogether misinterpreted if effect were given to Mr. Chatterjee's argument. The book itself, moreover, fails altogether to fall into line with the distinction suggested. People who are so unfortunate as to be unable to advocate change in the form of Government without attempting to bring into hatred or contempt or to excite disaffection towards the Government established by law have not been specially favoured by the legislature either by the terms of the section itself or by the explanations. They may take their grievance, if any, to

the legislature, but the section while it stands must be interpreted according to the plain and natural meaning of its words. In my opinion this application must be dismissed.

**Suhrawardy, J.**

17. I agree.

**Pearson, J.**

18. I agree.

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