1928.

SOMWAR GIR v. MAYANAND GIR.

good ground in law, but it cannot be said that there is any ground for revision. We cannot revise the order of the lower court merely because it came to an erroneous conclusion on a question of law raised before it. We think, therefore, this appeal fails and it is dismissed. No order as to costs, as the opposite party is not represented.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Sir Grimwood Mears, Knight, Chief Justice, and Mr. Justice King.

1928 *March*, 20.

HAR SWARUP *v.* MUHAMMAD SIRAJ.*

Act No. XXV of 1867 (*Press and Registration of Books Act*), *section 7—Newspaper—"Declared printer"—Responsibility of printer for defamatory matter printed in a paper—Act No. XLV of* 1860 (*Indian Penal Code*), *section* 500.

Primâ facie the person who is the "declared printer" of a newspaper is responsible for every thing that is printed in it. He can, however, escape liability by showing that he was absent *bonâ fide*, that is, not with the purpose of evading responsibility, when a particular article complained of was printed. But if he does so, he is bound to give evidence as to who the actual printer of the paper in his absence was. *Emperor* v. *Phanendra Nath Mitter* (1), followed.

THE facts of this case sufficiently appear from the judgement of the Court.

Pandit *Madanmohan Nath Raina*, for the applicant.

The opposite party appeared in person.

*Criminal Revision No. 279 of 1928, from an order of H. G. Smith, Sessions Judge of Meerut, dated the 10th of December, 1927.

(1) (1908) I. L. R., 35 Calc., 945.

1928

HAR SWARUP v. MUHAMMAD SIRAJ.

MEARS, C.J., and KING, J.—This is an application for the revision of an order passed by the Sessions Judge of Meerut, dated the 10th of December, 1927, setting aside the conviction of Muhammad Siraj under sections 500 and 501 of the Indian Penal Code, and the sentence of fine of Rs. 50 passed in respect of each offence.

The facts of the case were briefly as follows:—On the 24th of June, 1927, an article appeared in the "Risalat", which is a weekly newspaper published in Meerut, containing imputations calculated to harm the reputation of Lala Har Swarup, a respectable landholder and banker of Mowana in the Meerut district. He instituted criminal proceedings against the editor and printer of the "Risalat", charging them with defamation. The Magistrate found that the editor, Muhammad Nazir, and the declared printer, Muhammad Siraj, were guilty of defamation under section 500 of the Indian Penal Code and further found them guilty of subsidiary offences under sections 502 and 501 of the Indian Penal Code, respectively.

For the purpose of this application it is unnecessary to consider whether the publication of the article did or did not constitute an offence under section 500 of the Indian Penal Code.

Muhammad Siraj is the declared printer of the "Risalat", but his defence was that he was absent from Meerut at the time when the defamatory article was printed. It was printed by another person during his absence and he knew nothing whatever about it until he received a notice from the complainant. He produced evidence, which has been accepted by the trying Magistrate, proving that he was in fact at Delhi at the time when the issue of "Risalat" dated the 24th of June, 1927, was printed. He also produced a witness who deposed that he had printed that issue of the

1928

HAR SWARUP v. MUHAMMAD SIRAJ.

"Risalat" during the absence of Muhammad Siraj. The Magistrate, however, held that although the printer had proved his absence from Meerut on the date when the paper was printed, nevertheless his absence could not absolve him of his liabilities as a declared printer of the newspaper unless he could show that he left a "responsible man" in charge of his work in his absence, and that he had not produced any evidence to prove which "responsible man" was in charge of his work during his absence. The Magistrate, therefore, found him guilty of technical offences under sections 500 and 501 of the Indian Penal Code.

In appeal before the learned Sessions Judge the same argument was raised on behalf of Muhammad Siraj, namely, that he was not criminally liable for printing the offending article since he was *bonâ fide* absent from Meerut on the date of the printing, and the ruling of the Calcutta High Court in *Emperor* v. *Phanendra Nath Mitter* (1) was cited as an authority for the contention that his conviction was not justified. This argument was accepted by the learned Judge. He held that the accused was not merely absent from Meerut on the date of printing, but that he was "*bonâ fide* absent", in the sense that he knew nothing of the article in question, and did not know that it would be printed in his absence. In the Calcutta ruling, upon which the learned Sessions Judge relied, Mr. Justice RAMPINI, in his charge to the jury, refers to the provisions of section 7 of Act XXV of 1867, which lays down that a declaration made by a person that he is the printer of a newspaper shall be sufficient evidence (unless the contrary be proved) as against that person that he was the printer of every portion of every issue of the newspaper named in the declaration. He pointed out that the effect of this section is to throw upon the declared printer the onus of

(1) (1908) I. L. R., 35 Calc., 945.

proving that in fact he was not the printer of any issue of the newspaper which may form the subject-matter of legal proceedings. He explained to the jury that no doubt absence in good faith and without knowledge of the seditious articles would be sufficient evidence to the contrary, but not absence in bad faith. He goes on to explain what he means by absence in bad faith.

In the present case there is no evidence whatever to suggest that Muhammad Siraj, the declared printer, was absent in bad faith, i.e., that he knew that a defamatory article was about to be printed, and that he merely absented himself with a view to escaping liability. We must take it, therefore, that Muhammad Siraj was absent in good faith and without knowledge of the defamatory article. Under the law, as laid down in the Calcutta ruling, this was sufficient for his acquittal, and in our opinion the law is correctly set forth in that ruling. When the declared printer of a newspaper pleads absence in good faith he should, we think, prove who was in fact the printer of the newspaper in his absence. If he seeks to escape his presumptive responsibility, then he should show who was in fact responsible. This is just what Muhammad Siraj has done in the present case. The defence witness Abdul Rahman clearly states " I printed the issue dated the 24th of June, 1927, of the ' Risalat ' in my press " and thereby accepts whatever liability may attach to the printer. Muhammad Siraj has therefore fully discharged the onus of proving that he was not the printer of the issue in question.

The learned Sessions Judge was right in acquitting Muhammad Siraj and we dismiss the application for revision.

Application rejected.