

Before Mr. Justice Mitra and Mr. Justice Fletcher.

BENI BHUSHAN ROY

v.

EMPEROR.*

1907

Aug. 16.

sedition—“Swaraj”—Incitement to secure “swaraj”—Security for good behaviour—Seditious language at a public meeting—Criminal Procedure Code (Act V of 1898) s. 108—Indian Penal Code (Act XLV of 1860) s. 124A.

The term “*swaraj*” does not necessarily mean government of the country to the exclusion of the present Government, but its ordinary acceptance is “home-rule” under the Government.

The incitement of the members of a public meeting to exert themselves to secure “*swaraj*” does not amount to the offence of sedition under s. 124A of the Penal Code, and is consequently not within the purview of s. 108 of the Criminal Procedure Code.

CRIMINAL RULE.

THE petitioner was a zemindar and a pleader in practice at Khulna. He was appointed Chairman of the Reception Committee which had been formed to receive the delegates to the District Conference proposed to be held in the town on the 25th and 26th May 1907. On the 15th May the District Magistrate of Khulna issued an *ex parte* order under s. 144 of the Criminal Procedure Code prohibiting the holding of the Conference, but he rescinded the same on an application made to him under s. 144, cl. (4) of the Code, and on the petitioner and others giving an assurance that no breach of the peace would take place. The Conference was held on the dates fixed therefor, and speeches were made by the petitioner and others on the occasion.

It appeared that a junior Sub-Inspector of Police, Fazlur Rahman, was deputed to be present in the pandal at the sitting of the Conference, and that he took notes of the proceedings. On the 29th of May, the Sub-Inspector in charge of the police-station submitted a report of the speeches made at the Conference, based

* Criminal Revision No. 880 of 1907, against the order passed by A. Ahmad, District Magistrate of Khulna, dated July 15, 1907.

1907
 BENI
 BHUSHAN
 ROY
 v.
 EMPEROR.

on the memorandum prepared by Fazlur Rahaman from his notes which, it was alleged, he had afterwards destroyed. Upon receipt of the said police report the District Magistrate directed proceedings under s. 108 of the Criminal Procedure Code to be instituted against the petitioner and two other members of the Reception Committee, and notices in terms set out in the judgment of the High Court were duly served on the parties.

On the 3rd June 1907 the Magistrate discharged the latter, and proceeded with the case against the petitioner alone, and by his order, dated the 15th July, directed him to execute a bond to be of good behaviour for one year in the sum of Rs. 5,000 with two sureties each in the like amount.

The petitioner then moved the High Court and obtained the present Rule.

Mr. Jackson (Mr. K. N. Chaudhuri and Babu Narendra Kumar Bose with him), for the petitioner. There was no legal evidence before the Court of the actual words used in the petitioner's speech, as the Sub-Inspector admitted that he had drawn up a memorandum from his notes which he had destroyed. Section 108 of the Criminal Procedure Code, section 124A of the Penal Code, and *Reg. v. Burns*(1) were referred to.

The *Deputy Legal Remembrancer (Mr. Douglas White)*, for the Crown. The law of sedition in India was clearly explained in two cases: *Queen-Empress v. Bai Gangadhar Tilak*(2) and *Queen-Empress v. Ramchandra Narayan*(3). He proceeded to refer to the summing up of Strachey J. in the former case:

[FLETCHER J. Does he not go too far in saying that disaffection means want of affection?]

He follows Sir Comer Petheram in *Queen-Empress v. Jogendra Chunder Bose*(4). I do not lay stress on the words set out in the notice as to "the present year being very auspicious for the inauguration of the meeting," but the exhortation to secure "independent government" amounts to sedition. There was an incitement to attain "*swaraj*" at any sacrifice. This was an inducement to public disorder.

(1) (1886) 16 Cox C. C. 355, 359.

(3) (1897) I. L. R. 22 Bom. 152.

(2) (1897) I. L. R. 22 Bom. 112, 528.

(4) (1891) I. L. R. 19 Calc. 35.

[MITRA J. What is the meaning of “*swaraj*” ?]

Your Lordship can say that better than myself, but I understand it means the removal of the British Government.

[MITRA J. If that be its meaning, then no editor or writer here is safe; it cannot mean that. FLETCHER J. If it means the Colonial form of government, it is a legitimate aspiration of the people.]

If it means participation in the government of the country by the natives of India, they have that already. They are in the Legislative Councils and in every department of Government.

Mr. Jackson. The literal meaning of the word “*swaraj*” is “self-government”—“*swa*” means “*self*”, and “*raj*” means “government.” Mr. Naoroji initiated the word in his speech as President of the last ‘National Congress.’

[MITRA J. Speaking for myself, I can say that the word was used by Mr. Naoroji in the sense of “self-government,” and is being translated in Bengali in the same sense.]

MITRA AND FLETCHER JJ. The petitioner has been bound down under section 108 of the Code of Criminal Procedure in the sum of rupees five thousand, with two sureties each in like sum, to be of good behaviour for one year.

The charges against the petitioner are contained in the notice issued under section 108 of the Code of Criminal Procedure, which is this:—“Whereas from the police report it has been made to appear before me that you, Beni Bhushan Roy, on Saturday, the 25th May, read out a written speech as President of the Reception Committee of a meeting held at the Hindu Dharma-Sabha within the Khulna town on the aforesaid date, in the course of which you referred to the present year as being very auspicious for the inauguration of the meeting, as it was the fiftieth anniversary of the Indian Mutiny, when there was an attempt of the natives of India to regain their country which was almost successful, and you incited the members of the meeting to exert themselves to secure an independent government and you, the said Beni Bhushan Roy, thereby disseminated seditious

1907
BENI
BHUSHAN
ROY
v.
EMPEROR.

1907
 BENI
 BHUSHAN
 ROY
 v.
 EMPEROR.

matters, the publication of which is punishable under section 124A, you are hereby required to show cause, on or before the 30th June 1907, why you should not be ordered to execute a bond for five thousand rupees with two sureties each in like sum for good behaviour for one year, under section 108 of the Code of Criminal Procedure."

Evidence was gone into on the question as to what were the exact words of the speech of the petitioner which would bring the case within the words considered to be seditious and referred to in the notice.

The first and the principal witness examined was Fazlur Rabaman, a Sub-Inspector of Police. He took down certain notes of the speech at the meeting, but he destroyed the notes and produced in Court a memorandum made by himself from the notes he had taken down. The exact words used by the petitioner in his speech cannot, therefore, be ascertained, but the District Magistrate of Khulna has found that the words used are substantially the same as given in the notice. Looking, however, to the substance only and not the exact words, there is nothing which would bring the case within section 124A of the Indian Penal Code, and, therefore, section 108 of the Code of Criminal Procedure. The Deputy Legal Remembrancer, on behalf of the Crown, has conceded that there is nothing in the words "that the present year is very auspicious for the inauguration of the meeting, as it is the fiftieth anniversary of the Indian Mutiny" which may be held to be seditious, but he relies on the use of the words "independent government" in the next clause. The word which, it is said, was actually used is "স্বরাজ" (*swaraj*). The words "independent government" were not used, and it does not appear from the evidence of the witness Fazlur that the petitioner in his speech said that the people should have "independent government." The word *swaraj*, if it was used, does not necessarily mean government of the country to the exclusion of the present Government, but its ordinary acceptance is "home rule" under the Government. The vernacular word used, if literally translated, would mean *self-government*, but self-government would not necessarily mean the exclusion of the present Government or independence. It may mean, as it is now well understood,

government by the people themselves under the King and under British Sovereignty.

We are, therefore, of opinion that there is nothing in the charges, as stated in the notice, which would bring the case within section 108 of the Code of Criminal Procedure. We accordingly set aside the order of the District Magistrate of Khulna, dated the 15th July 1907, and direct that the bonds, if any, executed by the petitioner and his sureties be cancelled.

1907
BENI
BHUSHAN
ROY
v.
EMPEROR.

Rule absolute.

E. H. M.