

(1951) 02 PAT CK 0003
In the Patna High Court

Chanderdeo Sharma

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 15-02-1951

Acts Referred:

Constitution of India, 1950 — Article 13, 18, 19, 228

Government of India Act, 1935 — Section 49

Penal Code, 1860 (IPC) — Section 124, 124A, 17

Citation : AIR 1951 Patna 75 : (1951) CriLJ 799

Hon'ble Judges : Sinha, J; Sarjoo Prasad, J; Rai, J

Bench : Full Bench

Judgement

Rai, J.—The petnr. has moved this Court u/s 23, Press (Emergency Powers) Act (XXIII [23] of 1931) 1931, for setting aside the order referred to in the notification dated 14-7-1949, whereby all copies of the booklet entitled Bapu ke Saputon ka Raj have been declared to be forfeited to His Majesty.

2. The notification dated 14-7-1949, runs thus:

Government of Bihar, Political Department, Special Section.

Notification,

Dated 14-7-1949.

No. 18975C.?In exercise of the powers conferred by Section 19, Press (Emergency Powers) Act, 1931, (XXIII [23] of 1931) the Governor of Bihar hereby declares to be forfeited to His Majesty all copies wherever found, of the booklet in Hindi entitled "Bapu ke Saputon ka Raj" by Pandit Chanderdeva Sharma and printed at the Chand Press, Jehanabad, Gaya, all other documents containing copies, reprints or translation of, or extracts from the said booklet on the ground that it contains words of the nature described in Clause (2) of Sub-section (1) of Section 4 of the said Act.

By order of the Governor of Bihar, Sd. B. K. Dutta, Under Secretary to

Government.

Mr. Ramchander Sinha, learned Counsel for the petnr., urged before us that the booklet in question did not contain any words, signs or visible representations of the nature described in Section 4, Sub-section (1), Clause (d) of Act XXIII [23] of 1931.

3. The relevant provisions of Act XXIII [23] of 1931 run as follows:

Section 4 (1).—"Whenever it appears to the Provincial Govt. that any printing press in respect of which any security has been ordered to be deposited u/s 3 is used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations which tend, directly or indirectly:

(d) to bring into hatred or contempt His Majesty or the Govt. established by law in British India or the administration of justice in British India or any class or section of His Majesty's subjects in British India, or to excite disaffection towards His Majesty or the said Govt.: the Provincial Govt. may, by notice in writing to the keeper of such printing press, stating or describing the words, signs or visible representations which in its opinion are of the nature described above:

(i) where security has been deposited, declare such security or any portion thereof, to be forfeited to His Majesty, or

(ii) where security has not been deposited, declare the press to be forfeited to his Majesty, and may also declare all copies of such newspapers, book or other document wherever found in British India to be forfeited to His Majesty.

Explanation 2. -- Comments expressing disapprobation of the measures of the Govt. with a view to obtain their alteration by lawful means without exciting or attempting to excite hatred, contempt or disaffection shall not be deemed to be of the nature described" in Clause (d) of this sub-section.

Explanation 3, -- Comments expressing disapprobation of the administration or other action of the Govt. without exciting or attempting to excite hatred, contempt or disaffection shall not be deemed to be of the nature described in el. (d) of this sub-section.

Section 23 (1)--The keeper of a printing-press who has been ordered to deposit security under Sub-section (3) of Section 3, or the publisher of a newspaper who has been ordered to deposit security under Sub-section (3) of Section 7, or any person having an interest in any property in respect of which an order of forfeiture has been made u/s 4, Section 6, Section 8, Section 10 or Section 19, may, within two months from the date of such order, apply to the High Court for the local area in which such order was made to set aside such order, and the High Court shall decide if the newspaper, book or other document 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. The effect of Section 4, Clause (2) of the Indian (Adaptation of Existing Indian Laws) Order, 1947, was to substitute "all the Provinces of India" in place of the words "the British India" in Section 4 (1)(d) of the said Act XXIII [23] of 1931.

5. The booklet in question is a kind of satire written by way of a comic drama. Read as a whole, it advocates the path of truth and selfless service chalked out by the great leader Mahatma Gandhi. It also depicts at places in a rather vulgar language the subsequent deviation from that august path by some of his distinguished followers. It is unnecessary for me to consider in detail the entire booklet, but I will contend myself by referring only to those portions of it which were read to us by the learned Counsel representing the State of Bihar who submitted before us that it is not possible for him to point out a particular passage from the booklet in question to justify the order impugned against, but, if it is considered as a whole, the order of forfeiture would appear to have been justly passed.

6. At p. 7 of the booklet starts the second scene in heaven where the departed souls of Lokmanya Tilak, Gokhale, Bipin Chandra Pal, Lala Lajpat Rai, Dr. Hume, Deshbandhu Andrews, Pandit Madan Mohan Malviya, C. R. Das, Prof. Bari, Mohammad Ali & others had assembled. They were all enquiring of Mahadeo Desai about the health of revered Bapuji. On enquiry Mahadeo Desai told them that every arrangement had been made for the speedy recovery of Gandhiji. According to him, his recent illness was due to the serious shock received by him on account of the misdeeds of his followers in the Congress & mismanagement of the Congress Ministry, which had compelled many of his trusted followers to leave the Congressfold when they found that it was not possible for them to render real service to the masses by remaining in the Congress. It gives an extract from a letter of resignation submitted by one of such Congressmen. Nothing objectionable was pointed out to us from this portion of the booklet.

7. The third scene of the Act describes a meeting of Naradji with Gandhiji, when the former tells the latter that he proposed to go on a visit of Bharat. Narad asked Gandhiji if he had any message to be given there, whereupon the latter requested the former to report to him about the conditions prevailing there.

8. It may be mentioned here that Narad is a mythological figure who roams about everywhere chanting the name of God. He is said to carry a stringed Ektara in one of his hands, Sometimes, he is characterised as creating misunderstanding between persons.

8-A. The fourth scene runs from pp. 12 to 14 of the booklet. It represents a talk between the girl students in the garden of a college for women where they are discussing about the propriety of the selection of a woman candidate for the Legislative Assembly. They are depicted to have expressed their dissatisfaction over the non selection of a lady candidate from Saran district. They criticise the selection of an almost illiterate lady, simply because she happened to be the sister of one of the topmost leaders in the Congress party. So far as this portion

of the booklet is concerned I do not find anything there to bring it within the purview of Section 4 (1)(d), Press (Emergency Powers) Act.

9. The next portion read to us was the fifth scene beginning at p. 15 & ending at p. 18 of the booklet. This scene represents one of the Parliamentary Secretaries in a drunken revelry. He dances & sings in presence of a girl. In that intoxicated condition he has been presented singing a song the purport of which was that the Ministers & Parliamentary Secretaries were all powerful, & that they had arranged for all amenities for themselves. When asked about the members of the Legislative Assembly he said that they were also getting Rs. 200 p. m. besides Rs. 10 for every day of the sitting of the Assembly. They also command great influence in the sub division from which they come. Then, towards the end of that scene the girl asked him, "Are you not taken to task for your misdeeds by the great Congress leader?" The answer given by the drunken Parliamentary Secretary is "How can he find fault with others when he himself is not spotless."

Then he by way of a question asks:

"Why don't you see as to who is the head of the Bettiah Estate these days ? Who is the chief Labour Comr. of India & whose relations have the good fortune of occupying high posts in the Central Govt.?"

10. Act II scene I starts at p, 19 of the booklet & ends at p. 21. This depicts a scene wherein it has been represented that most of the time of the Governor of a Province is taken in laying down foundation stones & presiding over other functions without any real effective & useful service to the province.

11. Scene 2 depicts a talk amongst several Ely. passengers wherein it has been represented that relations of influential persons in the Congress are appointed to high posts without requisite qualifications & without advertisement. At one place an Honorary Mag. by the name of Pikdan Ali says that he succeeded in being appointed as an Honorary Mag. because of the influence of the son in law of a Minister. The scene ends with a statement of Pikdan Ali that he does not purchase a rly. ticket though he travels in first class.

12. The fourth scene of Act II depicts a toddyshop where several persons are taking toddy & singing in an intoxicated condition. During that conversation they criticise the idea of complete prohibition at least so far as toddy is concerned. They refer to the harmful habit of smoking cigarettes rather excessively by one who advocates complete prohibition. They say that so far as toddy is concerned, it does some good to health but smoking for which there is no talk of prohibition, is always injurious.

13. The fifth scene starts by a conversation between the Sub-divisional Officer & his wife at their bungalow when the former says that unless he keeps the influential Congressmen of his subdivision pleased, his own position might be endangered.

14. Scene 1 of Act III depicts the chamber of a Sub-divisional Officer where he is

busy collecting subscription for the Gandhi Memorial Fund from several persons. The Sub divisional Officer notes the amounts of subscription against their names without their free consent.

15. Scene 2 depicts a scene from the Bettiah Palace. There is a talk between the Maharani of Bettiah & Narad. The Maharani complains to him that the management of Bettiah Raj under the present regime is no better than what it was during the British Rule : she also complains to him that Managers of this Raj are appointed not on account of their qualifications but simply because their appointment to that post will please a particular section of the Congress party.

16. Scene 5 of Act III depicts a talk between a highly placed Congress leader, his son & his two relations. The booklet having been written in a comic form one finds that during that conversation there is a lot of fling in loose language by one relation on the other. At one place the conversation refers to the fact that by his appointment to a high post in the Central Govt. one Mr. J. has gained an unexpected elevation much above the place he occupied as a member of the bar. It also refers to the settlement of several pieces of land of the Bettiah Estate by its manager to some of his relations & his acquaintances. A list is given of the various settlement holders. It also contains a statement by the manager of Bettiah Raj himself that he had got monetary help from some of the business concerns.

17. Act IV, scene I represents a talk between two litigants wherein they speak of the malpractices prevalent amongst the process servers & the peshkars who are apt to harass the litigant public unless they are paid some reward.

18. Scene 2 represents a talk between Narad & some of the villagers of village Churiharwa, a village in the Bettiah Estate, wherein it is said that a Congress leader of eminence had not discharged his duties properly for which he was given certain land by the Ramnagar Estate from the produce of which his son gets about 82 to 40 thousand rupees a year. The lands given belonged to different rayata who were dispossessed with the help of lathials supplied by the Harinagar Sugar Mill.

19. Scene 4 of Act IV represents a collection of flatterers at the Govt Conference Hall. The flatterers praised the Ministers right & left. They tell them that their praise is on the lips of all, everywhere. Chorus songs are sung in their praise. At the end of the performance the flatterers disperse with a promise of grant of permits.

20. Act v. scene 1 depicts the good qualities of a police constable Ramanand Tewari.

21. The last scene of this booklet represents a talk between Gandhiji & Narad when the latter goes to him to report about what he has seen his followers doing in Bharat. Naradji recites to Gandhiji the degradations in which the Congress leaders had fallen. At one place there has been a suggestion put in the mouth of

Naradji that the Judges should not be appointed by the Governor-General. He is purported to have suggested that (a) the F. C. Judges should be appointed by the international Ct. of Justice, (b) H. C. Judges should be appointed by the Chief Justice of the F. C. (c) Dist. Judges & Munsifs should be appointed by the Chief Justice of the H. C. & (d) all cases, civil & criminal should be tried by Munsifs & Judges so that the executive authorities may not exercise any undue influence over any of the officers presiding over a Ct. of Justice. On these suggestions Mahadeo Desai is represented to have put this question to Naradji: "Why are you suggesting such a procedure? Has there been perpetrated any serious injustice?" To this Naradji replies:

A great injustice has been perpetrated, A criminal has been acquitted by a Judge under the influence of Munshiji. That Judge has thereafter been promoted.

At the end Naradji says that the act of administration by Congress Ministers is not laudable at all. In the Supply & Control Department there is a lot of corruption. The Ministers are, in hot haste in appointing their dear & near ones, however unqualified, to various posts. Even if candidates are selected by the Public Service Commission, they are liable to be not taken in on account of various other considerations at the hands of the Ministers. At another place Naradji has been made to say that the Police Dept. is also rotten from top to bottom.

22. This, in short, is the purport of the comic drama. Now the question is whether it comes within the mischief of Section 4 (1)(d) of Act XXIII [23] of 1931. Mr. Ramchandra Sinha, learned Counsel for the petnr. submitted that this Act had been brought on the statute book in 1931 to meet the emergency created by the non-co-operation movement, whose avowed object was to preach hatred & contempt against the Govt. established by law & also against the administration of justice then in vogue. By this preaching the followers of that movement wanted to create a mentality whereby people should be prepared to overthrow the Govt. It is well known that the Civil Disobedience Movement exhorted people to shun law Cts. to treat their orders with contempt, to disobey laws promulgated by the then Govt of the country to leave the army & the police force & soon & so forth. The Civil Disobedience Movement advocated disregard of Govt. in every sphere. According to the learned Counsel, it is this emergency which called for an amendment of the original Section 4 of Act XXIII [23] of 1931 by adding the following provisions which may be quoted in extenso to illustrate the significance of the above argument:

Amendment of Section 4, "Act XXIII [23] of 1931. - "In Sub-section (1) of Section 4, Press (Emergency Powers) Act, 1931,

(a) after Clause (b) the following words & clauses shall be inserted, namely:

"or which tend, directly or indirectly,

(c) to seduce any officer, soldier, sailor or airmen in the military, naval or air

forces of His Majesty or any police officer from his allegiance or his duty, or

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

(e) to put any person in fear or to cause annoyance to him & thereby induce him to deliver to any person any property or valuable security or to do any act which he is not legally bound to do, or to omit to do any act which is legally entitled to do, or

(f) to encourage or incite any person to interfere with the administration of the law or with the maintenance of law & order, or to commit any offence, or to refuse or defer payment of any land revenue, tax, rate, cess or other due or amount payable to Govt. or to any "local authority, or any rent of agricultural land or anything recoverable as arrears of or along with such rent, or

(g) to induce a public servant or a servant of a local authority to do any act or to forbear or delay to do any act connected with the exercise of his public functions or to resign his office, or

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

(i) to prejudice the recruiting of persons to serve in any of His Majesty's forces or in any police force, or to prejudice the training, discipline or administration of any such force:

(b) the Expln. shall be numbered as Expln. 1 & after the Expln. as so numbered the following Expln). shall be inserted, namely:

Expln. 2. - Comments expressing disapprobation of the measures of the Govt. with a view to obtain their alteration by lawful means without exciting or attempting to excite hatred, contempt or disaffection should not be deemed to be of the nature described in Clause (d) of this Sub-section.

Expln. 3.?Comments expressing disapprobation of the administrative or other action of the Govt. without exciting or attempting to excite hatred, contempt or disaffection, shall not be deemed to be of the nature described in Clause (d) of this sub-section,

Expln. 4. - Words pointing out, without malicious intention & with an honest view to their removal, matters which are producing or have a tendency to produce feelings of enmity or hatred between different classes of His Majesty's subjects shall not be deemed to be words of the nature described in Clause (h) of this sub-section.

23. The learned Counsel for the petnr. therefore, contended that the relevant words of the section, namely, "to bring into hatred or contempt the Govt.

established by law or the administration of justice" should be construed in that light. He further contended that the words "hatred or contempt of the Govt. established by law" do never mean a criticism of the administration of the various branches of the Govt. According to him there is not the least attempt by the author of this booklet to incite any feeling to overthrow the Govt. established by law & substitute it by another form of Govt. He further contended that Explan. 2 & 3 attached to Section 4 are wide enough to include the comments made in this booklet. In support of his contention he relied upon the decision in the case of *Bhanushanker L. Joshi v. The State* AIR 1950 Sau 1 : 1950 3 SLR 103 ; 52 CLJ 859 SB wherein it was held that criticism against the Food Dept, of the Govt. or the criticism against the Police Dept. of the Govt. did not come within the mischief of Section 4, Sub-section (1), Clause (d), Press (Emergency Powers) Act, 1931. It also held that a suggestion that influential persons in Saurashtra took advantage of their influence to secure employment in Govt. service is not such a statement that it could be brought within the said section of the Press (Emergency Powers) Act, 1931. He also relied upon the case of *In re Jangi-i-Azadi Lahore* AIR 1948 Lah 6 : 48 CLJ 931 SB wherein it was held that criticism of certain officer or officers of Govt. cannot be deemed to be a criticism of the Govt. established by law. In that case one of the learned Judges, merely, Teja Singh, J. considering the question of the criticism of the action of ministers said as follows:

Under the present constitution the Ministers belong to one or more political parties & a criticism of their doings or policy, even if it be strongly worded, cannot be said to bring into hatred or contempt His Majesty's Govt.. established by law in British India.

24. In the case of *Emperor Vs. Hemendra Prosad Ghosh and Another*, a Special Bench of the Calcutta H. G. held:

In our view, Ministers chosen from the elected representatives of the people of the province for the purpose of carrying into effect, if possible & within prescribed limits, their wishes, & acting as advisers to the Governor, cannot be described as "officers subordinate" to the Governor, within the meaning of Section 49, Govt. of India Act, 1935. It follows, therefore, that, although in popular language, the Ministers may be referred to as "the Govt." they are not "the Govt." within the meaning of Sections 17 & 124A, Penal Code. Whatever may happen in practice the Ministers are in law, the Governor's advisers.

The relevant provisions of Section 124A, Penal Code, quoted below are similar to those of Section 4 (1)(d) of Act XXIII [23] of 1931:

Section 124A?."Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, Her Majesty or the Crown Representative or the Govt. established by law in British India or British Burma shall be punished with transportation for life or any shorter term,

to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Expln. 1.?The expression "disaffection" includes. disloyalty & all feelings of enmity.

Expln. 2.?Comments expressing disapprobation of the measures of the Govt. with a view to obtain, their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute offence under this section.

Expln. 3.?Comments expressing disapprobation of the administrative or other action of the Govt. without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

I respectfully agree with the view taken in the case of Emperor Vs. Hemendra Prosad Ghosh and Another, , & I am also of opinion that the words "to bring into hatred or contempt the Govt. established by law" connote something more than mere criticism of the various branches of administration with a view to improve them and not with a view to overthrow the Govt. itself. The hatred or contempt preached must be of such a nature as to excite a feeling tending towards overthrow of the existing system of Govt. In the present booklet no hatred or contempt has been preached against the Govt. itself. The booklet read as a whole leaves only one & one impression, namely, the lapses of the followers of Mahatma Gandhi since they actually came in power. It depicts how they have neglected the great ideal of selfless service & how they have indulged in self seeking & self-profiteering, I do not consider that the book read as a whole or any portion of it brings it within the mischief of Section 4 (1)(d), Press (Emergency Powers) Act (Act XXIII [23] of 1931), 1931.

25. Mr. Lal Narain Sinha, learned counsel" for the State of Bihar contended that the booklet has been written in a very bad taste & it has tried to bring into prominence the defects only of the various branches of the administration. The motive of the author in so doing, therefore must be to bring into contempt the present Govt. He further contended that the booklet has not only criticised the executive side of the present Govt., but it has criticised the judicial side of it as well.. The booklet suggests that the executive officers functioning as Judges, such as Sub-divisional Officers, etc., & even Judges are amenable to outside influence. He contended that this amounts to contempt of the administration of justice in the Dominion of India. I have gone through the relevant portion of the booklet dealing with this topic & to me it appears that it deals more with the interference by members of the Congress party in judicial matters rather than the failing of the Judges. At one place no doubt the booklet refers to some Judge, having been influenced, but that, in my opinion, does not amount to bringing into hatred or contempt the administration of justice in the Dominion of India. The phrase "to bring into hatred or contempt the administration of justice" connotes something different, as one preached during the time of the non-co-operation

movement when the followers of the movement openly used to preach disregard of the Cts. of law. They used to say:

Don't take part in proceedings of the Ct. Do not defend any charge framed against you. Do not pay fine. Break all laws.

This & similar actions might be called acts which bring into hatred or contempt the administration of justice. But the suggestion that the appointment of Judges should be taken out of the hands of the executive authority & be placed in the hands of Judicial authority is not such a statement as to bring it within the purview of Section 4 (1)(d) of Act XXIII [23] of 1931. Mr. Lalnarain Sinha, learned Counsel appearing for the opposite party, in this connection referred to the cases of *The King v. Davies* (1906) 1 K B 32 : 75 LJKB 104, *In the matter of K. L. Gauba*, ILR (1942) Lah 411 : AIR 1942 Lah 105 : 43 CrJ 599 and *In re Motilal Ghose*, 45 Cal 169 : AIR 1918 Cal. 988 : 19 CrLJ 530 SB but they were all cases in connection with proceedings taken for contempt of Ct. they were not cases under the Press (Emergency Powers) Act (Act XXIII [23] of 1931 & any observation made in those decisions is not very relevant in the present case.

26. Mr. Lal Narain Sinha further relied upon the decision in the case of *Kshitish Chandra Roy Vs. Emperor*, to say that

the Govt. established by law in British India includes the executive power in action & does not mean merely the constitutional frame-work & it also includes the local Govt. as well as the Central Govt.

In that particular case, their Lordships of the Calcutta H. O. were considering the legality or otherwise of a conviction u/s 124 v., Penal Code. They have quoted in extenso various portions from a newspaper called "Desherbani" from which they inferred that the conviction of the applt. was justified under the provisions of Section 124A, Penal Code; but the present booklet has not been written in such a way as to bring into hatred or contempt the Govt. established by law or the administration of justice in the Provinces within the Indian Union.

27. The learned Counsel for the opposite party further relied upon the case of *Mrs. Annie Besant v. Govt. of Madras*, 39 Mad 1085 : AIR 1918 Mad. 1210 : 18 CrLJ 157 In that case the petnr. who was the keeper of a printing press & publisher of a newspaper, had been asked to deposit security for two thousand rupees u/s 3 (1), Press Act (I [1] of 1910). He had moved the H. C. u/s 17 of the Act for setting aside the order demanding the security. In that connection, their Lordships of the Madras H. C. had to consider, apart from other provisions of the Act, the provisions contained in Section 4 (1)(c) of the Act which runs thus:

4(1) Whenever it appears to the Local Govt. that any printing press in respect of which any security has been deposited as required by Section 8 is used for the purpose of printing or publishing any newspaper, book or other document containing any words, signs or visible representations which are likely or may have a tendency, directly, or indirectly, whether by inference, suggestion,

allusion, metaphor, implication or otherwise?

* * * *

(c) to bring into hatred or contempt His Majesty or the Govt. established by law in British India or the administration of justice in. British India or any Native 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 Govt. or any such Prince or Chief, or

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the local Govt. may, by notice in writing to the keeper of such printing press, stating or describing the words, signs or visible representations which in its opinion are of the nature described above, declare the security deposited in respect of such press & all copies of such newspaper, book or other documents wherever found to be forfeited to His Majesty.

Explanation I.? In Clause (c) the expression "disaffection" includes disloyalty & all feelings of enmity,

Explanation II.? Comments expressing disapproval of the measures of the Govt. or of any such Native Prince or Chief as aforesaid with a view to obtain their alteration by lawful means, or of the administrative or other action of the Govt. or of any such Native Prince or Chief or of the administration of justice in British India without exciting or attempting to excite hatred, contempt or disaffection do not come within the scope of Clause (c).

The judgment of the H. C. quotes in detail the various passages published from time to time in the newspaper, but it is not necessary for me to quote them here. Suffice it to say that at one place Abdur Rahim C.J. says about the Act:

The Act as is well known was passed in order to counteract the manifold ingenious devices adopted by the anarchists of Bengal for carrying out their propaganda. How far it has been instrumental in accomplishing that object is not a question with which we are concerned; nor are we concerned with the question whether the Legislature was justified in applying such a drastic press law to the whole of India, while the evil sought to be met was mainly connected with the activities of a band of young revolutionaries in one part of the country.

While considering the meaning of the words "the Govt. established by law in British India" the learned Judge held:

It is contended by the appct, that what is meant by that phrase is the supremacy of the British Crown & the British connection as opposed to independence. This cannot be a definition of "Govt." as used in the section, it would only indicate the essential elements in the political relation between India & Great Britain. Government denotes as established authority entitled & able to administer the public affairs of the country. On the other hand Govt. is not identical with any particular individuals who may be administering the Govt.

He quoted with approval from the judgment of Batty J. in the case of Emperor v. Bhaskar, 8 Bom. L. R. 421 at p. 438 : 30 Bom. 421 : 4 Cr.L.J. 1:

What is contemplated under the section is the collective body of men--the Govt., defined under the Penal Code. It means the person or persons collectively, in succession, who are authorised to administer the Govt. for the time being. One particular set of persons may be open to objection, & to assail them & to attack them & excite hatred against them is not necessarily exciting hatred against the Govt. because they are only individuals, & not representatives of that abstract conception which is called Govt. ...The individual is transitory & may be separately criticised, but that which is essentially & inseparably connected with the idea of Govt. established by law cannot be attacked without coming within this section.

This case also, in my opinion, does not help the opposite party. The booklet in question does not contain any passage to merit the order of forfeiture in question.

28. Mr. Ramchandra Sinha further contended that the provisions of Section 4 (1) (d), Press (Emergency Powers) Act of 1931 are ultra vires of Article 19, Sub-clauses (1) & (2) read with Article 13, Constitution of India.

29. The Constitution of India came into force on 26-1-1950. The order in question was, however, notified by a notification dated 14-7-1949, in the Bihar Gazette dated 27-7-1949. The order of forfeiture had taken effect on a date before the Constitution of India came into force & it is difficult to say how the validity or otherwise of that order can be called in question with reference to a further right granted to every citizen of the Indian Union by the Constitution.

30. A similar matter came recently to be considered by the S.C. in the case of Keshavan Madhava Menon Vs. The State of Bombay, In that case the applicant who was the Secretary of the People's Publishing House, Ltd. was prosecuted u/s 18 (1), Press (Emergency Powers) Act, 1931. During the pendency of the prosecution the Constitution of India came into force on 26-1-1950. The accused thereafter filed a written statement contending that the provisions of the Act for the breach of which he was prosecuted was ultra vires & void in view of Article 19(1)(a) read with Article 13 of the Constitution. He filed a petition before the H. C. of Bombay under Article 228 of the Constitution praying for a declaration that Sections 15 & 18 read with Sections 2 (6) & 10 of the Act were ultra vires of Article 19(1)(a) of the Constitution & are, therefore, void & inoperative & that he should be ordered to be acquitted. The H. C. came to the conclusion that the proceedings under the Press (Emergency Powers) Act, 1931, which were pending at the date of the commencement of the Constitution were not affected even if the relevant provisions of the Act were inconsistent with the fundamental rights conferred by Article 19(1)(a) of the Constitution. The accused went in appeal before the S.C. against the order of the H. C. The majority judgment of their Lordships of the S.C. held that:

It is, therefore, clear that the idea of the preservation of past inchoate rights or liabilities & pending proceedings to enforce the same is not foreign or abhorrent to the Constitution of India. We are, therefore, unable to accept the contention about the spirit of the Constitution as invoked by the learned Counsel in aid of his plea that pending proceedings under a law which has become void cannot be proceeded with further, if it is against the spirit of the Constitution to continue the pending prosecution under such a void law, surely it should be equally repugnant to that spirit that men who have already been convicted under such repressive law before the Constitution of India came into force should continue to rot in jail. It is, therefore, quite clear that the Ct, should construe the language of Article 13(1) according to the established rules of interpretation & arrive at its true meaning uninfluenced by any assumed spirit of the Constitution.

Article 13 (1) with which we are concerned for the purposes of this appln. is in these terms : "All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void".

It will be noticed that all that this clause declares is that all existing laws, in so far as they are inconsistent with the provisions of Part III shall, to the extent of such inconsistency, be void. Every statute is prima facie prospective unless it is expressly or by necessary implications made to have retrospective operation. There is no reason why this rule of interpretation should not be applied for the purpose of interpreting our Constitution. We find nothing in the language of Article 18(1) which may be read as indicating an intention to give it retrospective operation. On the contrary, the language clearly points the other way. The provisions of Part III guarantee what are called Fundamental rights. Indeed the heading of Part III is "Fundamental Rights". These rights are given, for the first time, by & under our Constitution. Before the Constitution came into force there was no such thing as fundamental right. What Article 13(1) provides, is that 11 existing laws which clash with the exercise of the fundamental rights (which are for the first time created by the Constitution) shall to that extent be void. As the fundamental rights became operative only on & from the date of the Constitution the question of the inconsistency of the existing laws with those rights must necessarily arise on & from the date those rights came into being. It must follow, therefore, that Article 13(1) can have no retrospective effect but is wholly prospective in its operation.

Therefore, the order in question which was passed in July, 1949, if valid in accordance with the provisions of law then in existence, cannot be questioned because of some higher right having been granted by the Constitution which came into force on 26-1-1950.

31. In my opinion, the booklet in question does not contain any words, signs or visible representations of the nature described in Section 4 (1), Press (Emergency Powers) Act, 1931; hence the order of forfeiture referred to in the notfn. dated 14-7-1949, as quoted above must be set aside,

32. The result is that the appln. is allowed, but without cost.

Sinha, J.

33. I agree to the order proposed.

Sarjoo Prasad, J.

34. I agree that this appln. should be allowed. On a careful perusal of the offending booklet, I am unable to find that its contents bring it within the mischief of Section 4 Sub-section (i) Clause (d) of Act XXIII [23] of 1931. The booklet purports to be a bitter satire & at places it even degenerates into scurrilous & personal attacks on individuals. That, however, by itself does not amount to bringing into hatred or contempt Govt. established by law in the State or the administration of justice therein. A mere criticism of man & measures or of the persons running the administration, howsoever bitter that criticism may be & even if the criticism is misguided, does not necessarily amount to bringing into contempt the Govt. of the province or the administration of justice. I, therefore, substantially agree with my learned brother Rai J. in holding that the booklet does not offend against the relevant section of the Indian Penal Act, & the order of forfeiture has, therefore, to be set aside.