Singh himself was not able to secure, namely possession of the property in dispute.

We accordingly dismiss this appeal with costs.

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NAWAB SINGH v. DALJIT SINGH

SPECIAL BENCH

Before Sir Shah Muhammad Sulaiman, Chief Justice, Mr. Justice Thom and Mr. Justice Niamat-ullah

EMPEROR *v.* GUPTA*

1936 *January*, 20

Criminal Procedure Code, sections 99A, 99B, 99D—*Order proscribing a publication as tending to promote hatred and enmity between different classes—Application to set aside the order—Right to begin—Onus of proof—Intention of author not material—Interpretation—Benefit of doubt—Indian Penal Code, section* 153A.

On an application under section 99B of the Criminal Procedure Code for the setting aside of an order of the Local Government under section 99A proscribing a publication, the initial burden of proof is not on the Crown counsel to support the order of the Government, and the language of section 99B clearly indicates that it is the applicant who has to make out a case in his favour. Accordingly the applicant's counsel should be allowed to open the case, and have the final right of reply.

Section 99D makes it clear that if the High Court is not satisfied that the publication contains matter of the nature referred to in section 99A, it shall set aside the order of forfeiture. It follows that where a passage is open to two interpretations and the matter is in doubt, the Court would not be satisfied that the matter is of the nature mentioned, and must therefore set aside the order of forfeiture.

Intention of the author to promote hatred or enmity between different classes is not a necessary ingredient of the offence under section 153A of the Indian Penal Code. The addition of the words "or is intended to" in section 99A of the Criminal Procedure Code makes the scope of that section wider than that of section 153A, because "intention" falls short of "attempt" and has in addition been made an alternative ground for proceeding under section 99A in cases where the hatred or enmity may not yet have been actually promoted or even attempted, but is intended. The Local Government may

* Criminal Miscellaneous No. 72 of 1935.

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intervene at an early stage as a preventive measure and stop the actual promotion of hatred etc. These words in section 99A do not make the intention of the author a necessary or material ingredient in cases where the matter comes under section 153A of the Indian Penal Code. Even if a question of intention could arise, such intention must be gathered from the words used, and they themselves would be conclusive; a man must be held to intend the natural consequences of his act.

Where the ethnical origin of a community is sought to be traced by the author of a book, then so long as there is adherence to the historical part of the narrative, however unpalatable it may be to the members of that community, or so long as he is merely relying on certain customs, habits and practices prevailing among that community, there may be no offence under section 153A of the Indian Penal Code. But, on the other hand, where the author uses language which shows malice and attributes to the entire community certain immoral practices and habits, and there is generalisation of offensive remarks on the basis of a few instances and the characterisation of an entire community as possessing certain vices, so as to degrade the members of that community in the eyes of the other classes, the case certainly amounts to promoting feelings of hatred or enmity between classes.

Mr. *K. Masud Hasan,* for the applicant.

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

SULAIMAN, C.J.:—This is an application by the author of a book, called "*Jat jati ke mukammal halat yani jat darpan,* Part I", under section 99B of the Criminal Procedure Code, for an order to set aside the order passed by the Local Government under section 99A forfeiting to His Majesty all copies of his book.

The first question which arose for consideration was whether the learned counsel for the applicant should open the case, or whether the Government Advocate should begin. That, of course, depends on the further question whether the onus of proof lies on the applicant or on the Government. No doubt the Full Bench in the case of *Emperor* v. *Baijnath Kedia* (1) were

(1) (1924) I.L.R., 47 All., 298.

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inclined to think that having regard to the framework of section 99, the onus is cast upon the Local Government, but added that the question of construction was not free from difficulty, and that the matter was not of any great practical importance. The importance of the question lies in the right to begin and then the final right of reply. The applicant's counsel naturally wishes to have the last word on the point in controversy. In a later case another Full Bench of this Court, in *Emperor* v. *Kali Charan Sharma* (1), definitely ruled that it is for the applicant to convince the High Court that for the reasons he gives the order of the Local Government is a wrong order. These two views were sought to be reconciled in a third Full Bench of this Court, *Emperor* v. *Saigal* (2), where it was held that the Bench were in complete agreement with the proposition laid down in *Kedia's* case (3) that the question of onus of proof after both the parties had been fully heard was of little or no practical importance, and considered that it was manifestly most convenient that the Government Advocate should begin and state the case in support of the Local Government's order. The Bench, however, did not expressly endorse the view that the onus of proof lay on the applicant; and, therefore, did not dissent from the ruling of the Full Bench in *Kali Charan Sharma's* case (1).

The language of section 99B is to my mind very clear, and it allows the applicant to have the order set aside by the High Court on the ground that the book in respect of which the Local Government's order was made did not contain any seditious matter, or other matters referred to therein. There is nothing in the framework of the section or its language which would suggest that the initial burden of proof is on the Government and that therefore the Crown counsel must open the case and support the order of the Local Government, and then

(1) (1927) I.L.R., 49 All., 856. (2) (1930) I.L.R., 52 All., 775.
(3) (1924) I.L.R., 47 All., 298.

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have the final right of reply. On the other hand the language clearly indicates that it is the applicant who has to make out a case in his favour. The importance of the question lies not only in the circumstance that there would be a right to have the last word in the matter, but also in that the applicant's counsel may open the case and may try to show that the intention of the author was innocent and that the general tenor of the book and the purport of the subject-matter was not intended to promote hatred, enmity, or involve any attack on the religious beliefs and faith of others, but was intended for a laudable purpose. When the translations of objectionable passages are available for the Court, the applicant's counsel can certainly refer to them and satisfy the Court that they do not amount to objectionable matter within the scope of the section. We have accordingly allowed the applicant's counsel to open the case.

The language of section 99B might have created some doubt, but that of section 99D makes it perfectly clear that if the Special Bench is not satisfied that the book contained objectionable matter it shall set aside the order of forfeiture. It would therefore follow that even where a passage is open to two interpretations and the matter is in doubt, the Bench would not be satisfied that the matter is objectionable, and must, therefore, set aside the order of forfeiture. Apparently this was the reason why the Full Bench in *Saigal's* case (1) remarked that where two views of a passage were reasonably possible, the applicant must have the benefit of that which is most favourable to him.

The learned advocate for the applicant has strongly pressed before us that the accused had no intention of promoting hatred or enmity between any two classes of His Majesty's subjects, and has contended that the intention of the author to do so is a necessary ingredient. Now it is quite clear to my mind that there are many

(1) (1930) I.L.R., 52 All., 775.

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offences in the Indian Penal Code for which the proof of an express intention on the part of the accused is not at all necessary. Indeed, wherever it is necessary that intention should form a necessary part of the offence the sections expressly say so. No doubt the view has been expressed in Calcutta and Lahore that the true intention of the author will have to be shown before the order can be justified. In *P. K. Chakravarti* v. *Emperor* (1) the learned CHIEF JUSTICE observed that "It must be the purpose or part of the purpose of the accused to promote such feelings, and, if it is no part of his purpose, the mere circumstance that there may be a tendency is not sufficient." Certain cases were relied upon, which were cases of sedition. That case, however, arose out of proceedings under section 108 of the Criminal Procedure Code where the word "intentionally" has been deliberately introduced by the legislature. In *Ishwari Prasad Sharma* v. *King-Emperor* (2) another Bench of the Calcutta High Court, although it came to the conclusion that a certain scene in a drama deserved the condemnation of all right thinking men, and if those expressions had stood by themselves and if the article were confined only to that scene they would have had no difficulty in holding that the article came within the purview of section 153A, remarked that the intention of the writer had to be judged not only from the words used in the article but from the article as a whole; and they held that it was not proved that the intention of the writer was to promote feelings of enmity or hatred. The earlier Calcutta High Court cases seem to have been followed in *Lajpat Rai* v *The Crown* (3), where it was held that the Crown had to establish that the writer of the work had been actuated by that malicious intent which it was necessary to prove by extrinsic evidence, or to infer from the nature of the work itself.

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(1) (1926) I.L.R., 54 Cal., 59(64). (2) A.I.R., 1927 Cal., 747.
(3) (1928) I.L.R., 9 Lah., 663(666).

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On the other hand the Full Bench in *Emperor* v. *Kali Charan Sharma* (1), when considering the question as to the intention of the writer, remarked: "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."

It seems to me that it would be interpolating the words "with intent to" in section 153A if one were to hold that the intention of the writer must be to promote hatred, etc., and that this must be established. The section merely says: "Whoever by words, either spoken or written, or by signs, or by visible representations, or otherwise, promotes or attempts to promote feelings of enmity or hatred etc." It does not say "intentionally promotes feelings of enmity, etc." The language of this section stands in clear contrast to that of section 499 where it is provided that "Whoever by words either spoken or intended to be read, or by signs or visible representations, makes or publishes any imputation concerning any person *intending* to harm etc." It would, therefore, seem to follow that the legislature contemplates that the words spoken or written, which do promote hatred, etc., would create sufficient mischief so as to fall within the scope of the section, and that it is not necessary for the prosecution further to establish that the writer had the intention to promote such hatred. Even if a question of intention were to arise, such intention must be gathered from the words spoken or written, and they themselves would be conclusive, and it would not be necessary for the prosecution further to prove that such an intention was behind the use of such words.

Coming to the facts of this case, there is no doubt that one of the principal objects of the author was to establish that the Jats are not one of the twice-born classes and are not entitled to wear *janeo* (sacred thread)

(1) (1927) I.L.R., 49 All., 856(860).

and pass as Kshatryas, which according to him they now claim to be. In this connection the author has attempted to trace the previous history of the community and their ethnical origin and has quoted profusely from previous histories and other books, trying to show that Jats could not belong to the upper classes. If he had dealt with the subject from a purely scientific or historical point of view, avoiding all offensive and abusive language, then even if he was wrong in his conclusion, the passages might not be open to objection. Again, even if in support of his theory he were merely relying on certain customs, habits, and practices prevailing among the Jats which are contrary to the practices accepted by the twice-born classes, he may still not be guilty of an offence under section 153A. But where the author of a book goes beyond this and generalises his remarks so as to make them apply to the entire community, and characterises them as low class people and belonging to the criminal classes who are guilty of offences and immoral acts, the book ceases to be a purely historical one and is bound to promote feelings of hatred and enmity between the two classes which are compared.

It is true that in this book the author has not attempted to offend the religious susceptibilities of the Jat community, as presumably he assumes that Jats are Hindus. He has, of course, not attacked their religion. Where a person attacks another religion, or the founder of such religion, there is bound to be a considerable resentment in the community whose religion is attacked, leading to hatred against the community to which the writer belongs. In such cases the offence may well fall within the scope of section 153A. All doubt on that point has now been removed by the amendment of section 295A of the Indian Penal Code under which insults, or attempts to insult the religion or religious beliefs of a class are made punishable. But where the origin of a community is sought to be traced, then so long as there is adherence to the historical part of the

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narrative, however unpalatable it may be to the members of that community, there may be no offence; but on the other hand where the author uses language which shows malice and is bound to annoy the members of the community the origin of which he is going to trace, and uses remarks which apply to all the present members of that community so as to degrade them in the eyes of the other classes, he would, in my opinion, be promoting feelings of enmity or hatred between that community and the members of his own community, who he intends should entertain a low and poor opinion of that community and regard them as belonging to the low castes.

It would not be proper to quote passages from the book of the author; but there is no doubt that there are several passages even in the portions which have been translated and printed that are wholly obnoxious and highly objectionable, and are intended to attribute to the entire Jat community certain immoral practices and habits which are probably untrue, and which would be highly resented by the Jats. The generalisation of remarks on the basis of a few instances, and the characterisation of an entire community as possessing certain vices are certainly objectionable. I am, therefore, of the opinion that the applicant has entirely failed to show that the book did not contain matters which promoted feelings of enmity and hatred between different classes.

In this connection I would like to add that in section 99A the words "or is intended to" have been added which do not find place in section 153A of the Indian Penal Code. The language of the amendment is unhappy, and might at first sight suggest that a case falling under section 99A must in every case fulfil the requirements of section 153A. The scope of section 99A is wider than that of section 153A, because "intention" falls short of "attempt" and has in addition been made an alternative ground. It seems to me that what was intended was that where the words written or spoken do attempt to promote

feelings of enmity, hatred etc., and therefore fall under section 153A, action can be taken by the Local Government where, although there has yet been no occasion for the promotion of any feelings of enmity and hatred and there may have been no attempt yet made to promote such feelings, but the words are *intended* to promote such feelings. The Local Government may intervene at an early stage as a preventive measure and may stop the actual promotion of hatred etc.

I would, therefore, dismiss this application.

THOM, J.:—I concur. This Court is entitled to set aside the order of the Local Government only if it is not satisfied that Mr. Gupta's book does contain obnoxious matter within the meaning of section 99A.

Now, it appears to me perfectly plain that Mr. Gupta's book does contain many passages which must be regarded by the Jat community as obnoxious and offensive and which are likely to result in feelings of hatred and enmity between the Jats and other sections of the community.

I would only add on the question of intention, that when the Government acts under section 99A and suppresses a publication it does so in the public interest and it is not concerned with the intention of the author of the publication. The powers given to the Government by section 99A were clearly for the purpose of enabling the Government to take steps to avoid trouble which such publication might possibly cause. It is true that there is a reference under section 99A to the provisions of section 153A of the Indian Penal Code. In this latter section, however, there is no specific mention of the intention of the author of the publication. Had the legislature intended that the prosecution must prove in proceedings under this section that the publication was made with the deliberate intent to promote feelings of enmity or hatred between different classes, specific provision would have been made therein. There being no reference in section 153A to the intention of the

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author of the publication it clearly follows that the general presumption that a man must be held to intend the natural consequences of his act applies.

I agree in dismissing this application.

NIAMAT-ULLAH, J.:—I concur.

BY THE COURT:—The application is dismissed, and the applicant must pay the costs of the respondent which we assess at Rs.200 in addition to the costs of translation and printing.

APPELLATE CIVIL

Before Mr. Justice Harries and Mr. Justice Rachhpal Singh

1936 *January*, 20

MANGALSEN JAIDEO PRASAD (DEFENDANT) *v.* GANESHI LAL AND OTHERS (PLAINTIFFS)*

Shah jog hundi—Negotiable Instruments Act (XXVI of 1881), sections 1, 5, 13—Bill of exchange—Negotiable instrument outside the Act—Mercantile usage—Liability of indorser to indorsee.

A Shah jog hundi is not a bill of exchange as defined in section 5 of the Negotiable Instruments Act, as it is not an order directing the drawee to pay either to a certain person named, or to the bearer of the instrument. If is, therefore, not a negotiable instrument as defined in section 13 of the Act.

The Negotiable Instruments Act, however, deals with only three specified classes of negotiable instruments, namely promissory notes, bills of exchange and cheques, as defined in the Act, and it does not deal with other kinds of negotiable instruments. Section 1 of the Act provides that the Act does not affect any local usage relating to any instrument in an oriental language. Such an instrument may therefore be a negotiable instrument independently of the definitions of the Negotiable Instruments Act, if the character of negotiability has been impressed on it by established mercantile usage.

A Shah jog hundi has been treated and recognized by Indian custom and law as a negotiable instrument, although it does not come within the definition of a bill of exchange in the Act; and it being a negotiable instrument, the general provisions of

*Second Appeal No. 1370 of 1933, from a decree of Ganga Nath, District Judge of Aligarh, dated the 16th of August, 1933, confirming a decree of Y. S. Gahlaut, Munsif of Koil, dated the 7th of January, 1932.