

RAJASTHAN HIGH COURT

Premi Khem Raj Sharma

Vs.

Chief Secretary

Misc. Appln No. 2 of 2005
(Nawal Kishore, C.J., Ranawat and Sharma, JJ.)

31.08.1950

JUDGMENT

Sharma, J

1. This is an appellant by Premi Khem Raj, Advocate the editor of 'Congress Ka Khuni Itihas', under Section 99B of the Criminal Procedure Code. The circumstances giving rise to it are as follows:

2. Premi Khemraj (who will hereinafter be referred to as the author in this Judgment) edited a booklet named 'Congress Ka Khuni Itihas' in the year 1946 and it was published by Hindu Pustak Bhandar, Jaipur, in December, 1946. The then Govt of Jaipur by its order No. 8984/MB, dated 9.7.1948, published in the Jaipur Gazette dated 1.8.1948, proscribed the said booklet as well as another booklet, 'Panjab Men Pakistani Gundashahi' edited by Gulab Chand Kala, which was also published by Hindu Pustak Bhandar, Jaipur. The order runs as follows :

'Congress Ka Khuni Itihas'

'Panjab Men Pakistani Gundashahi'

Jaipur, 9.7.1948.

Whereas the Govt. of Jaipur are satisfied that the circulation within the State of the marginally noted booklet is likely to be prejudicial to communal harmony and consequently to the maintenance of public peace and order in the State, and whereas the Govt. of Jaipur for the aforesaid consideration deem it necessary to prohibit the purchase, transfer, sale, or otherwise possession of the said booklet in the State, it is hereby ordered that under Section 99A, Criminal Procedure Code 1943, the purchase, transfer, sale or otherwise possession of the said booklet is banned with immediate effect in the Jaipur State territory, excluding

Sambhar Shamlat area."

3. The present application relates only to 'Congress Ka Khuni Itihas', and the author has prayed for the cancellation of the order of proscription relating to this booklet on the ground that there was no such matter in it as was likely to be prejudicial to the communal harmony and consequently to the maintenance of public peace and order in the State is apprehended by the Govt. of Jaipur. It was alleged the proscription was made in pursuance of the general all India wise policy of the Congress Govt. of suppressing all other political thoughts and thinking of the country except that of Congress and that too by the Congress men.

4. A notice was issued to the Chief Secretary to the Govt. of Jaipur and the said Govt. having been replaced by the Govt. of Rajasthan, the appellants has been contested by the present Govt. of Rajasthan.

5. It has been argued on behalf of the author in the first instance that the order of proscription is bad inasmuch as none of the conditions for proscription given under Section 99 A are mentioned therein, and the grounds of the Govt's opinion as required by Section 99 A (1) have also not been given. It has also been contended that the book merely records historical facts and it neither promotes nor was intended to promote feelings of enmity or hatred between different classes of His Majesty's subjects.

6. On behalf of the State the learned Govt. Advocate has argued that this Ct is not authorized under the present proceedings, to take into account the fact that the conditions given under Section 99 A are not specifically mentioned in the order of proscription or that the Govt. have not stated the grounds of their opinion therein. He has argued that the only grounds, on which this Ct can set aside the order of proscription, are given under Section 99 D which runs as follows:

"On receipt of the appellants, a Special Bench shall, if it is not satisfied that the issue of the newspaper or the book, or other document, in respect of which the appellants has been made, contained seditious or other matter of such a nature as is referred to in sub-sections (1) of Section 99 A, set aside the order of forfeiture."

7. It has been argued that the Ct shall be justified in setting aside the order of proscription only when it was not satisfied that the book contained such matters as are referred to in Section 99 A. These are seditious matters or any matter which promotes

or is intended to promote feelings of enmity or hatred between different classes of His Majesty's subjects, or which is deliberately and maliciously intended to outrage the religious feelings of any such class by insulting the religion or the religious beliefs of that class, that is to say, any matter, the publication of which is punishable under Section 124 A or Section 253 A or Section 295 A, Indian Penal Code. Reliance has been placed upon a ruling reported in '*Bajinath v. Emperor*',¹ in support of this view. It has further been argued that although the order is not couched in the exact language of Section 99 A. yet by the words, which are incorporated therein, it is clear that it promotes and is intended to promote feelings of enmity and hatred between the Hindus and Mohammadans.

8. Again on the merits we have been referred to 12 extracts from the book which find place on pp. 11, 15, 17, 20, 35, 42, 45, 58, 60, 63, 64 and 65 thereof. It has been argued that these extracts clearly promote and were intended to promote feelings of enmity or hatred between Hindus and Mohammadans.

9. Taking up the argument of the learned counsel for the author that the order is defective inasmuch as it does not contain such reasons for proscription which are given under Section 99 A, and does not state the grounds of the Govt's opinion, as laid down by Section 99 A, it can be said that the language employed is certainly not that which is required by the Section. It is also clear that no grounds of the Govt's opinion have been given in the order. However, on a careful reading of Sections 99 A to 99 G, it is clear that the only grounds on which this Ct can set aside the order of proscription, are those given in Section 99D. It was held by Mears, C.J. and Piggot and Mukerji, JJ., in the case '*Bajinath Kadia v. Emperor*',² cited by the learned Govt. Advocate that

"When an appellant is made to the H. C. under Section 99 B in respect of a document, the H. C. is precluded by Section 99 D from considering any other point than the question whether, in fact, the matters contained in the document were seditious or not and came within the mischief aimed at by Section 124 A."

It was held in that case that the absence of the grounds of the Govt's opinion, as required by Section 99A, does not entitle the H.C. to set aside the order of proscription. When Section 99 A and other connected sections were enacted in 1922, the only ground, on which a document could be proscribed, was that it contained

sedition matter and so the order of proscription in the case referred to was on the ground that the document in question contained seditious matter and the appellant for setting aside the order of proscription was made upon the ground that there was no seditious matter in the book and therefore their Lordships held that the only thing that they had to consider was whether the book contained such matter. Now the scope of Section 99 A has been enlarged by the amendments of 1926 and 1927 so as to include matters punishable under Sections 153 A and 295A, Indian Penal Code also. In the present case, the author has made the appellant on the ground that the booklet does not contain any seditious or other matter of such a nature as is referred to in sub-s (1) of Section 99A of Jaipur Criminal Procedure Code and this Bench is, therefore, entitled to set aside the order of proscription only if it is not satisfied that the booklet contains any such matter.

10. The learned counsel for the author cited '*Mohammad Ali v. Emperor*',³ in support of his argument that if the grounds of the Govt's opinion, as required by Section 99 A, are not given in the order of proscription, the order should be set aside. The ruling does not relate to Section 99 D, Criminal Procedure Code, as Sections 99 A, 99 B, 99 C, 99 D and other Sections up to 99G were not enacted when that decision was given, but were incorporated in the Criminal Procedure Code in the year 1922 by the Press Law Repeal and Amendment Act XIV (14) of 1922. The ruling relates to the provisions of the Press Act I (1) of 1910, wherein no provision similar to that of Section 99 D appears to have been made. But even in that case, the appellant for cancelling the order of proscription was not allowed on the technical ground of the absence of the grounds of the Govt's opinion, but was dismissed on merits. The ruling, therefore, does not help the author.

11. Coming to the merits of the case, I have read not only the extracts quoted by the learned Govt. Advocate, but the entire book, because isolated pieces, unless they are read in their contexts, cannot give a clear impression as to what feelings they were likely to create. The Book is divided into four parts or chapters. The first is instituted 'Congress Ka Khuni Itihas' (Bloody history of Congress), the second 'Hindu Janta Sarvanash' (Utter Destruction of Hindu Community) the third 'Hyderabad and Congress', and the fourth 'Shri Bhulabhai Ke Hatyare'. The first part gives the history of the Congress upto the non-co-operation movement started by Mahatma Gandhi in the year 1920. In the second part the author criticizes the language policy of the Hindustani Talimi Sangh of Wardha. In the third part he criticizes the Nizam Govt. of

Hyderabad and describes the atrocities against the Hindus which were being perpetrated under that regime. Towards the end he criticizes the Congress for not raising its little finger against the said regime and for not supporting the agitation going on against it, lest this action might be considered to be communal. In the fourth part he describes an interview of Dr. Khare with Sri Bhullabhai Desai some time before the latter's death and holds the Congress and Mahatma Gandhi responsible for his death by giving him acute mental agony. So far as the headings of these parts are concerned, it might be said that they by themselves do not promote any enmity or hatred in the minds of the Hindus against the Muslims, but in the first three parts the author has employed language in more than one place and has narrated such incidents that they cannot fail to incense the Hindus against the Muslims. It would not be proper for me to give a literal translation of the passages which create such feelings, and on which reliance has been placed by the learned Govt. Advocate to support the order of proscription. Suffice it to say that in criticising the Congress and Mahatma Gandhi in the language which is certainly very abusive and vilifying, the author has not hesitated to spit venom against the Muslims of India. In the first part the policy of Hindu Muslim Unity has been described to be a venomous tree planted by Mahatma Gandhi. It has been stated that as a result of that policy, although Hindus began to give shelter to the Muslims in their houses, the latter began to kidnap Hindu girls. The attitude of the Hindus towards Muslims has been contrasted with the attitude of the latter towards the former. Whereas, according to the author, the Hindus began to look upon the Muslims as their brothers, the latter began to make themselves their sons-in-law. A simple incident of the marriage of Mr. Asaf Ali with Sm. Aruna Gangoli has been described in the manner as to arouse the indignation of Hindu masses against the Muslims. The author proceeds to describe the Moplah rebellion of 1920 and in dealing with that event, long past and buried, he gives very harrowing details. Forcible conversion of thousands of Hindus and misbehavior of Muslims towards thousands of Hindu women have been alluded to. Mahatma Gandhi has been criticized for laying emphasis on Hindu Muslim unity in the face of such events. Again dealing with Hyderabad, the author has described many events in a way which cannot fail to create great hatred in the minds of the Hindus against the Muslims. Even the allegations about those matters in which the Hindu mind is greatly sensitive and which are likely to make the blood of an average Hindu boil have not been spared and have been brought out into relief on p. 45. The author has repeated the allegations against the Muslims of various places of misbehaving with Hindu women in more than one place, and has attempted to show that the Muslims as a whole were very undesirable persons.

He has not spared even the men like Maulana Abul Kalam Azad and Hakim Ajmal Khan from attacks. The booklet is very much like a drain Inspector's report, in which the worst sins, real or supposed, of certain Indian Muslims have been given great prominence and not a single good word has been said in favor of any member of that community. It is a cheap edition couched in a language which might easily be understood by Hindu masses, for whom it was presumably meant. The language which has been used and the events which have been narrated cannot fail to inflame such Hindu masses against Muslims.

12. The learned counsel for the author was fair enough to concede that certain portions of the booklet contained objectionable and abusive matter, but argued that the Govt. has not been able to show what untoward events followed the publication of the booklet, nor has it been able to show what was the condition obtaining in Jaipur at the time when the booklet was published or when it was proscribed. True, no evidence has been produced by either side to show what were the relations between the Hindus and the Muslims in Jaipur at either of these two times but it is not necessary to look for any external evidence when the words used are such as have a clear tendency to promote class hatred. It was further argued that it was not the intention of the author to create any feelings of enmity or hatred between the two communities. It was held in '*M. L. C. Gupta v. Emperor*',⁴ that the legislature contemplates that the words spoken or written, which do promote hatred etc., would create sufficient mischief so as to fall within the scope of Section 153 A, Penal Code and that it is not necessary for the prosecution further to establish that the writer had the intention to promote such hatred. Even if a question of intention were to arise, such intention must be gathered from the words spoken or written, and they themselves would be conclusive and it would not be necessary for the prosecution further to prove that such an intention was behind the use of such words. Similarly in '*Chamupati v. Emperor*',⁵ it was held that where the words naturally, clearly and indubitably have an intention to promote enmity between classes, it must be presumed that the writer intended the natural result of the words employed. It is immaterial whether the statements were supported by authority. In '*Emperor v. Kalicharan*',⁶ it was held that a violently abusive and obscene diatribe against the founder or prophet of a religion or against the system of a religion may amount to attempt to stir up enmity or hatred against persons who profess that religion. It did not matter that the statements in the book were supported by authority; in such a case the truth of the language could neither be pleaded nor proved.

13. The learned counsel for the author has further argued that the order of proscription can be maintained only if it was proved that its publication resulted in communal enmity or hatred between the two communities. The word, 'promote', however, means to further, to encourage, to advance, to excite and also to urge on, or incite another, as to strife. The only thing, therefore, that we have to see is whether the words used encourage hatred and enmity between two communities or excite one community against another. It is (not?) necessary to find that they actually brought about enmity and hatred between the two communities. It has been found above that several parts of the booklet are such as to encourage feelings of hatred and enmity between Hindus and Muslims, and incite the former against the latter.

14. From the wordings of Sections 99 B and 99 D, it is clear that the burden of proof that the words used by him did not promote enmity or hatred between two classes was upon the author. Support is lent to this view by ruling of Allahabad H.C. reported in '*M.L.C. Gupta v. Emperor*',⁷ The words being clearly such as to have a tendency to promote hatred and enmity between two classes, it was for the author to show what were the special circumstances obtaining at the time when the booklet was published or when it was forfeited which would take the sting out of the objectionable matter contained therein. He has, however, not made any attempt to put in any such evidence. Under these circumstances, it is difficult to hold that I am not satisfied that the words promote feelings of enmity or hatred between the Hindus and the Muslims.

15. It was finally argued that even the Govt. did not consider that the booklet contained any matter which created enmity or hatred between the two communities, and consequently used the words "prejudicial to communal harmony" in the order. It was contended that every matter which was prejudicial to communal harmony could not necessarily promote hatred and enmity between two communities. The relations between two individuals or communities may not be harmonious, yet there may not be enmity or hatred between them. It is true the words "promote or intended to promote enmity or hatred" do not find place in the order but the words "prejudicial to communal harmony and consequently to the maintenance of public peace or order" signify that the Govt. was conscious that the booklet contained matter which promoted feelings of enmity and hatred between the two communities. At any rate the words used in the order are not inconsistent with the words used in Section 99 A and when the Ct is satisfied on a perusal of the booklet that it contains matter which promotes enmity or hatred between the two communities the order of proscription cannot be set aside on the technical ground that the very words which are used in the section are not

used in the order.

16. On the day when the judgment was to be delivered the learned counsel for the author put in an appellant that Section 99 A was repugnant to Section 19, Constitution Ind which came into force on 26.1.1950, and therefore the order of proscription should be set aside. He was allowed to argue on this point as well and the learned Govt. Advocate was heard in reply. It was conceded by the learned counsel for the author that the order of proscription was made long before the Constitution came into force and Section 19 of the Constitution has no retrospective effect. The order was, therefore, perfectly valid when it was made, if the booklet promoted feelings of enmity between the Hindus and the Muslims. Under these circumstances, the order cannot be interfered with by virtue of Article 19, Constitution Ind.

17. The appln has no force and it is dismissed.

Ranawat, J.:- I Agree.

Nawal Kishore, C.J. :- I also agree.

Application dismissed.

Cases Referred.

1. AIR 1925 All 195: (26 Cr LJ 679 FB)
2. AIR 1925 All 195: (26 Cr LJ 679 FB)
3. AIR 1914 Cal 242: (14 Cr LJ 497 SB)
4. AIR 1936 All 314: (37 Cr LJ 599 SB)
5. AIR 1932 Lah 99: (34 Cr LJ 473 SB)
6. AIR 1925 All 195: (26 Cr LJ 679 FB)
7. AIR 1936 All 314: (37 Cr LJ 599 SB)