

SPECIAL BENCH.

Before Rankin C. J., Suhrawardy and Pearson JJ.

In re "INDIA IN BONDAGE."*
1929

 Dec. 10, 1929;
 1930

 Jan. 3.

Sedition—Attack on form of Government, if sedition—Forfeiture—Code of Criminal Procedure (Act V of 1898), ss. 99A(1), 99B, 99D—Indian Penal Code (Act XLV of 1860), s. 124A.

A sustained attempt to bring into hatred or contempt and to excite disaffection towards the form of Government established by law in British India is an offence under section 124A of the Indian Penal Code. Where disapprobation of measures of Government or of administrative or other actions of Government is motivated throughout by a desire to excite hatred, contempt and disaffection towards it, it is immaterial to consider whether absolute independence is advised or any form of constitution advocated.

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

If the Special Bench of the High Court is not satisfied that a book contains seditious or other matter of such a nature as is referred to in sub-section (1) of section 99A, its duty is to set aside the order of forfeiture.

APPLICATION to a Special Bench under section 99B, Criminal Procedure Code, by Sajanikanta Das.

The facts of the case, out of which this application arose, are briefly as follows:—Sajanikanta Das was the printer and publisher of a book entitled "India in Bondage" written by the Rev. J. T. Sunderland of America, an Englishman who had become a naturalised citizen of the United States of North America. In December, 1928, Sajani had published this book on behalf of the firm of R. Chatterjee, carrying on their business at No. 91, Upper Circular Road, Calcutta.

The petitioner, along with Mr. R. Chatterjee, owner of the said firm, was convicted under section 124A, Indian Penal Code, on the 12th August, 1929, by the Chief Presidency Magistrate of Calcutta on account of the publication of the aforesaid book. Thereafter, the book was forfeited to His Majesty by order of the Government.

*Application (numbered as Suit No. 61 of 1929) to the Special Bench, under section 99B, Code of Criminal Procedure.

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The *Calcutta Gazette* of the 14th August, 1929, had the following notification :—

Government of Bengal, Political Department, Political Notification, No. 9294P.—13th August, 1929. In exercise of the powers conferred by section 99A of the Code of Criminal Procedure, 1898 (Act V of 1898), as amended by the Press Law Repeal and Amendment Act, 1922 (Act XIV of 1922), and Act XXXVI of 1926, the Governor in Council hereby declares to be forfeited to His Majesty all copies, wherever found, of the book entitled "India in Bondage: Her Right to Freedom" by J. T. Sunderland, printed by Sajanikanta Das at the Prabasi Press, 91, Upper Circular Road, Calcutta, and published by him, on the ground that the said book contains passages which bring or attempt to bring into hatred or contempt, and excite or attempt to excite disaffection, towards the Government established by law in British India, the publication of which is punishable under section 124A of the Indian Penal Code.

(Sd.) W. S. HOPKYNs,

Chief Secretary to the Government of Bengal (offg.).

The petitioner, being a person having an interest in the book in question, within the meaning of section 99B of the Code of Criminal Procedure, claimed to be entitled, under the provisions thereof, to apply to the Special Bench of the High Court to have the aforesaid order of the Governor in Council set aside and did so apply.

Mr. B. C. Chatterjee and *Mr. Aswinikumar Ghosh*, for the petitioner. I have the right to begin: *Emperor v. Baijnath Kedia* (1). The author was an Unitarian Clergyman, who had this book printed and published in America, after it had first been printed and published in India. He wrote this book at the time when the "Simon Commission" had come to India and was calling for the expression of opinion for its consideration. The writer, who thought that the time was now ripe for India "to step into the status" of a Dominion within the British Empire—a status which would benefit both England and India—severely criticised the present bureaucratic form of Government in British India. In the preface to this book the author suggested that if England wished to retain India, this form of Government must be changed at once.

[RANKIN C. J. It will be convenient if you can point out the passages upon which you rely to show that the book is not seditious.]

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[THE ADVOCATE-GENERAL. I shall be able to refer Your Lordships to passages which bring it within the provisions of section 124A.]

That will be more convenient from my client's point of view.

The Advocate-General, Mr. N. N. Sircar, for the Crown, then read the remarks of Strachey J. in *Tilak's case* (1) and referred to various passages collected by him from "India in Bondage" which came within the principle laid down there.

Mr. B. C. Chatterjee, for the petitioner, continuing. The author really advocates "Dominion" form of Government and, for severely criticising England for maintaining the present form of Government in India, he did not become liable even if this severe criticism brought such Government into hatred or contempt. By "freedom" he means enjoyment of free institutions as in the Dominions, but not independence. There is no sedition, if the "form," but not the "fact" of Government, is brought into contempt. Mr. Montagu once said before his Reforms that the then Government of India was too wooden, too antediluvian, *etc.*, and this scathing criticism was not regarded as seditious in England. See also *Beni Bhushan Ray v. Emperor* (2).

[RANKIN C. J. There is such a thing as a political discussion without bringing the Government into hatred or contempt, but if a book abounds in materials industriously collected with a view to bring the Government into hatred or contempt, it would be seditious.]

I am quoting passages from this book to show that the author's intention was not seditious and also refer to His Majesty the King-Emperor's declaration. The

(1) (1897) I. L. R. 22 Bom. 112, 137. (2) (1907) I. L. R. 34 Calc. 991.

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author loves England as the up-builder of freedom and believes that England would be fully justified in giving Dominion status to India. The recent Viceregal declaration supports my contention.

[RANKIN C. J. It appears that the author is abusing England right and left.]

The author is bringing into contempt only the bureaucratic form of Government, but, as he does not advise any "breaking up" but only a change in the form of Government in India, he has committed no offence under section 124A.

The Advocate-General, Mr. N. N. Sircar, for the Crown: No one suggests that people by merely advocating Dominion status brought themselves within the provisions of section 124A. If defects in the present form of Government were shown with a view to bring about reform or change of Government, that by itself would not bring the person concerned within the provisions of that section. It all depends on the way one sets about to advise a change. A person, while protesting that he was an ardent admirer of England, can nevertheless, as done here, proceed to criticise the Government in India in such a manner as to bring it into ridicule or contempt, in which case he would commit an offence under section 124A. The scheme of this book was to attribute to the Government in India all sorts of evils, social or otherwise, and then come to the definite conclusion that this was due solely to the diabolical policy of a foreign Government. Taking a broad and comprehensive view of this book "India in Bondage" there is no escape from the irresistible conclusion that the author's motive was to bring our Government into ridicule and contempt by exciting hatred.

Mr. B. C. Chatterjee, in reply. Comments on the judgment in *Tilak's case* (1) cited by the Advocate-General. It is an intellectual impossibility to criticise

a Government in all suavity. Freedom includes freedom to think and to speak.

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Cur. adv. vult.

RANKIN C. J. This is an application by Sajnikanta Das under section 99B of the Criminal Procedure Code in respect of a book entitled "India in Bondage: Her Right to Freedom," of which he is the printer and publisher. On the 13th of August, 1929, the Government of Bengal declared every copy of this book to be forfeited to His Majesty under section 99A of the Code. The present application is to set aside that order, on the ground that the book did not contain any seditious matter or any matter, the publication of which is punishable under section 124A of the Indian Penal Code. Our duty is to come to a finding under section 99D of the Criminal Procedure Code, namely, if we are not satisfied that the book contains seditious or other matter of such a nature as is referred to in sub-section (1) of section 99A, our duty is to set aside the order of forfeiture.

The book would appear to have been first published in December, 1928, and again in May, 1929. The name of the author is given as Jabez T. Sunderland. From certain passages in the book, it would appear that it is addressed to an American audience and the author writes as an American. The book, however, was printed in India and it is only with its publication in India that this Court can be concerned. The general thesis or argument of the book is that Great Britain has no right to rule in India; that British rule in India is unjust, tyrannical and highly evil in its effects, is a crime against humanity and a menace to the world's freedom and peace. The main purpose of the book is to remove the impression, said to be widespread in America, that British rule in India has been and is a great and almost unqualified good. The author claims to be well qualified to deal with this matter by reason in particular of the fact that he has paid no less than two visits to India—one in the years 1895-96 and again in 1913-14. He claims to

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have read the Indian periodical press extensively during his visits and to have been a regular subscriber since 1896 to no fewer than 7 Indian newspapers. Accordingly, the reader is informed with great thoroughness and persistency that any signs of prosperity to be noticed in India are not signs of the prosperity of the Indian people, but only of the English; that the all-overshadowing fact connected with the history of India in recent years has been the succession of famines and the consequent plague epidemics. That in fact there is always famine, in the sense of starvation on a wide scale somewhere in the land. That the people of India are growing speedily poorer. The causes of India's impoverishment are set forth as being heavy taxation, the destruction of her manufactures as a result of British rule, the enormous and wholly unnecessary cost of her Government and in particular the heavy military expense of Government. These things are set forth as being the evils of foreign rule and the only remedy for them is said to be self-rule. It further appears, according to the author, that England's position in India works much injustice to the United States of America "When our Government desires to communicate upon any matter officially with India, it must be done round about by way of the British ambassador, the official not of India, but of the nation that is holding India in bondage." A chapter is devoted to the "arrogance of the British in India." Another is devoted to the denunciation of the legal system in India, the information of the author being that its "law system" was framed for India by Macaulay. This, it appears, (the reference would seem to be to the Indian Penal Code) is of a nature degrading to the Indian people. Its main features are said to be that the Judge and the prosecutor is the same man; that so many of the Judges are foreigners, generally Englishmen, who have little acquaintance with the Indian people; that Englishmen are often appointed Judges who have no knowledge of law; that the legal system is very costly. But the gravest charge of all against the British legal system

in India is given as partiality and favouritism towards Europeans. So too, the kind of peace which British rule has brought to India is explained to have been worse than war. "The British have made a "graveyard and they call it peace." Again, the British Government is responsible for India's "opium "curse"—"The British have fostered the opium evil "and organized it for purposes of revenue." It has done this hypocritically, pretending that "it is "fulfilling the wishes of the Indian people." The like is said, at length, of India's "drink curse." Of caste in India, it is said "The truth is, the caste, which is "the most galling of any to the Indian people, and "which they most desire to see reformed or removed, "is that of their arrogant foreign lords and masters, "who, with some honorable exceptions, treat them as "serfs." Of Hindu-Muhammadian riots it is explained that the responsibility for them is primarily on the British who "have employed the policy of "fostering divisions among the people, knowing well "that divisions always weaken a nation and render it "easier to hold in subjection." Again, as to the military protection, which the British give to India, a chapter is devoted to showing that "the only "protection the British give India in return for the "crushing military burden that she is compelled to "bear is the infinite injustice and wrong of subjection, "bondage, exploitation, loss of freedom, deprivation "of the place which she has a right to occupy among "the great nations of mankind." Another chapter describes the British rule in India as worse than that of the Moghul Emperors, because it is a Government of "foreigners and transients", India being a "plundered nation in the hands of constant plunderers "with the plunder carried away clean out of the land."

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It does not seem to me to be necessary in this judgment to illustrate further the character and contents of the book, nor do I propose to select for quotation the more extreme or rhetorical passages, or the passages which display at its worst the author's

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animus against the Government at present established by law in British India.

The question being whether we are satisfied or not satisfied that the book contains seditious matter, the publication of which is punishable under section 124A of the Indian Penal Code, the only reasonable answer in my opinion is that there is in this book ample to satisfy any Court of Justice that the terms of that section have again and again been contravened. The book appears to me to be a sustained attempt to bring into hatred or contempt and to excite disaffection towards the Government established by law in British India. The disapprobation expressed of the measures of Government or of the administrative or other actions of Government is motivated throughout by a desire to excite hatred, contempt and disaffection.

The Advocate-General has referred us to the statement by Strachey J. in *Tilak's case* (1), of the meaning of section 124A, Indian Penal Code, as it then stood; "A man may criticise or comment upon any measure or act of the Government, whether legislative or executive, and freely express his opinion upon it. * * * He may express the strongest condemnation of such measures, and he may do so severely, and even unreasonably, perversely and unfairly. So long as he confines himself to that, he will be protected by the explanation. But if he goes 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." Of this book it can hardly be doubted that its leading features are accurately described in the latter portion of the passage just

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

cited. It proceeds indeed upon well-worn lines—every evil and misfortune, be it the “drink curse,” the “opium curse,” famine or anything else, is attributed to the English Government, whose foreign origin and character is insisted on upon every page. The baseness of its motives is the ever-ready explanation of its policy.

In these circumstances, Mr. B. C. Chatterjee, counsel for the applicant, contended before us that the criticism of Government was both elaborate and severe, but that nevertheless the book does not offend against section 124A by reason of the fact that it appears from certain passages therein that it is no part of the author’s purpose to advocate that India should become entirely independent of the British Empire. Thus, in one passage, the author says “Here lies India’s only hope. She must become an absolute independent nation with no connection with Great Britain, or else, remaining in the Empire, she must be given the place of a real partner (not that of a subordinate under a partner’s name), a place of as true freedom and of as perfect equality with the other partners in the Empire, as that of Australia, or New Zealand or South Africa or Canada.” In other passages, moreover, the book contains criticism of the present form of Government as being contrary to England’s own interests and its continuance as the kind of policy which cost her the American colonies and which, if persisted in, must cost her India also. In the preface, or “foreword,” there is a passage in which the author disclaims enmity to Great Britain and states that what he advocates for India he believes to be for England’s good, as well as that of India. It appears that this position is maintained, so far as the author is concerned, by asserting that there are two Englands—one which he likes to think of as the true one and the other which he describes as “this evil and as I believe dangerous England” and “this imperialistic, might-makes-right England” which “unless held in check will make India a smouldering volcano of unrest.”

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On the whole, it seems to me to be quite true to say that it is no part of the purpose of the book to argue that all connection with Great Britain should be abrogated. So long as the author is engaged in denunciation, he has little interest, so far as I can discover, in any particular proposals for reform and the book does not seem to be an argument in favour of any special type of constitution. This circumstance, however, has little bearing upon the question whether the book infringes section 124A. It is not necessary for our present purposes to consider whether the advocacy of any particular policy or any particular kind of constitution would necessarily, and of itself, be within the terms of the section. Though there may be policies or doctrines, the advocacy of which is otherwise illegal, no such question need be considered in this case. The words of the section are "brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards His Majesty or the Government established by law in British India." No interpretation can be given to these words which would render it possible to hold that the book does not offend against the section.

Mr. Chatterjee suggested that there was room for a distinction between the fact and the form of British Government in India and contended that the attempt, if any, to excite hatred and contempt was in this book directed solely against the particular form of Government now obtaining and was thus innocent under the section. The words used by the legislature are "the Government established by law in British India." The section does not contemplate the probability of attempts being made to excite hatred and contempt against abstractions, but uses a clear phrase for a definite thing, and it would be altogether misinterpreted if effect were given to Mr. Chatterjee's argument. The book itself, moreover, fails altogether to fall into line with the distinction suggested. People who are so unfortunate as to be unable to advocate change in the form of Government, without attempting to bring into hatred or contempt or to

excite disaffection towards the Government established by law, have not been specially favoured by the legislature either by the terms of section itself or by the explanations. They may take their grievance, if any, to the legislature, but the section, while it stands, must be interpreted according to the plain and natural meaning of its words.

In my opinion this application must be dismissed.

SUHRAWARDY J. I agree.

PEARSON J. I agree.

Application dismissed.

Attorneys for the petitioner: *K. K. Dutt & Co.*

Attorney for the opposite party: *The Assistant Public Prosecutor (P. N. Sen).*

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