

SPECIAL BENCH.

Before Young C. J. and Dalip Singh and Rangil Lal JJ.

BODH RAJ—Petitioner

versus

THE CROWN—Respondent.

Criminal Original No. 2 of 1934.

In the matter of Act XXIII of 1931 and of the Virjanand Printing Press.

Indian Press (Emergency Powers) Act, XXIII of 1931, sections 3, 4, 12: Publication of an historical event in Russia—whether ground for Local Government to demand security—Transfer of press to new keeper—Accepted by District Magistrate—whether Government can order forfeiture of press for non-payment of deposit by former keeper.

B. R., the then keeper of the Virjanand Printing Press, was ordered by the Local Government on 6th August, 1934, to deposit Rs. 2,000 on or before the 20th *idem*, on the ground that the monthly Magazine 'Shanti' published by the press offended against section 4 (1) (b) of Act XXIII of 1931. B. R., being unable to deposit the Rs. 2,000 security by 20th August, 1934, transferred the press to P. C. who applied to the District Magistrate on 21st August, giving full particulars, to be accepted as the keeper in place of B. R. and his application was accepted, and he was ordered to deposit Rs. 2,000 under section 3 (1) of the Act, which he did. Subsequently the Local Government ordered forfeiture of the press under section 12 (2).

Held, that the article in question which was taken almost bodily from a book entitled 'Heroes and Heroines of Russia' could not be made the basis of an order for security under section 4 (1) (b), in face of the explanation to the section. It was a literary work and described an historical incident, *i.e.*, the story of an event in Russia under the Czarist regime which could not be said to incite anyone to commit murder in India under wholly dissimilar conditions.

Held also, that the Local Government was not competent to make the order of forfeiture in face of the order of the

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District Magistrate, accepting P. C. as the new keeper and ordering him to deposit security. Section 12 (1) of Act XXIII of 1931, should be read, as if after the words 'such press shall not be used' were inserted the words 'by such keeper.'

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Petition of Lala Bodh Raj praying that the order of the Local Government, dated 6th August, 1934, requiring him to deposit with the District Magistrate, Lahore, the sum of Rs.2,000, may be set aside. And petition by Lala Parkash Chand against the forfeiture of the Press.

J. N. AGGARWAL, V. N. SETHI, J. L. KAPUR, A. R. KAPUR, MOHAMMAD ASLAM KHAN and DINA NATH BHASIN, for Petitioners.

Diwan RAM LAL, Government Advocate, for Respondent.

YOUNG C. J.—*Lala* Bodh Raj has filed a petition under section 23 of Act XXIII of 1931, praying that an order of the Local Government, dated the 6th August, 1934, be set aside. The said order required *Lala* Bodh Raj to deposit on or before the 20th August, 1934, security to the amount of Rs.2,000 on the ground that the press, of which he was keeper, was used for the purpose described in section 4 (1), clause (b) of the Indian Press (Emergency Powers) Act, XXIII of 1931. The press published a monthly magazine in Hindi entitled 'Shanti.' In that magazine there was an article entitled 'Vir Bala Mary' (Brave girl Mary). The notice was served by the Local Government on the ground that the said article offended against section 4 (1) (b) of the Act.

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The material portion of section 4 (1) (a) and (b) is as follows:—

“Whenever it appears to the Local Government that any printing-press in respect of which any

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security has been ordered to be deposited under section 3 is used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations which—

“(a) incite to or encourage, or tend to incite to or to encourage, the commission of any offence of murder or any cognizable offence involving violence, or

“(b) directly or indirectly express approval or admiration of any such offence, or of any person, real or fictitious, who has committed or is alleged or represented to have committed any such offence, * * * ”

The article complained of purports to describe an incident which occurred in Russia under the old Czarist regime. In the first paragraph the article describes the conditions under which the Russians suffered at that time. It says, “if anyone happened to thrust his head out of a window to witness the procession of the Czar, his head was riddled with bullets fired by the body-guard.” The second paragraph may be quoted:—

“Human nature is strange. The greater the force with which it is pressed, the more it re-bounds, the higher it rises. This axiomatic truth was eventually in evidence even in the Czarist regime. The afflicted and the oppressed people staked their lives to free themselves from the grinding stone of oppression. They organized secret societies to overthrow the Czarist Government. Generally, the Government officials punish the opponents of the Government. They single them out and kill them. The atrocities that might have been committed on the members of the secret societies during that period of

gross injustice and wanton oppression can only be imagined; or what we can say at the best is that thousands of young men were singled out and shot down dead; thousands were sent to the gallows, thousands were exiled and forced to spend their lives in a state of helplessness in deserts like those of Siberia. Oh God! Thy ways are inscrutable. Just in those days when the people were groaning under the injustice and oppression of the Czarist regime. Mary Spreed was born in 1884."

The article stated that the girl Mary joined a secret society which was formed to overthrow the Czarist Government and that the Governor of one of the provinces "surpassed all Government officers in oppression and immorality. Besides looting thousands of houses, he robbed countless women of their chastity. His subordinates prowled in the province like wild beasts in a jungle." Mary made up her mind to kill the tyrannical Governor and deliver the people from his tyranny. She, therefore, on a suitable opportunity shot the Governor and was arrested. The article describes the sufferings of Mary at the hands of the Police. It is said that she was stripped of all her clothes and made to stand stark naked. Lighted cigarettes were pressed against her body and finally she was raped after she had been bound. It is said that though the Judges would have assisted her, they had received a mandate from the Czar that they had to sentence her to death. The sentence of death was, however, commuted, and Mary had a triumphant procession to Siberia. The Judges were not to escape. They were all murdered by the remaining members of the secret society together with the police officers and jailors

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We have no doubt that the article 'directly or indirectly expresses approval or admiration' of Mary, her acts, and of the sufferings that she underwent. Mary committed murder. If I had to consider section 4 (1) (b), I would have to hold that the article came within that section. I have, however, to consider the explanation to this section. The explanation is as follows:—

“No expression of approval or admiration made in a historical or literary work shall be deemed to be of the nature described in this sub-section unless it has the tendency described in clause (a).”

The tendency referred to is to incite or to encourage 'the commission of any offence of murder or any cognizable offence involving violence.' We have to consider, therefore, whether the article complained of does in fact tend to incite to or encourage the commission of such an offence.

It is clear to me that the intention of the Legislature was to prevent the commission of any such offence in India. It would be of no interest to the Indian Legislature to prevent the commission of crime outside this country.

It is contended by the learned Government Advocate that the article would tend to incite the girls of India to follow the example of Mary and commit political murders. I do not think so. I must consider the effect produced upon any reasonable person who reads it. Mary's motive is described in that part of the article quoted above, where it is said that she made up her mind to kill the tyrannical Governor and deliver the people from his tyranny. The Governor alluded to was a man who robbed women of their chastity and looted thousands of houses. I think that a reasonable

person would only be incited by this article to commit murder in this country if the conditions which obtained here were the same as those described in the article, that is, that Government oppressed the people in the way indicated and that Governors of provinces behaved like the Governor in the story. It is not suggested that the Government of India or any Governor behaves in any such fashion. And while most accused persons in India who make a confession allege torture by the Police, it cannot be said that reasonable people believe that the Police in India behave in the manner described in the article. It might well be argued that the general effect of this article, upon reasonable persons who read it, would be that they might think that they were extremely fortunate to be living under a Government or Governor differing so essentially from the Government and Governor described in the article. Therefore, the article, instead of inciting anyone to murder Government officials in India should have precisely the opposite effect.

I take into consideration as well the nature of the magazine. It is entitled 'Shanti' or peace. It is published entirely for women. We have seen some of its numbers. It prints pictures of women carrying on the ordinary functions of the household. It prints articles which generally interest women. I have asked the learned Government Advocate if he can point to any other article in any issue of this magazine of the same nature as the one complained of. He says there are no such articles.

This article has no political or criminal significance at all. It was meant to illustrate the sufferings of a woman who was prepared to sacrifice herself for what she considered to be right. It is quite clear that the article does not and cannot apply to Indian conditions.

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For instance, could it be said because the Courts in Russia carried out a mandate of the Local Government there, with regard to the infliction of a sentence of death, that anyone could think that the Courts in this country would do the same? Or because the article mentions that the Judges in Russia were murdered for this reason, that it would incite any person in this country to murder Judges here?

The explanation provides an exception in favour of an historical or literary work which does not tend to incite to murder. This article does describe an historical incident and may even be described as a literary work. In my opinion it cannot be said that the story of an event in Russia under the Czarist regime could be said to tend to incite anyone to commit murder in this country under wholly dissimilar conditions.

We have been referred to various authorities, but authorities can be of very little assistance to us. Every writing of this nature must be judged on its own merits.

It is to be noted that this article is taken almost bodily from a book entitled 'Heroes and Heroines of Russia,' which can be obtained from the Punjab Public Library of Lahore. No action has been taken in respect of this book by the Local Government.

I, therefore, would set aside the order of the 6th August, 1934.

The second application with which we have to deal is that of *Lala Parkash Chand*. He complains of an order, dated the 28th September, 1934, in which the Local Government purporting to act under section 12 (2) of Act XXIII of 1931, forfeited the press on the ground that the security demanded from *Lala*

Bodh Raj had not been deposited and that the press had been used for printing certain documents without the security having been deposited.

When *Lala* Bodh Raj had notice served upon him as described above, he was unable to deposit the security demanded by the 20th August, 1934. *Lala* Parkash Chand, therefore, on the 21st August, 1934, applied to the District Magistrate under section 3 (1) of the said Act that he should be accepted as the keeper of the said press in place of Bodh Raj. The Magistrate by his order of the same date accepted *Lala* Parkash Chand as the keeper and ordered him to deposit the sum of Rs.2,000 under section 3 (1) of the Act. This sum was deposited the following day. The learned Magistrate had complete knowledge of all the facts in connection with the order against *Lala* Bodh Raj and his failure to comply with the order. All material facts were contained in the application filed by *Lala* Parkash Chand.

The learned Government Advocate contends that the order of the 6th August, 1934, not being complied with by Bodh Raj the Government was entitled under section 12 (2) to forfeit the press as it had been used by *Lala* Parkash Chand for printing certain documents. In the first place we do not think it is competent for Government under the circumstances to make such an order. The District Magistrate under the Act is ordinarily an agent of the Government. He had full knowledge of the failure of *Lala* Bodh Raj to deposit the security. He accepted *Lala* Parkash Chand as the keeper and took from him the sum of Rs.2,000 as security. It would be an astonishing position if in view of this it were open to the Government thereafter to forfeit the press and to visit the sin—if any—of Bodh Raj upon his inno-

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cent successor. I do not think that any such position does arise under the Act. The proviso to section 3 (1) is as follows:—

“ Provided that if a deposit has been required under sub-section (3) from any previous keeper of the printing press, the security which may be required under this sub-section may amount to three thousand rupees.”

The Act clearly recognizes that the keeper of the press may change. Section 13 also enacts that “ Where any person has deposited any security under this Act and ceases to keep the press in respect of which such security was deposited. . . . he may apply to the Magistrate for return of the said security, and upon proof to the satisfaction of the Magistrate the security is to be returned to such person.” If a Magistrate, therefore, is satisfied that a new keeper has taken the place of an old keeper, any security deposited by the old keeper is to be returned to him. The position, therefore, is that if *Lala Bodh Raj* had accompanied *Lala Parkash Chand* to the Magistrate, when *Lala Parkash Chand* made his application to be accepted as a keeper, and *Lala Bodh Raj* had deposited for a few minutes the amount of security demanded by Government and then taken it back, the press could not have been confiscated. This appears to me to be a *reductio ad absurdum*. The sections of the Act must all be read together and I think that section 12 (1), therefore, which reads as follows: “ Where a deposit is required from a keeper of a printing press under section 3, such press shall not be used for the printing or publishing of any newspaper, book, or other document, after the expiry of the time allowed to make the deposit until a deposit has been made ” ought to be

read as if after the words 'such press shall not be used' are inserted the words 'by such keeper.' I am satisfied that the section must mean this if it is to accord with the other sections of the Act already quoted and also with common sense. It could not, in my opinion, have been the intention of the Legislature to enact, that if a keeper who had notice served on him completely severed his connection with the press and sold his interests to a third party, that the third party having deposited security and been accepted as keeper—should be penalized by having the press confiscated because the original owner refused to deposit the security demanded.

I would, therefore, also set aside the order of the 28th September, 1934. The petitioners to have the costs of these proceedings in each case.

DALIP SINGH J.—I agree.

RANGI LAL J.—I agree.

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