

CRIMINAL REVISION.

Before Biswas J.

KAMAL SARKAR

v.

EMPEROR.*

1937

July 20, 21, 26.

News-sheet—Unauthorised news-sheet. What is—Poster, how to be interpreted—“Union Jack”, if an emblem of Government established by law in British India—“Class or section”, Meaning of—Capitalists, if a class—Indian Press (Emergency Powers) Act (XXIII of 1931), ss. 4, 18.

The question was whether a poster was hit by cls. (d) and (f) of s. 4, sub-s. (1) of the Indian Press (Emergency Powers) Act of 1931, as bringing into hatred or contempt, or as exciting disaffection towards His Majesty or the Government established by law in British India, or as inciting the commitment of an offence.

Held that in dealing with such a poster containing a caricature or cartoon, the common sense interpretation of such a document, namely, the impression it gives to a man of ordinary common sense, must be taken. It is worse than useless to try to extract a meaning out of it by a laboured commentary.

Where such a poster gives one the impression of being a mere call to labourers to unity and to struggle to end the exploitation of labour by capital, the poster is not hit by s. 4, sub-s. (1) of the Act, even though in this process of exploitation the poor are represented as being crushed or oppressed. Unity and struggle is no incitement.

The Union Jack is not the emblem of the Government established by law in British India within the meaning of the Act.

The words “class or section” in cl. (d) of s. 4 (1) mean a definitely ascertainable body of individuals not an indeterminate body or group having no clearly defined and non-variable characteristics or criteria by which they may be distinguished from any other body or group. Exploiters or capitalists as such do not constitute a class or section within the meaning of this clause.

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

B. Das and *Hiran Kumar Ray* for the petitioner.
Prabodh Chandra Chatterji for the Crown.

Cur. adv. vult.

* Criminal Revision, No. 539 of 1937, against the order of R. Gupta, Chief Presidency Magistrate of Calcutta, dated June 8, 1937.

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BISWAS J. This is a prosecution under s. 18, sub-s. (1) of the Indian Press (Emergency Powers) Act (XXIII of 1931). This sub-s. provides as follows :—

(1) Whoever makes, sells, distributes, publishes or publicly exhibits or keeps for sale, distribution or publication, any unauthorised news-sheet or newspaper, shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

The offence complained of against the petitioner was that of "making" an "unauthorised news-sheet" in breach of this sub-section. Another person was charged with abetment of the offence, but he was acquitted. The petitioner was convicted by the Chief Presidency Magistrate and sentenced to pay a fine of Rs. 200, in default to rigorous imprisonment for six weeks. Hence this Rule.

The unauthorised news-sheet is said to be a lithographed poster in red, in three different editions, viz., in Urdu, Hindi and Bengali, stated on the face of it to be "published on behalf of the Workers Publishing House by Ajit Ghosh from No. 1, "Kenderdine Lane, Calcutta", and printed at the Alliance Press, Ltd., No. 63, Bowbazar Street. According to the prosecution, Ajit Ghosh is an *alias* of the petitioner. The poster in the Bengali edition is headed in big, bold type "*Ekatā O Sangrām*", which translated literally means *Unity and Struggle*, followed by the words "*May Dibash*," or May Day, meaning the day observed by Labour organizations for celebration of their movement. At the bottom is the legend "*soshan prathār dhangsa houk*,"—Perish Exploitation (literally, perish the system of draining). The body of the poster is filled with a striking pictorial representation obviously intended to illustrate the *soshan* or exploitation. In the upper half to the left is a group of three figures, two of portly dimensions in Indian dress, the first with a flowing beard, typifying probably a Moslem, and the second a Hindu, and the third, slim and spruce, sporting

European attire, frock-coat, trousers and top hat complete. All three seem to have an air of satisfied ease about them. In front of them is an out-stretched arm, seen only up to the wrist, dangling, what look like a few pieces of coin on the palm, which the man in frock-coat is seen to be clutching at with complacent avidity. Down on the left, in vivid contrast is the picture of about half a dozen lean, puny figures, men and women, busy loading their baskets with coins or carrying away loaded baskets of coins on their heads, but not for themselves. Overspreading the centre of the picture, over the heads of these poor creatures and in fact pressing down a few with its heel, is a heavy spiked army-boot,—the leg of its invisible wearer, the man whose out-stretched arm is seen at the top, hidden away behind a capacious bag apparently bulging with coins, held tightly by the same figure with his other hand, this too showing only up to the wrist. Over this wrist is seen a sleeve-link bearing the design of a miniature Union Jack. Filling the lower half to the right, there stands in three-quarters length a big, sinewy figure in tucked-up loin cloth, ready to strike a heavy blow with a big hammer. On the right side towards the top is a letter-script. "The rich become "richer", and on the left towards the bottom, "The "poor become poorer"

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Such is the offending document, and two questions arise: first, whether it comes within the mischief of the Act, and secondly, whether the petitioner "made" it.

To answer the first question, it is necessary to see if the poster comes within the definition of an "unauthorised news-sheet". Section 2(10) says that an unauthorised news-sheet means any news-sheet other than a news-sheet published by a person authorised under s. 15 to publish it. Admittedly, no one was authorised to publish this poster under

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s. 15. The question, therefore, is whether it is a news-sheet, and this is thus defined in s. 2(6) :—

(6) "news-sheet" means any document other than a newspaper containing public news or comments on public news or any matter described in sub-s. (1) of s. 4.

It is not said that the poster is a newspaper, or that it contains public news or comments on public news. Does it then contain any matter described in s. 4, sub-s. (1) ?

Now, s. 4, sub-s. (1) contains a number of clauses, and of these, the clauses which this document is said to offend against are (d) and (f). The words in these clauses are as follows :—

(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.

(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.

There is another clause, cl. (h) :—

to promote feelings of enmity or hatred between different classes of His Majesty's subjects,

but this is not invoked by the prosecution.

The learned Magistrate has held that the matter depicted in the poster falls within cls. (d) and (f). His interpretation, which he says is "obviously the "common sense interpretation", is this :—

that the hard-earned money of the poor is grabbed away from them and is shared by the capitalists—represented by the three richly dressed figures—and by the Government represented by the person who wears a Union Jack on his sleeve.

And he goes on :—

I take this figure to represent the Government and not the British people, because one of the capitalists is himself dressed in what are meant to be European clothes and is no doubt supposed to represent a European capitalist. The figure with the hammer, coupled with the slogans on the poster, obviously are an exhortation to the labouring class to destroy the exploitation depicted by the drawings.

Pausing here for a moment, I may state that before I read the Magistrate's judgment and before I heard counsel's arguments, I thought I should look at the poster myself and see how it struck me, and so I did. For, it seems to me that in a matter of this kind, when you have got to deal with a document like a poster, it is worse than useless to try and extract a meaning out of it by a laboured commentary. It is not a writing intended to be read and re-read at leisure, dotting the i's and crossing the t's, till it yields up its secret meaning, nor even a work of art like a high class painting to be studied and pondered to find its true interpretation, but it is at best a mere caricature or cartoon which from the nature of things must wear its heart on the sleeve, as it were. The "common sense interpretation" of such a document must be the impression it gives to a man of ordinary common sense.

I may state at once the impression this document did not give me. Decidedly, it did not strike me as bringing into hatred or contempt His Majesty or the Government established by law in British India, or as exciting disaffection towards His Majesty or the said Government, nor did it appear to be an incitement to commit an offence. It seemed to me to be a call to unity and to struggle to end the exploitation of Labour by Capital, and it certainly gave me the impression that in this process of exploitation the poor were represented as being crushed and oppressed. I was in no doubt that the invisible figure visible only through his hands and his booted leg was the exploiter, but was not so sure whether the three "richly dressed figures" were among the exploited or were

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exploiters as well. The big, brawny man with the up-raised hammer conveyed no idea of violence to me, as if he was out to maim the hand that held the bag of gold, but seemed only to typify the horny handed son of toil, standing to his full stature, free from the killing effects of exploitation, manly and independent, —a vivid representation, shall I say, of Carlyle's "Tools and the Man",—a contrast on the one hand to the three men at the left hand top luxuriating in slothful ease, and, on the other, to the miserable creatures at the bottom, specimens of sweated labour whose lot it is to "live for others" in any but the Socratean sense. The Union Jack was not surely the Government established by law in British India.

This was my first reading of the poster, and neither the judgment nor the arguments convinced me I was wrong. The document was torn to pieces at the bar on either side. The picture no doubt represented the poorer classes as being oppressed, but by whom? The Crown would say, by the Government of the country, and would fix its identity by the Union Jack on the sleeve. But, as we know, the Union Jack is not the emblem of the Government established by law in British India, but the national flag of the British Empire, in which are combined in union the crosses of St. George, St. Andrew and St. Patrick. It is the most important of all British ensigns, and is flown by representatives of the Empire all the world over, and when flown by the Governor-General of India, the star and device of the Order of the Star of India are borne in the centre. It is a flag which I believe every subject of His Majesty in India is permitted to fly, and it would be going beyond reasonable limits to infer merely from the Union Jack in the picture a reference to the Government in this country. It would not even necessarily suggest a British Imperialist, for what we see in the picture is only a pair of hands and a heavy boot, and these might be those of an Indian as much as those of a Britisher. I see no

point in the argument that as one of the three figures supposed to represent capitalists is in European attire, the invisible figure must typify the Government. For one thing, these three figures might not be those of exploiters at all; they might only stand for the comparatively well-fed and well-groomed classes who are equally the victims of exploitation along with sweated labour depicted at the bottom, the exploitation in their case being by the more unfelt process of throwing a few crumbs at them as a sop to Cerberus. Secondly, as I have pointed out, the figure with the Union Jack might not be a Britisher at all.

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At the worst, the poster might be said to come within the words "bringing into hatred or contempt "any class or section of His Majesty's subjects". But which class or which section? If there is any hatred or contempt excited, it is against those who exploit, but who are they, and how do they constitute a "class" or a "section"? The question has only to be stated to show how difficult it is to find an answer which would satisfy the requirements of the section. The words "class or section" in cl. (d) of s. 4(i) to my mind must mean a definitely ascertainable body of individuals, not an indeterminate body or group having no clearly defined and non-variable characteristics or criteria by which they may be distinguished from any other body or group. Exploiters or capitalists as such, any more than, say, literates or illiterates, or the rich or the poor, do not in my opinion constitute a "class" or "section" within the meaning of this clause.

The so-called "slogans" to which the learned Magistrate refers, whether by themselves or taken as interpretation clauses to the picture, cannot possibly attract the mischief of either cl. (d) or cl. (f). "Unity and struggle" is no incitement. The struggle evidently is the struggle to end a system of exploitation, but that is a legitimate objective of

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Labour against Capital, and if any one calls upon labourers to unite that they may cease to be exploited by capitalists for their own ends, I do not think he must be necessarily supposed to be doing something which will catch him within the net of this Act, wide as it is. To say that the rich become richer or that the poor become poorer is only stating the effect of the exploitation, and not exciting hatred or contempt between them, even if this be supposed to constitute two different "classes". As for the figure with the hammer, it would be almost a travesty to read it as an incitement to violence. The hammer in the picture is not shown as aimed at the hand or at any particular objective, and it is also to be seen that the face is turned away, which hardly suggests that a blow is intended to be struck at the hand.

After careful consideration, therefore, I have reached a conclusion as to the nature and effect of the poster different from that of the learned Magistrate, and in that view it becomes unnecessary for me to consider the other question as to whether the "petitioner" was "maker" of the document.

The result is that, in my opinion, the poster in question does not offend against the Act, and is not a "news-sheet" as containing matter described in sub-s. (1) of s. 4. The Rule must, accordingly, be made absolute, and the petitioner acquitted. The fine, if paid, must be refunded.

Rule absolute.

A. C. R.C.