

# CALCUTTA HIGH COURT

Satyendra Nath Mazumdar

Vs

Emperor

(Graham, J.)

14.07.1930

## JUDGMENT

### **Graham, J.**

1. In this case a rule was issued calling upon the Chief Presidency Magistrate of Calcutta to show cause why his order convicting the petitioner under Section 124-A, I. P.C. upon each of three charges framed thereunder and sentencing him to six months' rigorous imprisonment upon each charge (to run concurrently) should not be set aside upon certain grounds set out in the petition to this Court.

2. The facts may be briefly stated: The petitioner Satyendra Nath Mazumdar is the editor, printer and publisher of a daily newspaper published in Calcutta in the Bengali language known as the Ananda Bazar Patrika. This paper it appears has been in the habit of publishing every year at the end of December when Congresses and various conferences take place a special issue containing a review of the events of the past year, a description of places of interest where the Congress meets and a review of the history of the growth of the Indian National Congress and similar movements.

3. On the 29th December last this special Congress edition was published and on the 31st of that month the issue was forfeited by an order of the Government of Bengal under Section 99-A, Criminal P.C. duly published in a Gazette Extraordinary of that date on the ground that it contained seditious matter. Thereafter the petitioner was arrested under Section 124-A, I. P.C. and was placed on 'his trial before the Chief Presidency Magistrate in respect of the three articles which are entitled.

(1) Bharater Mukti Sadhana or "Freedom Movements in India."

(2) Jalianwallabagh.

(3) Batsarer Hisab Nikash or "Review of the Year." The learned Chief Presidency Magistrate found that each of these articles brought the accused under Section 124-A, and

convicted and sentenced him as stated.

4. The accused then moved this Court and obtained the present rule. The main grounds taken in the petition are:

1. That the learned Chief Presidency Magistrate erred in his interpretation of the articles.
2. That it ought to have been held that the petitioner had no seditious intention in publishing the articles.
3. That the learned Chief Presidency Magistrate ought to have found that the first Article is a mere chronicle of past events; the second, a narrative of the excesses committed by General Dyer personally and the third nothing more than a review or recapitulation of the political events of the past year.

5. Mr. Talukdar for the petitioner argued the case on those lines. He contended that it must be clearly established that the intention of the petitioner was to create hatred and disaffection, that so far from that being the case there is not a word in the articles to show that the crimes committed by revolutionaries were extolled and that on the contrary on a fair and reasonable construction of the articles it ought to have been held that nothing was further from the mind of the author than to excite disaffection in the minds of his readers.

6. The responsibility of the petitioner for the articles was not questioned when the matter was argued before us.

7. For the Crown on the other hand it was urged that the only possible con-elusion to be derived from a perusal of the articles is that the object in view was to excite hatred, contempt and disaffection against the Government. Before entering upon a discussion of the question at issue reference may be briefly made to the section and to the principles which are generally applied in such cases for the purpose of ascertaining intention. The material portion of the section reads as follows: Whosoever by words either spoken or written or by sign or by visible representation or otherwise brings or attempts to bring into hatred or contempt, or excites, or attempts to excite disaffection towards His Majesty, or the Government established by law in British India shall be punished" etc.

8. The language of the section might perhaps be deemed to give rise to some doubt whether as it stands the offence is independent of any intention and that view was formerly taken by the Chief Court of the Punjab [Re. *Ram Nath*<sup>1</sup>] but it is now well settled that intention is essential and that in fact the essence of the crime of sedition consists in the intention with which the language is used. in the well-known case of *Bal Gangadhar Tilah*<sup>2</sup> Strachey, J., elaborately discussed the circumstances which should be taken into account in judging the intention of the accused. In his charge to the jury he said inter alia: You will thus see that the whole question is one of the intention of the accused in publishing these articles. Did they intend to excite in the minds of

their readers feelings of disaffection or enmity to the Government . . . or did they intend to excite no feeling adverse either to Government or its measures but only to excite interest in a poem about Shivaji, and in an historical discussion about his alleged killing of a Mahomedan General?... There are various ways in which you must approach the question of intention. You must gather the intention as best you can from the language of the articles. What is the intention which the articles convey to your minds? In considering this you must first ask yourselves what would be the natural and probable effect reading such articles in the mind of the readers of the Kesari to whom they were addressed. Read these articles and ask yourselves how the ordinary readers of the Kesari would probably feel when reading them. Would the feeling produced be one of hatred the Government or would it be simply one of interest in a poem and an historical discussion about Shivaji and Afzal Khan and so forth? If you think that the only feelings which such readers would be excited to are feelings of interest in a poem or an historical or ethical discussion then you may presume that that is all the accused intended to excite. If you think that such readers would naturally and probably be excited to entertain feelings of enmity to the Government then you will be justified in presuming that the accused tended to excite feelings of enmity or disaffection.

9. The learned Judge then went on to point out that a person is presumed to intend the natural and ordinary consequences of his acts, and he cannot be allowed to excuse himself by saying that he did not, when publishing, intend that these consequences should ensue. Further he impressed upon the jury, and this I think has some importance in the present case also, that they must bear in mind the time, place, and circumstances, and the occasion of publication.

10. Another learned Judge, Jenkins, C. J., observed in the case of *Queen-Emperess v. Luxman Narayan Joshi*<sup>3</sup>.

To determine whether the intention of the accused was to call into being hostile feelings, the rule that a man must be taken to intend the natural and reasonable consequences of his act must be applied; so that if on reading through the articles the reasonable and natural and probable effect on the minds of those to whom they are addressed appears to be that feelings of hatred, contempt, or disaffection would be excited towards the Government, then it is justifiable to say that the articles are written with that intent, and that they are an attempt to create the feelings against which the law seeks to provide.

11. The Judicial Committee of the Privy Council also have laid down that in] judging of the question of intent, the publisher must be deemed to intend that which is the natural result of the words having regard, among other things, to the character and description of that part of the public who are expected to read the words. *Annie Besant v. Advocate General of Madras*<sup>4</sup>

12. While however these decisions furnish the principle or test to be applied in order to ascertain intention, it is only right to bear in mind that the articles would be read not in any spirit of narrow

criticism, but in a fair, free and liberal spirit, and, if any doubt should arise in regard to the intention, the benefit of that doubt should be given to the accused.

13. Applying the principles or tests referred to above the question is whether upon a fair and reasonable construction of these three articles it should be held that the accused intended to excite feelings of hatred, contempt, or disaffection towards Government, or whether, as his learned advocate has argued, his object was merely to arouse interest in a historical retrospect of recent events without any ulterior seditious purpose.

14. Now this can only be ascertained by referring to the articles themselves. I will deal first with the article, entitled " Bharater Mukti Sadhana. " Certainly no fault can be found with the title of this article, the aspiration to freedom being a very natural and perfectly legitimate desire. Nor can any exception be taken to the article in so far as it merely sets forth in chronological sequence the various landmarks in India's struggle for independence. The writer has not however contented himself with a mere recapitulation of events, but has in places made comments which indicate that his purpose was not merely to appeal to the interest of his readers in a historical retrospect, but that he had the further object of inflaming opinion against the Government. For example he charges Government with oppression in connexion with the terrible outbreak of plague at Poona in 1897 and observes that the oppression of Government officers to check the plague was worse than the plague itself. In another passage he speaks of the insult of the partition of Bengal. He goes on to say that after the session of the Congress in 1906 Government determined to repress the national awakening by means of " persecution. " Then again many murders by revolutionaries have been referred to in such a manner and in such terms as to suggest that their exploits are held up to admiration and emulation, e. g., the bomb outrage at Mozufferpore, the murder of Narendra Goswami, and the incident of Jatindra Nath Mukherjee. Perhaps one of the most unjustifiable remarks is in connexion with the Hunter Commission which was appointed to enquire into the affair at Jalianwalabagh. The writer referring to "the hideous character of the ruthless massacre " observes: But Parliament supported this hideous incident without any compunction. " The fact however is and it is a matter of common knowledge, that Parliament so far from supporting it condemned General Dyer's action and punished him. No reference whatever is made to this. The learned advocate for the petitioner was constrained to admit that in this particular passage the writer had been hardly fair. That however is putting a very favourable construction upon it because what has been stated is something which is definitely untrue, and it is difficult to see what the object of that could be except to create feelings of hatred and disaffection.

15. It is a striking feature of these articles that they are consistently one sided, and that while they refer to only one side of the picture they studiously avoid mentioning anything which goes in favour of Government. Other instances of this are the reference to the partition of Bengal and the Rowlat Act. No mention is made of the fact that the partition of Bengal was afterwards annulled by the Repartition and that the Rowlat Act was repealed. These omissions seem to be due to

design rather than accident.

16. As Strachey, J., observed in Tilak's case in considering the question of intention the time, place and circumstances when the articles were published are of importance. It is a significant fact that these articles were published at a time when the National Congress was actually in session and when attention was focussed upon political events. I do not say that it was not a perfectly natural and legitimate proceeding to publish articles at such a time. What however was not permissible was to\* excite feelings of hatred and contempt against Government under the cloak of an historical review. Reading the first of these articles with every desire to be-fair to the accused and making every allowance for the free expression of political opinion, it seems to me that the writer has gone too far and that it is impossible to resist the conclusion that there was present in his mind that intention to excite hatred, contempt and disaffection towards Government which the section has declared to be an offence. I come next to the article entitled.. Jalianwallah Bagh. Mr. Talukdar for the petitioner argued; that it is merely a condemnation of General Dyer personally. If that were so it might fairly be\* contended that that could be no offence-seeing that General Dyer's action was afterwards condemned by Government itself. The question however still remains whether the accused has made use-of his the means a cloak for the purpose of exciting feelings of hatred and disaffection towards Government. We think it is clear from a perusal of the article that the accused had that intention. The article is entirely one sided and no allusion whatever is made to the fact that some of the incidents referred to were-condemned by Government. The most inexcusable feature of this article however is the manner in which the evidence' of a witness named Lala Giridhari Lal before the Hunter Commission has been imported bodily into it containing the most vivid and harrowing details of the incident as described by this witness-who was obviously a witness against General Dyer. Such a narrative was out of place in an article purporting to be an historical review and we think that the object in quoting this evidence in extenso in the comments which have-been made here and there throughout the article and the pictorial illustrations which accompany it was to excite feelings of hatred against the Government. The same object is manifest in the quotations from the evidence of: General Dyer himself. In this article also there is no reference to the fact that General Dyer's conduct was condemned by Government and that he was punished as a result of the enquiry made into his conduct. Lastly, there is the third article "Review of the Year". If it were no more than it purports to be there would be nothing to be said since no possible objection can be raised to a mere perusal of events. But it is not permissible under the pretext of a review to deal with events in such a manner as to make it plain that there was an ulterior object, viz. to stir up feelings of hatred, contempt and disaffection towards Government. We think that it is not possible to read this article without coming to the conclusion, that that intention was present in the mind of the accused. Government is charged with pursuing a policy of checking all movements by repression. Prominence is given to the bombs in the Assembly, the Meerut conspiracy case, and the Lahore conspiracy case and in connexion with the first of these the same method has been adopted as referred to above by introducing certain passages in extenso from those proceedings. This however is an even worse case because here we have a reproduction of

the statements of the accused in the bomb case. There could be no justification long after the event in reproducing those statements by criminals who were convicted and punished for their crime and we think the object in view can only have been to stir up ill feeling against the Government.

17. One of the grounds taken in the petition though it was not seriously pressed was that the articles ought each to be considered and dealt with separately and independently and that it was not permissible to treat them as corroborative of each other for the purpose of establishing their seditious intention. We do not think there is any substance in this contention. The same point arose in the case of *Emperor v. Phanindra Nath Mitter*<sup>5</sup> and it was there held that seditious articles published in the newspaper even though not forming the subject-matter of the charges on which the accused was being tried were admissible to show intention. If that is so it seems to follow a fortiori that articles published in the same paper and forming the subject matter of some of the charges are admissible for the purpose of proving intention.

18. The final ground taken on behalf of the petitioner was that the sentence is too severe but having regard to the serious nature of the offence which is punishable with a maximum penalty of transportation for life or with three years imprisonment and having regard to the deliberation with which the offence was repeated in three separate articles the concurrent sentence of six months rigorous imprisonment cannot in my judgment be held to be excessive.

19. In the result therefore the rule fails and must be discharged. The petitioner if he has been released on bail must surrender and serve out the remainder of his sentence.

**S.K. Ghose, J.**

20. I agree.

Cases Referred.

1[1905] 1. P.R. 1905

2[1897] 22 Bom 122

3[1900] 2 Bom. L.L. 286

4A.I.R. 1919 P.C. 31

5[1908] 35 Cal. 945