

FULL BENCH.

Before Sir Cecil Walsh, Acting Chief Justice, Mr. Justice Lindsay and Mr. Justice Banerji.

EMPEROR *v.* KALI CHARAN SHARMA.*

1927
February,
24.

Criminal Procedure Code, sections 99A to 99G—Act No. XLV of 1860 (Indian Penal Code), section 153A—Application to set aside order of forfeiture—Burden of proof—Intention of author of proscribed book.

Held, that where an application is made under section 99B of the Code of Criminal Procedure to have an order of forfeiture set aside on the ground that the matter published does not fall within the mischief of section 153A of the Indian Penal Code, it is for the applicant to convince the Court that, for the reasons he gives, the order is a wrong order.

If the High Court is left in doubt, after hearing the application, it should set aside the order.

Held, also, that if the language of a book is of a nature calculated to produce or to promote feelings of enmity or hatred between two classes of His Majesty's subjects, the writer must be presumed to intend that which his act was likely to produce. *The King v. Burdett* (1), referred to.

A violently abusive and obscene diatribe against the founder or prophet of a religion or against a system of religion may amount to an attempt to stir up hatred or enmity against the persons who profess that religion.

THIS was an application to set aside an order of forfeiture of a book called "*Bichitra Jiwan*" passed by the Local Government under section 99A of the Code of Criminal Procedure. The facts of the case sufficiently appear from the judgement of LINDSAY, J.

Munshi Narain Prasad Ashthana, Munshi Panna Lal and Babu Surendra Nath Varma, for the applicant.

The Government Advocate (*Mr. G. W. Dillon*), for the Crown.

* Criminal Miscellaneous No. 3 of 1927.
(1) (1920) 4 B. and Ald., 95(120).

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LINDSAY, J.:—This case arises from an application made by Pandit Kali Charan Sharma under section 99B of the Code of Criminal Procedure as amended by Act XXXVI of 1926.

The applicant is the author of a book written in Hindi and entitled “*Bichitra Jiwan*,” which was first published at Agra in November, 1923, and which purports to treat of the life of the prophet Muhammad.

In October last the Local Government of these provinces took action under the powers conferred by section 99A of the Code (as amended by the Act above mentioned) and declared the book to be forfeited to His Majesty on the ground that it contains matter the publication of which is punishable under section 153A of the Indian Penal Code.

By the application now before us we are asked to set aside this order of the Local Government on the ground that the book does not contain such matter as is referred to above. In support of his application Pandit Kali Charan pleads—

(1) that he has taken his facts and material from authoritative Muslim literature and standard works on Islam and Muhammad by European as well as Indian writers;

(2) that by writing the book it was never his intention to promote or to attempt to promote feelings of enmity or hatred between different classes of His Majesty's subjects;

(3) that he wrote the book in a spirit of fair and honest criticism without any malicious intention of producing hatred; and

(4) that as a preacher of the Arya Samaj his propaganda is mainly confined to reclamation (*shudhī*)

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of the Hindus from other religious and especially from Islam.

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For these reasons he contends that the order of forfeiture is erroneous, as the book does not offend against the law; and the question we have to decide is whether, for the reasons just stated, the order is liable to be set aside.

When the case was opened there was some discussion regarding the onus of proof, it being contended on behalf of the applicant that it lay upon the Government to establish that the order complained of was justified by law. Speaking for myself I feel clear that this argument is not well founded in view of the language of section 99B. Where an application is made under that section to have an order of forfeiture set aside on the ground that the matter published does not fall within the mischief of section 153A of the Indian Penal Code, it is, in my opinion, for the applicant to convince the court that, for the reasons he gives, the order is a wrong order.

For the purposes of this case the point is, perhaps, not one of practical importance and the Government Advocate who appeared for the Crown undertook to support the order and did so. As, however, the question of onus was definitely raised I have thought it proper to express my opinion in the sense indicated above.

To pass on to an examination of the nature of the contents of the book, I would refer, in the first place, to the title which it bears. The short title is "*Bichitra Jiwan*" (Strange or Wonderful Life). A longer and alternative title, displayed on the front page is "*Muhammad Sahib ke jiwān ki bichitra aur rahasya-mayi ghatnaen*" which may, I think, fairly be rendered in English by the expression "strange

and diverting episodes in the life of Muhammad Sahib," though the Hindi word "*rahasya*" may also be translated as "private" or "secret," the fact being that the word "*rahas*" has a variety of meanings, most of which, however, are associated with the notion of pleasure or merriment.

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The book contains a preface (*Nivedan*) in which the author sets out the occasion for his writing it. He states that people who speak and read the Hindi language have hitherto had little or no opportunity of becoming acquainted with the religion of Islam, and goes on to say that at a time when persons like Khwaja Hasan Nizami are laying themselves out by secret methods to entrap Hindus in the snare of Islam, it is necessary that a book should be written in Hindi to teach Hindus something about the tenets of the Muhammadan religion.

[His Lordship then examined the nature of the contents of the book and proceeded as follows:—]

After this survey of the contents and language of the book a word or two may properly be said about the circumstances in which it came to be published. It made its appearance in November, 1923, and has run through three editions. The writer has admitted before us that some 6,000 copies of it have been given away or sold by way of propaganda in furtherance of the "*shudhi*" movement.

This movement was set on foot at or about the time this book was published and has for its principal object the reclamation from Islam of converts from Hinduism, of whom there are many in the western districts of these provinces. This campaign of re-conversion started at a time of more than usual tension between the Hindu and Muhammadan communities and led to a counter campaign on the part of the

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Muhammadans. It is a matter of notoriety that these movements have excited bitter animosity which has since expressed itself at frequent intervals in violent collisions between the followers of the two religions.

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The book, then, made its appearance at a time of unsettlement and excitement and has been widely distributed since its publication. According to what was stated by the author in the witness-box a second edition of 3,000 copies was printed and has been exhausted. A second edition copy before us shows that it was printed in February, 1925.

It is said that it was written in the Hindi dialect and printed in the Devanagri character for the use of Rajput converts, but it clearly must have been intended for a wider circle, namely, Hindus in general: that is clear from the language of the preface itself. "I wrote the book because I am a missionary of the Arya Samaj. I do *shudhi* work in order to try to convert people to the Vedic religion and to prevent my people from becoming Muslims." These are the words used by the writer in the course of his examination before us. The appeal is thus to Hindus as a class.

The question, then is as to the intention of the writer. Has he by this book promoted or attempted to promote feelings of enmity or hatred between two classes of His Majesty's subjects, the Hindus and the Musalmans?

This matter must be judged primarily by the language of the book itself, though it is permissible to receive and consider external evidence either to prove or to rebut the meaning ascribed to it in the order of forfeiture.

If the language is of a nature calculated to produce or to promote feelings of enmity or hatred, the

writer must be presumed to intend that which his act was likely to produce. This was the principle laid down by BEST, J., in *Burdett's* case (1) in dealing with a case of seditious libel, and the same principle clearly applies to the case of a publication punishable under section 153A of the Penal Code. Applying this test to the case before me I can only say that in my opinion the natural, indeed the inevitable, consequence of writing such as I find in this book is the excitement of enmity or hatred or both between the followers of the Hindu and Muhammadan religions.

The learned counsel for the applicant, while admitting that the book must be painful to Muhammadans, insulting to their prophet and their religion and frankly obscene in parts, has contended (if I have understood him rightly) that his client as a missionary, zealous for his religion, was entitled to collect and place before Hindus all the materials to be found in this book in order to prevent their being attracted towards Islam. It is suggested that for a missionary in the exercise of his calling it is legitimate to employ all means to excite hatred of a rival religion and that it is not to be inferred that because he does so he is necessarily attempting to engender hatred or enmity against the persons who profess it. And so it is argued here that because Pandit Kali Charan has written a violent, abusive and obscene diatribe against Muhammad we ought not to conclude that there is any evidence of an attempt to stir up strife against the followers of the prophet. That indeed is the plea of the Pandit in his petition (see paragraph 8) with which may also be read the plea in paragraph 9 to the effect that the book was written "in a spirit of fair and honest criticism without any malicious intention of producing hatred." As regards this last plea I would only observe that I

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(1) (1820) 4 B. and Ald., 95(120).

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have failed to discover in the book any traces of "fair and honest criticism." On the contrary I can find nothing but obscene abuse.

I am not prepared to assent to the proposition that there is no limit to the licence permitted to a missionary in the advocacy of the merits of his own religion, nor am I able to appreciate the distinction between an attack upon a system of religion in the abstract and one upon the people who believe in it. I do not think it is humanly possible to hold up to obloquy and derision a religious belief without stirring up resentment and hatred on the part of those who accept it as their creed.

We have heard the evidence of one Abdul Majid who is one of the persons who complained to the Government against this publication. He has told us how the book first came to his notice and has described the excitement created in the principal mosque at Agra when a few extracts from the book were read out to the Muslim congregation on the last Friday in Ramzan.

Abdul Majid declares that if Government had not interfered to suppress the book he would have felt impelled to murder the author. He further declares that but for restraint put upon them by one of their leaders his co-religionists would probably have joined in a massacre of Hindus. This, indeed, is strong language, but I have no reason to suppose that it does more than express the vindictive feelings which were roused by the recital of passages from the book of Pandit Kali Charan, and it is sufficiently plain that the argument that an attack upon a religion does not necessarily involve an attack upon its adherents possesses no merits in the eyes of the Muslims of Agra.

It must, of course, be recognized that in countries where there is religious freedom a certain latitude

must of necessity be conceded in respect of the free expression of religious opinions together with a certain measure of liberty to criticize the religious beliefs of others, but it is contrary to all reason to imagine that liberty to criticize includes a licence to resort to the vile and abusive language which characterizes the book now before me.

I have sought, therefore, to judge the intention of the writer from his own declarations in the book, from the nature of the language he has used and from the circumstances in which the book was published, and I cannot entertain any doubt, in spite of the author's protestations to the contrary, that the book was conceived and written with the deliberate intention not only of exciting odium against the founder of the Muhammadan religion but of promoting in Hindus feelings of hatred or enmity against their Muslim fellow-subjects.

I pay no attention to the plea that the statements contained in the book are supported by authority; in cases like these the truth of the language can neither be pleaded nor proved; it is immaterial. For these reasons I am of opinion that this application should be rejected.

BANERJI, J. :—I agree. The question is as to what was the intention of the writer of the book. Did he promote or attempt to promote feelings of enmity or hatred between the Hindus and Muhammadans? The principle applying to cases of seditious libel applies to the case of publication punishable under section 153A of the Indian Penal Code. I have carefully read the book from end to end and I have no hesitation in holding that the author must be held to have written the book intending to promote feelings of hatred between the Hindus and the Musalmans. The whole tenor of the book suggests to my

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mind that the object can be no other and I am not prepared to believe the statement of Kali Charan that he wrote the book as a missionary and in the exercise of legitimate rights to induce people to embrace Hinduism.

WALSH, A. C. J. :—I agree. I agree also as to the procedure. I think that the explanation of section 99D of the Code of Criminal Procedure is that if the High Court is left in doubt after hearing the application it should set aside the order, which may be said to be contrary to the ordinary practice in an appeal in a civil suit.

By THE COURT.—The order of the Court is that this application is dismissed with costs, including a fee of Rs. 300 to the Government Advocate.

Application dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Ashworth.

EMPEROR v. SAID AHMAD AND ANOTHER.*

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April, 19.

Act No. XLV of 1860 (Indian Penal Code), section 459—
House-breaking—Causing of grievous hurt after the entry is completed.

Held, on a construction of section 459 of the Indian Penal Code, that the offence of house-breaking is complete when entry into the house is effected and any grievous hurt subsequently caused by the persons breaking into the house cannot be said to be grievous hurt caused while they were committing the house-breaking.

The facts of this case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

Mr. *Sayed Mohammad Husain*, for the applicants.

* Criminal Revision No. 169 of 1927, from an order of K. G. Banerji, Sessions Judge of Ghazipur, dated the 18th of February, 1927.