Privy Council Appeal No. 49 of 1946

The King-Emperor - - - - - - - - *Appellant*

v.

Sadashiv Narayan Bhalerao - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 18TH DAY OF FEBRUARY, 1947

Present at the Hearing:

LORD THANKERTON
LORD PORTER
LORD SIMONDS
SIR MADHAVAN NAIR
SIR JOHN BEAUMONT

[*Delivered by* LORD THANKERTON]

This is an appeal by special leave from a judgment of the High Court of Judicature at Bombay, dated the 25th January, 1944, which affirmed an order of Mr. S. D. Adhav, Magistrate of the 1st Class, Jalgaon City, dated the 22nd June, 1943, acquitting the respondent who had been charged under Rule 38 (5) of the Defence of India Rules for having, on the 26th January, 1943, made, published and distributed copies of a leaflet which contained prejudicial reports within the meaning of Rule 34 (7) read with Rule 34 (6) (*e*) and (*g*) of the Defence of India Rules, and having thus contravened Rule 38 (1)(*c*).

The Defence of India Rules, which were made by the Central Government under section 2 of the Defence of India Act, 1939 (Act No. XXXV of 1939)—so far as material—provide as follows:

"34. (6) 'prejudicial act' means any act which is intended or is likely—

. . . . . .

(*e*) to bring into hatred or contempt, or to excite disaffection towards, His Majesty or the Crown Representative or the Government established by law in British India or in any other part of His Majesty's dominions;

. . . . . .

(*g*) to cause fear or alarm to the public or to any section of the public;

. . . . . .

34. (7) 'prejudicial report' means any report, statement or visible representation, whether true or false, which, or the publishing of which, is, or is an incitement to the commission of, a prejudicial act as defined in this rule;

. . . . . .

38. (1) No person shall, without lawful authority or excuse,

. . . . . .

(*c*) make, print, publish or distribute any document containing, or spread by any other means whatsoever, any prejudicial report;

. . . . . .

(5) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to five years or with fine or with both."

The document which formed the subject matter of the charge was admittedly made and published by the respondent at Jalgaon City on the 26th January, 1943, and he admittedly distributed printed copies thereof. It consisted of a leaflet addressed " To all the patriots ", and it will be sufficient to quote some of the statements in the leaflet:

" Unprecedented calamity has befallen our nation and the whole of our country has been undergoing sufferings. The Imperialists have by their barbarous policy turned the entire country into a cremation ground. When we were in great need of the national leaders for the purpose of the national defence, the bureaucracy has declared the National Congress unlawful and have detained all the leaders in jail.

By reason of firings and arrests several villages in Khandesh have been made desolate and on account of this great calamity the people are losing their moral courage (day by day) and the whole of the country is putting on moribund appearance. The people in Khandesh have been harassed by the inequitable collective fines. As the Government is unable to solve the food problem, the cry of hunger is heard everywhere; and a situation has arisen everywhere in which serious food riots are expected. By depriving the mills of the coal 50 thousand families of the workers have been thrown into the ditch of hunger.

But the Imperialists do not stop even at this. They are making ceaseless efforts to create a split between the people and the patriots. They have been trying to strengthen their hold by creating disputes and differences among the people by various ways such as creating a split between the owner and the worker on the question of dearness allowance and coal, between the merchants and consumers on the question of food grains and between the Muslims and the non-Muslims on the question of collective fines. The disunion among the people is their last resort.

. . . . . .

If we blindly carry on sabotage activities simply because the Imperialists are not transferring power to us the Japanese Imperialism may dominate over us. Therefore in order to face both these calamities we must achieve this great task of bringing about unity on the burning questions before the public such as national defence and self-determination and must take over the control of national defence."

After a trial, the learned Magistrate acquitted the respondent. He pointed out that it was nowhere suggested in the leaflet that the work of national defence should be snatched away from Government forcibly, that the national leaders should be freed by using force or that national government should be formed by resorting to unconstitutional methods, but that, on the contrary, the public was exhorted to achieve national unity for all the above purposes, not to resort to sabotage, and to take part in the campaign of achieving worldwide freedom. In the absence of any incitement to public disorder, he held himself bound to acquit, in view of the decision of the Federal Court in *Niharendu Dutt Majumdar* v. *King Emperor* (1942), F.C.R. 38, A.I.R. (1942) Fed. Ct. 22, to which their Lordships will refer later.

On appeal by the Crown, the decision of the Magistrate was affirmed by the High Court and the appeal was dismissed; the learned Judges held themselves bound by the decision of the Federal Court in *Niharendu's*

case. The charge of having committed a prejudicial act within the meaning of Rule 34 (6) (*g*) was not pressed and may be disregarded. The learned Judges, at the request of the Crown, certified for the purpose of section 205 of the Government of India Act, 1935, that the case does not involve a substantial question of law as to the interpretation of the Government of India Act or any order in council made thereunder. Thereafter the Crown obtained special leave to appeal against the decision of the High Court on an undertaking " that no further proceedings in connection with the said charges would be taken against the respondent in any event so long as that undertaking does not prejudice the reality of the appeal." The respondent has not appeared in the appeal, which has been heard *ex parte*.

The purpose of this appeal is to challenge the soundness of the decision in *Niharendu's* case, which their Lordships will therefore consider in some detail. In consequence of a speech made at Calcutta, Niharendu was convicted by the Additional Chief Presidency Magistrate of offences under Rule 34 (6), sub-paragraphs (*e*) and (*k*), of the Defence of India Rules. The conviction was upheld by the High Court, from which Niharendu appealed to the Federal Court, which allowed the appeal and acquitted the appellant on the ground that the speech of the appellant did not constitute a prejudicial act within the meaning of Rule 34 (6) (*e*). The Federal Court did not deal with sub-paragraph (*k*) of Rule 34 (6). The judgment of the Court was delivered by Sir Maurice Gwyer C.J., who said, in reference to sub-paragraph (*e*), that the prejudicial act was " described in precisely the same language as is used to describe the offence of sedition in section 124A of the Indian Penal Code. We were invited to say that an offence described merely as a ' prejudicial act ' in the Defence of India Rules ought to be regarded differently from an offence described as ' sedition ' in the Code, even though the language describing the two things is the same. We cannot accept this argument. Sedition is none the less sedition because it is described by a less offensive name; and in our opinion the law relating to the offence of sedition as defined in the Code is equally applicable to the prejudicial act defined in the Defence of India Rules. We do not think that the omission in the Rules of the three ' Explanations ' appended to the section of the Code affects the matter. These are added to remove any doubt as to the true meaning of the Legislature; they do not add to or subtract from the section itself; and the words used in the Rules ought to be interpreted as if they had been explained in the same way." The learned Chief Justice then proceeds to consider the meaning of sedition in English law, as defined and explained by decision of the Courts, and states the principle to be derived therefrom as follows: " Public disorder or the reasonable anticipation or likelihood of public disorder, is thus the gist of the offence. The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency." The learned Chief Justice then applied that test to the appellant's speech, and found that it contained no incitement, or intention or tendency to incite, to public disorder, and the conviction was set aside.

Their Lordships are unable to accept the test laid down by the learned Chief Justice, as applicable in India.

Their Lordships agree, for the purposes of the present appeal, that there is no material distinction between Rule 34 (6), sub-paragraph (*e*) and section 124A of the Penal Code, though it might be suggested that the words " an act which is intended or likely to bring " in the Rule are wider than the words " brings or attempts to bring " in the Code. They further agree with the learned Chief Justice that the omission in the Rule of the three explanations in the Code should not lead to any difference in construction.

The word " sedition " does not occur either in section 124A or in the Rule; it is only found as a marginal note to section 124A, and is not an operative part of the section, but merely provides the name by which the crime defined in the section will be known. There can be no justification for restricting the contents of the section by the marginal note. In England there is no statutory definition of sedition; its meaning and content have been laid down in many decisions, some of which are referred to by the Chief Justice, but these decisions are not relevant when you have a statutory definition of that which is termed sedition, as we have in the present case.

Their Lordships are unable to find anything in the language of either section 124A or the Rule which could suggest that " the acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency." The first explanation to section 124A provides, " The expression ' disaffection ' includes disloyalty and all feelings of enmity." This is quite inconsistent with any suggestion that " excites or attempts to excite disaffection " involves not only excitation of feelings of disaffection, but also exciting disorder. Their Lordships are therefore of opinion that the decision of the Federal Court in *Niharendu's* case proceeded on a wrong construction of section 124A of the Penal Code and of sub-paragraph (*e*) of Rule 34 (6) of the Defence of India Rules.

In that view, their Lordships are of opinion that there should have been a conviction in the present case, for they have no difficulty in agreeing with the learned Judges of the High Court in this case, who have both stated that, if disorder were not an essential element, there are undoubtedly passages in the leaflet which hold the Government up to hatred or contempt, and which would have led them to convict.

In the High Court three decisions of this Board were referred to, but the learned Judges preferred the decision of the Federal Court in *Niharendu's* case as the same sub-paragraph of Rule 34 (6) was the subject of decision and it was the latest case; it is unnecessary to consider whether the learned Judges had sufficient ground for distinguishing these decisions such as would avoid the binding nature of decisions of this Board. In the opinion of their Lordships, the principle of decision in these three cases is inconsistent with the decision of the Federal Court in *Niharendu's* case, and it is regrettable that the Federal Court did not pay attention to these cases, two of which are Indian.

In *Queen Empress* v. *Bal Gangadhar Tilak* (1897), 22 Bom. 112 and 528, the charge was under section 124A as it then stood, confined to disaffection, without any reference to hatred or contempt. Strachey J., in an admirable charge to the jury, which was subsequently approved by this Board, said (at p. 135), " The offence consists in exciting or attempting to excite in others certain bad feelings towards the Government. It is not the exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any disturbance, or outbreak was caused by these articles, is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within section 124A, and would probably fall within other sections of the Penal Code. But even if he neither excited nor intended to excite any rebellion or outbreak or forcible resistance, to the authority of the Government, still if he tried to excite feelings of enmity to the Government, that is sufficient to make him guilty under the section. I am aware that some distinguished persons have thought that there can be no offence against the section unless the accused either counsels or suggests rebellion or forcible resistance to the Government. In my opinion, that view is absolutely opposed to the express words of the section itself, which as plainly as possible makes the exciting or attempting to excite certain feelings, and not the inducing or attempting to induce to any course of action such as rebellion or forcible resistance, the test of guilt. I can only account for such a view by attributing it to a complete misreading of the explanation attached to the section and to a misapplication of the explanation beyond its true scope." In refusing leave to appeal, *inter alia*, on the ground of misdirection as to the proper construction of section 124A, the Board expressly approved of the charge. It is sufficient for their Lordships to adopt the language of Strachey J. as exactly expressing their view in the present case.

In *Besant* v. *Advocate General of Madras* (1919), 43 Mad. 146, it was pointed out by the Board that section 4 of the Indian Press Act of 1910, which was under consideration in that case, was closely similar in language to section 124A of the Penal Code, which had been the subject of careful consideration in *Tilak's* case above referred to.

In *Wallace-Johnson* v. *The King* (1940), A.C. 231, under sub-section 8 of section 326 of the Criminal Code of the Gold Coast, " seditious intention " was defined as an intention " to bring into hatred or contempt or to excite disaffection against . . . the Government of the Gold Coast as by law established." It was held by this Board that the words were clear and unambiguous, and that incitement to violence was not a necessary ingredient of the crime of sedition as thereby defined.

In conclusion, their Lordships will only add that the amendments of section 124A in 1898, the year after *Tilak's* case, by the inclusion of hatred or contempt and the addition of the second and third explanations, did not affect or alter the construction of the section laid down in *Tilak's* case, and, in their opinion, if the Federal Court, in *Niharendu's* case, had given their attention to *Tilak's* case, they should have recognised it as an authority on the construction of section 124A by which they were bound.

Their Lordships are accordingly of opinion that the appeal should be allowed and that the judgments and orders of the Courts below should be set aside, and that it should be declared that it is not an essential ingredient of a prejudicial act as defined in sub-paragraph (*e*) of Rule 34 (6) of the Defence of India Rules that it should be an act which is intended or is likely to incite to public disorder. Their Lordships will humbly advise His Majesty accordingly. There will be no order as to costs.

(55740) Wt. 8013—5 160 3/47 D.L. G. 338

In the Privy Council

THE KING-EMPEROR

v.

SADASHIV NARAYAN BHALERAO

DELIVERED BY LORD THANKERTON

Printed by His Majesty's Stationery Office Press,
Drury Lane, W.C.2.

1947