

Manomohan Ghose Vs. Emperor

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Court : Kolkata

Decided On : Nov-07-1910

Reported in : (1911)ILR38Cal253

Judge : Holmwood ; and Fletcher, JJ.

Appellant : Manomohan Ghose

Respondent : Emperor

Judgement :

Holmwood, J.

1. I have had the advantage of reading the judgment which my learned brother is about to deliver, and I find myself in agreement with him that the present appellant, the printer and publisher of the Karmayogin, cannot be convicted under Section 124A of the Indian Penal Code on the article which we have before us in this case.

2. It is unfortunate that of a series of articles alleged to have been written by one and the same hand the prosecution should have selected the one which on the face of it appears the least amenable to a charge of sedition, and it is doubly unfortunate that the case should have been so inadequately tried in the Lower Court. It is true that under the law, the printer and publisher of a seditious article can be punished merely on proof that the article is calculated to excite feelings of hatred, dislike, ill-will, enmity or hostility towards the Government established by

law in British India, but that renders it all the more incumbent on the prosecution to show either that the article does as a fact bring the Government into haired or contempt, or that the intention of the writer was to excite disaffection. Edge C.J. in delivering the judgment of the Full Bench in *Queen-Empress v. Amba Prasad* (1897) I.L.R. 20 All. 55, points out that the writer may be guilty of exciting or attempting to excite feelings of 'disaffection,' as that term is used in 124A, no matter how guardedly he may attempt to conceal his real object, but it is idle to contend that the printer and publisher can be punished if the concealed object is not established by evidence on the record. Now, in this case, although the prosecution alleged that a series of articles had been written by one individual and had those articles produced by a Police Officer who said that it was his duty to read them and if objectionable to forward them to his superiors, no evidence, was offered who that individual was nor whether all the articles were by the same author.

3. It was urged by the learned Advocate-General that these articles were admissible under Section 15 of the Evidence Act for the purpose of showing that the publication of the article before us in this case was not accidental, but that has obviously nothing to do with their admissibility for the purpose of showing the intention of the writer. In order to use them for this purpose it was necessary to show who the writer was and that all the articles produced were by the same hand. This not having been done We are compelled to take the article before us as it stands without any of the informing commentaries which were sought to be drawn from one previous article in particular by the learned Advocate-General.

4. The author of the present article may be a very ingenious and subtle master of language: there are indications throughout the article, that he is. Several of his conditional hypotheses if they were interpreted with the double meaning that is sought to be read into them from other sources, on the footing that the aims of the Nationalist party are really different from what they purport to be in this article, might bear a very sinister interpretation indeed; but as the possible author of this and the other articles is not before us and there is nothing to show that they are the work of one and the same hand, it would be extremely unfair to the appellant to judge him by any standard other than that of what the article before us really

purports to contain.

5. The learned Presidency Magistrate in the Court below has not dealt with the purport of the article as a whole. He has selected isolated passages and in my opinion given them an interpretation that they will not bear and in some cases appended a quite inaccurate account of what they purport to convey. For instance the article does not attack the Government when it is criticising the alleged inadequacy of the Home Rule Scheme. It attacks the Moderate Party who have been assumed to have expressed their concurrence with the scheme. Again the writer nowhere suggests that without recourse being had to violence, advancement is impossible, as the learned Magistrate finds he does, and so on in other passages of the judgment.

6. Having regard to the very inadequate way in which the case was dealt with in the Lower Court I have had to seriously consider whether it would not be our duty to direct a retrial, but having regard to the fact that the appellant had already served more than half his sentence before he was admitted to bail, and to the fact that the prosecution must be presumed to have abstained from proving the identity and intentions of the writer upon grounds which to them seemed good and sufficient, I do not think any good purpose would be served by carrying the case against the present appellant any further. I, therefore, concur with my learned brother that the appeal must be allowed, the conviction and sentence set aside and the appellant acquitted and released from bail.

Fletcher, J.

7. The appellant in this case has been convicted by the learned Officiating Chief Presidency Magistrate of an offence punishable under Section 124A of the Indian Penal Code as being the printer and publisher of an article entitled 'To my countrymen' which appeared in the issue of the Karmayog in newspaper, on the 25th December, 1909, and has been sentenced to undergo six months' rigorous imprisonment. The appellant has preferred an appeal to this Court against the conviction and sentence passed upon him. The article forming the subject of 'the charge purports to be an open letter addressed by one Arabindo Chose to his

countrymen. The principles applicable to cases of this nature are not open to doubt and all that we have to do is to apply those principles to the case now before us.

8. Section 124A of the Indian Penal Code coupled with the three explanations thereto contains in clear and concise language the law in this country relating to sedition which is practically identical with the law in England. It may, however, be useful in passing to quote one judicial utterance as to the limits permitted by the law to writers commenting on the action of the Government. In charging the Jury in *Queen-Empress v. Bal Gangadhar Tilak* (1897) I.L.R. 22 Bom. 112, 137, Strachey J. made the following remarks: 'It (i.e., the section) shows clearly what a public speaker or writer may do, and what he may not do. A man may criticise or comment upon any measure or act of Government, whether legislative or executive, and freely express his opinion upon it. He may discuss the Income Tax Act, the Epidemic Diseases Act, or any Military Expedition, or the suppression of plague or famine, or the administration of justice. 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, lie will be protected by the explanation. But if he goes beyond that, and, whether in the course of comments upon measures or not, holds up the Government itself to the hatred or contempt of his readers, - as for instance, by attributing to it every sort of evil and misfortune suffered by the people, or dwelling 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 save him.' Now, in this case the general theme of the writer of the article is a severe criticism on the policy of what is called the moderate party and a call to his countrymen to 'come forward and take up their burden.' The learned Advocate-General in the course of his argument has taken us through the whole of the article line by line and pointed out the parts which in his view are open to complaint. The learned Advocate has, moreover, relied upon two other articles, exhibits 16/1 and 18/1, which he states were written by the same writer and appeared in the issues of the *Karmayogin* on the 24th and 31st July, 1909. These two articles he claimed to use for the purpose of showing the meaning of certain expressions used in the article complained of and also to show the

intention of the writer.

9. But, as we pointed out during the argument, apart from all other questions, these articles were not proved in such a manner as to entitle us to take them into consideration. We must, therefore, deal with the article complained of as it stands.

10. Now the first words that the learned Advocate-General has laid stress upon is the call to the Nationalist party to once more assume their legitimate place in the 'struggle for Indian liberties.' This, it is said, is a clear invitation by the writer to his countrymen to join in a movement having for its attainment the liberation of India from foreign rule. But in my opinion the words standing alone are capable of a much more innocent meaning. The use of the word 'liberties' in the plural would not prima facie point to liberation of the country from foreign rule, but to certain specific liberties and this view appears to be supported by the subsequent portion of the article when the writer sets out what the demand of the Nationalist Party must be, viz., an effective voice in legislation and finance and some control over the Executive.

11. The next portion of the article on which the learned Advocate-General laid stress is the portion 'The survival of moderate politics in India depended on two factors, the genuineness of the promised reforms and the use made of them by the Connectionists of the opportunity given them by the practical suppression of Nationalist public activity.... Had the reforms been a genuine initiation of constitutional progress the moderate tactics might have received some justification from events.... The reforms have shown that nothing can be expected from persistence in moderate politics except retrogression, disappointment and humiliation.' The argument put forward on this part of the articles is that the statement that the reforms are not 'genuine' or a 'genuine initiation of constitutional progress,' holds the Government up to hatred and contempt as implying that they have given the people something that is not 'genuine.' To my mind this is a very far-fetched argument. The writer was obviously entitled to express his opinion on the reform scheme and the mere fact that he states that the scheme is not a genuine reform or not a genuine measure of constitutional progress cannot be seditious. But then it is said that the statement that 'nothing can be expected from

persistence in moderate politics except retrogression, disappointment and humiliation,' followed subsequently by the words 'discomfited and humiliated by the 'Government' are obviously seditious as the words mean that the Government has humiliated a large portion of the people, viz., the moderate party, and, therefore, the statement brings the Government into hatred or contempt. It is obvious that this is not the natural or ordinary meaning of the words. The natural meaning is that the moderate party has been humiliated by accepting the Reform Scheme which is not a measure of 'constitutional progress.' Then a portion of the article was relied upon as showing that the writer was advocating that violent methods should be used if necessary. The words are 'If the Nationalists stand back any longer, either the national movement will disappear or the void created will be filled by a sinister and violent activity.'

12. But that the intention is not such is shown by the sentence that immediately follows 'Neither result can be tolerated by men desirous of their country's development and freedom.'

13. The learned Advocate-General next referred us to the following part of the article. 'The fear of the law is for those who break the law. Our aims are great and honourable, free from stain or reproach. Our methods are peaceful though resolute and strenuous. We shall not break the law and, therefore, we need not fear the law. But if a corrupt police, unscrupulous officials or a partial judiciary make use of the honourable publicity of our political methods to harass the men who stand in front by illegal ukases suborned and perjured evidence or unjust decision, shall we shrink from the toll that we have to pay on our march to freedom.... We must have our associations, our organisations, our means of propaganda, and if they are suppressed by arbitrary proclamations, we shall have done our duty by our motherland and not on us will rest any responsibility for the madness which crushes down open and lawful political activity in order to give a desperate and sullen nation into the hands of those fiercely enthusiastic and unscrupulous forces that have arisen among us inside and outside India.'

14. The argument on the first part of this paragraph is that as the Government appoint the police officials and judiciary, to describe them as corrupt, unscrupulous

and partial reflects upon the Government and brings it into hatred and contempt. But, though the words used are such that one may strongly disapprove of, I am unable to see that the words taken in their context necessarily bear this meaning. The first portion of the paragraph states that the movement is to be a movement within the law and then follows the sentence commencing 'But if' which words clearly govern the sentence which follows: It seems to me reasonably clear that the writer does not intend to designate all the police officials and judiciary as corrupt, unscrupulous and partial. It is also to be remembered that the article is not one written on the police, officials or judiciary. Although one may regret the use of such words, I cannot bring myself to believe that the use of these words in the context in which they are used falls within Section 124A of the Indian Penal Code.

15. The other three expressions in the paragraph which have been dealt within are the expressions 'arbitrary proclamation' 'madness' and 'a desperate and sullen nation.'

16. It is very obvious that the expression 'arbitrary proclamation' coupled with the word 'associations' points to proclamations under the Criminal Law Amendment Act suppressing associations. I take it, however, that there is no particular harm in a writer stating that if his association, which he believes to be a lawful one, is suppressed the proclamation will be arbitrary. It is difficult to deal seriously with the other two expressions 'madness' and 'a desperate and sullen nation.'

17. That the first of these two expressions charges the Government with insanity cannot be argued. It is said, however, that the meaning of the word as used is that of recklessness and, therefore, falls within Section 124A. The word, however, is clearly used to indicate an act of folly which in the contesting clearly innocuous. Similarly with regard to the expression 'a desperate and sullen nation!' The learned Advocate argued that these words were seditious as implying that the Government had made the nation desperate and sullen and, therefore, brought the Government into hatred and contempt. But if arguments of this nature were assented to, the right of comment on the action of the Government given by law would be wholly taken away.

18. Then we come to what the writer states is to be the demand of the nationalist party. 'We demand, therefore, not the monstrous and misbegotten scheme which has just been brought into being but a measure of reform based upon democratic principles...an effective voice in legislation and finance, and some check upon an arbitrary executive. We demand also the gradual, devolution of executive Government out of the hands of the bureaucracy into those of the people. Until these demands are granted we shall use the pressure of that refusal of co-operation which is termed passive resistance. We shall exercise that pressure within the limits allowed us by the law, but, apart from that limitation, the extent to which we shall use it depends on expediency and the amount of resistance we have to overcome.'

19. The argument for the Crown is that the use of the words 'monstrous and misbegotten scheme,' as applied to the Reform Scheme hold the Government up to 'ridicule and vituperation.' But that does not appear to me to be the natural consequence of these words. Doubtless the words are a strong condemnation of the Reform Scheme framed by the Government. The law, however, permits comments on actions of the Government provided they do not bring the Government into hatred or contempt or promote disloyalty. A statement that the Reform Scheme is monstrous and misbegotten, because it is not founded upon democratic principles, is not by itself one that exceeds fair and reasonable comment.

20. The next words that the learned Advocate-General much relied on were the words 'arbitrary executive' which he stated were 'sufficient of themselves to contravene the law.' He argued that any constitutional lawyer would know that the Executive Government in India was not an arbitrary executive, as no person is liable to be deprived of his liberty or to have his property forfeited without recourse to the Courts of law. In the first place, however, it is to be noticed that we must look at the words used by the writer not as if he were a constitutional lawyer but as a writer in a journal.

21. I quote from the very pertinent remarks made by Strachey J. in charging the Jury in *Queen-Empress v. Bal Gangadhar Tilak* (1897) I.L.R. 22 Bom. 112, 142. 'A

journalist is not expected to write with the accuracy and precision of a lawyer or a man of science; he may do himself injustice by hasty expressions out of keeping with the general character and tendency of the articles.' Moreover, there is a more general and popular meaning to the words 'arbitrary executive' than that given by the learned Advocate-General. Further, if the definition given by the learned Advocate-General is correct, it may be a matter of opinion how far the Government does or does not fall within that definition. The next expression to which exception was taken was 'passive resistance.' The writer has, however, denuded it himself as being a refusal of co-operation within the limits allowed by the law. It seems difficult to deduce a seditious meaning from this phrase. But then it is said that although the writer states that the pressure is to be used within the limits allowed by the law, yet there is a covert threat to use pressure outside those limits if necessary.

22. All I can say on this argument is that I have not been able to discover this covert threat from the words used. The next and last part of the article, which the learned Advocate-General has called our attention to is: 'The movement of arbitration successful in its inception has been dropped as a result of repression. The swadeshi boycott movement still moves by its own impetus.... We must free our social and economic development from the incubus of the litigious resort to the ruinously expensive British Courts.

23. The learned Advocate-General stated that the expression 'swadeshi boycott' referred to a boycott of the Government. But it is a matter of public knowledge that it refers to a boycott of foreign goods; and again he laid stress upon the expression 'British Courts,' The question as to the expense involved in litigation before the Courts is surely a matter on which a writer is entitled to comment.

24. This is not the first time, nor will it I imagine be the last, when the Courts will be described as ruinously expensive, and I cannot see how such a statement can come within Section 124A.

25. I have now dealt with the arguments that have been made before us in detail on the article, and I have given the best consideration I can on the article as a whole and I have come to the conclusion that it does not appear from the article

that it is such as is likely to cause disaffection or produce hatred or contempt of the Government, nor can I find from the article that such was the intention, of the writer.

26. Doubtless to many if not to most people the writer's view on the great Reform Scheme would appear to be unreasonable and one that does not recognise the great advance that has been made.

27. But with that we are not concerned. All that we have to decide is whether the law, as it is, has or has not been broken by the appellant by the publication of this article, and I have come to the conclusion that it has not.

28. The learned Advocate-General has pressed upon us strongly to take into consideration the state of the country at the time this article was published. The authorities show that that is a matter to be taken into consideration, but that obviously does not entitle the Court to convert an, article not falling within the mischief aimed at by Section 124A into one that does.

29. In my opinion the appeal ought to be allowed and the conviction and sentence set aside.

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