

APPELLATE CRIMINAL.

Before Mr. Justice Harington and Mr. Justice Mookerjee
and Mr. Justice Teunon.

1910

Aug. 17.

SARAT CHANDRA MITRA

v.

EMPEROR.*

Printing Press, forfeiture of—“Newspaper,” definition of—Paper not containing periodically public news or comments thereon—Onus of proof of character of the paper—Formal proof of newspaper and offending matter—“Incitement” to murder and acts of violence—Use of seditious language—Newspapers (Incitement to Offences) Act (VII of 1908) ss. 2 (1), (b), 3—Power of third Judge on difference of opinion between Judges of the Court of Appeal, to deal with the whole case against an accused Criminal Procedure Code (Act V of 1898) s. 429.

The definition of a “newspaper” in s. 2 (1) (b) of Act VII of 1908 must be read as a whole. It refers to a work which publishes periodically public news or comments thereon. It is not enough to take a single issue of it, and to pick out an isolated sentence or a paragraph therein which might by stretch of language be interpreted to contain public news or comments thereon.

When it is disputed whether a work is a “newspaper” the prosecution ought to establish its alleged character by proof of the contents of more than one issue.

To bring a case under s. 3 (1) of the Act the character of the offending paper as a “newspaper” has to be first established, and this may not always be possible by the production and proof of the contents of one issue only.

In a proceeding under s. 3 of the Act the newspaper and the offending matter must be regularly proved. In such cases it is essential that the proceedings should be regularly conducted and the forms of law observed.

Section 3 (1) of the Act confers very limited powers of forfeiture and applies only to the cases of presses used for the printing of newspapers which contain an incitement to the particular crimes or classes of crimes specified therein.

The word “incitement” clearly implies the idea of rousing to action, instigation or stimulation. The use of seditious language, sufficient to bring the case under s. 124 A of the Penal Code, is not equivalent to

* Criminal Appeal, No. 121 of 1910, against the order of R. C. Hamilton, District Magistrate of Khulna, dated Jan. 25, 1910.

an incitement to offences mentioned in s. 3 (1) of Act VII of 1908. A thinly veiled glorification of rebellion implying a desire on the part of the writer that there should be a successful rebellion, though it may amount to sedition under s. 124 A of the Penal Code, is not sufficient to bring the case within s. 3 (1) of the Act. There must be something more direct and specific for that purpose.

In the case of two prisoners, regarding the guilt of one of whom only the Judges of the Appellate Court are divided in opinion, it may be that what has to be laid before another Judge is the case of such prisoner alone. But where they are equally divided as to the guilt of one accused, though in certain aspects they may be agreed, the whole case as regards the accused is laid before the third Judge, and not merely the point or points on which there is a difference of opinion, and it is his duty to consider all the points involved before delivering his opinion upon the case.

THE appellant, Sarat Chandra Mitra, was the proprietor of the Pallichitra Press at Khulna at which was printed and published a vernacular monthly magazine called the *Pallichitra*. In its issue of Assar 1316 B.S. (June-July 1909) there appeared a poem entitled *Esbo Ma Pallirani*, purporting to have been composed by one Nagendra Nath Chandra, a translation of which will be found in the judgment of Mookerjee J. On the 20th December 1909 the Superintendent of Police at Khulna, acting under the written authority of the Local Government, applied for, and obtained from, the District Magistrate of Khulna, a conditional order of forfeiture of the Pallichitra press, under s. 3 (1) of Act VII of 1908, on the ground that the same had been used to print the above issue of the *Pallichitra* containing the poem referred to, certain portions of which were alleged to amount to an incitement to murder and acts of violence. The appellant appeared before the District Magistrate and showed cause. The Magistrate after taking evidence made the order absolute on the 25th January 1910. The appellant thereupon filed the present appeal against the said order under s. 5 of Act VII of 1908.

The case first came on for hearing before Harington and Teunon JJ., and their Lordships delivered the following dissentient judgments:—

HARINGTON J. This is an appeal against an order made for the forfeiture of a printing press under Act VII of 1908.

1910
 SARAT
 CHANDRA
 MITRA
 v.
 EMPEROR.

1910

SARAT
CHANDRA
MITRAv.
EMPEROR.HARRINGTON
J.

Three points are taken in appeal: (i) that the *Pallichitra* is not a "newspaper" under Act VII of 1908; (ii) that the poem is not proved; (iii) that it does not contain any incitement to the crimes mentioned in section 3 of the Act.

As to the first point, a "newspaper" is defined under the Act as meaning any periodical work containing public news or comments on public news.

The *Pallichitra* is shewn to be a periodical work. The issue before us contains some items of news as for example a report of the Khulna District Conference. It also reports as an item of news that a pleader, Srijukta Jamini Chatterji, received Rs. 200 from his employers which he handed over to the Conference. The *Pallichitra* clearly then comes within the definition of a "newspaper."

The next point that the *Pallichitra* was not proved at the hearing was not taken in the grounds when cause was shewn against the conditional order, and, moreover, the paper appears to have been duly proved.

The other point is more substantial. Section 3 of the Act provides that a Magistrate may make a conditional order forfeiting the press used or to be used in printing any newspaper containing "any incitement to murder or to any offence under the Explosive Substances Act, 1908, or to any act of violence," and the question is whether this article contains any such incitement.

The article is a poem, and the poem depicts in allegory India under the domination of the English who are portrayed as evil: it glorifies a rising against the ruling power by force and a destruction of the power of the British who are represented as demons. No doubt, if such a state of affairs came about, most probably murder, acts of violence, and perhaps offences against the Explosives Act, would ensue. But, nevertheless, I do not think that a poem expressing a glorification of a rebellion, or even a desire that there should be a rebellion and that it should be successful, is enough. It is calculated no doubt to excite feelings of hatred and disaffection, and to rouse in the minds of its readers a desire for revolution. But it does not in

my opinion go so far as to amount to "an incitement to murder, or to any offence under the Explosives Act, or to any act of violence." There must be something more direct and specific than what is to be found in this allegorical poem.

No doubt, the poem falls within the provisions of section 124 A, and if the Legislature had enacted that printing presses used for the production of seditious literature might be forfeited, the order of forfeiture would have been most properly made; but the law as enacted gives very limited powers of forfeiture, and only enables presses to be forfeited where they are used for the printing of newspapers which contain an incitement to particular crimes, or to a particular class of crimes.

In my view such an incitement of this nature is not to be found in the poem in question. In my opinion, therefore, the appeal should be allowed, and the order for forfeiture set aside.

TEUNON J. In this appeal I have had the advantage of reading the judgment just delivered by my learned brother, and, as on the first and second points taken in the appeal, I am in entire agreement with him, it is needless to add anything to what he has said on that part of the case.

The third contention urged on behalf of the appellant is that the article on which the Magistrate's order of forfeiture is based contains no incitement to murder or to any act of violence within the meaning of section 3 of Act VII of 1908.

The portion of that section material to the question before us runs thus:—"In cases where a Magistrate is of opinion that a newspaper contains any incitement to murder or to any offence under the Explosive Substances Act, 1908, or to any act of violence," such Magistrate may make an order in the terms of the section. Obviously this section does not extend to many writings which would fall within the scope of section 124A of the Indian Penal Code as tending to excite feelings of enmity and contempt towards the King or towards Government as by law established, but in construing the section it is to be borne in mind that it is to be read with the General Clauses Act (X of 1897), which in section 13 provides, *inter*

1910
 SARAT
 CHANDRA
 MITRA
 v.
 EMPEROR.
 HARRINGTON
 J.

1910
 SARAT
 CHANDRA
 MITRA
 v.
 EMPEROR.
 TEUNON
 J.

aliâ, that words in the singular shall include the plural and *vice versa*.

Now the article under consideration is an allegorical poem entitled "Come Mother, Queen of the village" which appeared in the Assar number of the *Pallichitra* newspaper. The interpretation to be placed upon the poem has been the subject of full discussion before us both in this appeal and also in the appeal of the editor of the newspaper, one Bidhu Bhusan Bose, against his conviction under section 124 A of the Indian Penal Code in respect of the same poem. At the instance of the parties the two appeals were heard at one and the same time, and, for the reasons set out in our judgment in the appeal of the editor, we have come to the conclusion that the poem is an allegorical representation of India under British rule, and that in his references to the "crown," "the golden seat," "flames of fire," "weapons," "destruction of the power of the demons" and "oblations of blood" the writer desires to glorify a rising against the dominant power, and calls upon his countrymen, who are represented as at present steeped in cowardice, to arise and destroy those in whose hands the power now is by force and bloodshed. In other words, in my opinion, the poem in effect excites to armed rebellion and mutiny and, therefore, contains incitement to all the many acts of violence that necessarily accompany an attempt by force of arms to overthrow a strong established Government. Further, the writer, in fact, exhorts his readers to shed the blood of the present rulers of India, and of all who may seek to oppose them in their endeavour by use of force to substitute an Indian for the existing British Government.

With all deference to the opinion of my learned brother, the law does not, in my opinion, require anything more specific than this, and to hold that the incitement must be a direct incitement to some more defined, or some isolated act of violence, is in my opinion to limit the scope of the section and the usefulness of the Act in a manner not warranted by the language used. I should, therefore, dismiss this appeal.

Owing to this difference of opinion between their Lordships, the case was referred, under s. 429 of the Criminal Procedure Code, by his Lordship the Chief Justice to Mr. Justice Mookerjee.

1910
 SARAT
 CHANDRA
 MITRA
 v.
 EMPEROR.

Babu Narendra Kumar Bose and Babu Sachindra Prasad Bose, for the Appellant.

The Deputy Legal Remembrancer (Mr. Orr), and *Babu Atulya Charan Bose*, for the Crown.

MOOKERJEE J. This is an appeal under section 5 of the Newspapers (Incitement to Offences) Act of 1908, against an order absolute for forfeiture made under section 3, sub-section (5) of that Act. The appeal was heard in the first instance by my learned brothers Harington and Teunon, who have differed in opinion. My learned brother Harington is of opinion that the order for forfeiture must be set aside, while my learned brother Teunon is of opinion that the order for forfeiture should be maintained. The case has, therefore, been laid before me under section 429 of the Criminal Procedure Code read with section 9 of Act VII of 1908.

The circumstances under which the order absolute for forfeiture was made by the Court below are set out in the opinions recorded by my learned brothers, and need not be recapitulated at full length. It is sufficient to state that the order has been made on the ground that the *Pallichitra* is a "newspaper" within the meaning of the Newspapers (Incitement to Offences) Act of 1908, and that in the issue of it for Assar 1316 was published a poem "*Esho ma palli rani*" (এস মা পল্লী রানী) which contains an incitement to murder or to an offence under the Explosive Substances Act, 1908, or an act of violence. The legality of the order of forfeiture has been questioned before me upon three grounds, namely, *first*, that the *Pallichitra* is now a "newspaper" within the meaning of the Newspapers (Incitements to Offences) Act, 1908; *secondly*, that the poem has not been duly proved; and, *thirdly*, that it does not contain any incitement to the crimes mentioned in section 3 sub-section (1) of Act VII of 1908.

1910
 SARAT
 CHANDRA
 MITRA
 v.
 EMPEROR.
 ———
 MOOKERJEE
 J.

In so far as the first of these points is concerned, my learned brothers Harington and Teunon have held in concurrence with the Original Court that the *Pallichitra* is a "newspaper" within the meaning of the Act. After anxious consideration of the matter, I am constrained to adopt the view that the *Pallichitra* is not a "newspaper" within the meaning of the Act. Before I deal with the question, however, it is desirable to point out that the matter is open to discussion upon this reference under section 429 of the Criminal Procedure Code. That section provides that when the Judges composing the Court of Appeal are equally divided in opinion, the case with their opinion thereon shall be laid before another Judge of the same Court, and such Judge after such hearing, if any, as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion. Two points are worthy of note in connection with this section: *first*, that what is laid before another Judge is the "case," and, *secondly*, that the judgment or order follows the opinion delivered by such Judge. I am not now concerned with the question of the trial of two prisoners with regard to one of whom the Judges composing the Court of Appeal may be agreed in their opinion, while as regards the other the Judges may be equally divided in opinion. In such a contingency it is quite possible to maintain the view that, upon a reasonable interpretation of the term "case," what has to be laid before another Judge is the case of the prisoner as to whom the Judges are equally divided in opinion. I am now concerned only with the contingency in which the Judges of the Court of Appeal are equally divided in opinion upon the question of the guilt of one accused person, though upon certain aspects of the case they may be agreed in their view. In such a contingency, what is laid before another Judge, is, not the point or points upon which the Judges are equally divided in opinion, but the "case." This obviously means that, so far as the particular accused is concerned, the whole case is laid before the third Judge, and it is his duty to consider all the points involved, before he delivers his opinion upon the case. The judgment or order follows such opinion

which need not necessarily be the opinion of the majority of the three Judges; for instance, at the original bearing of the appeal, one Judge may consider the prisoner not guilty, another Judge may consider him guilty under one section of the Indian Penal Code, and liable to be punished in a certain way; the third Judge may find him guilty under a different section and pass such sentence as he thinks fit. It is this last opinion which prevails, subject to the provisions of section 377 of the Criminal Procedure Code in the case of confirmation of sentences of death. The question, therefore, whether the *Pallichitra* is or is not a "newspaper" within the meaning of the Act, is one of the matters which I am bound to take into consideration. Now the term "newspaper" is defined in section 2, sub-section (1), clause (b) of Act VII of 1908, to mean "any periodical work containing public news or comments on public news." This definition, therefore, involves two elements, one of time of publication, the other of subject-matter: in other words, the term "newspaper," as defined in the Act, involves the idea of periodicity, as also the fact that what is contained in the paper is public news or comment thereon. The definition, in my opinion, ought to be read as whole, and in order to determine the true character of a publication and to enable us to answer whether it is a "newspaper" within the meaning of the Act or not, we must ascertain whether the work is periodically published and contains public news or comments thereon. It is not enough to take a single number and to pick out an isolated sentence or paragraph therein which may, by stretch of language, be interpreted to contain public news or comment thereon. In some cases, the character of a paper may be so manifest as to make it incontestable that it periodically publishes public news or comments thereon, and is consequently a "newspaper" within the meaning of the Act. The case before me is, however, of an entirely different description. The *Pallichitra* is obviously a monthly magazine and critical review, but it is sought to be brought within the definition of "newspaper" because, in one particular issue of it, sentences or paragraphs are to be found, which may by some stretch of

1910
 SARAT
 CHANDRA
 MITRA
 C.
 EMPEROR.
 MOOKERJEE
 J.

1910
 SARAT
 CHANDRA
 MITRA
 v.
 EMPEROR.
 ———
 MOOKERJEE
 J.

language be deemed to contain news. In my opinion, when it was disputed that the *Pallichitra* was not a "newspaper," the prosecution ought to have established its alleged character by proof of the contents of more than one issue of the paper. In other words, to bring a case under sub-section (1) of section 3 of Act VII of 1908, the character of the offending paper, as a "newspaper," has to be first established, and this obviously may not always be possible by production and proof of the contents of one issue only. It is conceivable that the matter complained of may be contained in an issue of what is unquestionably a "newspaper" (that is, which periodically publishes news or comments on news), though that particular issue may not contain any item of news: the converse case is equally possible in which objectionable matter is contained in what is obviously not a "newspaper" and the mere fact that in that particular issue an isolated sentence or paragraph may be found which may be interpreted to contain public news or comments thereon does not make the publication a "newspaper." I feel no doubt whatever upon the materials on the record that it is a misuse of language to say that the *Pallichitra* is a "newspaper" within the meaning of Act VII of 1908. One might as well take an issue of the "Nineteenth Century" or the "Contemporary Review," pick out a solitary passage or paragraph which may be interpreted to contain public news or comment thereon, and then maintain the position that the periodical is a "newspaper." The case before me manifestly discloses an attempt to extend the operation of the provisions of the Act to cases of papers to which they were never intended to be applied by the Legislature, in so far as such intention may be gathered from the language used in the statute. The first ground urged on behalf of the appellant must consequently prevail.

In so far as the second ground urged on behalf of the appellant is concerned, it may, in one sense, be treated as unsubstantial as the point does not appear to have been taken when cause was shown against the conditional order. But I may observe that the case does appear to have been conducted

in the Original Court with a certain amount of laxity, and the poem as also the paper were not regularly proved as they ought to have been. In cases of this description, it is essential that the proceedings should be regularly conducted and the requirements of the law ought not to be ignored as idle forms. It is not necessary, however, to deal further with this aspect of the case, as the order of forfeiture must be set aside on other grounds.

In so far as the third ground argued on behalf of the appellant is concerned, it raises the question whether the poem contains any incitement to murder or to an offence under the Explosive Substances Act, or to an act of violence. The poem has been translated by one of the officers of this Court as follows:

“Come, Oh Mother Queen of the Village, the day is drawing its full length to a close. Let the children rise up with bounding hearts, hearing thy great voice. I have sacrificed my life to take away the crown of victory from the enemy’s brow, and decorate thee, thou Queen of Queens with it in the battle of life.” “Led by mistaken ideas, and tormented by passion, I did not perceive and could not feel at heart when (thy) golden seat disappeared.”

“Now the charming calls come pervading all through Bharat (India), and in the new light I see thee at the entrance of the “Temple of Heart.”

“Under the stamp of Asur’s (Gods’ adversaries) feet there are no Parijat flowers in the Nandan Gardens, and in the garb of a beggar, Indrani (the Queen of the Heavens) is sorely suffering in the inmost recess of her heart.”

“The Suras (Gods) who have conquered death see all this before them, and like cowards shut up their eyes for hatred and shame. O Mother, I do not know when for the swadesh the Gods will rise up in a body, and burning with rage as fierce as the world destroying fire kill the force of their adversaries, and relying on their own strength, and taking up their own arms, re-establish the throne of the Heavens by offering drinks of blood to the manes.”

1910
 SARAT
 CHANDRA
 MITRA
 v.
 EMPEROR.
 —
 MOOKERJEE
 J.

1910

SARAT
CHANDRA
MITRAv.
EMPEROR.MOOKERJEE
J.

“The six passions have, like the adversaries of Gods, come mastering over my heart and taken their seats at the (very) entrance to drown the Temple of Heart into the abyss of sin.”

“But what fear has he whose mother is the giver of redemption. For if she be enshrined at heart, all shackles withdraw.”

“Allured by passions and repressed by mistaken ideas, I so long remained forgetful; and when, O Mother, you came and found (my) heart shut against thee, you went away slighted. This stinging pain of bondage, more due to that sin, is burning in my heart. Is it after seeing this that you are calling us to dispel the intoxicating influence of mistaken ideas (over the heart.)”

“Hearing thy calls and benedictions, and getting a new life, I have come with my heart to offer it as a sacrifice for your worship. I have brought my heart to install thee in it. So Mother, Queen of the Village, come and accept my heart for your seat, tinged as it is with blood.”

There has been some discussion at the Bar as to the true meaning of the poem. On behalf of the appellant it has been contended, that it is an allegorical representation of the struggle between town life and country life; while on behalf of the Crown it has been urged that it is an allegorical representation of India under British rule. That the poem, interpreted literally, makes no sense in many places is obvious to any reader of the original. I think it indisputable that it has a metaphorical meaning, and that it is intended by an innuendo to describe what the author deems to be the condition of India under British rule. But the question which I have now to consider is not whether it justifies a conviction under section 124A of the Indian Penal Code, but whether it contains an incitement to the offences mentioned in section 3, sub-section (1) of Act VII of 1908. I have carefully read the poem, and I am unable to hold that it contains any such incitement. The passage upon which reliance has been principally placed on behalf of the Crown is that in which the writer states that

he does not know when the Gods will rise up in a body, and, burning with rage as fierce as the world-destroying fire, kill the force of their adversaries and re-establish the throne of the heavens by offering drinks of blood to the manes. It may be assumed that this embodies a thinly veiled glorification of rebellion, and implies a desire on the part of the writer that there should be a successful rebellion. But this is clearly not sufficient to bring the case within sub-section (1) of section 3. I agree with my learned brother Harington that there must be something more direct and specific than what is to be found in this allegorical poem to sustain an order absolute under the statute. The expression "incitement" clearly implies the idea of rousing to action, instigation or stimulation, and as the Act expressly states, the incitement must be to murder or to an offence under the Explosive Substances Act or to an act of violence. If the use of seditious language, sufficient to bring a case under section 124A of the Indian Penal Code, was equivalent to an incitement to the offences mentioned in section 3, subsection (1) of Act VII of 1908, the Legislature might appropriately have framed the section in very different terms. In my opinion, section 3, sub-section (1) as framed, confers very limited powers of forfeiture, and I agree with my learned brother Harington that it is applicable only to the cases of presses used for the printing of newspapers which contain incitements to the particular crimes or classes of crimes specifically mentioned in that section. The third ground urged on behalf of the appellants must, therefore, prevail.

The result is that, in concurrence with my learned brother Harington, I hold that the appeal must be allowed and the order for forfeiture set aside.

Appeal allowed.

E. H. M.

1910
 SARAT
 CHANDRA
 MITRA
 C.
 EMPEROR.
 MOOKERJEE
 J.