

## ORIGINAL CIVIL.

Before C. C. Ghose A. C. J., Mukerji and Panckridge JJ.

1933

July 14.

*In the matter of the "ADVANCE".\**

*Security—Article disapproving suspension of the "Civil Disobedience Movement," if hit by s. 4 of Indian Press (Emergency Powers) Act (XXIII of 1931)—Criminal Law Amendment Act (XXIII of 1932), s. 16.*

*Per Ghose A. C. J.* The editor or publisher of a newspaper publishes "news" sent by a news-agency at his own risk. A mere expression of disapproval of the suspension of the "Civil Disobedience Movement" on the part of a person in Cawnpore, about whom nothing is known, cannot have the effect such as is referred to in sub-clause (f) of section 16 of the Criminal Law Amendment Act (XXIII of 1932) amending section 4 of the Indian Press (Emergency Powers) Act (XXIII of 1931).

*Per Mukerji J.* The effect of the words as published in the newspaper and not merely the meaning of the words taken by themselves has to be considered in order to see whether the statement is hit by section 4 of the Indian Press (Emergency Powers) Act.

*Per Panckridge J.* The conduct referred to in sub-clause (f) of section 16 of the Criminal Law Amendment Act, 1932, is conduct which is connected with and characteristic of the "Civil Disobedience Movement." It is idle for the publisher of a newspaper to say "True, the article complained of may amount to poison; but if you search the remaining columns of my newspaper you will find an effective antidote."

## APPLICATION.

The material facts appear from the judgment.

*H. D. Bose* (with him *H. M. Bose*, *B. K. Chaudhuri* and *N. R. Ghosh*) for the petitioners. In the very first instance, it may be noticed that the Local Government has not specified which sub-clause of section 4 of the Indian Press (Emergency Powers) Act has been contravened. This renders the order defective and has seriously prejudiced the petitioners.

[Read the article and discussed its effect.]

This article is merely a news item and a report of an interview given by one Maulana Hasrat Mohani to a representative of the Associated Press. It is not really an expression of any opinion of the editor of

\*Application under section 23 of the Indian Press (Emergency Powers) Act, 1931.

the paper. Read as a whole, it only represents the view of the said gentleman that the "Civil Disobedience Movement" is dead and should be buried. Opinion of that description is being expressed daily and there are such reports in other papers, even in the "Statesman." Admitting that the article advocated the refusal to call off the "Civil Disobedience Movement," it does not come within the purview of clauses (d) and (f) of section 4 as it stands amended. It is not suggested that the report of suspension or otherwise of the movement was false because reports of a conference where such question was discussed were published recently in all newspapers. Even now a conference is going on which is discussing the question. When this news reaches the paper, the editor has a right to publish it and there is no reason why he should suppress it. Moreover, there is nothing to show who this gentleman was and what his influence over the public was and there is nothing on the record to justify any inference that the news would tend to incite or encourage what is referred to either in clause (d) or (f) of section 4. On the other hand, the editorial notes make it clear that the editor entirely disagrees with the view expressed by that opinion. The order of the Local Government is bad and should be set aside.

*The Officiating Advocate-General, A. K. Roy*, for the Crown, discussed the article. The meaning of the article was plain. It is clear that the interviewer was saying that the suspension of the "Civil Disobedience Movement" was an acknowledgment of defeat. He supported the opinions of Bose and Patel in Europe and said "the fight should be continued." "The fight" meant the "Civil Disobedience Movement," the suspension of which the interviewer was condemning. The publication of this article had the effect of telling people that it was all nonsense to suspend the movement and the fight should be carried on until freedom was achieved. It, therefore, came within the purview of sub-clause (f) of section 4. The

1933

In the matter of  
the  
"Advance."

1933

In the matter of  
the  
"Advance."

consideration whether the interviewer was a man of influence was beside the question. The real question was whether the article itself had the tendency referred to in sub-clause (f). The editorial did not, in any way, tone down the effect of the article. The court should take judicial notice of what the "Civil Disobedience Movement" was and it was one which came within the purview of section 4. See sub-clauses (d) and (f) of section 4. The Local Government were justified in making the order complained of.

GHOSE A.C.J. This is an application by two persons named Brajendranath Gupta—who is described as the editor, printer and publisher of the "Advance" newspaper—and Anilchandra Datta Gupta—who is described as the "Keeper of the Sâdhan Press"—where the newspaper in question is printed, under section 23 of Act XXIII of 1931, the Indian Press (Emergency Powers) Act, 1931, praying that certain orders of His Excellency the Governor of Bengal in Council, dated the 9th June, 1933, calling upon these two petitioners to deposit cash or securities to the extent of Rs. 2,000 each, may be set aside in the circumstances stated in the petition.

Under orders of His Excellency the Governor of Bengal in Council, notices under sub-section (3) of section 7 and sub-section (3) of section 3 of the said Act were served on these two petitioners directing them to deposit with the Chief Presidency Magistrate, Calcutta, security to the amount of Rs. 2,000 each; in money or the equivalent thereof, in securities of the Government of India, on or before the 20th June, 1933. We are informed by learned counsel for the petitioners that the securities demanded have been deposited with the magistrate.

According to the Local Government, the petitioners have published and printed in the "Advance" newspaper on the 20th May, 1933, what is described as an article, but which, in reality, is a news item. This is an annexure to the said orders of the Governor of Bengal in Council, containing, it is alleged, words

of the nature described in sub-section (1) of section 4 of the Indian Press (Emergency Powers) Act, 1931. This Act was amended by the Criminal Law Amendment Act, 1932, being Act XXIII of 1932 and the question now for our decision is whether the said news item reproduced in the said annexure does or does not contain any words of the nature described in sub-section (1) of section 4 of the said Act as amended. The learned Advocate-General, on behalf of the Crown, informs us that the words in question were considered objectionable by the Government, as, in their opinion, they were hit by clauses (d) and (f) of section 16 of the Criminal Law Amendment Act, 1932 (Act XXIII of 1932).

1933  
 In the matter of  
 the  
 "Advance."  
 Ghose A. C. J.

It is not necessary for me to set out the words originally appearing in sub-section (4) of the Indian Press (Emergency Powers) Act, 1931, nor is it necessary for me to set out the whole of the amending section, namely, section 16 of Act XXIII of 1932. It will be sufficient for me to set out the relevant sub-clauses, namely, sub-clauses (d) and (f) of the said Act. In section 16, sub-clause (d) and sub-clause (f), any words, which tend, directly or indirectly, to do or to have the effect hereinafter described, are hit, and in order to fully explain I set out below the two sub-clauses in question :

Sub-clause (d)—to bring into hatred or contempt His Majesty or the Government established by law in British India or the administration of justice in British India or any class or section of His Majesty's subjects in British India, or to excite disaffection towards His Majesty or the said Government, or, and

Sub-clause (f)—to encourage or incite any person to interfere with the administration of the law or with the maintenance of law and order, or to commit any offence, or to refuse or defer payment of any land revenue, tax, rate, cess or other due or amount payable to Government or to any local authority, or any rent of agricultural land or anything recoverable as arrears of or along with such rent, or

Mr. H. D. Bose, who appears in support of the petition of these two petitioners, has made a sort of half-hearted complaint before us that the order of the Local Government did not specify which of the clauses of sub-section (1) of section 4 as amended had

1933

In the matter of  
the  
"Advance."  
Ghose A. C. J.

been contravened by the petitioners and that, in the circumstances, the order of the Local Government was vague. As regards this point, this has been the subject of debate and decision in two previous cases in this Court and I am of opinion that, having regard to the very wide language used in the relevant sections of the Indian Press (Emergency Powers) Act, 1931, there has been sufficient compliance on the part of the Local Government and that, in law, the action taken by the Local Government cannot be questioned or attacked on the technical ground put forward by Mr. Bose.

In my opinion, we are not entitled on an application of this nature to discuss profitably whether the petitioners were put to any disadvantage; we can only proceed upon the words used in the Indian Press (Emergency Powers) Act, 1931. Leaving, therefore, this technical argument aside, the real question we have got to determine is whether the words reproduced in the annexure to the orders of the Local Government are such as are hit by sub-clauses (d) and (f) of section 16 of Act XXIII of 1932.

Now, the words reproduced in the annexure run as follows :

"Maulana Hasrat Mohani in an interview to the Associated Press on 'the suspension of the 'Civil Disobedience Movement' said that an 'acknowledgment of defeat would not further the cause of national progress. He supported the opinion expressed by Messrs. Bose and Patel in Europe and stated that the fight should be continued till the 'freedom was attained.'"

The words reproduced in the annexure obviously are a news item transmitted by a news-agency called the "Associated Press of India" and it appears from a copy of the "Advance" newspaper, dated the 20th May, 1933, which has been shown to us, that the message in question was sent by post from Cawnpore by the "Associated Press." It was published as a news item and the substance of the words in question is that, in the opinion of a person named Maulana Hasrat Mohani, the suspension of the "Civil Disobedience Movement" amounted to an

acknowledgment of defeat and that such acknowledgment of defeat was not likely to further the cause of what is called national progress. The person concerned stated that in an interview with a representative or representatives of the "Associated Press" and he went on to refer to certain opinions expressed somewhere in Europe by two persons, named Bose and Patel, and expressed the opinion that the fight be continued till freedom was attained.

It is not clear, on the evidence before us, who the interviewer was, whether he was, to use a colloquial expression, a man in the street or whether he was or is a person of any importance whatsoever and whether the words expressed by him were likely to obtain—leaving aside wide-spread acceptance—acceptance among a considerable section of the intelligent public. We have no evidence before us as to who this person is, what his standing in the country is and whether the views expressed by him are worth listening to or whether they, in the circumstances, were calculated to directly or indirectly encourage or incite, *etc.*, what is referred to in sub-section (f). That is the first observation that I should like to make. The second observation is that in the context the "fight" that is referred to in the last sentence obviously had reference to the question of the continuance of the struggle by means of the "Civil Disobedience Movement." But, here again, the value of such an opinion on the part of this person depends upon a variety of circumstances to which I have alluded just now. In the absence, therefore, of evidence of that nature it is impossible to say that the words in question can have directly or indirectly the effect described or referred to in clauses (d) and (f) of section 16 of Act XXIII of 1932.

I leave out of my consideration clause (d), because, although the learned Advocate-General has, in his argument, referred to clause (d) as being one of the sections which can be used for the purpose of—if I may again use another colloquial expression—roping in the editor, printer and publisher of the words reproduced in the annexure, he has not really

1933  
 In the matter of  
 the  
 "Advance."  
 Ghose A. C. J.

1933

In the matter of  
the

"Advance."

Ghose A. C. J.

attempted to induce us to hold that clause (d) can be brought into effective operation in the present case.

The learned Advocate-General's main contention is that the words in question are hit by sub-clause (f) of section 16. In addition to what I have already said about the want of evidence regarding the character and standing of the interviewer, I have got to consider in this case, as I attempted to say in previous cases, the entirety of the words as they occur in the annexure in a fair and free spirit and not with an eye of narrow and fastidious criticism. In coming to a conclusion on the specific question raised, I cannot shut my eyes to the nature and manner of the publication of the words transmitted, as they were by a news agency, and I must come straight to the point to discover for myself as to whether a mere expression of disapproval of suspension of the "Civil Disobedience Movement" on the part of a person in Cawnpore, about whom nothing is known on the record before us, can have the effect such as is referred to in sub-clause (f) of section 16 of Act XXIII of 1932. I am not unmindful of the fact that the editor or publisher publishes "news" at his own risk. But whether any real risk has been run in this case depends on circumstances. After giving my very earnest and most careful attention to the question raised, I am of opinion that the words complained of are not hit, in the circumstances of this case, by sub-clause (f) of section 16 of Act XXIII of 1932. It is not necessary for me to elaborate this point, nor is it necessary for me to amplify it in any manner whatsoever. It is sufficient for me to say that the conclusion is that the words are not hit by sub-clause (f) of section 16.

In that view of the matter, in my opinion, this application ought to be allowed and an order should be made setting aside the orders passed by the Local Government on the 9th of June, 1933, and directing that the moneys or securities deposited with the Chief Presidency Magistrate be returned to the depositors. There will be no order for costs.

MUKERJI J. I agree. I only wish to add that, after all, it is the effect of the words as published in the newspaper, and not merely the meaning of the words taken by themselves, that has to be considered, in order to see whether the statement, which is complained of, is hit by section 4. Taking the so-called offending statement as a news item, which it is, it is not possible to hold that it does come within the purview of any of the clauses of that section.

1933  
In the matter of  
the  
"Advance."

PANCKRIDGE J. I agree with the order proposed by my Lord for the reasons given by him and also for the reasons given by my learned brother, Mr. Justice Mukerji. I desire, however, to add a very few words to what has fallen from them. In my opinion, the learned Advocate-General is amply justified in saying that the words attributed in the newspaper to Maulana Hasrat Mohani amount to an expression of approval of the "Civil Disobedience Movement" and of disapproval of any proposal for its suspension. I also agree with him that the conduct referred to in clause (f) of section 16 is conduct which is connected with and characteristic of that movement. I notice that, in the petition, the petitioners submit that if the report of the interview is read along with the editorial paragraphs in the newspaper it would appear that the petitioners disagree with the view expressed in the interview regarding suspension of the "Civil Disobedience Movement." Counsel for the petitioners did not elaborate this argument; but I desire to say that, in my opinion, the argument is without substance. It is idle for the publisher of a newspaper to say "True, the article complained of may amount to poison; but if you search the remaining columns of my newspaper you will find an effective antidote." It is notorious that newspaper readers seldom read the entire publication: many of them confine their attention to the news items and neglect leading articles and comments.

1933  
In the matter of  
the  
"Advance."  
Panckridge J.

With regard to clause (d), it is clear to me that that can have no application. The Government established by law is not referred to in the interview either directly or by implication. With regard to clause (f), although, as I have said, that clause clearly refers to the activities of those supporting the "Civil Disobedience Movement," I cannot bring myself to think that a statement in a newspaper that a gentleman, of whose existence I was unaware until to-day, approves of the "Civil Disobedience Movement" has a tendency to encourage or incite the readers of the newspaper to support it. It is perfectly true that the report of a speech may have a wider and more mischievous tendency than the speech itself; but, in the circumstances of this particular case, I find it impossible to draw the conclusion that the words upon which the Local Government seek to justify their order for security have such a tendency.

I concur in the order to be made.

*Application allowed.*

A. C. R. C.