

(1912) 12 BOM CK 0014

Bombay High Court

Case No: Criminal Reference No. 109 of 1912

Emperor

APPELLANT

Vs

Vishnu Krishna Puranik

RESPONDENT

Date of Decision: Dec. 5, 1912

Acts Referred:

- Penal Code, 1860 (IPC) - Section 292

Citation: (1913) 15 BOMLR 307 : 19 Ind. Cas. 504

Hon'ble Judges: Rao, J; Batchelor, J

Bench: Division Bench

Judgement

Batchelor, J.

In this case one Vishnu Krishna Puranik has been convicted by the Magistrate u/s 292, Indian Penal Code, in that he sold or printed for sale or hire an obscene book. On the matter coming before the learned Sessions Judge of Thana, Mr. Dixit, he was of opinion that the conviction was bad, inasmuch as the impugned passages in the book were not of an obscene character. He has therefore made a reference to us asking that we should set aside the conviction.

2. We have heard the learned Government Pleader in support of the conviction, and he has read to us translations, which satisfied him, of the particular passages on which this charge was framed. The book was published in connection with a large pharmacy of native medicines situated at Panvel. The book bears the title " Vyavahar Vaidyak " which may be roughly Englished as meaning "Medicine in practice" or " Practical Medicine," and the general object of it appears to be to advertise various medicines which can be obtained from this pharmacy on payment. In order, it may be, to stimulate the purchase of these medicines the author describes certain rules of conduct calculated to acquire or preserve health. He then goes on to discuss several diseases, and in those discussions various physiological facts are noted and explained. We agree with the learned Government Pleader in one proposition, namely, that if the prosecution had succeeded in showing that the detailed

passages on which they rely were of an obscene character, the author's liability in respect of those passages would not be saved or avoided merely by reference to other passages in the book which might contain moral precepts of an unexceptionable character. The question, however, is whether the prosecution have succeeded in showing that the charged passages are such as under the section should be called "obscene." The meaning of that word has frequently been laid down by high judicial authority ; but for our present purposes we need not travel beyond the definition given by Cockburn C. J. in *Regina v. Hicklin* (1868) L.R. 3 Q.B. 360. Following that decision the test which we must apply is to see whether the language complained of is such as is calculated to deprave or corrupt those whose minds are open to immoral influences. That being the test to be applied, it seems to us, that the important point to look at will be rather the form of the expression than the actual meaning, for the same meaning may be obscenely expressed by one form of language, and yet by the use of another form of language may be couched in expressions free from reproach. In this respect it is likely that I am at a certain disadvantage, inasmuch as I cannot lay claim to a familiar acquaintance with current vernacular Marathi. It must, however, I think, be taken that a distinction should be observed between obscenity, i.e., language calculated to inflame the passions, and a certain primitive frankness of expression such as, if I am not mistaken, one would expect to find in such a language, as Marathi. But everyone conversant with human language and its resources is aware of the fact that it is not the primitive frankness or directness of expression which is most likely to corrupt or inflame the mind. Now my learned brother has assured me that there is nothing in the Marathi form of language here employed which can justify the epithet "obscene." On the contrary the language chosen is rather of a Sanskrit character, is rather stilted and dignified than inflammatory or passionate. Certainly as far as I myself am able to judge of the Marathi, that is a fair description of it. That is a description also which is given by a gentleman fully qualified to judge, I mean the Sessions Judge Mr. Dixit, whose own vernacular is Marathi. He says in this reference :- "It is conceded that the language used is chaste throughout and to express the meaning no better words could have been used so far as the chastity of the language is concerned." The words, as we have noticed, are mostly directly Sanskrit, and they seem to have been chosen as being words of a colourless and unimpassioned and quasi-scientific character. If the mere words are discarded as being quite incapable of satisfying the legal test of obscenity, then we think that the thoughts which the words convey are equally incapable of satisfying that test, for the thoughts conveyed are in all cases serious, not to say solemn. No attempt is anywhere made by the author to represent sexual aberration or excess as a matter of triviality or as a matter easily obtaining forgiveness. On the contrary his whole purpose, which he maintains even throughout the impugned passages, is to call the reader's attention to the heavy penalty which outraged nature exacts for any violation of her physiological laws. That, we think, is clear upon an impartial perusal of the passages upon which the prosecution rely; and in support of that view we have the concurrent testimony of

two gentlemen well entitled to speak, namely, Dr. Bhajekar and Colonel Kirtikar. As the Sessions Judge observes, these are two eminent doctors both ripe in age and experience. Moreover, though by profession they are physicians, it is not merely as physicians that they have given their evidence in this case. On the contrary they are careful to point out that they speak simply as educated men familiar with the language and the subject-matter of the book. Colonel Kirtikar's evidence appears to us to be exceptionally weighty, inasmuch as he is described by the learned Sessions Judge as being not merely a doctor but a scholar, a philosopher, and a literary savant of weight and authority.

3. So much for the evidence which the witnesses have tendered in this case. For ourselves we have judged the passages to the best of our powers of understanding them, and we see no reason to suppose that we have missed their meaning or aim. We are satisfied that there is nothing in the passages charged which is calculated to deprave or corrupt the minds of those open to such influences or to inflame the passions of the young or immature. We think, therefore, that the prosecution was in this case mistaken, and we must set aside the conviction, direct the accused to be acquitted and discharged, and order that the fine, if he has paid it, be returned to him and that the order u/s 521, Criminal Procedure Code, be discharged and the books delivered to the accused.