

Amiya Kumar Bhattacharjee Vs. Emperor

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Court : Kolkata

Decided On : Apr-22-1931

Reported in : AIR1931Cal641

Appellant : Amiya Kumar Bhattacharjee

Respondent : Emperor

Judgement :

Panckridge, J.

1. This is a rule obtained by the accused who has been convicted under Section 12, Act 25 of 1867 and sentenced to pay a fine of Rs. 25 or in default to undergo 15 days simple imprisonment. The Magistrate has found that on the room, occupied by the accused, being searched certain leaflets were discovered by the police, that other copies of such leaflets were being distributed on the streets and daring inquiries in connexion with such distribution the accused was arrested. The Magistrate has, on the evidence, come to the conclusion that the accused has been distributing the leaflets. On that finding he has convicted the accused under Section 12, Act 25 of 1867, which lays down that

whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in Section 3 of the Act shall, on conviction before a Magistrate be punished by fine not exceeding Rs. 2,000, or by simple imprisonment for a term not exceeding six months, or by both.

2. It is urged on behalf of the accused that in doing what he has been found to have done he cannot be said to have published the paper within the meaning of Section 12. I need not decide that point which does not appear to me to be altogether an easy one because there is another matter which appears to me to be of an insuperable difficulty in the way of prosecution. When we turn to Section 3 we find that it enacts that

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.

3. It is conceded that those leaflets which are 'papers' within the meaning of Section 3, do not bear the name of the printer, the place of printing the name of the publisher or the place of publication. But the important point is that the legislature has not thought fit to apply a similar provision to books or papers printed outside British India. There is no evidence as to where the paper has been printed, and as has been suggested it is by no means impossible that it has, in fact, been printed outside British India.

4. The learned Deputy Legal Remembrancer protests that the onus should not be laid on the prosecution to prove affirmatively that the paper was printed within British India and he says that the matter is one particularly within the knowledge of the accused and therefore if his defence be that it may have been printed outside British India it is for him to show it. I cannot agree with that contention. The accused is a schoolboy and it is quite possible that he may not know where the leaflets have been printed. It is also equally possible that behind the distribution there is some one and the boy has been used as a tool and the fact as to the origin of the leaflet has been carefully kept from the knowledge of the boy. He appears a somewhat foolish and ill-balanced boy, and not the sort of person whom those inspiring the distribution would take into their confidence.

5. Mr. Khundkar also suggests that he at least knows who was the person who gave him the copies which were found in his possession and it is likely that if he gave that person's name the leaflets could be traced. I do not think that is a consideration which ought to affect my decision.

6. In these circumstances I think the burden was on the prosecution to prove that the paper was printed within British India and that therefore the case falls within the purview of Section 3, Act 25 of 1867. No evidence on the point has been given and therefore I consider that the rule must be made absolute. The conviction and sentence are set aside and the line, if paid, will be refunded.

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