

CRIMINAL REVISION.*Before Greaves and Walmsley JJ.*

SITAL PRASAD

v.

EMPEROR.*

1915

Nov. 17.

Security for good behaviour—Dissemination of matter likely to promote enmity or hatred between classes—Necessity of intention—Criminal Procedure Code (Act V of 1898) s. 108 (b)—Penal Code (Act XLV of 1860) s. 153A.

To justify an order under s. 108 (b) of the Criminal Procedure Code, it is sufficient that the words used are likely to promote feelings of enmity or hatred between different classes, and it is not necessary to establish an intention to promote such feelings, as it would be on a trial for the offence under s. 153 A of the Penal Code.

Dharmaloka v. Emperor (1) dissented from.

Joy Chandra Sarkar v. Emperor (2), *Jaswant Rai v. Atharale* (3) referred to.

The facts of the case were as follows. On the 26th November 1914, the petitioner circulated in the town of Monghyr, during the *Mohurram* festival, personally and by agents, copies of an anonymous pamphlet called "*Apna Sanatan Dharm Patchano*" printed at the "Star Press". Upon a police report, dated 8th December 1914, the District Magistrate of Monghyr drew up a proceeding under s. 108 (b) of the Criminal Procedure Code, on the 13th March 1915, against the petitioner requiring him to execute a bond in the

*Criminal Revision No. 1168 of 1915, against the order of J. Johnston, District Magistrate of Monghyr, dated July 8, 1915.

(1) (1911) 12 Cr. L. J. 248.

(3) (1907) 5 Cr. L. J. 439 ;

(2) (1910) I. L. R. 38 Calc. 214, 225.

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sum of Rs. 2,000. with two sureties each in the amount of Rs. 1,000, to be of good behaviour for one year.

The contents of the pamphlet were thus summarized in the judgment of the District Magistrate.

The leaflet is an appeal to those Hindus whom the writer considers to be associating too much with Mahomedans, and particularly criticises their taking part in Mahomedan festivals. Various strong expressions are used. Thus the Mahomedans are described as "beef-eaters," the "destroyers of *vedas* and *shastras*" and "untouchable." Things mentioned as leading to conversion to Mahomedanism are said to be whore-mongering drinking liquor, contamination by touch, degraded ways of life and absence of fixed rules of conduct. The Mahomedan festivals are described as rude and churlish, and those who take part in them as a handful of ignorant Mahomedans. Then Mahomedanism is described as a religion on the basis of which thousands of Hindu temples have been demolished, images of gods and goddesses broken down, libraries of *vedas* and *shastras* used as fuel for heating baths, places of pilgrimage destroyed and mosques built on their sites, crores of cows slaughtered and crores of Hindu widows enticed out of their own faith. To take part in their festivities is alleged to be condemned in the *shastras* as a sin of the same gravity as killing a cow, killing a Brahman or cohabiting with the wife of one's guru. The Hindus are then advised not to take part in Mahomedan festivals and, if they cannot help doing so, to require the Mahomedans to take part in theirs, a thing which it is said they never do and consider to be a sin. The leaflet then winds up with a reminder that under the British rule nobody can compel anybody else to join in the rites and ceremonies of his religion, and closes with a Sanskrit verse that one's own religion is always the best.

The petitioner was, after an enquiry, bound down on the 8th July 1915, and obtained the present Rule from the High Court.

Babu Dasarathi Sanyal (with him *Babu Sivannandan Roy* and *Babu Rajendra Prasad*), for the petitioner. To bind down a party under section 108 (b) of the Criminal Procedure Code, the offence under s. 153A of the Penal Code must be established, and intention is an ingredient of the latter: *Joy Chandra Sarkar v. Emperor* (1), *Jaswant Rai v. Athavale* (2), (1) (1910) I. L. R. 38 Cal. 214, 225. (2) (1907) 5 Cr. L. J. 439 ;

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Reg. Sullivan (1), *Reg. v. Burns* (2). Reading the leaflet as a whole, there was no intention to stir up enmity or hatred, the object being to prevent Hindus from joining in the *Moharram* festival.

Mr. S. Ahmed, for the Crown. Section 108 (b) of the Criminal Procedure Code does not require proof of all the elements of the offence under s. 153A of the Penal Code. It refers to "matters punishable under s. 153A", that is, matters by which enmity between classes may be promoted. The intention to promote such enmity is immaterial as long as there is intentional dissemination of matter likely to promote enmity or hatred. A distinction must be drawn between a prosecution under s. 153A of the Penal Code and precautionary proceedings under s. 108 (b) of the Criminal Procedure Code. If the former failed, would it bar the latter? Next, assuming that proof of intention is necessary in a proceeding under s. 108 (b), it is present here. It must be gathered from the writing and the conduct of the accused in personally distributing the leaflets. [Cites three passages as evidencing intention.] A reference to ancient history does not justify language in a leaflet likely to promote enmity: *Jaswant Rai v. Athavale* (3). Abuse of Mahomedans was not necessary for the alleged object of the accused, *viz.*, to prevent participation by Hindus in the *Moharrum*. The Explanation to s. 153A does not apply. There was here a direct promotion of ill-feeling and no question of removal of matters producing enmity or hatred.

Babu Dasarathi Sanyal, in reply.

GREAVES AND WALMSLEY JJ. The petitioner in this case has been bound down under s. 108 (b)

(1) (1868) 11 Cox. C. C. 44, 47. (3) (1907) 5 Cr. L. J. 439 ;

(2) (1886) 16 Cox. C. C. 315, 363. 10 Punj. Rec. 23.

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of the 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 s. 153A of the 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 feeling of enmity or hatred, there could be no order made under s. 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* (1) as an authority that for a conviction under s. 153A there must be a deliberate attempt to excite class against class and an intention to create enmity. We were also referred to a case, *Jaswant Rai v. Athavale*(2), which lays down that to constitute an offence under s. 153A there must be an intention to promote feelings of enmity and hatred. We were further referred to two English cases: *Reg. v. Sullivan* (3) and *Reg. v. Burns* (4)—cases under the English Common Law which were cited before us as authorities for the proposition that to constitute an offence under section 153A, 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(b) of the Criminal Procedure Code, is the case of *Dhammaloka*

(1) (1910) I. L. R. 38 Calc. 214, 225. (3) (1868) 11 Cox C. C. 44.

(2) (1907) 5 Cr. L. J. 439 ; (4) (1886) 16 Cox C. C. 355.

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v. *Emperor* (1). 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. Our view of the section is at variance with this decision. We think that, although to constitute an offence under section 153A of the Indian Penal Code there must clearly be intention, different considerations arise with regard to the provisions of section 108(b) of the Criminal Procedure Code. It is true that the words of the section are "any matter the publication of which is punishable under section 153A of the 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 153A. If this were not so there would be no necessity for section 108 of the Criminal Procedure Code, as proceedings would be taken under section 153A of the 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 of the Criminal Procedure Code. But it seems to us that when we read the leaflet we

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find that there are passages which go far beyond the object above mentioned, if that had been the only object. For instance, there was no necessity 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 Moughyr binding down the petitioner was rightly made. The Rule is, therefore, discharged.

E. H. M

Rule discharged.