PRIVY COUNCIL.*

J. C.

1920

Dec. 9

KALI NATH ROY—*Appellant*

versus

THE KING-EMPEROR—*Respondent.*

Privy Council Appeal No. 164 of 1919.

[From the Martial Law Commissioners at Lahore.]

Criminal Law—Trial under Ordinance I of 1919—Accused not named in order for Trial—Construction of Ordinance IV of 1919—Exciting disaffection—Indian Penal Code, section 124-A—Effect of pardon.

The appellant, who was the Editor of a newspaper called the *Tribune* published at Lahore, was convicted by a Court of Commissioners sitting at Lahore under the Martial Law Ordinance I of 1919 of an offence under section 124-A of the Indian Penal Code, namely, of having by written words excited or attempted to excite disaffection towards His Majesty or the Government established by law in British India. The order of the Lieutenant-Governor made under Ordinance IV of 1919 did not name the accused who were to be so tried, but referred to "all persons charged with offences connected with the recent disturbances."

Held (1) that the validity of the Ordinance being established by the decision of the Board in *Bugga* v. *The King-Emperor* (1), the Commissioners' Court had jurisdiction, although the order of the Lieutenant-Governor did not name the accused persons; (2) that the Court having applied the right principles of law in considering whether an offence under section 124-A had been committed, their Lordships would not advise an interference with the conclusion arrived at.

It being stated by counsel for the Crown that since leave to appeal had been given a free pardon had been granted, their Lordships observed that that would be a sufficient ground (as held in *Levien* v. *The Queen*) (2) for not entertaining the appeal; but as the pardon was disputed and direct evidence of its having been granted was not forthcoming, their Lordships had not stopped the appeal on that ground.

Present:—Viscount Cave, Lord Dunedin, Lord Phillimore, Sir John Edge and Mr. Ameer Ali.

(1) (1920) I. L. R. 1 Lahore 326: L. R. 47 I. A. 128.

(2) (1867) L. R. I. P. C. 536.

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Appeal by special leave from a judgment, dated May 28, 1919, of a Court of Commissioners appointed under the Martial Law Ordinance, 1919, sitting at Lahore, whereby the appellant was convicted of an offence under section 124-A of the Indian Penal Code and sentenced.

The facts appear from the judgment of the Judicial Committee ; the terms of the Martial Law Ordinance (I of 1919) and of the Martial Law (Further Extension) Ordinance (IV of 1919), together with the circumstances in which they were promulgated, appear from the judgment of their Lordships in *Bugga* v. *The King Emperor* (1).

In the present case the Lieutenant-Governor having under Ordinance IV directed a trial before the Commissioners of "all persons charged with offences in connection with the recent disturbances," the duly appointed convening officer convened the Court of Commissioners to try the person named in the schedule to the convening order. The schedule stated the name of the appellant, and that the offence charged was under section 124-A of the Indian Penal Code and rule 25 of the India Consolidation Rules.

The charge sheet stated :—

"The accused, Kali Nath Roy, is charged with an offence under section 124-A, Indian Penal Code, and Rule 25, Defence of India Consolidation Rules. In that he, at Lahore, on the 3rd, 4th, 6th, 8th, 9th, 10th, 11th April 1919, uttered sedition by written words, and published by written words false reports, which he had no reasonable grounds to believe to be true, and which were likely to cause fear and alarm to the public, and promote feelings of enmity and hatred among His Majesty's subjects."

Special leave to appeal was granted on August 1, 1919, the appellant's petition raising the same question as to the competency of the Court of the Commissioners as was raised by the appellants in the appeal above mentioned, which question was afterwards decided against them.

1920, November 23, *Sir Erle Richards, K.C.*, and *Kenworthy Brown* for the Crown took the preliminary objection that since the granting of special leave the appellant, among other persons in the Punjab, had

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been given a free pardon and orders had been issued for the refund of the fine ; reference was made to *Levien* v. *The Queen* (1), and it was submitted that the appeal should not be entertained.

Upjohn, *K. C.*, and *Dube* for the appellant—The pardon has not been proved ; in the case relied on it was admitted that there had been a free pardon. The document now produced for the first time does not appear to be a free pardon, but to be conditional.

[Their Lordships directed that the appeal should proceed, the preliminary question being reserved.]

This case differs from *Bugga* v. *The King Emperor* (2) in that there was no order of the Local Government specifically naming the appellant as a person to be tried by the Commissioners. Even if a general order of this kind might be sufficient, it was not here. It did not include the appellant since the articles complained of began on April 3, 1919, and the only disturbance before that date was at Delhi, not at Lahore. On the merits the articles did not constitute an offence under section 124-A, upon the proper construction of that section. The Court did not give effect to the proviso.

Counsel for the Crown were not called upon to argue further.

The judgment of their Lordships was delivered by—

VISCOUNT CAVE :—The appellant was convicted on the 28th May 1919 by a Court of Commissioners sitting at Lahore under Ordinance I of 1919, and having the powers of a summary court-martial, of an offence under section 124-A of the Indian Penal Code, *i.e.*, of having by written words excited or attempted to excite disaffection towards His Majesty or the Government established by law in British India, and was sentenced to two years' rigorous imprisonment—afterwards reduced to three months' simple imprisonment—and to a fine of Rs. 1,000. Special leave to appeal was granted by His Majesty in Council on the 18th August 1919.

(1) (1667) L. R. 1 P. C. 536.

(2) (1920) I. L. R. 1 Lahore 326 : L. R. 47 I. A. 128.

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The facts are shortly as follows :—In March and April 1919, there was unrest in the Punjab. Serious disturbances occurred at Delhi on the 30th March, when some persons were killed ; and these disturbances were followed by disorder and violence at Amritsar and Lahore and elsewhere in the Punjab. The disturbances at Lahore occurred on the 6th, 10th, 11th and 12th April, the evidence showing that on the 11th April Lahore City was " practically closed to the police." The appellant was the editor of the *Tribune*, a daily newspaper published at Lahore, and on the 6th, 8th, 9th, 10th and 11th April he published in that newspaper paragraphs and articles commenting on the deaths at Delhi (the persons killed there being repeatedly described as " martyrs ") and charging the Government with grave misconduct in connection with the disturbances. It was stated in the issue of the 10th April that the " atmosphere was highly surcharged " and the " public mind in a state of unusual excitement. "

On the 6th May the appellant was charged, in consequence of these paragraphs and articles, with the offence above described, and also with an offence under Rule 25 of the Defence of India Rules ; and on the 28th May judgment was delivered convicting him of the offence under section 124-A of the Penal Code and pronouncing sentence as above. The charge under Rule 25 was not proceeded with.

The appellant in his case gave two reasons against his conviction, *viz.*, (1) that his trial by the summary procedure of martial law was bad in law and wholly unconstitutional ; and (2) that on a reasonable construction of the articles complained of the appellant was not guilty of the offence of sedition as defined by section 124-A of the Indian Penal Code.

The facts and ordinances bearing on the first point raised by the appellant, *viz.*, want of jurisdiction in the tribunal by which he was tried, were substantially the same as in the case of *Bugga* v. *The King Emperor* (1), decided by the Board in February last, the only distinction being that the order of the Lieutenant-Governor directing a trial before the Commissioners did not (as in that case) name the accused who were to be so tried, but

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applied to "all persons charged with offences connected with the recent disturbances." Their Lordships have no doubt that the offence with which the appellant was charged was connected with the disturbances referred to in the Order, and accordingly that this case is not distinguishable from the case cited. This contention, therefore, fails.

With reference to the second point raised on behalf of the appellant, *viz.*, that on a reasonable construction of the articles complained of the appellant was not guilty of the offence with which he was charged, their Lordships have carefully considered the judgment delivered by the President of the Commission, with a view to ascertaining whether the Commission properly construed the section and gave proper weight to its terms and to the explanations annexed to it. The judgment was a very careful one, and their Lordships do not find that the section was in any way misconstrued or misunderstood. This being so, there remains only the question whether the principles of the law were properly applied in detail to the language of the various articles; and this question, as was pointed out in *Besant* v. *Advocate-General of Madras* 1), is one which partakes so much of the nature of a question of fact that it would be difficult for the Board to interfere on this ground with the conclusions arrived at by a Court in India. The decision of such a Court must necessarily depend, not only on the construction of the written matter complained of, but also on the local conditions obtaining at the time of publication and a just appreciation of the effect which the publication under those conditions of the articles in question would be calculated to produce; and the Board could not revise the conclusions of the local tribunal on facts of this nature without putting themselves into a position which they have repeatedly declined to assume, namely, that of a Court of Appeal in criminal proceedings. In these circumstances, their Lordships, while not thinking it necessary to express any opinion of their own as to the intention of the articles in question, are not prepared to advise His Majesty to interfere with the conclusions arrived at by the Commission.

(2) (1919) I. L. R. 43 Mad. 146, 165: L. R. 46 I. A. 176, 196.

It should be added that in the course of the argument their Lordships were informed by counsel for the Crown that since leave to appeal was given a free pardon had been granted to the appellant. If so, this of itself would be a sufficient reason, as pointed out in *Levien* v. *The Queen* (1), for not entertaining the appeal, but as the pardon was disputed and direct evidence of its having been granted was not forthcoming, their Lordships did not stop the case on this ground.

For the above reasons their Lordships will humbly advise His Majesty that this appeal should be dismissed.

Appeal dismissed.

Solicitor for appellant—H. S. L. POLAK.

Solicitor for respondent—THE SOLICITOR, INDIA OFFICE.

(1) (1867) L. R. 1 P. C. 536.