

P.K. Chakravarty Vs. Emperor

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Court : Kolkata

Decided On : Jul-30-1926

Reported in : 97Ind.Cas.738

Judge : George Claus Rankin and ;Mukerji, JJ.

Appellant : P.K. Chakravarty

Respondent : Emperor

Judgement :

George Claus Rankin, J.

1. In this case the appellant. Mr. P.K. Chakravarty, has been ordered to enter into his own recognizance in the sum of Rs. 500 to be of good behaviour under Section 108, Cr, P.C. The order has been made in respect of an article in the issue for the 27th April of this year of a newspaper called the Forward which is a newspaper printed in English and circulating in Calcutta. The circumstances at the time of the publication are shortly these. An outbreak of rioting having occurred some little time before in parts of this city, it was after some time brought to notice that one of the causes of this outbreak, or, at least of its continuance, was the fact that certain people were circulating inflammatory leaflets in the vernacular in the streets, leaflets calculated to incite members of different communities to violence against one another. The particular pamphlet which is animadverted on in the article in question was a pamphlet in Urdu printed on yellow paper and circulating

apparently for the benefit of the Muhammadans. What the appellant has done as editor is this. He has printed the pamphlet in an English translation. He has also given a transliteration in English letters of the original Urdu and what he says is that this pamphlet was being circulated and that it is not difficult to trace the source from which it emanated. Then he adds: 'Let us wait and see what steps the guardians of 'law and order' take in the matter.' The head lines of the article are: 'Yellow Urdu Leaflet; Attempts at Incitement; Will Mahomedan Leaders Intervene?' At the end of the translation, there is an extract from what appears to be a daily paper circulating among the Muhammadans. That extract does not seem to require a special description. It is not alleged that there is anything in the history of the Forward to give the article a special meaning or to be evidence of any special intention as regards this article. It so happened that, in the next column, there was printed an appeal signed by eminent Hindu and Muhammadan gentlemen earnestly praying the members of both communities to cease attacking one another; this appeal is also printed verbatim and all the signatures are copied out. One has, therefore, to approach this matter on the basis that, unless in the mere copying of the Urdu pamphlet there is enough to entitle the Chief Presidency Magistrate to make his order under Section 108, Cr. P.C. there is nothing else against the present appellant and the order cannot be supported.

2. It will, I think, be convenient if I commence by giving an illustration. In the course of the recent riots, it has happened that a Hindu has been badly assaulted and murdered by a Muhammadan or that a Muhammadan has been assaulted and murdered by a Hindu. If the next morning in a newspaper printed in English and circulating in Calcutta there appeared a statement as an ordinary item of news to the effect that Babu so and so was going down a certain street and was attacked and murdered by men of the opposite community, no body would suppose that that piece of news, unless it was written up and made an excuse for incitement to ill-feeling, would of itself be any breach of the law. But it is perfectly plain that in some circumstances, such an item of news might have some tendency with some people to induce them to entertain feelings of hatred or enmity towards the class to which the offending person belonged. It is, therefore, of great importance that the Court should consider carefully whether it is really the law that any person who prints or publishes anything which, in fact, has any tendency to promote ill feeling

between classes has committed an offence or has rendered himself by that mere fact liable to proceedings under Section 108, Cr. P.C. In substance, my opinion of this case is that the newspaper here has given its readers in the ordinary way a perfectly legitimate and sensible piece of news without any intention to utilize that piece of news for the purpose of promoting or furthering class hatred and that even if the news is of such a character that it is possible to suppose that some people reading it may momentarily or foolishly be induced to entertain unreasonable feelings towards a class of other people, this is not enough to bring it within the mischief either of Section 153A, Indian Penal Code, or Section 108, Cr. P.C. In my judgment there is no reason to say that this editor because he has published the pamphlet itself and a translation of it for the benefit of his English readers has gone out of his way to utilize this information for an oblique purpose, namely, the promotion of class hatred. Apart altogether from the fact that the very next column contained an appeal in the contrary sense, the only comment that the editor made was--'Let us wait and see what steps the guardians of law and order take in the matter.' That being my view of the facts of the case, I propose to say something about the law for the purpose of showing why I do not think that the order made by the learned Chief Presidency Magistrate was justified.

3. It is settled law, that Section 153A, Indian Penal Code, does not mean that any person who publishes words that have a tendency to promote class hatred can be convicted under that section. The words 'promotes or attempts to promote feelings of enmity' are to be read as connoting a successful or unsuccessful attempt to promote feelings of enmity. It must be the purpose or part of the purpose of the accused to promote such feelings and, if it is no part of his purpose, the mere circumstance that there may be a tendency is not sufficient. It is quite true that whether or not the promoting of enmity is the intention is to be collected in most cases from, the internal evidence of the words themselves, but I know of no authority for saying that other evidence cannot be looked at; and it appears to me that the explanation shows quite conclusively that in any matter on which other evidence could assist it may be taken. The learned Chief Presidency Magistrate has himself pointed out that, even on the question of likelihood to promote ill-feelings, the facts and cir-cumstances of the time must be taken into account and something must be known of the kind of people to whom the words are

addressed. Although other evidence is not excluded, it is true that from the nature of the case, the internal evidence of the words used and the meaning of the words used will very generally be decisive of the question whether or not the Court is confronted with a successful or unsuccessful attempt to promote feelings of enmity. They will be decisive in all cases where the intention is expressly declared; also if the words used naturally, clearly and indubitably have such a tendency, then it must be presumed that the publisher intended that which is the natural result of the words used [In re Amrita Bazar Patrika 54 Ind. Cas. 578 : 47 C. 190 : 23 C.W.N. 1057 : 30 C.L.J. 289 : 21 Cr. L.J. 98 (S.B.)]. But the words used and their true meaning are never more than evidence of intention and it is the real intention of the accused that is the test [Joy Chandra Sircar v. Emperor 10 Ind. Cas. 948 : 38 C. 214 : 12 Cr. L.J. 318, In the matter of Amrita Bazar Patrika 54 Ind. Cas. 578 : 47 C. 190 : 23 C.W.N. 1057 : 30 C.L.J. 289 : 21 Cr. L.J. 98 (S.B.) and Annie Besant v. Advocate-General, Madras 52 Ind. Cas. 209 : 43 M. 146 : 23 C.W.N. 986 : 37 M.L.J. 139 : 17 A.L.J. 925 : 21 Bom. L.R. 867 : (1919) M.W.N. 555 : 10 L.W. 451 : 20 Cr. L.J. 593 : 26 M.L.T. 408 : 1 U.P.L.R. (P.C.) 74 : 35 T.L.R. 500 : 46 I.A. 176 (P.C.)]. I cannot assent to any doctrine of 'constructive intention' such as the Magistrate has in this case adopted. So much for the meaning of the substantive part of Section 153A.

4. When we come to the explanation we have what the Judicial Committee has called 'a delicate balancing of two important political considerations.' 'In applying these balancing principles it is inevitable that different minds may come to different results.' [Annie Besant v. Advocate General, Madras 52 Ind. Cas. 209 : 43 M. 146 : 23 C.W.N. 986 : 37 M.L.J. 139 : 17 A.L.J. 925 : 21 Bom. L.R. 867 : (1919) M.W.N. 555 : 10 L.W. 451 : 20 Cr. L.J. 593 : 26 M.L.T. 408 : 1 U.P.L.R. (P.C.) 74 : 35 T.L.R. 500 : 46 I.A. 176 (P.C.)]. Now an explanation is not the same as a proviso, but this particular explanation cannot, in my opinion, be used to enlarge the provisions of the substantive section; any more than a proviso can be used to enlarge the provision to which it is a proviso [of. West Derby Union v. Metropolitan Life Assurance Society (1897) A.C. 647 : 66 L.J. Ch. 726 : 77 L.T. 284 : 16 J.P. 820.] Such things are put in constantly to enable certain classes of people to feel safe that the section will not penalise them if they are acting in a certain manner. In this case the explanation says that it is not an offence 'to point out without

malicious intention and with an honest view to their removal matters which are producing or have a tendency to produce feelings of enmity or hatred between different classes.' Now, if the question were whether this article was hit by Section 153A, Indian Penal Code, in my opinion there would be two answers. I should say, first of all, that assuming it to have in some sense a tendency to promote ill-feeling in the minds of certain persons, it is quite plain to me that the editor or the publisher was not attempting to do anything of the sort and that the reasonable explanation of the publication of this matter was the ordinary desire of the editor to publish a fairly important piece of news likely to be of some genuine interest to reasonable readers. I cannot imagine that anybody desirous of promoting ill-feeling on the part of the Muhammadans against the Hindus would publish in his newspaper in English, and, with the preliminary observations here used, this pamphlet. I cannot suppose that the editor was desirous of effecting the result that the educated English-knowing Hindus reading this pamphlet would be inflamed against Muhammadans as a class, rather than interested to know that this objectionable practice of incitement by pamphlet was being brought to the notice of the Police. But, secondly, apart altogether from the fact that I do not think that it comes within the first part of Section 153A, Indian Penal Code, there is, in my opinion, no sufficient reason shown why it is not within the terms of the explanation which *prima facie* covers it. Malice is not to be imputed without definite and solid reason.

5. I return now to Section 108 of the Cr. P.C. Broadly speaking, two views of its object have been canvassed before us. According to one view it applies only to a person who disseminates matter, e.g., publishes spoken or written words so as to commit an offence under Section 153A. Such person, it is said, is to be bound down to prevent his committing within the jurisdiction of the Magistrate a fresh offence against the section. According to the other view if the writer of an article had the intention to promote enmity the disseminator may under the section be bound down although he himself has had no such intention and has never been guilty of any offence under Section 153A. In such a case he will usually be able to go on disseminating as before without incurring a forfeiture of his bond, which seems a little curious; but Counsel for the Crown contends that a person disseminating objectionable matter may be regarded as a person likely to commit

with the full intent an offence under Section 153A or some similar offence and that this gives a meaning to the section as a preventive provision. A third view is that adopted by a Division Bench of this Court in *Sital Prasad v. Emperor* 34 Ind. Cas. 974 : 43 C. 591 at p. 595 : 20 C.W.N. 199 : 23 C.L.J. 105 : 17 Cr. L.J. 254 that 'in order to justify an order under Section 108(b), one has only got to find that there are words used in the leaflet, or matter complained of, which are likely to promote feelings of enmity or hatred.'

6. Now Clause (b) of Section 108 uses the phrase 'matter, the publication of which is punishable under Section 153A.' What Section 153A says in effect is that the publication of matter is punishable if by such publication the person publishing is making a successful or unsuccessful attempt to promote enmity. This fits in awkwardly with the words employed in Section 108 which require us to ask 'of what matter is the publication punishable?' To the question so put the answer seems to be 'matter which is the vehicle of an attempt to promote enmity.' This seems to be the parallel to 'any seditious matter' in Clause (a) In this way there drops out of sight the important fact that in theory at all events the publication of such matter is only punishable as regards the person or persons making the attempt, that many persons may be engaged in the publication of the same matter and that it will constantly happen that some of these have no such intention as the others. Section 108 seems to assume that one has only to look at the matter to tell whether its publication is punishable or not. This is broadly true no doubt but it is not the truth and it ill consists with Section 153A under which no matter is set aside or classified except with reference to the intention of the particular person accused.

7. It may be observed that Clause (b) of Section 108 does not say 'the publication (or first publication) of which was punishable under Section 153A' but 'the publication of which is punishable under Section 153A.' As dissemination and publication do not seem to be different and as Section 153A uses neither term it may be that 'the publication' means 'the publication by the disseminator,' though the language is in that case very cumbersome. Again the word 'intentionally' was introduced into Section 108 in 1923. The question arises whether this word was introduced in order to overrule the decision in the case of *Sital Prasad v. Emperor*

34 Ind. Cas. 974 : 43 C. 591 at p. 595 : 20 C.W.N. 199 : 23 C.L.J. 105 : 17 Cr. L.J. 254 or merely to make clear that the dissemination of the matter in question is not done by mistake, or to require that the person disseminating had knowledge of the contents or of the character of the matter. The Chief Presidency Magistrate was of opinion that the word was introduced for the first of these purposes, but points out with great reason that if so the amendment fails to carry out the intention.

8. The present case can be decided without wrestling with all of these difficulties, but I desire to say that the rule laid down in the case of *Sital Prosad v. Emperor* 34 Ind. Cas. 974 : 43 C. 591 at p. 595 : 20 C.W.N. 199 : 23 C.L.J. 105 : 17 Cr. L.J. 254 seems to me to be wholly inadmissible. The utmost that is warranted on any view of the section is that a person comes within its scope if he disseminates matter which reveals an intention to promote feelings of enmity between classes. Matter which has in fact a tendency to do so may be published alio intuitu or even with an honest view to stop class hatred, with an (sic) appreciation of the circumstances or feelings of the persons to whom it is addressed, with an inadequate knowledge of the things discussed or by reason of insufficient care and caution. Some tendency to excite class hatred may be almost unavoidable save by keeping silent on certain topics. As the Magistrate need not take action in the end unless he deems it necessary, this may be no conclusive reason why Section 108 should be inapplicable to such cases. But there certainly are some reasons. And as the Legislature has passed upon the matter and drawn the line in its own way, it is not for the Criminal Courts to abandon 'intention,' the ancient and the statutory test and to put in peril of their process persons of innocent intention. I cannot help thinking that if the Legislature had really meant to say that a Magistrate could proceed under this section against any person who was found to have disseminated matter which in the opinion of the Magistrate had tendency to promote class hatred it would have said this very plainly in terms very different from those which it has employed.

9. This case, however, does not depend upon the rule in *Sital Prasad's* case 34 Ind. Cas. 974 : 43 C. 591 at p. 595 : 20 C.W.N. 199 : 23 C.L.J. 105 : 17 Cr. L.J. 254. The argument for the prosecution has been in this Court that what the appellant has done' is to disseminate the Muhammadan handbill, that this hand-bill

was without excuse under Section 153A and that it is enough that the appellant has intentionally disseminated it. In my judgment this argument is unsound. What the appellant was accused of disseminating and what he in fact disseminated was the article in the Forward. There is nothing in Section 108 or anywhere else to justify the distortion of this meaning, his purpose or his act by looking to a part only of the article. He has quoted the hand-bill and objected to it in order to get it stopped. If this is not a mere colourable pretence which cloaks a real intention to incite Muhammadans to violence against Hindus and if the article would not be taken by any reader in that sense, what difference can it make that the few vicious lines of rubbish have been quoted verbatim so as to be pilloried as well as reprehended? The word 'disseminate' affords no answer; it would apply equally to a part of the hand-bill as to the whole unless the context altered the meaning of the part.

10. The present appellant was the editor of the paper when the article appeared in it. If any one is responsible for its publication under Section 153A he is the man. If he is innocent under that section, I cannot see how he comes under Section 108 as a person 'disseminating matter, the publication of which is punishable under Section 153A.'

11. There is yet another aspect of the case. The most important thing in the end is the question under Section 118, Cr. P.C., whether it is necessary to order the person summoned to enter into a bond. In the present case, the Chief Presidency Magistrate took the view that, if the editor had admitted that he had committed an error in publishing the hand-bill, no action would have been called for at all. But because the editor contended before him that he had not brought himself within the purview of the law, the Chief Presidency Magistrate says: 'In other words, he is still of opinion even after the matter has been brought to notice by these proceedings, that he can print pink and green leaflets to-morrow. I, therefore, think that it is necessary at least in the case of the editor to demand security.' I cannot say that I approve of that way of deciding such a case as this. It may sometimes happen that the contention on the part of the editor in such circumstances is so extravagant that the Magistrate may be justified in thinking that unless effective steps are taken, the editor intends, notwithstanding the decision of the Court, to go

on as before. Merely because a person has insisted upon putting his case before the Court and taking its decision, to infer that it is necessary after the decision has been given to bind him down in order to prevent him from doing the same thing again is, I think, unwarranted. I cannot help feeling that, in any view of this matter, it is reasonably plain that there was no necessity in this case to order the execution of the bond. I quite appreciate that much damage may be done in times of riot by thoughtlessness as well as from an intention to promote class hatred. I quite see that the authorities were anxious to discourage as much as possible anything that would feed the spirit of the riots. But in this case we have to consider the matter from the point of view of the restriction which a careful Legislature has thought fit to put upon the liberty of the press. I can express my own view in the matter by saying that, if the Legislature intended to lay down that people could be proceeded against for publishing or disseminating any matter which, in the opinion of the Court, has a tendency--any tendency--to promote ill-feeling between classes, the Legislature would have said so in plain terms, and that the Court is unable to infer from what the Legislature has said in Section 153A, Indian Penal Code, and Section 103, Cr. P.C, that the Legislature has intended to go to that length.

12. For these reasons I am of opinion that the order of the learned Magistrate should be discharged and that the bond executed by the appellant should be cancelled.

Mukerji, J.

13. I entirely agree.

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