

SPECIAL BENCH.

Before Addison, Coldstream and Hilton JJ.

CHAMUPATI, Petitioner

versus

THE CROWN, Respondent.

Criminal Original No. 2 of 1929.

*Criminal Procedure Code, Act V of 1898, section 99-B—
Application to set aside order of forfeiture of a book—Indian
Penal Code, 1860, section 153-A—Promotion of enmity be-
tween different classes—intention—proof of.*

The Petitioner, a *Hindu*, applied to the High Court under section 99-B of the Code of Criminal Procedure to set aside an order, passed by the Governor in Council, forfeiting his book "Chaudhwin ka Chand."

Held, that the real question for decision of the High Court was whether there was inherent evidence in the book itself of an intent to promote, or attempt to promote, feelings of enmity or hatred between *Hindus* and *Musalman*s, though other evidence of this intention, such as the facts and circumstances at the time, including the state of feeling between the two communities, was admissible.

P. K. Chakravarti v. Emperor (1), *Devi Sharan Sharma v. Emperor* (2), *Emperor v. Baijnath Kedia* (3), and *Emperor v. Kali Charan Sharma* (4), relied upon.

Held further, that in the present case there could be no doubt that the intention of the author was to promote feelings of enmity or hatred between the two communities which would justify a conviction under section 153-A of the Indian Penal Code and that the application to set aside the forfeiture of the book must, therefore, be rejected.

Application under section 99-B, Criminal Procedure Code, praying that the order of forfeiture by the Local Government, dated the 2nd May 1929 proscribing the book "Chaudhwin ka Chand" be set aside

(1) (1927) I. L. R. 54 Cal. 59. (3) (1925) I. L. R. 47 All. 298 (F. B.).

(2) 1927 A. I. R. (Lah.) 594. (4) (1927) I. L. R. 49 All. 856 (F. B.).

ACHHRU RAM and RAM LAL II, for Petitioner.

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ABDUL RASHID, Assistant Legal Remembrancer,
for Respondent.

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ADDISON J.—This is an application by *Pandit* Chamupati, writer and printer of a book, entitled “Chaudhwin ka Chand,” under the provisions of section 99-B of the Code of Criminal Procedure, asking that an order of the Governor in Council, dated the 2nd May 1929, whereby the book was forfeited, be set aside and costs awarded to the petitioner.

The real question for decision is whether there is inherent evidence in the book itself of an intent to promote, or attempt to promote, feelings of enmity or hatred between Hindus and Musalmans though other evidence of this intention (such as the facts and circumstances of the time) is admissible as held in *P. K. Chakravarti v. Emperor* (1), where it was also laid down that if the words naturally, clearly and indubitably have such an intention, it must be presumed that the writer intended the natural result of the words employed. The explanation to section 153-A, Indian Penal Code, however, was enacted for the benefit of certain classes of people who might desire to point out without malicious intention and with an honest view to their removal, matters which were producing or had a tendency to produce feelings of enmity or hatred between different classes. Again, it was held in *Emperor v. Baijnath Kedia* (2), that a compilation consisting of extracts from certain sources may be seditious though the extracts considered in relation to their own proper contents may not in themselves be of a seditious nature, and the same

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principle applies to offences punishable under section 153-A, Indian Penal Code. In *Emperor v. Kali Charan Sharma* (1) it was said that a violent abusive and obscene diatribe against the founder or prophet of a religion or against a system of religion may amount to an attempt to stir up enmity or hatred against the persons who profess that religion. In this case, too, the circumstances in which the book was published were taken into account and it was held that it did not matter that the statements in the book were supported by authority; in such cases the truth of the language could neither be pleaded nor proved; it was immaterial. Lastly, in the *Vartman Case* [*Devi Sharan Sharma v. Emperor* (2)], it was said that the intention is to be collected in most cases from the internal evidence of the words themselves, but that the explanation to the section showed quite conclusively that in any matter on which other evidence could assist, it might be taken. It was thus permissible to take into consideration the persons for whom it was written and the state of feeling between the two communities at the time of publication. In this latter case it was also said that it was possible to conceive the writing of a reasoned critical and strong attack on a religion or its founder with a view to attract converts, which might fall within the explanation, for the reason that though there might be a tendency in the language employed to promote hatred or enmity, the language employed did not of necessity convey the intention or where the writer has been able to prove by evidence that that was not his intention even in part. But a scurrilous and vituperative attack on a religion or its founder would re-

(1) (1927) I. L. R. 49 All. 856 (F. B.). (2) 1927 A. I. R. (Lah.) 594.

quire a considerable amount of explanation to take it out of the substantive part of section 153-A of the Indian Penal Code and bring it within the four corners of the explanation.

In the case before us, there is an affidavit of the petitioner to the effect that *Rishi* Daya Nand, the founder of the Arya Samaj, published his work, the *Satiarath Parkash*, in 1884; that *Maulvi* Sanaullah of Amritsar published a work named the *Haq Parkash* in 1900, in which an attempt was made to meet the attack on the Mohammadan religion made in the first work; that in a later edition *Maulvi* Sanaullah argued that his book was accepted as true as none had contradicted it; and that the reason why the petitioner wrote his book was in order to substantiate the criticisms contained in the fourteenth chapter of *Rishi* Daya Nand's work with facts and figures culled from the Islamic scriptures themselves and not in order to wound the susceptibilities of any person.

When this alleged new edition of *Maulvi* Sanaullah's book came out is not mentioned, but, on the other hand, it is the case that a *Hindu*, Rajpal, publisher of a pamphlet which attacked the Prophet of Islam, was murdered in Lahore on the 6th April 1929 by a Mohammadan and it is a matter of notoriety that the feelings of the two communities were very inflamed before and after that time. There is no date of publication printed on the forfeited book, and counsel informed us that he could not tell us when it was published. Certain extracts of criticism of the book from Mohammadan papers have been proved, and, in the above circumstances, as the earliest of these is dated the 26th April 1929, it is legitimate to conclude that the book was published after the

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murder of Rajpal. In the affidavit of Mr. Puckle, the District Magistrate, it is stated that the communal situation in Lahore in April was such as to give cause for the gravest anxiety; while the offensive publication of Rajpal which had previously been the subject of litigation had already been the cause of much ill-feeling between the two communities. The affidavits of the City Magistrate and Inspector of the City Police also prove that the publication of this book caused a great commotion amongst Mohamadans in Lahore, coming as it did when the communal tension was already grave.

It is true that in the preface the book is described as an introduction to the 14th Chapter of the Satiarath Parkash in which the Mohammadan religion was criticised. This chapter, it is said, shows the labour and judiciousness of *Rishi* Daya Nand. Thereafter the author read *Maulvi* Sanaullah's Haq Parkash, (but no allusion is made to any new edition). The *Maulana* is criticised for presenting new tenets of *Islam* instead of clearly admitting the defects of the popular beliefs of *Islam* and the propriety of the *Rishi's* objections to them and it is hoped that he will find in the forfeited work material for the removal of his misunderstandings (or misrepresentations).

But, when we come to the work proper, which commences with the remark that the very opening word of the Koran Sharif is wrong, it seems to me that the only possible conclusion that can be arrived at is that the intention of the author was to promote, or to attempt to promote, feelings of hatred between the two communities and not to answer the criticisms of *Maulana* Sanaullah contained in a book published in

1900, and that he deliberately chose a time when he knew that there was grave tension between the two communities. His object was to ridicule the doctrines of the Mohammadan religion as set out in the Koran Sharif in such a way as to promote hatred between the two communities. It is true that reference is made to certain old commentaries, but the passages selected from these further show the real design of the writer. Different chapters are allotted to the different doctrines attacked and held up to contempt. A perusal of the book leads me unhesitatingly to the finding that the writer's intention was to stir up enmity and hatred and that the work does not come within the explanation to section 153-A. Many of the passages are obscene and most amount to a violent diatribe against the Prophet and the doctrines of the Mohammadan religion which are held up to ridicule and contempt. It is not a reasoned and critical attack on a religion, written with a view to make persons forsake that religion for another, but a scurrilous attack which would require a considerable amount of explanation, which is not forthcoming, to take it out of the substantive part of section 153-A and bring it within the explanation. I do not propose to give examples of the attacks as I consider that that would be objectionable. It is sufficient to say that the intent of the author is clear and that the book is such that a conviction under section 153-A, Indian Penal Code, would be justified. There is nothing in the book of fair and honest criticism; the intention obviously was not to substantiate the criticisms contained in the 14th Chapter of the Satiarath Parkash with facts culled from the Islamic Scriptures themselves; but the intention was to wound the

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susceptibilities of Mohammadans at a time when there was already grave ill-feeling between the two communities, by holding isolated portions of the Koran, sometimes interpreted in the light of certain commentaries, up to intolerant ridicule and contempt.

I would dismiss the application with costs and would fix the fee of the Assistant Legal Remembrancer at Rs. 150.

COLDSTREAM J.

COLDSTREAM J.—I agree. That the forfeited book naturally has a tendency to promote feelings of enmity between Hindus and Mohammadans is manifest from its tone and language. The presumption is, therefore, that the promotion of such feelings was the purpose, or one of the purposes, of the petitioner in publishing it.

We have heard petitioner's counsel at great length. He has not, in my opinion, succeeded in discharging the onus of showing that the book was written without malicious intention. On the other hand, as pointed out by my learned brother Addison, the circumstances of time and place of the publication were such as to leave no doubt that one, if not the only, purpose of the petitioner was to promote the feelings, which, as an educated man, he knew would be promoted in fact by what he wrote.

HILTON J.

HILTON J.—I agree.

N. F. E.

Petition dismissed.