

## A NOTE ON THE OFFICIAL SECRETS ACT, 1963

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**T**HE Official Secrets Act, 1923, which consolidates the law relating to Official secrets, deals with two kinds of offence: (1) Spying: (2) Wrongful communication etc. of secret information.

Under section 3 of the Act, it is an offence if any person for any purpose prejudicial to the safety or interests of the State— (a) approaches, inspects, passes over or is in the vicinity of, or enters any prohibited place; or (b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be directly or indirectly, useful to an enemy<sup>1</sup>; or (c) obtains, collects, records or publishes or communicates to any other person any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy.

On a prosecution for an offence punishable under the above mentioned section with imprisonment for a term which may extend to fourteen years it is not necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and notwithstanding that no such act is proved against him, he may be convicted, if, from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place, or relating to anything in such a place, or any secret official code or password is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose

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1. In the parallel provision of the English Statute (The Official Secrets Act, 1911) on which the Official Secrets Act, 1923, is patterned the reference to "enemy" has been interpreted not in the technical sense of a country at war, but to include a potential enemy country i.e. a country with whom there might be a war, R.V. Parrott, (1913)8 Cr. App. R, 186.

was a purpose prejudicial to the safety or interests of the State, such sketch, plan, model, article, note, document or information shall be presumed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interests of the State. In *State v. Captain Jagjit Singh*<sup>2</sup> where the accused was charged with communicating military secrets to a foreign secret agency, the Supreme Court has taken such a grave view of the offence that they held that in the circumstances of the case the discretion vested in the High Court under S. 498 of the Criminal Procedure Code to release an accused on bail, should not have been exercised in favour of the accused.

Under section 5 of the Act, it is an offence if any person having in his possession or control any secret official code or pass word or any sketch, plan, model, article, or note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, or which has been made or obtained in contravention of this Act or which has been entrusted in confidence to him by any person holding governmental office, *wilfully communicates* the same to any person other than a person to whom he is authorised to communicate or it is his duty to communicate.

It is also an offence under the same section if any person *voluntarily receives* any secret official code or pass word or any sketch, plan, model, article, note, document or information, knowing or having reasonable ground to believe, at the time when he receives it, that the same has been communicated in contravention of the Official Secrets Act. In *State of Kerala v. K. Balakrishna and another*<sup>3</sup>, the Kerala High Court held that the publication of the budget, a secret document in a newspaper (*Kaumadi*) before its presentation to the State Assembly, was an offence committed by the newspaper, its editor, printer, publisher and the correspondent, under this provision of the Act.

Under the provisions of the Act any publication by a newspaper of an official secret, whether in the form of a note, document code or pass word, sketch, plan or model, makes not only the correspondent, editor, printer and publisher, liable to punishment but also every director and officer of the company or corporation with whose knowledge and consent the offence was committed becomes guilty of a like offence.

In *R. K. Karanjia v. Emperor*<sup>4</sup>, The Bombay High Court, while rejecting the petition of *Blitz* to set aside an order of the

2. A.I.R. 1962 S.C. 253.

3. A.I.R. 1961 Kerala 25.

4. A.I.R. 1946 Bombay 322.

Government of Bombay requiring the petitioner to deposit a sum of Rs. 3000/- as security under S. 7 Sub-S. (3) of the Press Emergency Powers Act, 1931, held that to publish in a newspaper a notice inviting people to offer "official secrets" in return for handsome remuneration, amounted to inciting or encouraging people to commit an offence within the meanings of the Press Emergency Powers Act, 1931, as it was an offence under the Official Secrets Act to convey or publish official secrets.

In another matter also, the press is affected by the Provisions of the Official Secrets Act, 1923. Under Section 14 of the Act, powers have been vested in the Courts, "in addition and without prejudice to any powers which a court may possess", to exclude all or any portion of the public from any proceedings under the Act, if an application is made in the course of proceeding by the prosecution on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the State. Thus, if the above mentioned conditions are satisfied the press may be excluded from the court proceedings under the Act.