

the order, the correctness of which was questioned and which was sought to be set aside in the case, was not an order passed under sections 37 and 38 of the Act, but an order, whereby an order passed under those sections was interfered with and vacated.

The result of the aforesaid observations is that the appeal is allowed, the decree of the lower appellate court is set aside and that of the court of the first instance restored. The plaintiff-appellants will get their costs from the respondents throughout.

C. C. GHOSE J. I agree.

A.A.

*Appeal allowed.*

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## APPELLATE CRIMINAL.

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*Before Rankin C. J. and C. C. Ghose J.*

EMPEROR

*v.*

SATYA RANJAN BAKSHI.\*

*Rebellion, elements of—Penal Code (Act XLV of 1860), s. 124A.*

Advocating expressly any form of rebellion is not a necessary element in an offence under section 124A of the Indian Penal Code. It is quite possible by the abuse of Government officials to make an endeavour to bring into hatred or contempt the Government established by law in British India.

*Queen Empress v. Bal Gangadhar Tilak (1) referred to.*

CRIMINAL APPEAL by the Government.

Two persons, Satya Ranjan Bakshi, editor of the vernacular newspaper "Banglar Katha," and Satya Ranjan Mukherji, the printer and publisher of the said newspaper, were convicted for an offence under section 124A of the Indian Penal Code in connection with an article which appeared in the issue of the 20th

\*Criminal Appeal, No. 714 of 1928, against the order of T. Roxburgh, Chief Presidency Magistrate of Calcutta, dated Sep. 3, 1928.

(1) (1897) I. L. R. 22 Bom. 112, 137.

1929.

HEM  
CHANDRA  
CHAKRAVARTI

*v.*  
SARABALA  
DATTA.

MALLIK J.

1929.

Feb. 5.

1929.  
 EMPEROR  
 v.  
 SATYA  
 RANJAN  
 BAKSHI.

May, 1928. The editor was sentenced to undergo one month's simple imprisonment and to pay a fine of Rs. 1,000, in default one month's further simple imprisonment. The publisher was to pay a fine of Rs. 1,000, in default he was to undergo two months' simple imprisonment. Against the conviction and sentences, an appeal was taken to the High Court.

*The Advocate-General, Mr. N. N. Sircar*, for the Crown.

*Mr. B. C. Chatterji, Mr. Mrityunjay Chatterji, Mr. Sureshchandra Talukdar, Mr. Jyotishchandra Guha, Mr. Bholanath Ray and Mr. Binodelal Ghosh*, for the appellants.

RANKIN C. J. In this case the appellants have been convicted on a charge of sedition under section 124A of the Indian Penal Code in connection with an article which appeared in the issue of 20th May, 1928, of a Calcutta daily newspaper published in Bengali and called the "Banglar Katha." The translation of the article is before us and it is headed "Barbarism in the Garb of Gentlemanliness." We have to read the article solely from the point of view of seeing whether we are satisfied by the internal evidence of the article itself that as a fact the writing or publication of the article was a successful or unsuccessful attempt to bring into hatred or contempt or to excite disaffection towards the Government established by law in British India. It does seem to me that, for the purpose of the present question, from the words used by the writer, it is necessary to go into an analysis of the phrase "The Government established by law in British India." Since the case of *Queen Empress v. Bal Gangadhar Tilak* (1) was decided, various changes in form and, to some extent, in principle, have been introduced into the constitution which obtains in British India. But we have, in this case, to see whether the article is an endeavour to express disapprobation against certain measures of Government

(1) (1897) I. L. R. 22 Bom. 112.

without exciting or attempting to excite hatred, contempt or disaffection or whether in one guise or another an attempt to excite hatred, contempt or disaffection towards the Government established by law in British India is a part of the purpose of the writer. The article begins by a reference to State prisoners and persons who have been in prison under certain legislation without trial by the ordinary tribunals. It makes a reference to "living burials" taking place every month in the plains of Siberia under the Czar of Russia. It goes on to say that incidents of a far-away land are taking place daily at our own doors and that, while there is no Czar in a physical form in our country, the administrative system which is going on in place of the Czar is still more terrible than the Czar. I do not think there can be any doubt that "the administrative system which is going on" is a reference to the Government established by law in British India. It is not a reference specifically to any legislation or to the exercise of any legislative function, but the Government is not the same thing as the legislature and the administrative system in India as obtaining at the present time is clearly the object of animadversion in the article. It goes on to say that barbarity is going on under the name of civilisation and all its diabolic cruelty is dancing under the mark of law; and after that it says that more terrible even than the rule of the Czar of Russia is the administration of the bureaucracy in India. "This is the acme at once of barbarism and of deceitfulness." Apart from certain exaggerated expressions about a jail being as hot as fire and a reference to self-interested lying spies, we come to certain sentences which show the standpoint of the article for our present purpose. It says that even if the State prisoners had been convicted after an open trial, the writer would not have approved of the sentences. The reason given is that "no country has the right to fetter another country to satisfy the thirst for pillage." Here we get a reference, a direct reference, to British rule at large. "If the children of an enchained country do

1929.

EMPEROR  
v.  
SATYA  
RANJAN  
BAKSHI.

RANKIN C. J.

1929.

EMPEROR

v.

SATYA  
RANJAN  
BARKHI.

RANKIN C. J.

“ even take up arms for the deliverance of the land of their birth, even then no foreign oppressors can have the right to inflict punishment on them.” It goes further to talk about the inhuman oppression of foreign rule and about people having no power to liberate certain persons from the array of the bayonets of a handful of foreigners, and it speaks of weapons, namely, the weapon of boycott of British goods and that if it would be possible to break the “fangs of Lancashire” by boycotting cloths made in foreign countries “the edifice of foreign rule would have in a trice tumbled down to the dust of ruin like a house of cards.” My only purpose in making any citation from this article is to show why I think that the article (which is certainly full of hatred and bitterness) is clearly directed against the Government established by law in British India. It is doing exactly what Mr. Justice Strachey in the case cited [*Queen Empress v. Bal Gangadhar Tilak* (1)] said must not be done. “But if he goes on beyond that, and, whether in the course of comments upon measures or not, holds up the Government itself to the hatred or contempt of his readers,—as for instance, by attributing to it every sort of evil and misfortune suffered by the people, or dwelling adversely on its foreign origin and character, or imputing to it base motives, or accusing it of hostility or indifference to the welfare of the people,—then he is guilty under the section, and the explanation will not save him.”

Mr. Chatterji has pointed out to us that, while the article advocates the boycott of cloth, it does not, in any way, advocate any form of rebellion. I quite appreciate that, but that is not the charge. It is quite clear from the section itself that this is not a necessary element in an offence under section 124A. It has been pressed upon us that there are expressions which are to be attributed to a spirit of exaggeration and which may be regarded as excrescences upon this article.

(1) (1897) I. L. R. 22 Bom. 112, 137.

That, in fact, is true up to a point, but I must point out that there are exaggerations in this article which are of themselves clear evidence of the desire to bring the Government into hatred or contempt.

We have been treated to an argument on the strength of the Government of India Act of 1919 and on the fact that the legislative power in this country is no longer in the hands of Government officials; and Mr. Chatterji has argued that by the legislation of 1919, the law of sedition underwent a complete transformation. His idea is that "officialdom," to use the word which he tells us, no doubt quite correctly, would be a better translation of the Bengali word than the word "bureaucracy"—that officialdom are the servants of the people and, therefore, abuse of officialdom can not possibly be an attempt to bring into hatred or contempt the Government established by law in British India. I can only say that in that argument, Mr. Chatterji is gravely wrong. It is quite possible, by the abuse of Government officials as officials, to make an endeavour to bring into hatred or contempt the Government established by law in British India. There is no necessary equivalence between mere legislative power and the "Government established by law in British India." That is a concrete phrase which applies to such Government, whatever form that Government takes, and is just as much applicable to it after the legislation of 1919 as when it was enacted years ago.

We really, in this case, have to see whether, after making all reasonable allowances, we think it possible to hold that this is an article whose criticism, however unreasonable, is still legitimate; or whether it is really an attempt to bring into hatred or contempt the Government established by law in British India. Upon that question, I can entertain no doubt whatsoever that this article is not only on the wrong side of the line, but it is a very long way off the line.

In my judgment, the sentences which have been inflicted are very moderate and this appeal should be ~~dismissed~~.

1929.

EMPEROR

v.

SATYA  
RANJAN  
BAKSHI.

RANKIN C. J.

1929.

EMPEROR

v.

SATYA  
RANJAN  
BAKSHI.

GHOSE J.

GHOSE J. I agree. On a previous occasion, I attempted to indicate within what limits section 124A is to be worked and also endeavoured to make it clear that criticisms of measures of Government, however strongly worded, provided that criticism itself does not come within the mischief of section 124A, will leave the critic unscathed. In my opinion, this article taken as a whole, and after making all allowances for the enthusiasm of the writer goes very much beyond the limits indicated in my previous judgment in the case of the *Emperor v. Satya Ranjan Bakshi*. I am, therefore, of opinion that the learned Chief Presidency Magistrate is right in coming to the conclusion that this case does come within the mischief of section 124A and I agree also with the learned Chief Justice that the sentences inflicted are moderate and that this appeal should stand dismissed.

O.U.A.

*Appeal dismissed.*


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### APPELLATE CRIMINAL.

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*Before Rankin C. J. and C. C. Ghose J.*

SATYA RANJAN BAKSHI

v.

EMPEROR.\*

1929.

Feb. 11.

*Newspaper—Intention gathered from writing—Indian Penal Code  
(Act XLV of 1860), s. 153A.*

Where a newspaper published an account of a railway accident, in the shape of a letter, containing highly objectionable matter, without taking trouble to verify and without any belief in the truth of what it published, spreading broadcast accusations against certain European officials of the East Indian Railway, and the question arose whether such publication was an attempt to promote feelings of enmity or hatred between Indians and Europeans within the meaning of section 153A of the Indian Penal Code,

*held that the real intention of the accused is the test.*

*P. K. Chakravarti v. Emperor* (1) followed.

Each case must be dealt with on its own facts.

*In re Amrita Bazar Patrika Press, Ltd.* (2) distinguished.

*Jaswant Rai v. King Emperor* (3) referred to.

\*Criminal Appeal, No. 818 of 1928, against the order of T. Roxburgh, Chief Presidency Magistrate, Calcutta, dated Oct. 1, 1928.

(1) (1926) I. L. R. 54 Calc. 59. (2) (1919) I. L. R. 47 Calc. 190.

(3) (1907) 23 Punjab Records No. 10.