

(1932) 06 CAL CK 0019

Calcutta High Court

Case No: None

In Re: Janasakti of Sylhet and
Others

APPELLANT

Vs

RESPONDENT

Date of Decision: June 2, 1932

Acts Referred:

- Press (Emergency Powers) Act, 1931 - Section 4(1), 7(3)

Citation: 138 Ind. Cas. 849

Hon'ble Judges: Rankin, C.J; Panckridge, J; Mitter, J

Bench: Full Bench

Judgement

Panckridge, J.

This is an application by one Bidhuranjan Chakravarti, the publisher of the "Janasakti" a Bengali Weekly Newspaper published in Sylhet, asking the court to set aside an order made by the Government of Assam on February 26th 1932, directing him to deposit a sum of Rs. 1,000 as security.

2. u/s 7(3) of the Indian Press (Emergency Powers) Act 1931 (Act XXIII of 1931) whenever it appears to the Local Government that a newspaper, in respect of which security under the provisions of the Act has not been required, contains any words, signs or visible representations of the nature described in Section 4, Sub-section (1), the Local Government may require the publisher to deposit security.

3. u/s 23(1) the publisher may apply to the High Court to set aside the order, and the High Court shall decide if the newspaper, in respect of which the order was made, did or did not contain any words, signs or visible representations of the nature described in Section 4 sub Section (1).

4. u/s 25(1) if it appears to the High Court that the words, signs or visible representations were not of such a nature it shall set aside the order.

5. The words in respect of which the order for security was made were published in the issue of the "Janasakti" of February 17th, 1932, and are as follows:

Find of Satyagrahis at Karimganj

On the 10th February last 10 satyagrahis went from Baser Bazar to Karimganj Congress Office. Within a few minutes of their arrival at the place, at about half past ten, the local Police Inspector, the officer in charge, one Assistant Police Sub-Inspector and 6 constables came up and declaring that they were under arrest led them out of the town to a place near Shahaghati bridge in the vicinity of village Batrachi and used lathis on them. On account of the lathi charge Satyagrahi Ambica Charan Sen became unconscious on the spot. All the others have received injuries. This news got circulated in the town in due course. The Pleaders and Muktears of the local Bar and many of the respectable people of the town together with Doctor Srijut Benode Behari Deb and Doctor Srijut Karunamey Gupta came to the place of occurrence and saw the unconscious Satyagrahi and the marks of assault on the other Satyagrahis who had been beaten. After a while the Police arrested 4 persons and took them to the Thana.

He who was unconscious is in the local Public Hospital as his condition is serious, he is somewhat better now. A list is given below of the Satyagrahis who were beaten and arrested.

(1) Sri Ambica Charan Sen became unconscious as a result of beating. (2) Bankim Chandra Dey was beaten (3) Biswaranjan Kar has marks of assault on the thigh and the hand and he was subsequently arrested by the police. (4) Karunamey Kar has marks of assault on the thigh and the hand. (5) Nirmal Chandra Kar was beaten and subsequently arrested by the Police. (6) Nishi Kanto Chakrabarty has got marks of assault at 5 places on the thigh and on the right hand. (7) Kamini Kumar Das was assaulted and was subsequently arrested by the Police. (8) Lokenath Das. He has got marks of assault below the waist and on the back. (9) Harendra Nath Das. He has got marks of assault on the back and the thigh. (10) Basanta Kumar Das was beaten and subsequently arrested by the Police. Those who had been arrested by the Police were taken to the Jail lock-up on the 11th February at 4 o'clock in the afternoon.

6. We have accordingly to decide whether these words are or are not of the nature described in Section 4 Sub-section.

7. That sub section has been temporarily amended by Section 63 of the Emergency Powers Ordinance 132 (Ordinance 11 of 1932), published in the Gazette of India of January 4th, 1932, read with Section 2 of the amending Ordinance 1932 (Ordinance VII of 1932), published in the Gazette of India of February 6th 1932.

8. The relevant portions of the sub-section as amended are as follows:

Any newspaper...containing...any words "...which tend, directly or indirectly.

(d) to bring into hatred or contempt His Majesty or the Government established by law in British India or the administration of justice in British India or any Indian Prince or Chief under the suzerainty of His Majesty, or any class or section of His Majesty's subjects in British India or to excite disaffection towards His Majesty or the said Government or any such Prince or Chief, or.

(h) to promote feelings of enmity or hatred between different classes of His Majesty's subjects.

9. What is the result when we apply these tests to the words on account of which the order for furnishing security has been made. It will be observed that the accusations are directed at nine Police Officers, six of whom are constables and none of whom is above the rank of Inspector. There is no suggestion that the misconduct of these officers is approved of by the administration, or is part of a deliberate policy of repression. In fact there is no comment of any sort.

10. The circumstances of the case before us are not unlike those in the case of *Raj Pal v. The Crown* 71 Ind. Cas. 519 : 3 Lah. 405 : AIR 1923 Lah. 61 : 24 Cri.L.J. 167 : 5 P.W.R. 1923 Cr. (S.B.), where a Special Bench of the Lahore High Court held that the statement that the Police of Ferozpur Jhinka fired for an hour on a peaceful crowd, killing fifteen and wounding two hundred, was not covered by the wider language of Section 4(1) of the now repealed Indian Press Act 1910 (Act I of 1910). It is not possible to lay down a precise test and we do not desire to commit ourselves to all the reasons given in that case. In particular we are far from saying that in no circumstances can aspersions on individual Police Officers tend, directly or indirectly, to bring into hatred or contempt the Government established by law in British India or the administration of justice, or to excite disaffection towards His Majesty. In other words such aspersions may well in certain cases fall within Section 4(1)(d) of the present Act as extended by Section 63 of the Ordinance. It is sufficient for our purpose to say that in our opinion the words here complained of cannot be said having regard to all the circumstances to be covered by the clause.

11. It is also suggested that Clause (h) may have some application, that is to say, that the words tend directly or indirectly to promote feelings of hatred or enmity between different classes of His Majesty's subjects. In *Raj Pal v. Crown* 71 Ind. Cas. 519 : 3 Lah. 405 : AIR 1923 Lah. 61 : 24 Cri.L.J. 167: 5 P.W.R. 1923 Cr. (S.B.) it was contended that the Police of Ferozpur Jhirka constituted "a class or section of His Majesty's subjects". On this aspect of the case Sir Shadi Lal, C.J. observes at page 413 Page of 3 Lah.--[Ed.]

I do not think that a fortuitous concourse of one or two Inspectors or Sub-Inspectors and a few policemen who happen to be employed at a particular place, can be designated a section of His Majesty's subjects much less a class thereof.

12. We consider that these observations are applicable to the present case and that it is not possible to hold that the nine Police Officers and the Satyagrahis of

Karirnganj are "different classes of His Majesty's subjects" within the meaning of Clause (h).

13. The conclusion of the matter is that it appears to us that the words contained in the newspaper in respect of which the order of the Government of Assam of February 26th, 1932 was made are not of the nature described in Section 4 Sub-section (1) of the Indian Press (Emergency Powers) Act 1931 and we must accordingly set the order aside u/s 25 of that Act.

14. Rankin, C.J.--I agree.

15. Mitter, J.--I agree.