

Benoy Kumar Sen Vs. Emperor

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Court : Kolkata

Decided On : Apr-24-1929

Reported in : AIR1929Cal635

Appellant : Benoy Kumar Sen

Respondent : Emperor

Judgement :

ORDER

Mukerji, J.

1. The petitioner in this case has been convicted under Section 13, Press Act 25 of 1867. Section 13 runs thus:

Whoever shall keep in his possession any such press as aforesaid without making such a declaration as is required by Section 4 of this Act shall etc.

2. To understand what is meant by any such press' reference has to be made to Section 4 which says:

No person in British India shall keep in his possession any press for the printing of books or papers etc.

3. It is clear, therefore, that the press that is referred to in Section 13 is a press for the printing of books and papers, in other words, to sustain a conviction under

Section 13 it is necessary to find that the press was in a sufficiently fit condition to enable the printing of books or papers thereby. The trial Magistrate in the explanation which he has submitted is quite right in referring to his own findings in his judgment which are to the effect that there was printing of certain invitation cards in the press. The learned Sessions Judge who heard the appeal preferred by the petitioner from the conviction by the trial Court, however, has thought fit to disbelieve the evidence relating to such printing. Having done so the learned Judge has referred to the evidence that was adduced on behalf of the defence for the purpose of establishing that the press was at the place where it was found for the purpose of repairs and apparently being of opinion that it was for the defence to establish that the press was out of repairs has upheld the petitioner's conviction. In the view as regards the onus that the learned Judge took I am of opinion that he was wrong. It was for the prosecution to establish that the press was one which required a declaration and in order to do so it was for the prosecution to show that it was a press in workable order. This has not been done and indeed the evidence that they adduced for that purpose has been disbelieved by the learned Sessions Judge. In this state of facts even if the evidence for the defence be not acceptable the conviction of the petitioner is not sufficiently justified.

4. The result is that the rule is made absolute, the conviction is set aside and the fine if paid by the petitioner will be refunded.