

SPECIAL BENCH

*Before Sir Shah Muhammad Sulaiman, Chief Justice,
Mr. Justice Allsop and Mr. Justice Bajpai*

EMPEROR v. GAUTAM*

1936
May, 12

Criminal Procedure Code, sections 99A, 99B—Indian Penal Code, sections 124A, 153A—Intention—"Classes"—"Capitalists"—Translation proscribed, though not the original.

Hindi translations of two books, Lenin's "Imperialism, the highest stage of Capitalism" and Marx and Engels' "Manifesto of the Communist Party", were proscribed under section 99A of the Criminal Procedure Code by the Local Government. On an application under section 99B of the Code it was held—

As the authors of both these books did not have His Majesty the King-Emperor or the Government established by law in British India particularly in mind but were attempting to deal with certain supposed conditions of exploitation of the working classes by so-called Capitalists and Imperialists prevailing in the entire world, the books could not be held to bring or attempt to bring into hatred or contempt, or excite or attempt to excite disaffection towards, His Majesty or the Government established by law in British India. It was possible that such writings might have the remote effect of causing some disaffection; but it could not be said that there was any such intention directly implied. These publications did not therefore come within the scope of section 124A of the Indian Penal Code.

To make section 153A of the Indian Penal Code applicable two things are necessary: (1) promotion of feelings of enmity or hatred, and (2) between different classes of the subjects. Everything done which may have a remote bearing on promoting feelings of hatred or enmity would not be an offence. There should either be the intention to promote such feelings, or such feelings should be promoted as a result of such publications. Again, feelings of enmity and hatred should be aroused between two "classes" of His Majesty's subjects, that is to say, between two sections of the people which can be classified as two well defined groups opposed to each other. A vague, indefinite and nameless body, even though given one name, may not in certain circumstances be considered as a class by itself, particularly if individuals overlap indiscriminately. At the same time, how-

*Criminal Miscellaneous No. 114 of 1935.

1936

EMPEROR
v.
GAUTAM

ever, it is not necessary that the classes should be so distinct and separate as to make it always easy to put an individual in one class or the other.

The big "Capitalists" spoken of in the first of the two books are those magnates and big bankers who are supposed to control the finances of the world and are imagined to promote war in their own interests and to perpetuate the exploitation of the working classes for their own ends. Whether such bodies of influential men exist in other parts of the world or not, it is difficult to say that there is any definite body of such big bankers and financiers in this country who can be regarded as a "class" by themselves. So, although there were passages in the book which might be construed to create some distant feeling of hatred against the rich and the wealthy, it could not be held that they had the direct effect of actual promotion of any ill-feeling or hatred between any defined "classes" of His Majesty's subjects, so as to bring the book within the scope of section 153A. The theme of the book is a contrast between capitalism and labour throughout the world and in all the stages of history; and the section does not contemplate the penalising of political doctrines, even though of the extreme kind like communism, but only such writings as directly promote feelings of hatred or enmity between classes.

The second book professedly contains a practical party programme consisting of methods to be adopted by the proletariat in destroying property, smashing machinery to pieces and setting factories ablaze and restoring by force the rightful status of the workman. It contemplates the contest often breaking out into riots, the wresting of capital and political power by force and despotic inroads on the rights of property, and by revolutions. The people are divided into distinct groups, (1) the rich vs. slaves, (2) the high caste vs. the low caste people, (3) landlords vs. tenants, (4) king vs. subjects, and (5) oppressor vs. the oppressed, who are stated to be constantly at war with each other. It advocates the forcible overthrow of all existing social conditions. The book, therefore, directly aims at promoting class hatred and enmity and comes under the scope of section 153A.

It cannot be laid down as a general proposition that translations should be permissible when the originals are not proscribed. Translations into Indian vernaculars may become accessible to a very large population and the danger arising therefrom may be immensely greater.

Mr. J. C. Mukerji, for the applicant.

The Government Advocate (Mr. Muhammad Ismail), for the Crown.

1936

 EMPEROR
 v.
 GAUTAM

SULAIMAN, C.J., ALLSOP and BAJPAI, JJ.:—These are applications under section 99B of the Criminal Procedure Code made to the High Court to set aside two orders of the Local Government under which printed translations of two books made by the applicant have been forfeited. The main point for consideration is whether these books or any of them contain any matter the publication of which is punishable under section 124A or section 153A of the Indian Penal Code. It is clear from section 99D that if this Special Bench is not satisfied that they contain matters of such objectionable nature, we must set aside the order of forfeiture.

The first book is a Hindi translation of Lenin's "Imperialism, The Highest Stage of Capitalism", together with the publisher's announcement and the prefaces to the French and the German editions. Lenin wrote this pamphlet in Zurich in the spring of 1916 during a time when the Great War was in progress. The book was written, as the author himself admitted, "with an eye to the Tsarist Censorship", and was therefore written with a certain amount of caution. Apparently the book successfully passed the Russian Censorship, for the author boastfully stated in the preface to the later editions that "this book too is lawful in the eyes of the Tsarist Censorship". The professed object of the pamphlet was that the Great War was an imperialist war on both sides. The main theme of the author as summed up in the publisher's announcement was to show that Imperialism is a developed form of Capitalism and that the Capitalist system has accomplished its work and the present age for it is an age of decay and decline. From the author's point of view it is only after viewing the state of the entire economic system and not merely on the basis of the condition of

936

EMPEROR
v.
GAUTAM

a particular country that it can be decided whether social revolution is possible in a country or not. He has emphasised that "on being trampled down by imperialist states even industrially backward countries can prepare themselves for a new social system". In the preface to the French and German editions the author declared that his aim was to give a picture of the economic system and the reciprocal international relations of the capitalist world, which may serve as an example to very many communists of advanced countries. The professed object was to disclose the alleged hollowness of the idea and the hopes of the Social-Pacifists to establish a republic in the world. The author is labouring under the idea that Capitalism practices oppressions through railways and other enterprises upon a million people, and helps in harassing and plundering half the population of the world, to quote his own words, people in colonies and semi-colonies and the people in slave countries as well as the wage-slaves of capitalism even in civilised countries. He has referred to America, England, Japan, Russia, Germany and France as capitalist countries and developed his theme that the Great War was resolved upon to decide whether the bankers of England or those of Germany should get the major portion of the plunder, and asserted that the Great War has brought about a world-wide havoc due to which a revolution was simmering whose success in the end was inevitable. The idea developed is that there are certain inherent contradictions in Imperialism which make the revolutionary crisis inevitable. He considers that an international split in the proletariat is an easy matter and "armed struggle or civil war between these two tendencies is inevitable". The author suggests that capitalism has brought to the fore a few particular and powerful States forming 1/10th or 1/5th of the total population of the world which are exploiting the rest of the world. He has also stated that the principal spheres of

1936

EMPEROR
v.
GAUTAM

investment of British capital are its colonial possessions which are very great in America and Asia. According to him, the characteristic of Imperialism is a striving not merely for agrarian countries, but also for industrialised countries. He has referred to the alleged tyrannical Imperialism of great powers including Great Britain, and has also stated with regard to India, Indo-China and China that these three colonial and semi-colonial countries inhabited by 6 or 7 million human beings are subject to the exploitation by several imperialist powers, Great Britain, France, Japan and the United States, etc. It is not possible to reproduce any considerable portion out of this book. Only a gist of the passages considered objectionable by the Government Advocate and printed on behalf of the Local Government has been very briefly given to indicate the general purport of the pamphlet. It will thus appear that the author did not of course have His Majesty the King or the Government established by law in British India particularly in view. He was dealing with his own notions of what he called Imperialism and denounced Capitalism in all its forms. In order to find some support for his thesis, he has given his own version of certain historical events and his own inferences from certain statistical figures. Interspersed here and there, there may be passages which may have direct reference to the political part of Imperialism; but the author has emphasised at several places that he was interested in his book "in the economic aspect of the question". The objectionable passages printed and placed before us do not contain any direct incitement to violence or any clear instigation to use force, though there is undoubtedly the suggestion that an ultimate clash is inevitable.

The second book is a Hindi translation of the "Manifesto of the Communist Party", prepared by Marx and Engels in 1848. No doubt it deals with the conditions supposed to have existed during that rather

1936
 EMPEROR
 v.
 GAUTAM

remote period, but it is professedly a "complete and practical party programme". The translator in his preface says: "It can be concluded from this that never before were the principles written in this Manifesto so much respected as they are today. It will not be, therefore, improper to say that the translating of this book is opportune." One translated passage runs as follows: "The rich and the slaves, the high caste people and the low caste people, the landlords and the tenants, kings and their subjects, signify that the oppressor and the oppressed have always been hostile to each other and have constantly been at war, sometimes secretly and sometimes openly." It is stated that the characteristic of the present period is that the class conflict has become quite evident in it and society is divided day by day into two hostile parties prepared to face each other, namely the workers and the capitalists. In Engels' preface there is reference to the defeat of the Parisian insurrection of June, 1848, which is called the first great battle between the proletariat and the bourgeoisie. The joint authors' reading of history is that the whole history of mankind is one of "class struggles, contests between exploiting and exploited, ruling and oppressed classes" and that "Nowadays, a stage has been reached where the exploited and oppressed class—the proletariat—cannot attain its emancipation from the sway of the exploiting and ruling class—the bourgeoisie—without, at the same time and once and for all, emancipating society at large from all exploitation, oppression, class distinctions and class struggles." Referring to the various stages of development through which the proletariat passes, the author says that "They direct their attacks not against the bourgeois conditions of production, but against the instruments of production themselves; *they destroy imported wares that compete with their labour, they smash to pieces machinery, they set factories ablaze, they seek to restore by force the vanished status of the workman of the Middle*

1936

EMPEROR
v.
GAUTAM

Ages." They go on to say that "Thereupon the workers begin to form combinations (trades' unions) against the bourgeois; they club together in order to keep up the rate of wages; they found permanent associations in order to *make provision beforehand for these occasional revolts.* Here and there the *contest breaks out into riots.*" It is asserted that "every class struggle is a political struggle", and that "the proletariat alone is a really revolutionary class". It is said that the down-trodden class of the present society, the working class, cannot redeem itself until the so-called "superincumbent strata of official society is sprung into the air". They say that the capitalist class creates also those who will dig their tombs and bury them. They make no secret of announcing that the immediate aim of the communists is the "conquest of political power by the proletariat". Their theory is the "abolition of private property". The proletariat is to use its political supremacy "to *wrest*", by degrees, all capital from the bourgeoisie, and it is admitted that in the beginning "this cannot be effected except by means of *despotic* inroads on the rights of property". The joint authors announced that "If by means of a revolution, the proletariat makes itself the ruling class and as such sweeps away by force the old conditions of production, then it will, along with these conditions, have swept away the conditions for the existence of class antagonism and of classes generally." They refer to the French Revolution of 1830 as also to the English reform agitation. Referring to Germany by way of illustration they remark "It was a sweet finish after the bitter pills of floggings and bullets, with which these same Governments, just at that time, dosed the German working class *risings*". They state that there is a clear hostile antagonism between the bourgeoisie and the proletariat, and that after the fall of the reactionary classes, the fight against the bourgeoisie itself may immediately begin. They themselves sum up their theme by saying

1936
 EMPEROR
 v.
 GAUTAM

"In short, the Communists everywhere support every *revolutionary* movement against the existing social and political order of things", and conclude by saying that the "Communists disdain to conceal their views and aims, and openly declare that *their ends can be attained only by the forcible overthrow of all existing social conditions*. Let the ruling classes tremble at a Communist revolution. The proletarians have nothing to lose but their chains. They have a world to win. Working men of all countries unite!"

There is an apparent anomaly that the English texts of these two books, which are now fairly old, have not been proscribed and are available in India. It is only their Hindi translations recently made which have been declared to be forfeited. The translator might well have expected that the Hindi translations of books which have remained in circulation for many years would not be objected to. But it cannot be laid down as any general proposition that translations should be permissible when the originals are not proscribed. Translations in Indian vernaculars may become accessible to a very large population and the danger arising therefrom may be immensely greater, calling for the intervention of the Government. We are not concerned with the policy underlying such forfeitures. The sole consideration is whether the books contain any objectionable matter referred to in section 99A.

As the authors of both these books did not have His Majesty the King-Emperor or the Government established by law in British India particularly in mind and were attempting to deal with certain supposed conditions prevailing in the entire world, it is very difficult to hold that these books bring or attempt to bring into hatred or contempt, or excite or attempt to excite disaffection towards, His Majesty or the Government established by law in British India. It is possible that such writings may have the remote effect of causing some disaffection. But it cannot be said that there was

any such intention directly implied. Both these books seem to be directed against supposed capitalists who exploit the working classes. Without unduly stretching the meaning of the words, it is not possible to bring these publications within the scope of section 124A.

The scope of section 153A was considered by RANKIN and MUKERJI, JJ., in *P. K. Chakravarti v. Emperor* (1). It was laid down that the section does not mean that any person who publishes words that have a tendency to promote class hatred can be convicted. The words are to be read as connoting a successful or unsuccessful attempt to promote feelings of enmity, and it must be the purpose or part of the purpose to promote such feelings; and if it is no part of the purpose, then the mere circumstance that there may be a tendency is not sufficient.

In *Emperor v. Maniben Kara* (2) BEAUMONT, C.J., and NANAVATI, J., had to consider the applicability of both the sections 124A and 153A in regard to two speeches delivered by the accused on "May Day". The speaker had stressed the solidarity of the working class and its determination to fight and destroy the capitalist system by organising mass resistance in the form of general strike. She wanted the rule of labour to be established by all labourers combining. The speech, taken as a whole, was an exhortation to labour to unite with the object of being in a position to declare a general strike, though there was no suggestion that a general strike should be declared at that time. The learned CHIEF JUSTICE held (p. 259) that "In reference to divisions between capital and labour, the capitalist generally means a person with a considerable amount of property invested in industry. But if you take any definition of that sort, it is impossible to say what amount of capital would bring a man within the class. He might be within the class one day, and without it the next. He may be a capitalist in one country and

1936

EMPEROR
v.
GAUTAM

(1) (1926) I.L.R., 54 Cal., 59.

(2) (1932) I.L.R., 57 Bom., 253.

1936
 EMPEROR
 v.
 GAUTAM

not in another. It seems to me that "capitalist" is altogether too vague a phrase to denote a definite and ascertainable class so as to come within section 153A." NANAVATI, J., also held that it is difficult to hold that capitalists or imperialists are a definite class for the purposes of section 153A. The remark of SHADI LAL, C.J., in *Raj Pal v. The Crown* (1), with which SCOTT-SMITH and MARTINEAU, JJ., agreed, was quoted with approval, where the learned CHIEF JUSTICE had said that "A class or section as contemplated by this particular section of the Indian Penal Code connotes a well defined group of His Majesty's subjects", and it was held that the term "capitalists" cannot be regarded as sufficiently precise or connoting any well defined class or readily ascertainable group of subjects. The Bench, therefore, held that no offence under section 153A was committed. But in the speech the accused had also incited the labourers to unite to fight the two enemies, Government and the capitalists, as the Government and the capitalists had weapons. She also said that everything was in the hands of labour who wanted to break the powers of capitalists and imperialists which could be done by the way of M. N. Roy. It was held that the speech was seditious.

In *Zaman v. Emperor* (2) JACK and GHOSE, JJ., had a case where the accused's article "Sword of Imperialism" had contained an attack upon the capitalists. The article contained criticisms of British imperialism and the rulers of India, accusing them of exploiting and crushing the workers and the proletariat. The Bench held that the article could not be said to be calculated to promote feelings of enmity or hatred between the Europeans as Europeans and the Indians as Indians, and that there was no evidence that there was any intention on the part of the accused to promote that kind of enmity.

(1) (1922) I.L.R., 3 Lah., 405.

(2) A.I.R., 1933 Cal., 139.

In the Meerut conspiracy case, *Emperor v. Jhabwala* (1), it was pointed out that the offending act consists not in spreading "opinions, ideas and education" but in the endeavour to put such opinions into practice.

086

EMPEROR
v.
GAUTAM

The ingredients of section 153A are promotion or attempting to promote feelings of enmity or hatred between different classes of His Majesty's subjects. The explanation makes it clear that there would be no offence in pointing out, without malicious intention and with an honest view to their removal, matters which are producing or have a tendency to produce feelings of enmity or hatred between different classes of His Majesty's subjects. Section 99A of the Criminal Procedure Code shows that even if there be no intention of the author to promote and no attempt on his part to promote feelings of enmity or hatred, forfeiture can be ordered if the matter does promote such feelings of enmity or hatred. To make the section applicable, two things are necessary: (1) promotion of feelings of enmity or hatred, and (2) between different classes of the subjects. It seems to us that everything done which may have a remote bearing on promoting feelings of hatred or enmity would not be an offence. There should either be the intention to promote such feelings, or such feelings should be promoted as a result of such publications. Again, feelings of enmity and hatred should be aroused between two classes of His Majesty's subjects, that is to say, between two sections of the people which can be classified as two groups opposed to each other. A vague, indefinite and nameless body, even though given one name, may not in certain circumstances be considered as a class by itself, particularly if individuals overlap indiscriminately. But it may also be conceded that it is not necessary that the classes should be so distinct and separate as to make it easy to put an individual in one class or the other. The big capitalists spoken of in the first book, "Imperialism,

(1) (1933) I.L.R., 55 All., 1040(1090-91).

1936
EMPEROR
v.
GAUTAM

the Highest Stage of Capitalism", are those supposed magnates and big bankers who control the finances of the world and are imagined to promote war in their own interests and to perpetuate the exploitation of the working classes for their own ends. Whether such bodies of influential men exist in other parts of the world or not, it is difficult to say that there is any such body of big bankers and financiers in this country who can be regarded as a class by themselves. The book propounds certain political doctrines of communism which, howsoever objectionable and revolting *per se* they may be, have not been forbidden by any law. The section does not contemplate the penalising of political doctrines, even though of the extreme kind like communism, but merely such writings as directly promote feelings of hatred or enmity.

So far as the first book is concerned, it is on the border line. There are passages in it which might be construed to create some distant feeling of disaffection against the rich and the wealthy, but it is not easy to hold that they have the direct effect of actual promotion of any ill-feeling or hatred, particularly as the theme is a contrast between capitalism and labour throughout the world and in all the stages of history. We therefore find it difficult to say that we are satisfied that the book contains objectionable matter within the scope of section 153A. The applicant must therefore be given the benefit of doubt.

The second book stands on a different footing. It not only propounds the doctrine of communism, but is a manifesto of the communist party and professedly contains "a complete theoretical and *practical* party programme". The picture of the class struggles is highly coloured, and references to the French Revolution of 1830, the Parisian Insurrection of 1848 and the Reform Agitation in England, etc., point to the readers a revolutionary method for the achievement of the purpose in view. There is a pointed reference to the

methods often adopted by the proletariat in destroying property, smashing machinery to pieces and setting factories ablaze and restoring by force the former status of the workman. It points out that in this clash the contest has often broken out into riots. It lays down that the immediate aim is the conquest of political power by the proletariat, and asserts that "the wresting" of capital from the bourgeoisie cannot be expected except by means of despotic inroads on the rights of property, and shows how by means of a revolution the proletariat can sweep away by force old conditions and make itself the ruling class. Their feelings are excited by the reference to the use of floggings and bullets sometimes made against the working classes. The people are divided into distinct groups, (1) the rich vs. slaves, (2) the high caste vs. the low caste people, (3) landlords vs. tenants, (4) king vs. subjects, and (5) oppressor vs. the oppressed, who are stated to be constantly at war with each other and divided into two hostile parties prepared to face each other. It declares that communists must everywhere support their revolutionary movement against the existing social and political order of things and announces that the end can be attained only by the *forcible* overthrow of all existing social conditions, and ends with an appeal to the working men to unite.

There can, therefore, be no doubt that this translation of an old manifesto directly aims at promoting class hatred and enmity, and in fact incites working classes to overthrow the capitalist classes even with the use of force, and so it undoubtedly contains matter which is objectionable under section 153A.

We set aside the order of forfeiture so far as the Hindi translation of Lenin's book "Imperialism, the Highest Stage of Capitalism" is concerned. We dismiss the application so far as the Government's order relating to the Hindi translation of Marx and Engels' Manifesto of the Communist Party is concerned. We order that the parties should bear their own costs.

1936

EMPEROR
v.
GAUTAM