

CRIMINAL REVISION.

Before Mr. Justice Mitra and Mr. Justice Fletcher.

ABINASH CHANDRA BHATTACHARJEE

v.

EMPEROR.*

1907

Aug. 6.

Confiscation—Forfeiture—Sedition—Printing Press—Instrument used for the commission of offence—Disposal of Property—Criminal Procedure Code (Act V of 1898), s. 517—Penal Code (Act XLV of 1860), ss. 62, 124A.

The first part of section 517 of the Criminal Procedure Code refers to cases of offences relating to property or documents, *e.g.*, where the Court directs, as in cases of theft or criminal misappropriation or offences of a similar description, that the property stolen or misappropriated be restored to its owner.

The words "which has been used for the commission of any offence" refer to cases of the same nature, *i.e.* to instruments like guns or swords produced in Court. A printing press cannot be said to have been used for the commission of sedition, inasmuch as the offence consists in the publication, and not the printing, the press being only a remote instrument.

CRIMINAL RULE.

The petitioner, Abinash Chandra Bhattacharjee, was the proprietor of a printing press called the "Sadhana Press" located at No. 176-2, Bow Bazar Street. One Bhupendra Nath Dutt, the editor of a weekly Bengali newspaper named the "*Yugantar*," was convicted on the 24th July 1907 by the Chief Presidency Magistrate under s. 124A of the Penal Code, in respect of two seditious articles published in its issue of the 16th June preceding, and sentenced to rigorous imprisonment for one year. The Magistrate further passed the following order: "It having been proved that the Sadhana Press has been used for the commission of the offence, it is ordered that the press be confiscated."

On the 26th July the petitioner filed an application alleging that he was the proprietor of the said press, and praying for a

*Criminal Revision No. 894 of 1907, against the orders passed by D. Kingarū, Chief Presidency Magistrate of Calcutta, dated July 24 and 29, 1907.

reconsideration of the order of the 24th of July. The Magistrate, after hearing the application, passed an order on the 29th July as follows:—"Police to take possession of the property, pending orders of the Appellate Court." In pursuance of this order, the Police took possession of the press on the next day.

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In his petition to the High Court, the petitioner further alleged that the issue of the 16th June, which formed the subject of the prosecution of Bhupendra Nath Dutt, was not printed at his press, but at the Keshab Press, the printer and proprietor of which were, in connection with the printing of the said issue, convicted under Act XXV of 1867, and that the blocks from which the seditious articles had been printed were seized and detained by the Police.

The petitioner then obtained the present Rule on the following grounds:—(i) that the Sadhana Press was not used for the commission of the offence of which the said Bhupendra Nath Dutt was convicted; (ii) that the said orders of the 24th and 29th July did not come within the scope of s. 517 of the Criminal Procedure Code; (iii) that the Magistrate in ordering the confiscation of the press had exceeded his jurisdiction; and (iv) that the order of the 24th July could not be passed without notice to the petitioner.

Mr. A. Chaudhuri (Babu Narendra Nath Sett with him), for the petitioner. Sections 62, 121, 122, 126 and 127 of the Penal Code provide for forfeiture of property, but s. 124A does not contain any such provision. Section 517 of the Criminal Procedure Code empowers the Magistrate to make orders as to the disposal of property used for the commission of an offence, but does not justify confiscation. It is too remote to suggest that a press is an instrument for the commission of sedition. If a seditious meeting is held on the *maidan*, the Magistrate cannot confiscate the land. Section 124A of the Penal Code makes the person who brings about hatred or contempt liable, but not the press.

The Officiating Standing Counsel (Mr. Gregory) for the Crown. The words "or which has been used for the commission of any offence" in cl. (1) of s. 517 of the Criminal Procedure Code refer to any instrument used towards the commission of an offence. If a press is necessary for the issue of printed sedition, it can fairly

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be argued that it is used for the commission of the offence. In the case of printed libel the press is an essential thing, and is, therefore, used for the commission of the offence.

[FLETCHER J. referred to *Jarip Gazi v. Emperor* (1).]

MITRA AND FLETCHER, JJ. This is a Rule calling on the Chief Presidency Magistrate of Calcutta to show cause why his order, dated the 24th July last, directing that the Sadhana Printing Press be confiscated, should not be set aside on grounds Nos. 1, 2, 3 and 4 taken in the petition before us.

One Bhupendra Nath Dutt was prosecuted under section 124A of the Indian Penal Code for the publication, in the issue of the newspaper called *Yugantar* of the 16th June 1907, of matters which, it was alleged, attempted to excite disaffection towards the Government of India. He was convicted on the 24th July, and was sentenced to rigorous imprisonment for one year. The Sadhana Printing Press which, it was alleged, was used for the purpose of the publication of the *Yugantar* of the 16th June, was also directed by the said Magistrate to be confiscated. On the 26th July, an application was made to the Chief Presidency Magistrate by the present petitioner for an order directing that the execution of the order of the 24th July for confiscation might be suspended on the grounds that the press belonged to him and not to Bhupendra Nath Dutt, and that it was not used for the publication of the *Yugantar* of the 16th June. Thereupon, the possession of the Press was directed to be taken by the Police pending the orders of this Court.

The present application has been made on the grounds—*first*, that the order was made without any notice to the petitioner, and without any evidence showing that the *Yugantar* newspaper of the 16th June was printed in his press; and, *second*, that the Magistrate had no jurisdiction under section 517 of the Code of Criminal Procedure to direct a confiscation.

The allegations of fact made in the sworn petition now before us have not been traversed by any counter-affidavit, and we

should deal with the case on the footing that the petitioner is the proprietor of the Sadhana Printing Press, and it was not used for the publication of the *Yugantar* of the 16th June. The evidence recorded in the case against Bhupendra Nath, in which the petitioner was not a party, is not of much value.

Without, however, entering into facts and upon the ground of want of notice, we are of opinion that the order for confiscation is erroneous.

An order for confiscation of property can be made under certain sections of the Indian Penal Code. Section 62 of that Code deals with forfeiture of property or forfeiture of the rents and profits of moveable or immoveable property in respect of offenders punishable with death, transportation or imprisonment. It says:—“Whenever any person shall be convicted of any offence for which he shall be transported or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that the rents and profits of all his moveable and immoveable estate during the period of his transportation or imprisonment, shall be forfeited to Government.” In the present case, the accused Bhupendra Nath was convicted and imprisoned for one year only, and section 62 has, therefore, no application.

Confiscation of property may be ordered when a conviction takes place either under section 121 or section 122 of the Penal Code, but there is nothing in section 124A which authorises a Magistrate to confiscate the property of an accused.

Section 517 of the Code of Criminal Procedure, which is relied on by Mr. Gregory on behalf of the Crown, refers to the disposal of any property or any document which is produced before the Court, or in the custody of the Court, or regarding which any offence appears to have been committed. The last words of the section may give some scope to the contention of Mr. Gregory, namely, the words: “which has been used for the commission of any offence.” The first part of the section appears to us, however, to have reference to cases of offences relating to property or relating to documents, *e.g.*, where the Court directs, as in cases of theft or criminal misappropriation or offences of similar description, that the property which is stolen or misappropriated be restored to its owner. The last words of

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the section must refer to cases of the same nature, *i.e.*, to instruments like guns or swords produced in Court. The Magistrate has under section 517 power to give directions as to disposal of property or instruments produced in Court, and not direct a forfeiture.

The Explanation to section 517 says that the term "property" in sub-section (1) of section 517 "includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise." The reference is obviously to property stolen or appropriated by criminal misappropriation or breach of trust, or offences of the same kind.

We are also of opinion that the press could not be said to have been used for the commission of the offence in the same way as a gun, a sword or a dagger. The offence was publication and not printing, and the press is a remote instrument. We accordingly set aside the order of the Chief Presidency Magistrate complained of, so far as they affect the present petitioner, and direct that the press be restored to him.

Rule absolute.

M. H. M.