

they are in agreement, but lays down that if they disagree, the matter " must be kept pending until the next meeting of the Tribunal at which the President is present " when the opinion of the majority will prevail. The final sentence of sub-clause (2) commencing " the opinion of the majority " to " Tribunal " lays down that the opinion arrived at under the circumstances detailed therein shall be deemed to be the opinion of the Tribunal.

My answer to the question referred therefore is in the affirmative.

TEK CHAND J.—I agree.

JOHNSTONE J.—I agree.

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*Reference answered in the affirmative.*

### REVISIONAL CRIMINAL.

*Before Tek Chand J.*

ROSHAN LAL—Petitioner,

*versus*

THE CROWN—Respondent.

Criminal Revision No. 1445 of 1930.

*Indian Criminal Law Amendment Act, XIV of 1908 (as amended by the Devolution Act, XXXVIII of 1920), sections 16, 17—Declaration of an Association as unlawful—whether persons arrested before publication of notification in Gazette can be convicted for an offence under the Act.*

On 17th September 1930, the Chief Commissioner of Delhi declared the Delhi Congress Committee to be an unlawful association within the meaning of Part II of Act XIV of 1908. This declaration was not published in the official Gazette till the 27th September 1930. The five persons, whose cases were reported to the High Court by the Sessions

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Judge, Delhi, were arrested on 17th and 18th September as being the manager and members of the association, and were convicted for offences under section 17 (2) and (1) of the Act, respectively.

*Held* (quashing the convictions) that under section 16 of Act XIV of 1908, the Local Government could declare the Association unlawful only by a notification in the official Gazette, and as this notification was not published in the *Gazette of India* till the 27th September 1930, the Delhi Congress Committee could not be considered to be an unlawful Association till that date, and therefore no person arrested before that date was guilty of offences under section 17 of the Act.

*Case reported by Mr. L. Middleton, Sessions Judge, Delhi, with his No. 1072 of 21st November 1930.*

JAGAN NATH AGGARWAL, for Petitioner.

ABDUL RASHID, Assistant Legal Remembrancer, for Respondent.

*Report of the Sessions Judge.*

The accused, on conviction by Mr. F. B. Pool, exercising the powers of a Magistrate of the 1st class in the Delhi Province, Delhi District, was sentenced, to various terms of imprisonment.

*The facts of this case are as follows:—*

*Facts*—In the Gazette of India bearing date September 27, 1930, appeared Notification No. 8362-Home, dated 17th September 1930, by the Chief Commissioner of Delhi, declaring (1) The Delhi Congress Committee and (2) The Managing Committee and members of the Satyagraha Ashram situated in Delhi, to be unlawful associations within the meaning of Part II of the Indian Criminal Law Amendment Act. The declaration was made under the powers conveyed under Section 16 of the Act, as amended by the Devo-

ution Act, 1920. Section 16 of the Criminal Law Amendment Act, as amended, is as follows :—

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“ If the Local Government is of opinion that any association interferes or has for its object interference with the administration of the law or with the maintenance of law and order, or that it constitutes a danger to the public peace, the Local Government may, by notification in the official Gazette, declare such association to be unlawful.”

It appears that on the 17th of September 1930 and on subsequent dates prior to the 27th of September, various persons were arrested in Delhi as being members of the associations declared to be unlawful by the Chief Commissioner and these persons have subsequently been convicted and sentenced in various trials. One Roshan Lal, who does not appear to be connected with any of the convicted persons, presented an application to this Court purporting to be under Section 435, Criminal Procedure Code. He drew attention to the arrest of five persons by name, that is :—

Faridul Haq, Ansari, Barrister,

Asaf Ali, Barrister,

Mangat Rai, Banker,

Brij Kishan Das, Banker, and

Ahmad Sayad, *Maulana*

also alleging that many other people had been arrested, though not named by him in his petition. In his petition he urged that Section 16 of the Act prescribes the method for declaration of an association as unlawful as “ by notification.” He points out that the Gazette of India is the Official Gazette for Delhi, and

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that no notification appeared in it until the 27th September 1930. He then urges that all convictions following the arrests made before the 27th of September were illegal in that the associations had not become unlawful until the 27th of September.

I heard the Public Prosecutor at a preliminary hearing on the 10th of November 1930 before calling for the records. I then passed a detailed order and issued formal notice to Government through the District Magistrate. I also directed the petitioner to file a list of names of the convicts regarding whom he urged that illegal convictions had taken place. The petitioner was unable to name any further persons and the records regarding the five persons named have been called for. The original records of the trials of Faridul Haq Ansari, Asaf Ali, Ahmad Said are now before the Court whilst a complete copy of the records of the summary trial of Mangat Rai is also before the Court; for some reason the records of proceedings in which Brij Kishan Das was convicted have not been produced.

*The proceedings are forwarded for revision  
on the following grounds:—*

1. The first point to be considered in connection with these revision proceedings, is in connection with their institution. Not only was the attention of this Court called to the alleged illegality by the petitioner, who does not appear to be connected with any of the convicted persons, but it appears that the five convicted persons named in his petition, as well as a sixth (by name Prag Nath) have been informed of his action and disassociate themselves from it; they have sent telegrams to the Local Government, copies of which have been forwarded to this Court, in which they protest

against the proceedings as being unauthorised and in which they request that the proceedings be withdrawn.

Section 435, Criminal Procedure Code, gives the Sessions Judge power to call for the records of proceedings before inferior criminal courts within his jurisdiction for the purpose of satisfying himself as to the legality of any finding, sentence or order, recorded or passed, and as to regularity of any proceedings of such inferior courts. The Section does not indicate any method by which the Sessions Judge should ordinarily be apprised of the existence of the records needing scrutiny. Section 438 empowers the Sessions Judge on examining a record under Section 435 if he thinks fit to report the result of his examination to the High Court. It cannot be supposed that a Sessions Judge's action under Section 435 should be limited to cases in which he happens to have personal knowledge leading him to suspect an irregularity, nor can I see any reason why his action under that Section should be limited to cases in which the persons directly interested as complainants or accused move him to call for records. In my opinion directly the Sessions Judge has any reasonable cause of suspicion that an irregularity has occurred he should call for the records irrespective of the source of his information, on this consideration I did call for the records as already noted. Under Section 438 the Sessions Judge need only report the result of his examination "*if he thinks fit,*" but here again, in my opinion, he must exercise a judicial discretion and if, in his opinion, a material irregularity or illegality has occurred, he should report the matter and cannot justly refrain from doing so.

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For reasons, which will appear later, I do consider that fundamental illegalities have occurred and

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for the foregoing reasons I do submit the result of my examination to the High Court.

2. The Public Prosecutor, in arguments, and the District Magistrate, in a note submitted to the Court in response to the notice of these proceedings, have drawn my attention to the fact that although the declaration was not actually published in the Official Gazette until the 27th September 1930 it was not kept a secret and was widely made known in Delhi. From the records of the trial of Mr. Asaf Ali, I find evidence that on the evening of the 17th September a large meeting was held in which the first speaker informed all present that the associations had been declared unlawful by the local Government. Mr. Asaf Ali and others declared themselves to be members of one of these associations at that meeting and it is clear that they knew of the declaration and yet joined the meeting and declared their membership. From that time onwards there can be no doubt that persons connected with the associations knew that they had been declared unlawful. I have not examined every record before me to see if there is similar evidence upon it; the point I wish now to bring out is the fact that Mr. Asaf Ali and those arrested subsequent to him did know of the declaration and had had full opportunity to withdraw from the connection with the association. The only person arrested before Mr. Asaf Ali was Mr. Faridul Haq, Ansari. In his case, so far as I can gather from the records, he only had an opportunity of some 20 minutes in which to sever his connection with an association, after having learnt that it had been declared to be unlawful.

I have mentioned this matter of publication by other means than that of notification in order to lay

stress on what is very clear in connection with the alleged illegality, *i.e.* that the alleged illegality is a technical one which, though it may go to the very root of the trials by eliminating all possibility of offences, did not lead to any misunderstanding on the part of the persons arrested and convicted.

3. I now turn to the alleged illegality. The wording of Section 16 of the Indian Criminal Law Amendment Act is to my mind very clear; it enables the Local Government in certain cases to declare an association to be unlawful. The word "may" leaves the act of declaration to the discretion of the Local Government, but the qualifying words "by notification in the Official Gazette" lay down the only method by which the Local Government can make the declaration, should it decide to do so.

The Public Prosecutor has urged that the word "may" also governs the method of declaration. I am quite unable to agree with this argument which appears to me to be opposed to the grammatical and logical construction of the Section. The District Magistrate, in his note, has pointed out that, if a declaration cannot be effective until after publication of a notification, the Local Government of Delhi will be unable to exercise powers granted to it by law to use in emergency without undue delay. This is pertinent and is undoubtedly true, but to my mind the remedy lies not in adopting an artificial interpretation of the existing law, but in the amendment of that law by legislation. Past practice may have been that such declarations have been put in force directly they are issued by Local Governments for future notification in Gazettes but, in my opinion, past executive precedents, though entitled to great respect, can have

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no bearing on the interpretation of a statute in the Courts.

After very careful consideration I am of opinion that the associations mentioned in the Chief Commissioner's Notification No. 8362-Home, dated 17th September 1930, did not become unlawful until the notification appeared on the 27th of September 1930. If this be so, no person arrested before the 27th of September could possibly have been guilty of an offence under the Indian Criminal Law Amendment Act as read with the notified declaration.

Holding, this opinion, I consider it my duty to report the result of my examination to the High Court under Section 438, Criminal Procedure Code, with a recommendation that the sentences imposed be set aside.

4. I have already explained that there may be numerous persons whose names have not been ascertained and who have been convicted on grounds similar to those in the case of the convicts actually named. My object in submitting this report before inspecting all the records is not that the cases of these persons should escape notice, but is that avoidable delay should not be caused by an enquiry and search for records.

I have no doubt that if the High Court agree with the view of the law at which I have arrived and pass orders of acquittal in revision in any case or cases the Local Government will take steps to release other persons whose convictions appear to be similarly vitiated and, in any case, once the real point at issue is decided by the High Court all cases in which it arises can be reported.



## ORDER OF THE HIGH COURT.

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TEK CHAND J.—This is a reference under section 438 of the Code of Criminal Procedure made by Mr. Middleton, Sessions Judge, Delhi, reporting five cases in which Mr. Faridul Haq Ansari *Bar.-at-Law*, Mr. Asaf Ali *Bar.-at-Law*, Mangat Rai Banker, Brij Kishan Das Banker and Ahmad Sayad Maulana have been convicted by Mr. Pool, Magistrate 1st class, Delhi, under section 17 of the Indian Criminal Law Amendment Act, XIV of 1908, and sentenced to various terms of imprisonment. None of these persons took part in the proceedings before the trial Court, nor was an appeal or petition for revision preferred by or on behalf of any one of them. The matter was brought to the notice of the learned Sessions Judge on an application presented before him by one Roshan Lal, who does not appear to be connected with any of the convicts. The learned Sessions Judge heard the Public Prosecutor before calling for the records, and then passed a detailed order issuing formal notice to the District Magistrate. He then heard the Public Prosecutor at length and considered a note submitted by the District Magistrate, and came to the conclusion that the convictions were vitiated by “fundamental illegalities.” He has accordingly submitted the records of these five cases to this Court with the recommendation that the convictions and sentences be set aside.

The relevant facts are that on the 17th September 1930, the Chief Commissioner of Delhi, in exercise of the power conferred on him by section 16 of the Indian Criminal Law Amendment Act, XIV of 1908 (as amended by the Devolution Act of 1920), “declared” certain associations, including the Delhi Congress Committee, to be “unlawful associations” within the

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meaning of Part II of the Act. This "declaration" was, however, not published in the *Gazette of India* which is the Official Gazette for the Delhi administration, till the *27th of September 1930*. It appears that immediately after the declaration, on a warrant issued by the Additional District Magistrate, Mr. Faridul Haq Ansari, was arrested on the 17th September for having committed the offence of "managing the affairs of the Delhi Congress Committee a body which had been declared to be an unlawful association by the local Government." Similarly the other four persons named above were arrested on the 18th September or subsequent dates, but in all cases *prior to the 27th September*, for being members or managers of the Congress Committee. In the case against Mr. Asaf Ali the trial was concluded on the 23rd September and he was convicted and sentenced as stated above. The other persons were convicted in the month of October.

Before the Sessions Judge an objection was raised by the Public Prosecutor that he ought not to have entertained the revision proceedings, as the convicts had not appealed and had in fact disassociated themselves from those proceedings. This objection was, however, overruled by the learned Judge and as the Assistant Legal Remembrancer, who appears for the Crown, has not re-agitated the point before me I do not think it necessary to discuss it here. All that I need say is that I am in full and complete agreement with the learned Judge (Mr. Middleton) in the reasons given by him in support of his ruling.

On the merits the case is perfectly clear. It is conceded that in all the five cases, which have been reported by the Sessions Judge, the arrests were made

after the Chief Commissioner had passed an order "declaring" the Delhi Congress Committee to be an unlawful association, but *before* the publication of the notification in the *Official Gazette*. Now section 16 of the Act (as amended) reads as follows :—

"If the Local Government is of opinion that any association interferes or has for its object interference with the administration of the law or with the maintenance of law and order, or that it constitutes a danger to the public peace, the Local Government may, by *notification in the Official Gazette*, declare such association to be unlawful."

The phraseology of the section is plain and unambiguous. It gives full power to the Local Government to declare any association unlawful, which, in its opinion, has acted or is likely to act in the manner specified in the section; but, at the same time, it lays down explicitly and in the clearest terms possible that the declaration is to be made by Notification in the *Official Gazette*. As tersely put by Mr. Middleton, "though the Chief Commissioner may declare an association to be unlawful, yet when he does so, he must do so by a particular method, *i.e.* by notification in the *Gazette*." There is no manner of doubt that this provision is mandatory and imperative and not merely directory or enabling. It is *the one and only* mode prescribed in the statute for making the declaration and according to the well-known rule of construction, embodied in the maxim *expressio unius est exclusio alterius*, it excludes every other mode. The so-called 'declaration' made by the Chief Commissioner on the 17th of September did not, therefore, become effective until its notification in the *Gazette*; and as stated already the notification was not printed in the

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*Gazette of India* (which is issued from Calcutta) till the 27th of September, 1930, and it must have taken some days for the *Gazette* to be properly published at Delhi. This being so, I agree with the learned Sessions Judge in holding that the Delhi Congress Committee could not be considered to be an "unlawful association" till the 27th September, and no person arrested before that date could possibly be held guilty of an offence under section 17 of the Indian Criminal Law Amendment Act.

The decision of the trial Magistrate in all the five cases is, therefore, vitiated by this manifest and patent illegality, which goes to the very root of the charge against the persons concerned, and the Assistant Legal Remembrancer has very properly and frankly expressed his inability to support it. All that he has urged is that the action of the Local Government in arresting these persons was taken under the *bonâ fide* belief that it was in accordance with law. But whether this was so or not is a matter that has no bearing whatever on the legality of the convictions, which is the only question with which I am concerned at present.

For the foregoing reasons, I accept the reference, quash the convictions against all the five persons named above, and direct that they be set at liberty forthwith.

In the last paragraph of his judgment the learned Sessions Judge has noted that the petitioner, Roshan Lal, had stated in his petition that there were numerous other persons whose cases were similar to those reported by him and which were vitiated by the same illegality. The learned Judge was, however, unable to examine these cases, as he was anxious to

avoid delay in getting a decision from the High Court on the question of law involved. Mr. Jagan Nath, who appeared as *amicus curiæ* before me, asked me to order the release of those other persons also, but as the records of their cases are not before me, I am not, at present, in a position to express any opinion on them. The learned Sessions Judge, at the close of his judgment, has indicated the action which he proposes to take in the matter, and the course suggested by him is in accordance with law and is eminently reasonable and proper.

A. N. C.

*Convictions quashed.*

### APPELLATE CRIMINAL.

*Before Bhide J.*

CHUNI LAL—Appellant

*versus*

THE CROWN—Respondent.

Criminal Appeal No. 989 of 1930.

*Indian Penal Code, 1860, section 124-A—Intention—a necessary ingredient—Pamphlet printed in absence of accused (the proprietor of the Press)—Knowledge of contents—whether may be presumed—Press and Registration of Books Act, XXV of 1867, section 7.*

*Held*, that it is well established that “intention” is an essential ingredient of the offence under section 124-A, Indian Penal Code, and the requisite “intention” cannot be attributed to a person, accused under that section, if he was not even aware of the contents of the seditious publication.

*Held also*, that the initial presumption of knowledge of all the matter printed at the Press under section 7 of the Press and Registration of Books Act, XXV of 1867, is not applicable to the case of a pamphlet like the one forming the subject matter of this prosecution.

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