

Sital Prasad Vs. Emperor

Sital Prasad Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/881596

Court : Kolkata

Decided On : Nov-04-1915

Reported in : 34Ind.Cas.974

Judge : Greaves and ;Walmsley, JJ.

Appellant : Sital Prasad

Respondent : Emperor

Judgement :

1. The petitioner in this case has been bound down under Section 108 (6), Criminal Procedure Code. We granted a Rule calling on the District Magistrate to show cause why the order should not be set aside, on the ground that upon the true construction and interpretation of the leaflet as a whole the Court below ought to have held that it does not contain any matter the dissemination of which is punishable under Section 153 A, Indian Penal Code, which necessitates there being an intention to promote feelings of enmity or hatred. On behalf of the petitioner it was contended that even if the matter or some of the matter contained in the leaflet was likely to promote feelings of enmity or hatred, there could be no order made under Section 108, unless the Court was satisfied that there was an intention in using the words of the leaflet to promote or attempt to promote feelings of enmity or hatred; and we were referred to Joy Chandra Sarkar v. Emperor 10 Ind. Cas. 948 : 38 C. 214 at p. 225 : 12 Cr. L.J. 348 as an authority that for a conviction under Section 153A there must be a deliberate attempt to excite class

against class and an intention to create enmity. We were also referred to the case of *Jaswant Rai v. Emperor* 10 P.R. 1907 Cr. : 5 Cr. L.J. 439 : 14 P.W.R. 1907 Cr. : 2 M.L.T. 272, which lays down that to constitute an offence under Section 153A there must be an intention to promote feelings of enmity and hatred. We were further referred to two English cases, *Reg. v. Sullivan* (1868) 11 Cox. C.C. 44 and *B. v. Burns* (1886) 16 Cox. C.C. 365, cases under the English Common Law, which were cited before us as authorities for the proposition that to constitute an offence under Section 153 A, which is said to be founded upon the principles of the English Common Law, there must be intention. The only case to which we were referred which is an actual decision under Section 108 (6), Criminal Procedure Code, is the case of *V. Dhammaloka v. Emperor* 10 Ind. Cas. 789 : 12 Cr.L.J. 248 : 4 Bur. L.T. 84. It is a case decided in the Lower Burma Chief Court by a single Judge and he without ambiguity lays down the proposition that to justify an order under Section 108 (b) there must be an actual intention to promote or attempt to promote feelings of enmity or hatred.

2. Our view of the section is at variance with this decision. We think that although to constitute an offence under Section 153A, Indian Penal Code, there must clearly be intention, different considerations arise with regard to the provisions of Section 108 (6), Criminal Procedure Code. It is true that the words of the section are 'any matter the publication of which is punishable under Section 153A, Indian Penal Code.' But in our view 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; and once one has got those words present, there is no necessity for finding intention as would be necessary if the person was placed under his trial under Section 153 A, If this were not so, there would be no necessity for Section 108, Criminal Procedure Code, as proceedings would be taken under Section 153A, Indian Penal Code. The result is that we have simply got to look to the actual words of the leaflet to see if there are words which in our opinion are likely to promote feelings of enmity or hatred. The leaflet as a whole is designed to call backsliders from the true Hindu faith to a sense of their misdeeds. If the words of the leaflet had been confined to this, there would have been nothing in respect of which the petitioner before us could have been bound down under Section 108, Criminal Procedure

Code. But it seems to us that when we read the leaflet we find that there are passages which go far beyond the object above-mentioned, if that had been the only to refer, as the pamphlet does, to members of the Mahomedan faith as beef-eaters and destroyers of the Vedas and the Shastras. The passage which specially seems to us unnecessary for the alleged purpose of the pamphlet is as follows: 'Is it proper to observe the festivals and the religious observances of a religion on the basis of which thousands of our temples have been pulled down and the images of our gods and goddesses have been burnt for heating hamams for providing hot baths, many places of pilgrimage have been destroyed for the construction of mosques (and mosques built on the sites), crores of beneficial cows have been killed and crores of ignorant widows or orphans and the helpless are deprived of (degraded from) their religion by misleading and enticement.' These facts may be true historically or not, and in the history of any country or of any community or religion there are passages which are best left unrecalled. It seems to us, therefore, that in this and other passages of the pamphlet there are words which are likely to promote feelings of enmity or hatred between Hindus and members of the Mahomedan religion. Having regard to this we consider that the order made by the District Judge of Monghyr binding down the petitioner was rightly made.

3. The Rule is, therefore, discharged.