

FULL BENCH.

Before Young C. J., Addison and Din Mohammad JJ.

1937
Feb 19.

IN THE MATTER OF THE INDIAN PRESS
(EMERGENCY POWERS) ACT, 1931,
AND OF THE 'DAILY SIYASAT,'
LAHORE.

Criminal Original No. 9 of 1936.

Indian Press (Emergency Powers) Act, XXIII of 1931 (as amended by Act XXIII of 1932), ss. 4 (1) (d), 7 (1) and 7 (3): Notice by Local Government for deposit of security — not describing contents of article, but annexing a copy of the whole article — whether valid — Change of Publishers — Notice under section 7 (3) to present Publisher — who was not publisher when the article appeared — whether affected by the fact that the Magistrate had not demanded security at the time of the declaration under section 7 (1).

I. S. was printer and publisher of the Urdu 'Daily Siyasat,' Lahore. On 15th October, 1936, his brother M. H. appeared before a Magistrate, under the provisions of section 7 (1) of the Indian Press (Emergency Powers) Act, and made the necessary declaration, that he was the printer and publisher of the said newspaper. The Magistrate did not require him to deposit security. On the 24th October, 1936, the Punjab Government served a notice under section 7 (3) of the Act on I. S. calling upon him to deposit security to the amount of Rs.3,000, as a particular article published in the issue of 8th October, 1936, contained words of the nature described in section 4 (1) (d) of the Act. Apparently the Government did not then note that I. S. had ceased to be the publisher. On 7th November, 1936, the Government served a similar notice under section 7 (3) of the Act on M. H. as he was the publisher of the newspaper, and he put in the present petition under section 23 of the Act asking the High Court to set aside the order demanding security from him.

Held, that the notice was not defective merely because it did not describe the contents of the article coming within the mischief of section 4 (1) (d), as a translation of the whole

article was annexed to the notice and this was sufficient compliance with the requirements of the law.

Also, that there was no force in the contention that the Local Government had no power to issue a second notice to M. H., seeing that it had already issued a notice to his brother I. S., because the first notice was obviously a mistake and of no effect as I. S. was not the publisher at the time, and the second notice was the only valid notice.

Held further, that the contention of the petitioner, that the notice could not be issued to M. H. as, on the 8th October, 1936 his brother I. S. was the publisher of the newspaper, was without force, because it did not matter who the publisher happened to be at the time of the notice, if the newspaper contained words coming within the mischief of section 4, and a change of the publisher after the offending article had appeared made no difference.

And, that the contention of the petitioner, that the Local Government had no power to act under section 7 (3) of the Act, seeing that the Magistrate under section 7 (1) had accepted, on the 15th October, 1936, the declaration of M. H. without requiring security from him, was without force, because the Magistrate and the Local Government were completely independent of each other with respect to the functions exercised by each in this matter.

Held also, that the contention that the article itself did not come within the mischief of section 4 (1) (d) of the Act, was without substance because the article as a whole and certain passages therein, tended, directly and indirectly, to bring into hatred or contempt the Government established by law in British India and the Administration of Justice in British India, and to excite disaffection towards the said Government.

Petition of Mohammad Habib, publisher of the 'Daily Siyasat,' Lahore, praying that the order of the Local Government for a deposit of Rs.3,000, be set aside.

M. M. ASLAM KHAN, for Petitioner.

DIWAN RAM LAL, Govt. Advocate, for the Crown.

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The judgment of the Court was delivered by—

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YOUNG C. J.—Syed Inayat Shah was printer and publisher of the newspaper styled the Urdu 'Daily Siyasat,' Lahore. On the 15th October, 1936, his brother Syed Mohammad Habib appeared before the Magistrate under the provisions of section 7 (1) of the Indian Press (Emergency Powers) Act and made the necessary declarations that he was the printer and publisher of the said newspaper. The Magistrate did not require him to deposit security. On the 24th October, 1936, the Punjab Government issued a notice under sub-section (3) of section 7 of the Act to Syed Inayat Shah calling upon him to deposit security to the amount of Rs.3,000, as a particular article published in the issue of the 8th October, 1936, contained words of the nature described in clause (d) sub-section (1) of section 4 of the Indian Press (Emergency Powers) Act. Apparently the Government did not then note that he had ceased to be the publisher.

Accordingly, on the 7th November, 1936, the Government issued a similar notice under sub-section (3) of section 7 of the Act to Syed Mohammad Habib *alias* Habib Shah as he was the publisher of the newspaper and he has put in this petition under section 23 of the Act, asking this Court to set aside the order, demanding Rs.3,000 as security from him under section 7 (3).

It was first objected that the notice was defective as it did not describe the words, signs or visible representations coming within the mischief of section 4 (i) (d). There is no force in this contention as a translation of the whole article was annexed to the notice and this was sufficient compliance with the requirements of the law in this respect.

It was next argued that the Local Government had no power to issue a second notice to Syed Mohammad Habib, seeing that it had already issued a notice to his brother Syed Inayat Shah. The first notice was obviously a mistake and of no effect as Syed Inayat Shah was not the publisher of the paper at the time of the notice. The second notice was, therefore, the only valid notice, the first being a piece of waste paper.

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Thirdly, it was argued that the notice could not be issued to Syed Mohammad Habib as, on the 8th October, 1936, his brother Syed Inayat Shah was the publisher of the newspaper. This contention must be again repelled. Sub-section (3) of section 7 runs as follows :—

“ Whenever it appears to the Local Government that a newspaper published within its territories, in respect of which security under the provisions of this Act has not been required, or having been required has been refunded under sub-section (2), contains any words, signs or visible representations of the nature described in section 4, sub-section (1), the Local Government may, by notice in writing to the publisher of such newspaper, stating or describing such words, signs or visible representations, require the publisher to deposit with the Magistrate within whose jurisdiction the newspaper is published, security to such an amount, not being less than five hundred or more than three thousand rupees, as the Local Government may think fit to require.”

The meaning of this section is clear. It is that when a newspaper contains words coming within the mischief of section 4 the Local Government may require, by notice in writing to the publisher of such newspaper, security as set out in the section. In fact,

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it may be said that it is the newspaper which is penalised.

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This is further clear from the wording of section 23 (1) of the Act which runs as follows: “ * * * the publisher of a newspaper who has been ordered to deposit security under sub-section (3) of section 7 * * may, within two months from the date of such order, apply to the High Court * * to set aside such order and the High Court shall decide *if the newspaper* * *, in respect of which the order was made, did or did not contain any words, signs or visible representations of the nature described in section 4, sub-section (1),” while under the provisions of section 25 of the Act, the Special Bench can only set aside the order if it appears to it that the words, etc., were not of the nature described in section 4 (1). It follows that it does not matter who the publisher happens to be at the time of the notice, if *the newspaper* contained words coming within the mischief of section 4. Clearly a change of publisher after the newspaper has inserted the offending article makes no difference: the new publisher can be required by the Local Government to deposit the amount. If this were not so, the object of enacting sub-section (3) of section 7 could always be set at naught by a change of publishers and the new publisher could only be required by the Magistrate under sub-section (1) to give security to the extent of Rs.1,000. Apart, however, from this absurdity, the law is quite clear that the publisher, no matter who he is at the time of the notice, can be required to deposit security if *the newspaper* contained any words coming within the mischief of section 4.

Fourthly, it was argued that the Local Government had no power to act under sub-section (3) of section 7, seeing that the magistrate under sub-section

(1) of the same section accepted on the 15th October, 1936, the declaration of Syed Mohammad Habib that he was the publisher without requiring security under that sub-section. In this connection reference was made to *Bodh Raj v. The Crown* (1), where it is said that the District Magistrate under the Act is ordinarily an agent of the Government. The case itself does not afford any help in the decision of this case but reliance is placed on the words already given. We, however, consider that the remark was not necessary for the decision of that case and is in the nature of an *obiter dictum*. Besides, it has been too broadly stated. A District Magistrate may be an agent of the Government when he is required to perform any functions on behalf of the Government in that capacity; but where he is invested with independent powers, he cannot be considered to be an agent of the Government in the discharge of those functions. It is clear from a perusal of the Act that the Magistrate and the Local Government are completely independent of each other with respect to the functions exercised by each. It is for the Magistrate and for him alone to decide what he is to do and it is for the Local Government to decide what it is to do, each acting within the respective powers conferred upon them within the Act. The fact, therefore, that the Magistrate did not require security under section 7 (1) on the 15th October, 1936, from Syed Mohammad Habib did not debar the Local Government from taking action under sub-section (3), if it considered it proper to take action under the powers given to it under that sub-section. The Magistrate may not have been aware of the article at the time and the hands of the Local Govern-

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(1) I. L. R. (1935) 16 Lah. 270, 277.

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ment cannot be tied by his action if the Local Govern-
ment takes action under sub-section (3) of section 7.

The last contention was that the article itself, though offensive, did not come within the mischief of section 4 (1) (d) which runs as follows:—

“ Whenever any newspaper contains any words, signs or visible representations which tend, directly or indirectly, to bring into hatred or contempt His Majesty or the Government established by law in British India or the administration of justice in British India or any class or section of His Majesty's subjects in British India, or to excite disaffection towards His Majesty or the said Government * * *.”

The article commences with a bitter attack upon His Excellency the Governor but it does not end there. It also brings into hatred or contempt the Government of India and the Local Government—*vide* the passage printed at page 7, line 19 *et seq.* of the paper book. Another such passage commences at line 28 of the same page. The third such passage is printed at lines 46 to 51. We have no hesitation in holding that the article as a whole and these passages in particular tend directly and indirectly to bring into hatred or contempt the Government established by law in British India and the administration of justice in British India and to excite disaffection towards the said Government. This being so, the Local Government had power to require the security in question.

We, therefore, dismiss the application with costs.
Counsel's fee Rs.150.

A. N. C.

Application dismissed.