Before Mr. Justice Caspersz and Mr. Justice Chitty.

APURBA KRISHNA BOSE
v.
EMPEROR.*

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Nov. 12.

Sedition—Government authority for prosecution—Sufficiency of authority—Complaint—Regularity of proceedings—Criminal Procedure Code (Act V of 1898) ss. 4(h), 196, 200—Presumption of regularity of official acts—Evidence Act (I of 1872) s. 114—Re-publication of seditious articles—Penal Code (Act XLV of 1860) ss. 124A, 499, Exception (4)—Printer, liability of—Act XXV of 1867, s. 7.

Orders under s. 196 of the Criminal Procedure Code should be expressed with, sufficient particularity and with strict adherence to the language of the section. But the real question in such cases is whether the prosecution was instituted under the authority of Government.

An order purported to accord sanction to prosecute the editor, manager and the printer of a newspaper under s. 124A of the Indian Penal Code without specifying their names, and containing a misdescription of the seditious article. A police officer received it from the Commissioner of Police, and under his directions applied for and obtained warrants from the Chief Presidency Magistrate against the accused. He was examined by the Magistrate, but not on oath, and his deposition was not recorded. On the day of the trial the same police officer filed an amended order under s. 196 of the Criminal Procedure Code correcting the error in the name of the article in the previous orders:

Held, (i) that the prosecution was regularly instituted.

Queen-Empress v. *Bal Gangadhar Tilak*(1) referred to.

Kali Kinkar Sett v. *Nritya Gopal Roy*(2) and *Reg.* v. *Judd*(3) distinguished.

(ii) that the order under s. 196 of the Criminal Procedure Code was not a "complaint" within s. 4(h), but that the application of the police officer for warrants in respect of an offence under s. 124A of the Indian Penal Code, coupled with his oral allegations, though not made on oath nor recorded, amounted to a "complaint."

Queen-Empress v. *Sham Lall*(4) followed.

(iii) That the presumption under s. 114 of the Evidence Act supplied any omissions either as to the method of the communication of the order to the prosecuting officer, or in the order-sheet of the Magistrate.

(iv) That the article in question was incompatible with the continuance of the Government established by law, and was seditious. It is the duty of every citizen

* Criminal Revision No. 1176 of 1907 against the order of D. H. Kingsford, Chief Presidency Magistrate of Calcutta, dated Sept. 23, 1907.

(1) (1897) I. L. R. 22 Bom. 112.
(2) (1904) I. L. R. 32 Calc. 469.
(3) (1888) 37 W. R. 143.
(4) (1887) I. L. R. 14 Calc. 707.

to support the Government established by law, and to express with moderation any disapprobation he may feel of its acts and measures.

(v) That the re-publication of seditious articles from another newspaper, one of which only was filed as an exhibit by the prosecution and used in the case against the editor of that paper on his trial for sedition, was not a report of the proceedings of a Court of justice, and was not justifiable under the circumstances.

(vi) That the presumption contained in s. 7 of Act XXV of 1867, in the absence of evidence to the contrary, rendered the printer liable for seditious matters published in his paper.

The petitioner was the printer of the "*Bande Mataram*," a daily newspaper published in Calcutta. He was put on trial before the Chief Presidency Magistrate, with the alleged editor and the manager of the paper, for having published in the town edition of the 27th June 1907 and the *dák* edition of the next day an unsigned letter addressed to the editor entitled "Politics for Indians," the material portions of which were as follows:—

"Methinks the time is approaching when the world will refuse to believe that the same race of Englishmen were instrumental in the abolition of the slave trade . . . . Mr. Morley has said that we cannot work the machinery of our Government for a week if England generously walks out of our country. While this supposition is not conceivable, did it not strike Mr. Morley that if, instead of walking out, the English were by force driven out of India, the Government will go on perhaps better than before, for the simple reason that the exercise of power and organization necessary to drive out so organized an enemy will, in the struggle that would ensue, teach us to manage our own affairs sufficiently well? The Government is fast becoming a Government of the evil genii, "oppressive as the most oppressive form of barbarian despotism," yet strong with all the strength of organization and the sinews of war, if not with all the strength of civilization. It was the same evil genii which a year ago tried the trick of decoying school-boys as a warning to refrain from the practice of boycott. It was the same evil genii who destroyed Hindu images and ravished Hindu women at Jamalpur and Mymensingh to strike terror into the hearts of those who advocated the use of country-made goods. It was the same evil genii who are now terrorizing the advocates engaged in defending the accused at Rawalpindi . . . . The spectacle of a merchant sovereign is so demoralising, so opposed to all oriental notions of sovereignty, and so subversive of justice, the scales of which the sovereign is expected to hold evenly between the merchant and the non-merchant, between the white and the black, that it is high time for the Indian Government . . . . to calmly look on the heavy exports of grain from the country, exposing the children of the soil to an eternal state of chronic starvation. We have heard of the Mahomedan mandate of the sword or the *Koran*. Perhaps some day the *fiat* will go out that British goods or the sword are the only two alternatives between which we have got to choose."

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The three accused were also charged with having re-produced in the issue of the 26th July 1907 of the same paper the official translations of certain seditious articles which had originally appeared in the "*Jugantar*." This re-publication was headed "The *Jugantar* case. The articles on which action was taken." It appeared that translations of all the seditious articles which had appeared in the "*Jugantar*" made by the Bengali Translator to Government for the prosecution of the editor had been given to the defence pleader, but the prosecution only elected to proceed on one of the articles which alone was exhibited in the case.

By a notification, dated the 3rd June 1907, which appeared in the *Gazette of India* of the 8th June 1907, at p. 443, the Viceroy-in-Council empowered Local Governments to institute proceedings for sedition, in consultation with their legal advisers, in all cases where the law had been wilfully infringed.

On the 30th July 1907 two orders under s. 196 of the Criminal Procedure Code were issued in these terms:—

"The sanction of Government is hereby accorded to the prosecution, under s. 124A of the I. P. C., of the editor of the "*Bande Mataram*" newspaper, for publishing in the *dák* edition of the 28th June a letter entitled "India for the Indians" the contents of which are seditious.

E. A. GAIT,
Chief Secy. to the Govt. of Bengal.

"The sanction of Government is hereby accorded to the prosecution, under s. 124A of the I. P. C., of the editor of the "*Bande Mataram*" for re-publishing in his issue of the 26th July certain seditious articles that originally appeared in the "*Jugantar*," and for one of which (the dispelling of fear) the editor of that paper has been already prosecuted and convicted.

E. A. GAIT,
Chief Secy. to the Govt. of Bengal."

On the same day Superintendent Ellis, of the Detective Department, applied to the Chief Presidency Magistrate for a warrant against the alleged editor of the "*Bande Mataram*," Arabindo Ghose, under the verbal directions of the Commissioner of Police, in these terms:—

"Emperor *v.* Arabindo Ghose.

In the above case I beg to apply for a warrant of arrest against the accused above-named, charged under s. 124A of the Indian Penal Code.

The 30th July 1907.

M. B. ELLIS,
Superintendent, C. C. I. D."

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On the 6th August sanctions were granted against the manager and the printer of the "*Bande Mataram*" in the same terms as in the case of the editor, as set out above, and related to the same publications, and Superintendent Ellis made an application to the Chief Presidency Magistrate, on the 17th instant, against them as follows:—

"King-Emperor *v.* (1) Arabindo Ghose, (2) Hemendro Prosad Bagchi, (3) Apurbo Kumar Bose.

Charges under s. 124A of the Indian Penal Code.

(1) Printing and publishing in the "*Bande Mataram*" of 28th June last an article headed "India for the Indians."

(2) Printing and publishing in the "*Bande Mataram*" of 26th July last certain seditions articles which originally appeared in the "*Jugantar.*"

Prays for warrants of arrest against Nos. 2 and 3 on the above charges. Government sanctions enclosed.

(Sd.) M. B. ELLIS,
Superintendent, C. C. I. D."

Warrants were granted against the three accused on the 30th July and 17th August, respectively, as applied for. It appears that Superintendent Ellis was examined by the Magistrate on both occasions, but not on oath, and his depositions were not recorded.

The case against the accused was taken up on the 26th August, when an amended Government sanction, dated the 23rd instant, was filed by Superintendent Ellis; the previous sanctions of the 30th July and 6th August having misdescribed the article as "India for Indians" instead of "Politics for Indians." It was as follows:—

"Government of Bengal.

The sanction of Government is hereby accorded to the prosecution, under s. 124A of the I. P. C. of the editor, manager, printer and publisher of the "*Bande Mataram,*" newspaper, for the publication of an article entitled "Politics for Indians" in the *dák* edition of the 28th June, and the corresponding town edition.

Copy forwarded to the Commissioner of Police, Calcutta, for information and guidance.

E. A. GAIT,
Offg. Secy. to the Govt. of Bengal."

Bengal Government Camp,
The 23rd August 1907.

The trial against the accused then proceeded, and ended on the 23rd September in the acquittal of the editor and the

manager, and the conviction of the petitioner who was sentenced to three months' rigorous imprisonment. He then moved the High Court and obtained the present Rule, the grounds of which are set forth in the judgment of the High Court.

Mr. A. N. Chaudhuri, (*Babu Nagendra Kumar Bose* and *Babu Monmotho Mukerjee* with him), for the petitioner. The sanctions under s. 196 of the Code are bad as being vague and indefinite: *Queen-Empress* v. *Bal Gangadhar Tilak*(1). The name of the authorized complainant should have been mentioned in it. There is nothing to show that Superintendent Ellis had authority to complain: see *Baperam Surma* v. *Gouri Nath Dutt*(2). The accused should have been named: *Reg.* v. *Judd*(3). Then sanction was originally given in respect of the article entitled: "India for Indians," and not for "Politics for Indians," which was the subject of the charge. The sanction should have been signed by the Lieutenant-Governor. There was no complaint by Ellis, but only an application for a warrant. The order or sanction under s. 196 is not a complaint. There is nothing to show that Superintendent Ellis was examined as required by law. There is no evidence of his authority to complain: see *Kali Kinkar Sett* v. *Nritya Gopal Roy*(4). These arguments apply to grounds Nos. 1—3 of the Rule. As to the fourth ground, the bad sanctions could not be validated afterwards. The next ground is already covered by my arguments. As to the sixth ground, the article is not seditious. Then the re-publication is justified by Exception (4) to s. 499 of the Penal Code. The last grounds are that the printer was imperfectly acquainted with English, and that he is not liable as a mere printer.

Mr. Bagram (instructed by *Mr. Hume*), for the Crown. The order is not defective. Section 196 does not contemplate a *sanction* as s. 195 does. The only question is whether the orders in the case amounted to a giving of authority to complain within the terms of s. 196. If the Court is satisfied that it was, nothing more is required. The signature of the Lieutenant-Governor is not necessary, nor need the accused be named: see s. 195(4),

(1) (1897) I. L. R. 22 Bom. 112.
(2) (1892) I. L. R. 20 Calc. 474, 475.
(3) (1838) 37 W. R. 143.
(4) (1904) I. L. R. 32 Calc. 469.

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and the definition of "complaint," which shows that it can be brought even against an unknown person. The section does not require the name of the complainant to be specified. The case of *Kali Kinkar Sett* v. *Nritya Gopal Roy*(1) is distinguishable. The application of Superintendent Ellis for warrants, coupled with his oral allegations and the orders of Government, constitute a complaint: *Queen-Empress* v. *Sham Lall*(2), *Jogendra Nath Mookerjee* v. *Emperor*(3). The mere fact of the examination of the complainant not being recorded, does not show that there was no examination. The omission to examine the complainant is only an irregularity: *Queen-Empress* v. *Monu*(4). The description in the first orders of the seditious article as "India for Indians" did not prejudice the accused, as he knew which article was meant. The signature of the Chief Secretary to the Government of Bengal raises a presumption that the authority of the Lieutenant-Governor was given: see s. 114 of the Evidence Act. The section does not require the authority to be in writing or in any particular form, or to be signed by any particular person or to be addressed to any particular complainant; nor does it require a description of the seditious article. As to the re-productions from the *Jugantar*, s. 499 of the Indian Penal Code relates to defamation, but not to sedition. Section 7 of Act XXV of 1867 makes the printer *prima facie* liable for everything in the paper. He has not discharged the *onus* imposed on him under the section.

CASPERSZ AND CHITTY, JJ. This is a Rule calling on the Chief Presidency Magistrate, Calcutta, to show cause why the conviction and sentence passed on the petitioner should not be set aside. The learned Judges who granted the Rule did not restrict its operation in any way. We are, therefore, in a position to deal with all the grounds upon which the petitioner based his application; and, in view both of the importance and the connection, one with another, of the questions raised for our consideration, the course adopted has been the most convenient one.

(1) (1904) I. L. R. 32 Calc. 469.
(2) (1887) I. L. R. 14 Calc. 707, 716.
(3) (1905) I. L. R. 33 Calc. 1.
(4) (1888) I. L. R. 11 Mad. 443.

The petitioner, Apurba Krishna Bose, was the printer of a daily newspaper called the "*Bande Mataram*" published in Calcutta, and he was recorded as such under the provisions of the Printing Presses and Newspapers Act (XXV of 1867). He was arrested on a warrant issued by the Chief Presidency Magistrate on the allegation that he had committed the offence of sedition punishable by section 124A of the Indian Penal Code. The following paragraphs of the application recite the facts which are not in controversy :—

"That your petitioner was put upon his trial before the Chief Presidency Magistrate of Calcutta, along with the alleged editor and the manager of the paper, for having published in the town edition of the 27th June 1907, and the corresponding *dâk* edition, of the "*Bande Mataram*" a letter headed "Politics for Indians," and a copy of the official Translator's translation of the articles for which the editor of the "*Jugantar*," a weekly paper, had been found guilty of sedition and convicted under section 124A.

"That at the trial three notes purporting to be signed by the Chief Secretary to the Government of Bengal were put in, so far as regards your petitioner, as the sanction for his prosecution. True copies of these are herewith attached and marked A, B and C.

"That evidence was gone into, and eventually, on the 23rd September 1907, the learned Chief Presidency Magistrate delivered his judgment acquitting the alleged editor and manager, but convicting your petitioner under section 124A of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for three months."

The further particulars, so far as they need be mentioned, and as we gather them from the record, are these. The earlier sanctions of the Government of Bengal, bearing date the 6th August 1907, were filed in the Court of the Chief Presidency Magistrate on the 17th *idem* by Superintendent Ellis, of the Detective Department, who applied for a warrant of arrest against the printer, by name Apurba Krishna Bose, of the "*Bande Mataram*," on a two-fold charge of sedition, namely, for printing an article headed "India for the Indians," and for re-printing certain seditious articles which originally appeared in another newspaper called

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the "*Jugantar*," and in respect of one of which articles the editor of the "*Jugantar*" had been already convicted. In pursuance of the warrant issued the petitioner was arrested on the 21st August, and the trial began on the 26th. The accused were charged on the 4th September, and the petitioner was convicted on the 23rd. Meanwhile, on the 26th August, the description of the article "India for the Indians" had been corrected to "Politics for Indians," by means of a third sanction of the Government of Bengal filed on that date. All the sanctions were forwarded through the Commissioner of Police, Calcutta, for whose "information and guidance" they were sent by Mr. E. A. Gait, Officiating Chief Secretary to the Government of Bengal, the officer who had signed the sanctions. The wording of these three sanctions is :—"The sanction of Government is hereby accorded to the prosecution under section 124A of the Indian Penal Code of the . . . . Printer . . . . . of the "*Bande Mataram*" newspaper," and so forth. No name was inserted in any of the sanctions, but this omission was supplied by Superintendent Ellis on his application for warrants dated the 17th August. In his deposition, given on the 26th August, Superintendent Ellis said :—"This, shown to me, is the body warrant for the arrest of the accused Apurba. On the 18th August, I endorsed it for execution to Inspector Lahiri. Applications for both these warrants were made after receipt of sanction, and on or about the 17th August." The Superintendent had previously said that he had received the sanctions signed by the Chief Secretary to the Government of Bengal. He also stated in cross-examination :—"I am in charge of this case. I am acting under the directions of the Commissioner of Police. I received verbal instructions from the Commissioner of Police, but no written instructions. I obtained a body warrant. The application for warrant contained no statements, nor did I make any verbal statement on oath. I proceeded against Apurba on the basis of the declaration made by him. I knew of that declaration when I applied for the warrant. I believe, however, that there was some additional evidence known to the Police."

On these facts, the learned counsel for the petitioner has advanced ten contentions, with which we shall deal *seriatim*.

It is first urged that the trial of the petitioner was wholly bad, as there was no proper sanction for his prosecution as required by section 196 of the Criminal Procedure Code.

Section 196 of the Code enacts that "no Court shall take cognizance of any offence punishable under Chapter VI of the Indian Penal Code (except section 127), or punishable under section 108A, or section 153A, or section 294A, or section 505 of the same Code, unless upon complaint made by order of, or under authority from, the Governor-General in Council, the Local Government, or some officer empowered by the Governor-General in Council in this behalf." The section does not use the word *sanction*. It contemplates a complaint made by order of, or under authority from, the Local Government. The Code differentiates between sanctions and complaints, as, for example, in section 195. The so-called sanctions signed by Mr. Gait were not expressed in exact language, but we do not think that the prosecution of the petitioner was bad for want of proper sanction. He was duly proceeded against, if the provisions of section 196 were substantially complied with.

The section was construed by the Bombay High Court in *Queen-Empress* v. *Bal Gangadhar Tilak* (1). In that case the sanction, to use the convenient word, was expressed in general terms, and did not even specify the seditious articles. Nevertheless, the Court held that "the effect of no such specification being made is to give him (complainant) the widest latitude in selecting the matter to be complained of." We entirely agree with Strachey, J., that orders under section 196 should be expressed with sufficient particularity and, we may add, with strict adherence to the language of the section. But the real question in such a case is whether the prosecution was instituted under the authority of Government. To quote the judgment of the Full Bench, "There is no special mode laid down in the Code whereby the order or sanction of Government is to be conveyed to the officer who puts the law in motion. In this case the prosecution was conducted by the Government solicitor. It was instituted by the Oriental translator to Government, and he produced the written

(1) (1897) I. L. R. 22 Bom. 112.

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order of Government to institute the complaint." The prosecution of the petitioner was, *mutatis mutandis*, even more regular than the prosecution of Tilak.

But the learned counsel has called our attention to a decision of Pratt and Handley JJ., in the case of *Kali Kinkar Sett* v. *Nritya Gopal Roy* (1), where a Division Bench of this Court ruled that a Presidency Magistrate is not excused by section 200, clause (*b*), of the Criminal Procedure Code, from the necessity of placing on record the necessary evidence of the actual complainant's authority as delegated by the person to whom sanction was actually granted to prosecute certain persons under section 193 of the Indian Penal Code. We think that case is clearly distinguishable from the present, because in the absence of proof of delegation the actual complainant had no *locus standi*, and his complaint might have been negatived by the real complainant coming forward and exercising his own discretion not to proceed in the matter. No such considerations can affect the present case. We may notice in this connection the English case of *Regina* v. *Judd* (2). The learned counsel has argued, on the authority of the observations of Lord Colerdge, C.J., that the petitioner's name should have been mentioned and specified by Government, and that the *fiat*, or order, or sanction initiating his prosecution being defective, in that it merely described him as the printer of the "*Bande Mataram*," the conviction of the petitioner should be quashed. We think it sufficient to say that *Regina* v. *Judd*(2) proceeded on a construction of the English Newspaper Libel Act, and that the law we administer in this country is contained in the Code of Criminal Procedure. We have to construe section 196 of that Code, the terms of which are very different from the English Statute. The petitioner here was indicated from the first. His name was supplied when it was required, *i.e.*, at the commencement of the Police Court proceedings.

The next contention is that the sanctions or notes by Mr. Gait were not really "complaints" within the meaning of section 4(*h*) of the Code. With this we entirely agree. The sanctions were the order or authority by which the prosecution

(1) (1904) I. L. R. 32 Calc. 469. (2) (1888) 37 W. R. 143.

was started. The complaint, if any, was made by Superintendent Ellis. The definition of "complaint" is "the allegation made orally or in writing to a Magistrate, with view to his taking action." Now, the petitioner himself has admitted in the second paragraph of his application that he was arrested "on the *allegation* that he had committed an offence under section 124A., I. P. C." The facts which we have recited in the earlier part of this judgment can bear no other construction than that Superintendent Ellis made oral allegations against the petitioner. It was not necessary that those allegations should be on oath, or that they should be reduced to writing. We desire to affirm the rule laid down in *Queen-Empress* v. *Sham Lall*(1) where an application by a complainant to have his witnesses summoned and the case tried was regarded as a "complaint." The same rule has been followed in later decisions of this Court. We, therefore, think that the application of Superintendent Ellis, coupled with his oral allegations, though the latter were not on oath, nor reduced to writing, amounted to a "complaint" within the meaning of section 196.

It was argued that because there is no record of Superintendent Ellis' examination, he must be taken to have not been examined. It is, however, clear, from the proceedings and Superintendent Ellis' subsequent examination in Court, that he was examined by the Magistrate at the time that he applied for the warrant, though that examination was not upon oath.

In this connection we should notice a subsidiary argument of the learned Counsel. He urges that the sanction of Government was sanction given in the abstract which, to use the words of Pigot and Hill, JJ., in *Bayeram Surma* v. *Gouri Nath Dutt*(2), "may float about the world like a bit of thistledown until it comes in contact with some possible prosecutor." But can it be said that Mr. Gait dispersed these sanctions in empty air, and that Superintendent Ellis intercepted them and used them for prosecuting the printer of the "*Bande Mataram*"? Can it be said that the Commissioner of Police and the Standing Counsel to the Government of India abetted an unwarrantable and illegal action

(1) (1887) I. L. R. 14 Calc. 707. (2) (1892) I. L. R. 20 Calc. 474.

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on the part of Superintendent Ellis? We think not. It must be presumed that all official acts have been regularly performed, and the presumption of section 114 of the Indian Evidence Act amply supplies any omission, either as to the method of communication of the sanction to Superintendent Ellis, or in the order sheet of the Chief Presidency Magistrate. Moreover, the facts stated by the petitioner in his own application clearly indicate that he was put upon his trial in consequence of the sanctions granted by Government.

There is another subsidiary contention on this part of the case, and that is that the Lieutenant-Governor should have *personally* igned the sanctions under section 196. The contention appears to us puerile. Although the expression "Local Government" means the Lieutenant-Governor, the Head of the Executive Government must necessarily, and ordinarily does, act and communicate his orders through his accredited and gazetted officers.

It is contended, thirdly, that even if Mr. Gait's notes or sanctions be held to be "complaints," the Magistrate should have examined the complainant (Mr. Gait or Superintendent Ellis) as required by law, before issuing process against the petitioner. The argument must fail by reason of the observations we have already made. We do not regard these sanctions as "complaints;" they merely authorized Superintendent Ellis to make the complaint which we have found that he did make.

The fourth contention is that Exhibits 3 and 4 were wrongly considered to be supplementary complaints, and that the petitioner could not be properly tried on them after they had been placed before the Court. This contention refers to the correction of the name of the article headed "Politics for Indians." The first citation of the article, viz., "India for the Indians," was merely a misdescription. There was no such article in the "*Bande Mataram*" of the date indicated, but there was an article, or letter, headed "Politics for Indians," and the trial commenced, proceeded, and ended in respect of that article. The petitioner was in no way prejudiced, as he knew what case he had to meet. The defect, if any, is cured by the provisions of section 537 of the Criminal Procedure Code.

The next ground taken is that the Magistrate acted illegally in proceeding with the trial of the petitioner when he found that there was no authority for proceeding with the trial. As to this, we do not desire to add anything to what we have already said, because, in our opinion, there was no real irregularity depriving the Chief Presidency Magistrate of his jurisdiction over the petitioner.

We pass now to a consideration of the sixth plea that the article "Politics for Indians" is not in any way seditious. We have read that article with attention and, we may say, with indulgence, and we find it impossible to regard it otherwise than as seditious. The definition of sedition given in section 124A of the Indian Penal Code contemplates *hatred* or *contempt* or *disaffection* towards His Majesty or the Government established by law in British India, and this apart from any intention of the offender. The article is in the form of an unsigned letter, but it does not appear in the correspondence columns. There is no heading or foot-note that the editor does not accept responsibility for the opinions expressed in the letter. The comments in the letter are incompatible with the continuance of the Government established by law. Reading the article, as we have read it, for the first time, we think the comments on the slave trade, the evil genii, and the alternatives of British goods or the sword, and the reference to His Majesty, the King-Emperor, and the tone, generally, of the production, are not within the Explanations to section 124A. Such writings are calculated to bring the Government into hatred and contempt. It may be said that these are words of emotional exaggeration. It may be said that "Politics for Indians" was based on imperfect telegraphic intelligence. But the duty of every citizen is to support the Government established by law, and to express with moderation any disapprobation he may feel of the acts and measures of that Government. If the article were near the line demarcating legitimate comment from seditious utterance, we might feel disposed to give the petitioner the benefit of the doubt, but in our opinion no such reasonable doubt exists.

The seventh contention refers to the re-printing of the official translations of the "*Jugantar*" articles, and it is urged the

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re-publication was one made *bonâ fide* of the proceedings of a Court of Justice. The protection afforded by the fourth Exception to section 499 of the Indian Penal Code is invoked. That Exception provides that it is not defamation to publish a substantially true report of the proceedings of a Court of Justice. But did the "*Jugantar*" articles form part of the proceedings of a Court of Justice? They did not. The conviction for sedition in the "*Jugantar*" case was based on one article only. The prosecution intended to rely in support of their case upon other articles published in that paper. These other articles were translated and communicated to the accused for his sole benefit. They were, however, never used, and were never brought upon, or formed part of the record in the "*Jugantar*" case. There was, therefore, no excuse for the wholesale publication in the "*Bande Mataram*" of these translations, and the head-note is inaccurate and misleading. The publication cannot, therefore, be justified on the ground put forward by the petitioner. It was not, indeed it could not be, contended that these articles were not seditious. In a question of this kind we have to take into consideration the state of the contry and the object with which the re-publication was made. It is admitted that the country was at the time in a state of unrest. That being so, it was mischievous to add fuel to the flame of disquiet. There is no reason to believe, and we have not been told, that the "*Jugantar*" articles were communicated to the readers of "*Bnde Mataram*" for any useful or proper purpose. The communication of seditious articles to another, and possibly larger, and certainly more educated, class of readers tended to increase and continue the mischief which had been checked by the criminal prosecution of the "*Jugantar*." The dissemination of temptation is not excusable on any principle with which we are conversant.

The eighth contention is that the petitioner is imperfectly acquainted with the English language, and that he merely acted under orders. We shall consider this matter when we come to the question of sentence.

Ninthly, it is argued that the petitioner merely subscribed to the declaration required by the Printing Presses and Newspapers Act (XXV of 1867), and that, in the absence of evidence to show

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that he was cognizant of what he was printing and publishing, he cannot be liable for the publication of the "*Bande Mataram.*" This contention cannot prevail in view of the legal presumption embodied in section 7 of the Act, and in the absence of any evidence to the contrary. The learned counsel has called our attention to the diversity of the provisions contained in Act XXV of 1867, and we are disposed to agree with him that forty years ago it was never anticipated that a mere printer would be punished, with the aid of the Act, for the publication of seditious matter. It is unfortunate that the person or persons really responsible for these seditious utterances remain undetected. But our duty is to apply the law. It may be observed that if, in consequence of the post of printer being found to be a dangerous or invidious one, the real authors of sedition are unable to get their writings printed, the present law will indirectly succeed in checking sedition, though it is evident that if the law cannot also reach the more guilty persons, it should be, and we have little doubt that it will be, amended.

Lastly, on the question of sentence, we pointed out to Mr. Chaudhuri that section 124A provides the punishment of transportation for life or imprisonment for three years with fine. We agree with him that the petitioner should not be severely punished, but we cannot regard a sentence of three months' imprisonment as other than lenient. To reduce it any further would destroy the responsibility and the salutary dread of punishment which should be inculcated. The Rule is discharged.

Rule discharged.

E. H. M.