

APPELLATE CRIMINAL.

Before Bartley and Khundkar JJ.

DHIRENDRA NATH SEN

v.

EMPEROR.*

1938

July 19.

Sedition—Criticism of the ministry, if sedition—Criticism of a proposed Bill, when sedition—Indian Penal Code (XLV of 1860), s. 124A—Government of India Act, 1935 (25 & 26 Geo. V c. 42), ss. 49, 50, 59.

An article is seditious when it brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law in British India.

Government, in this connection, denotes the person or persons authorised, by law to administer executive government in any part of British India.

Under s. 49 of the Government of India Act, 1935, the executive authority of a province shall be exercised by the Governor either directly or through officers subordinate to him. All such action of the Government shall, under s. 59, be expressed to be taken in the name of the Governor.

There is no specific provision in the Government of India Act vesting the ministry with executive functions. Ministers are members of the Government and also servants of the Crown, but it is very doubtful if a ministry, chosen from the elected representatives of the people under a democratic constitution, and empowered, within prescribed limits, to dictate the policy of the executive Government, is in any real sense a body of officers subordinate to the Governor.

A journalist may canvass and censure the acts of Government and their policy and indeed it is his duty.

R. v. Sullivan (1) referred to.

An attempt to remove from power the ministers in office or any agitation for the repeal of an Act of Parliament cannot be seditious if no unlawful means are employed.

An article which is not an attack on the ministry, but on a proposed bill and the policy of the ministry as revealed therein, is not seditious within the meaning of s. 124A of the Indian Penal Code.

Held in the present case that the article in question read as a whole amounted in a sense to nothing more than a censure, expressed in exaggerated, inflated and intemperate language, on a still born Bill.

*Criminal Appeal No. 161 of 1938, against the order of R. Gupta, Chief Presidency Magistrate of Calcutta, dated Mar. 7, 1938.

CRIMINAL APPEAL.

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This appeal arose in connection with an article published on November 27, 1937, in a newspaper called the "Hindusthan Standard." The article purported to be a criticism of a bill proposed to be introduced in the Bengal Legislative Assembly known as the Bengal Secondary Education Bill. The article in question was as follows:—

Where is Bengal to-day ?

Is Bengal dead? Has she been effaced from the map of *Hindusthan*? Where are her children—where are those brave men and women who have often in the chequered history of this Province made rulers or administrators tremble and totter? Where are they to-day? If there was any occasion for a relentless struggle, howsoever long and bitter, for a fight unto death, here is the occasion and now is the time. The Ministry in Bengal have declared war. It is not a Hindu or a Muslim question. They have declared war against the entire Province. They have launched a savage attack on the hoary traditions of the past, on an ancient culture which has been nurtured by tears of countless generations and on the integrity and independence of intellectual life in the Province of which we are so much proud. Sir John Anderson had brought to us his experiences of the Black and Tan method of violent and vindictive repression. Punitive fines, concentration camps, unauthorised raids, military route-marches and the camping of troops in distant parts of Bengal were features of an administrative purging which we owe to Sir John Anderson and for which the professional sycophants, who swarmed round him as they swarm round every man of power and patronage, will for ever be beholden to him. He has left and left with a vengeance. His parting gift to Bengal and his parting kick to His Hindu Ministers is the Bengal Secondary Education Bill, and we refuse to believe that his Ministry would have dared sponsor a measure of such dangerous and monstrous crudity had not the Governor inspired it in its conception and blessed it in its production.

The outrageous illegality of the Bill has been exposed in these columns, but far more outrageous than its illegality is the impudent challenge that it deliberately throws out to Bengal's culture, thought and tradition. Its pervading purpose, as its provisions make it clear, is to hand over education irrevocably and once and for all not to competent educationists, not to their accredited representatives, not to the spokesmen of those who by their initiative, enterprise and finance have built up the secondary schools of Bengal, but to the howling idiots, and worse than the howling idiots, to the communal maniacs and to panic-stricken officials who constitute a grave menace to educational independence. Its sole aim and object is to create a body of communal "terrorists" and place them in entire charge of the educational policy of this Province. Fourteen seats in a Board of thirty-four members have been reserved upon a communal basis; fifteen seats out of that number are proposed to be filled up by officials and nominees of the Provincial Government. And what are the functions of this Board? They will direct, supervise and control secondary education. They will do all such other acts and things as they consider necessary in the interests of that education. They will grant, refuse recognition to, or withhold recognition from, schools. They will grant or refuse permission to any student to appear

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at the Calcutta University Matriculation or any other Matriculation examination held in Bengal. They will, subject to the approval of the Local Government, institute and control such examination other than the Calcutta University Matriculation examination as they think fit. With the previous sanction of the same Government, they will make regulations for the purpose of carrying into effect all or any of the provisions as set out in the Bill. The powers of the Board are thus complete, plenary and absolute as against all men and all institutions including the University of Calcutta, which is a body corporate charged as it is with functions which are not confined only to Bengal, but excluding the Government of Bengal. Wherever the Board fail, in the opinion of that Government, to carry out the purposes of the measure—and the sinister purposes of the Bill are clear beyond any shadow of doubt—and to execute faithfully, loyally and in every meticulous detail the policy of the Government, the latter will have power to intervene, interpose and interdict.

Such indeed is the Bill which has been forwarded to the University of Calcutta for consideration and report. Such is the Bill which has been drafted to the knowledge and with the approval of Mr. Nalini Ranjan Sarker, who bereft in youth by an unkindly Providence of the blessings of a liberal education, has in his declining years become the champion of national purging and educational reform. Such is the Bill which has been formulated apparently in collaboration and under the inspiration of Sir John Anderson, who only the other day in Midnapore expatiated with so much eloquence upon the intellectual and moral recovery of youth in the Province which he loved so well to her utter confusion and to her children's eternal shame. The entire Bill has been begotten in iniquity. Its purpose is to be executed by terror and in cruelty. It is not the result of a compact. It is not the upshot of a bargain between honourable men. It is an act of the most decided tyranny and barbarity that was ever perpetrated in the name of moral and intellectual healing. Where is Bengal to-day, we ask again? Where is the University of Calcutta? Where is the voice of Sir Ashutosh Mookherjee that thundered in the Senate Hall against injustice, tyranny and the insolence of power? Where are our brave young men and women? Will they be cowed down by this audacious challenge to their power, their prestige and their honour? Through the ages of darkness and storm the lamp of Bengal has burnt a sacred fire. Will the inheritors of a great culture and a brave memory stand aside in panic and in horror when the lamp that has burnt so long is put out and extinguished and when the land they love and worship is deliberately hurled into the abyss of communal savagery?

The bill, however, was ultimately dropped. The editor, Dhirendra Nath Sen and the printer and publisher, Upendra Nath Bhattacharjya, of the paper were put upon their trial under s. 124A of the Indian Penal Code before the Chief Presidency Magistrate, Calcutta. The accused pleaded not guilty to the charge and the main contentions on their behalf were, firstly, that the ministry did not form any part of the executive government under the Government of India Act, 1935, and as such any criticism of the ministry or their actions could not come within s. 124A and, secondly, the article read

as a whole was really a *bona fide* criticism of a proposed Bill and the policy of the Government which was within the scope of the duties of a journalist. The learned Magistrate over-ruled these contentions and convicted and sentenced the appellants, whereupon the present appeal was preferred.

Narendra Kumar Basu, Suresh Chandra Talukdar, Prafulla Kumar Roy and Sisir Kumar Basu for the appellants.

The Officiating Deputy Legal Remembrancer, Debendra Narayan Bhattacharjya, and Nirmal Chandra Das Gupta for the Crown.

BARTLEY J. Appellants, the editor, and the printer and publisher of a newspaper, called the "Hindusthan Standard," have been convicted of sedition, in respect of an article published in the issue of that paper, dated November 27, last.

The sole question for decision in this appeal is whether the article falls within the mischief of s. 124A of the Indian Penal Code.

In form, it is an onslaught upon a certain Education Bill, and the contention on behalf of the prosecution, which has been accepted by the Court below, is that it excited hatred, contempt and disaffection towards the ministry in Bengal and was, therefore, seditious.

An article is, in law, seditious when it brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the government established by law in British India.

Government, in this connection, denotes the person or persons authorised by law to administer executive government in any part of British India.

The question before us then is whether the present article can fairly be construed as an attempt, successful or not, to bring into hatred or contempt, or to excite disaffection towards, persons authorised

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by law to administer executive government. Further, as the attack is upon the ministry, that question involves the point whether the ministry are persons authorised by law to administer executive government. If they are not, an attempt to excite hatred, contempt or disaffection towards them would not be an offence under s. 124A of the Code.

Under s. 49 of the Government of India Act, the executive authority of a province (which I take to mean the same thing as legal authority to administer executive government) shall be exercised by the Governor either directly or through officers subordinate to him. All such action of the government shall, under s. 59, be expressed to be taken in the name of the Governor.

The role of the council of ministers is defined in s. 50 as being "to aid and advise the Governor in the "exercise of his functions" except in so far as he is given discretionary powers under the Act.

It may further be taken that the Governor is bound to follow the advice of his ministers in certain cases, that is to say in cases other than these in which he is required by the Act to exercise his own discretion, or where, in his opinion, the advice is inconsistent with the special responsibilities committed to him under the Act.

On the other hand, the Governor chooses his ministers, who hold office during his pleasure. He is empowered to allocate among them the business of the government, and to regulate the transmission to himself of information, or of matters under consideration by a minister which may involve any special responsibility of the Governor.

There is no specific provision in the Government of India Act vesting the ministry with executive functions. On the other hand such functions "shall", in the words of the Act, "be exercised by the Governor "either directly or through officers subordinate to "him"

The position seems to be that, unless the ministry can be held to consist of officers subordinate to the Governor within the meaning of the Act, it cannot exercise executive functions.

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I entertain the gravest doubt whether any such description is applicable to a ministry chosen from the elected representatives of the people under a democratic constitution. There is no difficulty in the position that ministers are members of the Government. There is no difficulty in the position that they are servants of the Crown. It does, however, seem to me to be difficult to maintain the position that a ministry, chosen from the elected representatives of the people, and empowered, within prescribed limits, to dictate the policy of the executive Government, is in any real sense a body of officers subordinate to the Governor.

On the merits of this appeal, it is necessary to examine the article in detail. It is, as I have said, an attack on an Education Bill. What appears from the evidence is that a draft Bill, the Bengal Secondary Education Bill, had been sent for consideration in certain interested quarters. Its provisions, thus made public, inspired the article. There is no evidence before us as to the nature of the Bill, except what can be derived from the article itself, and we are informed from the bar that it has been dropped.

The article, which is headed "Where is Bengal 'to-day?'" begins rhetorically "Is Bengal dead? Has 'she been effaced from the map of Hindusthan?'"

It then alludes to the bravery of the men and women who in the past made rulers or administrators tremble and totter, and says that the time has come for another fight to the death. The ministry in Bengal have declared war on the entire province. They have attacked the traditions and culture of the past, derived from an independent intellectual life.

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Next comes a reference to the last Governor, Sir John Anderson, as objectionable in its language as it is irrelevant to the topic under discussion. The only relevant portion is the statement that the bill was his parting kick to his Hindu ministers, and the insinuation that it was inspired by him. The writer then goes on to say that the "outrageous illegality of 'the bill'" had been exposed in his columns, and to describe it as an impudent challenge to the culture, thought and tradition of Bengal. Its purpose is to hand over education "to the howling idiots, and 'worse than the howling idiots, to the communal 'maniacs and to panic stricken officials who constitute 'a grave menace to educational independence.'"

"Its sole aim is to create a body of communal 'terrorists and place them in entire charge of the 'educational policy of the province.'"

Next follows a criticism of the machinery to be set up for the control of education, which is described at some length; a reference to its sinister purpose, and a statement that government has full powers to control the Education Board.

The concluding paragraph avers that the entire Bill has been begotten in iniquity and that its purpose is to be executed by terror and in cruelty.

It is an act of the most decided tyranny and barbarity ever perpetrated in the name of moral and intellectual healing.

The article concludes with a further burst of rhetoric in which the "inheritors of a great culture" are told that "the land they love and worship is 'deliberately hurled into the abyss of communal 'savagery'".

From this analysis, it is clear, in the first place, that the article is an attack, not on a ministry, but on a measure. The Bill itself is, throughout, the

object of the attack. The sole references to the ministry in the whole article are the statement that they have declared war, and attacked the traditions of the past and an ancient culture, and the statement that the writer refuses to believe that the ministry would have dared to sponsor the measure unless the former Governor of the Province had inspired and blessed it. The word "ministry" is not to be found elsewhere in the article.

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The keynote of it indeed is "the outrageous "illegality of the bill", a note, according to the writer, previously sounded in his columns.

The attack is directed against the policy of the ministry, as revealed through proposed legislation.

In this view of the real intention of the article, no comment expressing disapprobation of the measure with a view to obtain its alteration by lawful means without exciting or attempting to excite hatred, contempt or disaffection, would amount to an offence under s. 124A of the Code.

It has been said that in the present day at all events an attempt to remove from power the ministers in office or any agitation for the repeal of an Act of Parliament cannot be seditious if no unlawful means are employed.

It was laid down in *R. v. Sullivan* that a journalist may canvass and censure the acts of Government and their policy and indeed it is his duty. He is free to discuss their acts and their public policy and he may if he thinks proper censure the acts of government and ministers.

The article complained of in this case amounts in essence to nothing more than a censure, expressed in exaggerated, inflated and intemperate language, on a still born Bill.

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It is not, however, in my opinion, seditious in the sense that it brought or attempted to bring the ministry into hatred or contempt, or that it excited disaffection in any greater measure than the measure implicit in the working of a democratic constitution, apart altogether from the question whether it is seditious within the narrower limits imposed by the Indian Penal Code.

In the result I am of opinion that this appeal must be allowed, and the convictions and sentences set aside. Appellants will be discharged from their bail.

KHUNDKAR J. I agree.

Appeal allowed. Accused acquitted.

A. C. R. C.