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(1927) 05 AHC CK 0037

Allahabad High Court

Case No: None

Kali Charan Sharma		APPELLANT
	Vs	
King-Emperor		RESPONDENT

Date of Decision: May 23, 1927

Hon'ble Judges: Dalal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Dalal, J.

This is an application by Pandit Kali Charan Sharma, author of a Hindi book entitled "Vichitra Jiwan" He was convicted by the District Magistrate of Agra of an offence u/s 153-A, I.P.C., and his appeal was dismissed by the Sessions Judge Agra. The sentence imposed on him is of one year''s rigorous imprisonment and a fine of Rs. 1,000, or six months'' further rigorous imprisonment in default. The ground of revision is that the District Magistrate shut out cross-examination of prosecution witnesses and the production of defence witnesses, and therefore the trial being in contravention of the mandatory provisions of Section 251, Criminal P. C., was void, and the conviction passed on such a trial untenable.

2. It so happened that after the evidence of twenty prosecution witnesses had been recorded in September 1926, the local Government prescribed the book u/s 99-A, Criminal P. C., on the 27th October 1926. The notification ran as follows:

In exercise of the powers conferred by Section 99-A, Criminal P. C., (No. 5 of 1898), as amended by Act No. 36 of 1926, the Governor in Council hereby declares to be forfeited to His Majesty all copies wherever found of the book in Hindi, or of its translation, entitled "Vichitra Jiwan" written by Pandit Kali Charan Sharma and published by Prem Pustakalaya, Phulatti Bazar, Agra, and all other copies or editions of, or extracts from, the same book wherever printed, inasmuch as the said book in the opinion of the local Government, contains matter the publication of which is punishable u/s 153-A, I. P. C.

3. The Pandit, instead of facing out his trial, adopted the shorter course u/s 99-B, Criminal P. C., as amended by Act No. 36 of 1926, which permitted any person having any interest in a book, in respect of which an order of forfeiture has been made u/s 99-A, to apply to the High Court to set aside such order on the ground that the issue of the book, in respect of which the order was made, did not contain any matter which promoted, or was intended to promote, feelings of enmity or hatred between different classes of His Majesty''s subjects. The meaning of the Hindi words "Vichitra Jiwan" is a peculiar topsyturvy or abnormal life." The very title suggests the life of a person who said one thing and did another, or did good or bad things at different times. In order to understand what effect a book of that nature whose contents were rightly advertised by its title would have on the minds of devout Mahomedans, it is sufficient to give the meaning of these words and to state that the life was that of the Prophet Mahommad who is considered to be a holy personage by the Mahomedans. At the applicant''s request the trial in the District Magistrate''s Court was stayed. The application u/s 99-B by the pandit was heard here by a bench of three honourable Judges: Walsh, Lindsay and Banerji, JJ. Vide Kali Charan Sharma Vs. Emperor, They definitely held, as they were bound to do in order to dismiss the application, that the book contained matter which promoted or was intended to promote feelings of enmity or hatred between different classes of His Majesty''s subjects.

4. The learned Counsel who argued this revision showed me a copy of a judgment of an honourable Judge of the Lahore High Court AIR 1927 Lah. 590 on a similar book "Rangila Rasul" (a gay prophet) issued in the Punjab. Possibly the judgment was cited as both books appeared to have been issued in prosecution of the same Hindi propaganda. With all respect to the learned Judge, I am not prepared to agree with the nice distinction he has drawn between a book which may hurt the feelings of Mahomedans and a book which may cause feelings of enmity or hatred between different classes of His Majesty''s subjects. Speaking for myself I look at such a matter not as a somewhat learned Judge of a High Court, but as a common or ordinary citizen of a town in India. I would place myself in the position of a Mahomedan who honours his prophet, and then consider what my feelings would be towards a Hindu who ridiculed that Prophet, not out of any eccentricity (some vichitra mind), but in the prosecution of a propaganda started by a class of persons who are not Mahomedans. In such a position from the hatred of the author I would, as an ordinary man, proceed to hatred of the class to which the author belonged and which instigated the author. There cannot be the slightest doubt that the writing such as that of the book before me which I am not going to analyze for fear of giving it further publicity will certainly promote feelings of enmity and hatred between Hindus and Mahomedans.

5. The matter, however, does not rest there. The question is whether the applicant had a fair trial, I do not agree with the learned Judge of the lower Court who held that the judgment of this Court, solemnly delivered by three learned Judges, who

had the same issue before them as the learned Sessions Judge, a presiding officer of an inferior Court had, was irrelevant. u/s 11, Evidence Act, facts not otherwise relevant are relevant if they are inconsistent with any fact in issue or relevant fact. The fact in issue here is whether the writing comes within the purview of Section 153-A, I. P.C., and the defence to it is inconsistent with the dismissal of the petition of the applicant by this Court. u/s 13 also the judgment of this Court may be admissible. The applicant claimed the right to distribute his books, and that right was denied by this Court on the ground that the book contained matter which promoted hatred between Hindus and Mahomedans.

6. Upon a closer examination, we must inquire whether the District Magistrate should go through the farce of recording evidence under a mandatory provision of the Criminal Procedure Code when he knows well that no Magistrate, Sessions Judge or a Judge of the High Court can hold on the matter in issue in the trial before him contrary to the definite opinion of a bench of three Judges of this Court. In my opinion, even in cases of mandatory provisions their application must vary according to the circumstances of the case. When Section 251 was recodified in 1898 the framers thereof had not in mind the subsequent provisions of Section 99-A, B, C, D, E, F and G, which were first enacted in 1922 by the Press Law Repeal and Amendment Act (14 of 1922) and subsequently extended in operation by Act 36 of 1926, Would it have been possible for any Magistrate to convict the pandit of the offence of which he has been convicted if the bench of this Court had granted his application under S 99-B and set aside the local Governments order of forfeiture, dated 27th October 1926? I am certain that no conviction would have been possible. When his application was dismissed he must suffer the penalty. Two, courses were open to him either the quick one u/s 99-B, or the slow and, spectacular one of a trial before the District Magistrate with lengthy cross-examination and a crowd of defence witnesses. He chose the shorter cut and in my opinion the District Magistrate was perfectly correct in shutting out all further evidence after the order of a bench was passed here. The applicant had a definite finding against him of the highest Court in the province presided over by three Judges, two of them being the most senior puisne Judges of this Court, Whatever the evidence may be on either side, no Court in this province would be able to decide otherwise, and, therefore, in my opinion all further evidence was rightly disallowed by the District Magistrate. It is true that the provisions of Section 251, Criminal P. C., have been violated but I have explained the necessity of such violation by amendments in the Code which were subsequent to the codification of Section 251.

7. There is a heavy sentence of fine and the local Government did not take prompt action. Whatever mischief the book was likely to do has been done. Under the circumstances I think there should be a substantial reduction in the sentence of imprisonment. I reduce the sentence of one year''s rigorous imprisonment to one of two months'' rigorous imprisonment but uphold the sentence of fine of Rs. 1,000 and the rigorous imprisonment for six months in default; otherwise the application

is dismissed.