

MISCELLANEOUS CRIMINAL.
SPECIAL BENCH.

*Before Sir Shadi Lal, Chief Justice, Mr. Justice Scott-Smith and
Mr. Justice Martineau.*

RAJ PAL—Petitioner

versus

THE CROWN—Respondent.

1922

Aug. 2

Criminal Miscellaneous No. 29 of 1922.

*Indian Press Act, 1 of 1910, sections 4 (1), 17, 18, 19—Forfeiture
of security (deposited by the keeper of a Press) on account of a para-
graph attacking the police stationed at a particular place.*

The "Parkash Steam Press", of which the petitioner was the keeper, was used for the purpose of printing a vernacular daily newspaper called the "Partap." In compliance with an order under section 3 of the Indian Press Act the petitioner had deposited with the District Magistrate of Lahore Rs. 2,000 as security in respect of his press. In the issue of the newspaper, dated 29th December 1921, appeared a paragraph commenting upon the conduct of the police in connection with the assembly of a crowd at a place called Firozpur Jhirka. The Local Government, being of opinion that the article was likely or might have a tendency to bring into hatred or contempt or excite disaffection towards the Government, issued a notice under section 4 (1) of the Act forfeiting the security. The petitioner applied to the High Court under section 17 of the Act for an order setting aside the order of forfeiture.

Held, that the function of the Special Bench constituted under section 18 of the Indian Press Act is circumscribed by the provisions of section 19 (1) which empowers the Special Bench to set aside the order of forfeiture if it appears to the Bench that "the words * * * * contained in the newspaper * * * * in respect of which the order in question was made, were not of the nature described in section 4 (1)."

Held, also, that, if the words in their plain grammatical meaning are of the nature mentioned in sub-section (1) of section 4 of the Act, it is immaterial whether the editor acted in good faith or otherwise. The operative portion of clause (c) of the sub-section does not make the motive or the intention of the writer material in deciding the question whether the words are not of the nature indicated in that sub-section.

Held, however, that as the only officials referred to in the paragraph concerned were the police officials stationed at Firozpur Jhirka who participated in the affair, and as they could not,

1922

RAJ PAL

v.

THE CROWN.

either individually or collectively, be regarded as "the Government established by law in British India," the words used were not of the nature described in section 4 (1) of the Act.

Queen-Empress v. Bal Gangadhar Tilak (1), per Strachey J. and *Emperor v. Eshkar* (2), per Batty J., followed.

In the matter of the petition of Sundar Lal (3), distinguished.

It is necessary to draw a clear distinction between the Government and individual officers employed under the Government; words bringing the former into hatred or contempt constitute sedition, but similar words directed against the latter can only infringe the law of libel.

Held, also, that the paragraph could not be held to have a tendency, even indirectly, to bring the Government into hatred or contempt in the mind of a normally constituted person, nor could the police officials referred to in the paragraph constitute a class or section of His Majesty's subjects within the meaning of the latter portion of clause (c) of section 4 (1).

Held, consequently, that the order of forfeiture must be set aside.

In the matter of the forfeiture of the security of the "Parkash Steam Press" Lahore, and of the petition of Lala Raj Pal, keeper of the Press, for setting aside the order of forfeiture, dated 4th January 1922, passed by His Excellency the Governor of the Punjab in Council.

TEK CHAND, BADRI DAS and S. K. MUKERJI, for
Petitioner.

GOVERNMENT ADVOCATE, for Respondent.

The judgment of the Special Bench was delivered
by—

SIR SHADI LAL C. J.—This is an application under section 17 of the Indian Press Act (I of 1910) asking this Court to set aside an order made by the Punjab Government under section 4 of the Act declaring the security deposited by the keeper of the "Parkash Steam Press" to be forfeited to His Majesty. The circumstances which led to the order of forfeiture lie within a narrow compass. It appears that the "Parkash Steam Press" was used for the purpose of printing a vernacular

(1) (1897) I. L. R. 22 Bom. 112.

(2) (1906) 8 Bom. L. R. 421, 433.

(3) (1919) I. L. R. 43 All. 233.

daily newspaper called the "Partap" and that, in compliance with an order made under section 3, the keeper of the press deposited with the District Magistrate of Lahore a sum of Rs. 2,000 as security in respect of his press. In the issue of the "Partap" newspaper published on the 27th December 1921, and bearing date the 29th December the following paragraph appeared :—

"Restlessness at Firozpur Jhirka on the arrest of Congress and Khilafat workers. Firing by the police on a large peaceful crowd. Fifteen killed and 200 wounded."

"On the 23rd December 1921 at 3 p. m. the Police arrested 15 members and Secretaries of the Khilafat and Congress Committees of Firozpur Jhirka. This news got afloat in the town instantaneously, and a crowd of 5,000 people gathered. Flowers were showered on the patriots. The police began to throw stones at the crowd which, despite violence, remained peaceful. Then the police fired for one hour continuously with the result that 15 patriots were killed and 200 wounded."

This version of the incident attracted the attention of the Local Government who issued on the 31st December a Press *Communiqué* in the following terms :—

"Information has been received that an attack was made on the police on December 23rd, at Firozpur Jhirka, 52 miles from Gurgaon and 32 miles from Alwar, by a crowd which sought to rescue certain persons who had been arrested for serious assault on members of an Aman sabha. Stones were thrown and several officials and police were injured. The police found it necessary to open fire in order to disperse the mob. Full information of the number of killed and wounded is not available. Three dead bodies have been seen by the District Magistrate, who is now on the spot with a military force from Delhi, and commenced a formal enquiry.

The boundary of the Alwar State is only seven or eight miles from Firozpur Jhirka, and large numbers of mob from State territory joined their fellow-tribesmen of British territory in a menacing attitude. The situation was a dangerous one, and indicative of inflammable conditions in the country side. The authorities of the Alwar State sent State troops which co-operated with the British troops in restoring order.

The Deputy Commissioner reports, after enquiry, four deaths at Firozpur Jhirka, including one who died subsequently from wounds received. One rioter was seriously wounded and twenty-two slightly wounded. Seventeen Government servants received injuries."

1922

RAJ PAL

THE CROWN.

1922.

—
 RAJ PAL
 v.
 THE CROWN.

This *communiqué* is said to have reached the "Partap" newspaper on the 2nd January 1922, and was published *in extenso* in the issue of the newspaper which was published on that very date, but bore date the 4th January 1922.

On the 3rd January another Press *Communiqué* was published by the Local Government which was to the following effect :—

"Two vernacular newspapers have published distorted accounts of the incident at Ferozpur Jhirka, with greatly exaggerated statements of the casualties among the rioters and accompanied by articles of which the obvious intention was to arouse hatred and disaffection against the Government. Notice is therefore issuing under section 4 of Act I of 1910 to the keepers of the press at which those newspapers are printed declaring their security to be forfeited."

On the following date, namely the 4th January, the Local Government, in exercise of the powers conferred upon them by section 4 (1) of the aforesaid Act, issued a notice, the relevant portion of which may be quoted here :—

"And whereas the said issue, that is, the issue of the "Partap" bearing date the 29th December, contains an article entitled *Ferozpur Jhirka men Karkunan-i-Congress aur Khilafat ki griftari par bechaisi*. And, whereas, in the opinion of the Local Government of the Punjab, the said article is likely, or may have a tendency to bring into hatred and contempt or excite disaffection towards the Government established by law in British India—

Now, therefore, this notice is hereby given to the said Raj Pal that in exercise of the powers conferred by section 4 (1) of the Indian Press Act, 1910, the Governor of the Punjab in Council declares the security of two thousand rupees deposited in respect of the abovementioned Parkash Steam Press, and all copies of the aforesaid issue of the "Partap" wherever found, to be forfeited by His Majesty."

It is this order of forfeiture which the keeper of the press seeks to impugn, and the function of the Special Bench, constituted under section 18 of the Act to hear and determine the application, is circumscribed by the provisions of section 19 (1) which empowers the Special Bench to set aside the order of forfeiture if it appears to the Bench that "the words.....contained in the newspaper..... in respect of which the order in question was made, were not of the nature described in section 4 (1)."

Before determining the question whether the words complained of do not come within the purview of the aforesaid provision of the law, I may mention that at the commencement of the hearing the learned Advocate for the applicant prayed for permission to advance evidence in order to show that an account of the incident at Ferozpur Jhirka was sent by the Secretaries of the local Congress and Khilafat Committees to several newspapers at Lahore, and that, while the other papers published the account *in extenso*, the "Partap" published only a brief summary thereof without making any comments thereon or writing any article about it. The object of producing this evidence was evidently to establish the *bondâ fides* of the editor of the paper, but we consider that if the words in their plain grammatical meaning are of the nature mentioned in section 4 (1), it is immaterial whether the editor acted in good faith or otherwise. The operative portion of clause (c) of the sub-section does not make the motive or the intention of the writer material in deciding the question whether the words are not of the nature indicated in that sub-section. It is only in connection with comments expressing disapproval of the measures of the Government that the protection afforded by Explanation II to the sub-section can be invoked, and then it can be shown that the comments were made with a view to obtain alteration of the measures of the Government by lawful means. Apart from this explanation, the intention of the writer has no bearing upon the question whether the words may or may not have the tendency to produce the objectionable effect described in the various clauses of sub section (1). The case before us is admittedly not one to which the explanation applies, and we, accordingly, disallowed the request for the production of evidence relating to the good faith of the editor.

On the merits our attention has been invited to the fact that, while the paragraph complained of was merely a summary of the news communicated by the correspondents at Ferozpur Jhirka, the notice declaring the forfeiture of security mis-described it as an article, and that the Press *Communiqué* of the 3rd January wrongly stated that the account of the incident

1922

RAJ PAL
v.
THE CROWN

1922.
 R. & F. PAL
 THE CROWN.

was accompanied by an "article." Now it may be that the expression "article" ordinarily means a literary composition of which the editor is actually or presumptively the author, and that the same thing cannot be said with respect to a paragraph containing merely news communicated by a correspondent. Further, it appears that so far as the "Partap" newspaper is concerned, no such article as is alluded to in the *communiqué* was published. It is, however, unnecessary to dwell upon this subject, because it is beyond dispute that if the paragraph in question falls within the ambit of sub-section (1) of section 4, the keeper of the press cannot derive any help from the fact that it was wrongly described as an "article," or that there was an erroneous impression that it was also accompanied by an article.

The vital question for consideration is whether the words complained of do not fall within the scope of that sub-section. It is to be observed that the paragraph contained no reference to the Government and that the only officials referred to therein were the police officials stationed at Ferozpur Jhirka who participated in the affair. I do not think that these officials can either individually or collectively be regarded as "the Government established by law in British India." As pointed out by Strachey J. in the well known case of *Queen-Empress v. Bal Gangadhar Tilak* (1) this expression means—

"British Government and its representatives as such—the existing political system as distinguished from any particular set of administrators."

The phrase includes the collective body of men authorised by law to administer executive Government in British India, as distinguished from any particular set of administrators or individuals administering the country for the time being. The position is correctly described by Mr. Justice Batty in the following words, *vide Emperor v. Bhaskar* (2).

"It is not necessary that the individual should be the object of hatred. What is contemplated under the section is the collective body of men. The Government, defined under the Penal Code, as the person or persons authorised by law to administer

(1) (1897) I. L. R. 22 Bom. 112, 135. (2) (1906) 8 Bom. L. R. 421, 438.

executive Government in any part of India. That does not mean the person or persons for the time being. It means the person or persons collectively, in succession, who are authorised to administer Government for the time being. One particular set of persons may be open to objection, and to assail them and to attack them and excite hatred against them is not necessarily exciting hatred against the Government because they are only individuals, and are not representatives of that abstract conception which is called Government. Individuals come and go, but the Government is supposed to remain. The individual is transitory and may be separately criticised, but that which is essentially and inseparably connected with the idea of the Government established by law cannot be attacked without coming within this section. And you do not need to be reminded that it is of the essence of Government in India that it is British Government and British Rule, and so long as it continues to be that, the Government remains unchanged however much the persons administering it may change."

1922
RAJ PAL
v.
THE CROWN.

The learned Government Advocate places his reliance upon a judgment of the Allahabad High Court reported as *In the matter of the petition of Sundar Lal* (1), where it was laid down that the expression "Government established by law in British India" means the established authority which governs the country and administers its public affairs and includes the representatives to whom the task of Government is entrusted. I have no quarrel with this *dictum*, because it is clear that the articles dealt with in that case excited hatred against the rulers as a whole or the ruling class in British India. In the present case the persons, against whom the paragraph was directed, were a few police officials employed at a particular station, and it is impossible to identify them with the Government or the general body of rulers. An attack upon certain policemen at a particular place does not convey any reflection upon the governing authority; indeed the governing authority if satisfied of the justice of the complaint, will probably repudiate the alleged misdeeds and may even punish the delinquent officers for their misbehaviour. I fail to understand why the Government should be identical with the individual officers or why an attack on such officers should reflect upon the Government. It is necessary to

1922

RAJ PAL
v.
THE CROWN.

draw a clear distinction between the Government and individual officers employed under the Government; words bringing the former into hatred or contempt constitute sedition, but similar words directed against the latter can only infringe the law of libel.

Mr. Jai Lal for the respondent, however, argues that though the persons directly attacked are only certain officials the paragraph has a tendency indirectly to bring into hatred and contempt the Government established by law in British India. I consider that this argument is not well founded. As I have already pointed out, there is no reason why the acts or conduct of individual officers should be attributed to the Government, and I do not see why an adverse criticism of their action should lead, even indirectly, to the result of bringing the Government into hatred or contempt. We must construe the statute in a reasonable manner and should have regard to the effect which the words may produce on the mind of a normally constituted person. I do not think that such a person would think ill of the Government because one or more of its officers may have been guilty of excesses or misdeeds. I accordingly hold that whatever effect the words complained of may have on the police officials referred to therein, they cannot be reasonably construed as affecting, directly or indirectly, the Government established by law in British India.

I now proceed to examine the contention urged by the learned Government Advocate that the police officials concerned are a class or section of His Majesty's subjects in British India within the meaning of the latter portion of clause (c) of section 4 (1); and that consequently the words complained of fall within the purview of the said clause. Now it is true that the Local Government in their order of forfeiture did not invoke the aid of this portion of the clause, but I do not think that the respondent is confined by the law to the particular provision quoted in the notice or is precluded from showing that the words are covered by another provision of that clause or by any other clause. The language of section 19 makes it clear that the High Court can set aside the order of forfeiture on one ground and one ground only, namely, that the words

to which objection has been taken, do not fall within the purview of any of the clauses of sub-section 1.

1922

RAJ PAL

v.

THE CROWN

I am not, however, prepared to accede to the contention that the police officials referred to in the paragraph constitute a class or section of His Majesty's subjects. In my opinion, a class or section as contemplated by clause (c) connotes a well defined group of His Majesty's subjects, and I do not think that a fortuitous concourse of one or two Inspectors or Sub-Inspectors and a few policemen, who happen to be employed at a particular place, can be designated a section of His Majesty's subjects, much less a class thereof. The expression "section of His Majesty's subjects" signifies a distinct portion of His Majesty's subjects and it would be straining the language to describe the aforesaid group of officials by that phrase.

Accordingly I hold that the paragraph complained of is not obnoxious to the provisions of clause (c) nor is it suggested that it can be condemned under any other clause of the sub-section. I would accordingly accept the application and set aside the order of forfeiture.

The respondent must pay the costs incurred by the applicant in this Court.

SCOTT-SMITH J.—I concur entirely with the learned Chief Justice.

MARTINEAU J.—I also concur.

C. H. O.

Application accepted.
