

CRIMINAL REVISION.

Before Henderson and R. C. Mitter J.J.

HARI PADA SEN GUPTA

v.

EMPEROR.*

1936

Nov. 2, 10.

Construction—Notification under s. 19 of Sea Customs Act, 1878—Prosecution, Authorisation of, by District Magistrate—Court, if can question such authorisation—Sentence—Duty of Court to examine the book, possession of which is punishable—Bengal Suppression of Terrorist Outrages Act (Ben. XII of 1932 as amended by Ben. VII of 1934), ss. 35, 38—Sea Customs Act (VIII of 1878), ss. 19, 19A.

A notification issued by Governor-General-in-Council in 1923 under s. 19 of the Sea Customs Act, 1878, prohibited the importation into India of "books issued by M.—that may be written in any language".

Held that the words of the notification would cover not only books already issued at the date of the notification but also books that might be issued subsequently.

Held, further, that the phrase, "books issued by M." in the notification, would include books written by him as well as books published by him.

Once the District Magistrate has under s. 38 of the Bengal Suppression of Terrorist Outrages Act, 1932, authorised a prosecution for knowingly possessing any book, possession of which is punishable under s. 35 of the Act, the Court cannot go behind the authorisation and examine the contents of the book for the purpose of determining whether the District Magistrate was right or wrong in authorising the prosecution; but it is the duty of the Court to examine the contents for the purpose of deciding upon the measure of sentence to be imposed.

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The facts of the case and arguments in the Rule appear from the judgment.

J. C. Gupta and Sudhangshu Bhooshan Sen for petitioner.

The Officiating Deputy Legal Remembrancer, Debendra Narayan Bhattacharjya, for Crown.

Cur. adv. vult.

*Criminal Revision, No. 861 of 1936 against the order of P. C. De, Sessions Judge of Rangpur, dated Aug. 4, 1936, modifying the order of A. K. Bose, Magistrate, First Class, of Kurigram, dated June 30, 1936.

MITTER J. The petitioner, Hari Pada Sen Gupta, has been convicted of an offence punishable under s. 35(a) of the Bengal Suppression of Terrorist Outrages Act, 1932. He was tried by the Sub-divisional Magistrate of Kurigram and sentenced to two years' rigorous imprisonment. On appeal, the Sessions Judge of Rangpur maintained the conviction, but reduced the sentence to a term of nine months' rigorous imprisonment.

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The father of the accused has a book shop at Lâlmanirhât. The shop room abuts on the road and the back rooms of the house are used for residence. The father does not take any part in the management of the shop, which has been left to the petitioner, who is, according to the finding, about 26 years of age. He has two brothers, one aged about 15 or 16 years and the other 12 or 13. They both live in the house in which the shop is located. The eldest of these two brothers helps the petitioner by acting as salesman, but the youngest is a school boy.

On May 5, 1936, the shop was searched in connection with the Kurigram train robbery. No. incriminating articles were found on the search which would have connected the petitioner with the said robbery, but in a corner of the shop a book entitled "The Future of Indian Politics" written by M. N. Roy and published by R. Bishop of 7, Bloomfield Crescent, London, was found inside a packing case. Thereupon the officer-in-charge of Lâlmanirhât Police Station with the sanction of the District Magistrate, given under s. 38 of the said Act, filed a complaint before the Sub-Divisional Magistrate of Kurigram against the petitioner for an offence punishable under s. 35(a). The book in question was written and published in 1927.

Section 35 of the Act creates the offence and prescribes the punishment. Whoever knowingly has in his possession any newspaper, book or other document the importation of which has been prohibited under the Sea Customs Act, 1878 (I quote only the relevant subsection), is punishable with imprisonment which may

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extend to three years or with fine or with both. Under s. 38(1) of the Act, no cognisance of the offence punishable under s. 35 can be taken except upon complaint made by order of, or under authority from, the Local Government or a District Magistrate empowered by the Local Government in this behalf. Sub-s. (2) of s. 38 states that no complaint shall be made under sub-s.(1) unless the Local Government or the authorised District Magistrate is satisfied that the newspaper, book or document in respect of which the offence is alleged to have been committed contains words, signs or visible representations which tend to further or encourage the terrorist movement or the commission of any offence in connection with that movement. The District Magistrate of Rangpur who sanctioned this prosecution is empowered in this behalf under s. 38(1). A notification issued by the Governor-General-in-Council in the year 1923 under s. 19 of the Sea Customs Act prohibited the importation into India of "books issued by M. N. Roy—that may be written in any language".

The learned counsel appearing for the petitioner raised the following points before us:—

- (1) That the book in question is not covered by the aforesaid notification, it being written and published about four years after the said notification;
- (2) That, in any event, the word "issued" used in the notification does not include authorship;
- (3) That, in any event, the conviction is not sustainable in the absence of any evidence by the Crown that the petitioner knew of the said notification;
- (4) That, in any event, the petitioner was only in constructive possession of the book and constructive possession only does not constitute an offence punishable under s. 35;

(5) That the sanction of the District Magistrate is bad as the book does not contain any word, sign or visible representation which would tend to further or encourage terrorism or terrorist crimes, and

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(6) That the sentence, at any rate, is severe.

We do not consider any of the first five contentions to be sound, but for the reasons to be stated hereafter we consider the sentence to be severe.

In order to examine the first contention we must take into account not only the language used in the notification in question but also consider the scope of ch. IV of the Sea Customs Act. The notification, as the learned Sessions Judge rightly remarks, is not very happily worded. The language used, however, would cover not only books already issued by M. N. Roy at the date of the notification but also books that may be issued in future, and unless the said interpretation be adopted the object underlying ch. IV of the Sea Customs Act would be frustrated.

Chapter IV of the said Act consists of three sections, of which s. 19A need not be examined in detail. It contemplates the detention and confiscation of goods, the importation of which is prohibited under the preceding two sections, under conditions defined in regulations to be made by the Governor-General-in-Council. Section 18 prohibits the importation into India of certain classes of goods well defined in the six sub-sections to that section. Section 19 empowers the Governor-General-in-Council by notification to prohibit or restrict the bringing or taking out by land or sea goods of any specific description. For the purpose of detention or confiscation all that the Chief Customs Officer is required to do is to satisfy himself at the time when the goods are brought into the port that they are such as are prohibited to be imported in accordance with the regulations, that is to say, to see if the goods in question come within any of the sub-sections of s. 18 or answer the description of goods as

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given in the notification issued under s. 19. In the case of a book he need not read it, nor is he required to do so to find out when it was written. To hold that the Chief Customs Officer could rightly detain or confiscate the book in question and to hold at the same time that no offence would be committed which is punishable under s. 35(a) of the Bengal Terrorist Act, if such a book had been smuggled in and was found in the possession of a person, would be inconsistent. Our view is that an offence under s. 35(a) of the Terrorist Act in respect of a book is committed if it could have been rightfully seized by the Chief Customs Officer, at the time of its importation. We accordingly overrule the first contention.

The second contention is that the word "issued" used in the notification means published. The learned counsel for the petitioner accordingly contends that as M. N. Roy is not the publisher of the book in question it does not come within the notification. We do not think that such a restricted meaning should be given to the word "issued". One of the meanings given to the word "issue" in the Oxford Dictionary is "that which proceeds from any source". We accordingly hold that the phrase "books issued by M. N. Roy" would include books written by him as well as books published by him. The second contention is accordingly overruled.

The third and fourth contentions are also without substance. The word "knowingly" in s. 35 of the Terrorist Act qualifies the word "possession". Constructive possession on the part of the person charged is not enough. If such a book is in a room occupied by the person charged, he is no doubt, in the eye of the law, in possession of the book, because he has possession of the room, but to sustain a conviction under the section the Crown must prove that he knew that the book was in his room. The finding of the learned Sessions Judge is that the petitioner knew that the book was in his shop. As the word "knowingly"

qualifies the word "possession" only, it is immaterial whether the petitioner had knowledge of the notification or not.

To the fifth contention there can be only one answer. A prosecution can be started only on the sanction of the Local Government or of an authorised District Magistrate. Whether the sanctioning authority would authorise a prosecution for an alleged offence punishable under s. 35(a) or not is a matter for that authority to decide. No doubt, the legislature enjoins the Local Government or the District Magistrate to satisfy themselves that the book in question contains words, *etc.*, which tend to further or encourage terrorism or terrorist crimes, but, once the prosecution is authorised, the trying Court cannot go behind the sanction or question the propriety of the judgment of the sanctioning authority. We cannot, therefore, examine the book for the purpose of seeing whether it contains any words, *etc.*, which would tend to further or encourage terrorism or terrorist crimes for the purpose of seeing whether the District Magistrate was right in directing a complaint to be filed. We, accordingly, overrule this contention also.

In considering the question of sentence the learned Sessions Judge was asked to look into the book but he refused. He said as follows:—

I did not think it necessary to read the book, but, in my opinion, that point is irrelevant, as the accused has been found guilty under a particular notification. His offence is an offence under a special and preventive Act. The fact of his having broken that law is his offence. It is in any way technical offence.

We do not think that the learned Sessions Judge was right in this view. We have already held that the contents of the book cannot be examined by the Court, which holds the trial, or by us, for the purpose of seeing whether the District Magistrate ought to have authorised the prosecution. But for the purpose of deciding what sentence ought to be passed, it is the duty of the Court to take into account the character of

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the book. If the book in question is a violent one, advocating terrorism or terrorist crimes, the sentence ought to be substantial. If it is an innocent one, in the sense that it does not encourage terrorism, it may be unfortunate that authority to file a complaint has been given by the District Magistrate, but the Court must take the character of the book into consideration in passing sentence. With this view, we asked the learned Deputy Legal Remembrancer to go through the book and tell us if there is in it any appeal to terrorism or anything concerning terrorism or terrorist crimes. He has stated before us that the book contains no such thing. I have examined the book myself and I do not find in it anything which has any reference to terrorism or terrorist crimes. On this ground we hold that the offence committed is of a technical character and that justice would be done if the sentence be reduced to the term already served. We order accordingly. The petitioner is discharged from his recognisance.

HENDERSON J. I agree.

Sentence reduced.

P. K. D.