

(1954) 04 BOM CK 0001

In the Bombay High Court

Case No : Criminal Application No. 222 of 1954

Girdharlal Popatlal Shah and Others

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 13-04-1954

Acts Referred:

Press (Objectionable Matter) Act, 1951 — Section 11, 24, 3

Citation : AIR 1956 Bom 32 : (1955) 57 BOMLR 952 : (1956) CriLJ 206 : (1955) ILR (Bom) 932

Hon'ble Judges : Chainani, J;Bavdekar, J

Bench : Division Bench

Advocate : Purshottam Trikamdas and N.C. Dalal and Co, for the Appellant;
H.M. Choksi, Govt. Pleader and A.M. Mandgi, Asst. Govt. Pleader, for the Respondent

Judgement

Chainani, J.—This is an application u/s 24 of the Press (Objectionable Matter) Act, 1951 (LVI. of 1951) against the order of forfeiture passed by the State Government on 7-1-1954, forfeiting a book entitled "Dampatya Rahasya" published in Gujarati by Messrs. Ellis and Martyn, a firm doing business in Bombay. It appears from the petition that a book bearing the title "Mysteries of Marriage" was published in 1943 in English. The book which has been forfeited is a translation of the English book and is said to have been brought out in March 1953. Both the English and Gujarati books give detailed descriptions of 40 coital postures, that is positions which may be adopted during the act of sexual intercourse.

At the end of each book there are coloured pictures showing the different postures. Each picture shows a naked man and a naked woman joined together for the purpose of sexual intercourse. By the side of each picture, there is a diagram which shows the position of the male organ inside the female organ. As the book was considered to be obscene, the State Government obtained the opinion of the Advocate General and on his certifying that it contained obscene

matter, an order of forfeiture was passed u/s 11 of the Act.

The grounds for issuing this order, as stated in the order itself, are that the book contains descriptions of forty postures of sexual intercourse and pictures of the different postures which are obscene. Against this order, the present application has been filed and the petitioners have prayed that the order of the State Government forfeiting all copies of the book may be set aside.

2. Clause (vi) of Section 3 of the Press (Objectionable Matter) Act, 1951, states "inter alia" that the expression "Objectionable Matter" means any words, signs or visible representations which are grossly indecent or obscene. Section 11 of the Act empowers the State Government to declare by notification in the Official Gazette, after obtaining a certificate from the Advocate-General or the one of the other law officers mentioned in the section, that any issue of any book contains any objectionable matter, that every copy of such book shall be forfeited to the Government.

The word "obscene" is not defined in the Act. But the definition of this term, which is generally accepted by the Courts, is that laid down by Cockburn C. J. In -- "The Queen v. Hicklin" (1868) 3 QB 360 (A) :

"....I think ths test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall."

This test has been accepted by various High Courts in India and also by this Court in --"Queen Empress v. Parashram Yeshwant" 20 Bom 193 (B) and -- "Emperor v. Vishnu Krishna" 15 Bom LR 307 (C). In considering whether a publication is obscene, the class of persons who are likely to read such a publication must also be taken into consideration, see -- "Emperor v. Thakar" AIR 1917 Lah 288 (D) and -- Sukanta Halder (in Custody) Vs. The State, . A scientific book which is published, say for the use of medical men, cannot, therefore, be tested in the same way as a book intended for the use of the ordinary public. In applying the test, one has also to consider the effect which the book would produce on an ordinary average person, and not on a person with depraved mentality.

3. We are also of the opinion that a publication cannot be said to be obscene merely because it deals frankly with sex matters, provided, of course, that the language used is not such as to excite sensual feelings or give rise to thoughts of lust. We agree with the view expressed by the Lahore High Court in -- "Emperor V. Harnam Das" AIR 1947 Lah 383 (P), that a book which is intended to give advice to married people on how to regulate the sexual side of their lives, that is to say, with a view to promoting their health and mutual happiness and which is written in a fairly plain language in order to be understood, cannot be said to be obscene, merely because such a book might fall into wrong hands.

4. Mr. Purshottam has invited our attention to three books on sex problems, "Human Sex Anatomy" by Dr. Dickinson, "The Art of Love and Sane Sex Living" by Shri A. P. Pillay and "Ideal Marriage" by Dr. Velde. According to these writers, it is necessary and desirable to adopt different coital postures. Some postures are more likely to produce conception than others. Some postures are particularly suitable when the woman is pregnant. It is also recommended that the ordinary postures should be departed from both in order to provide variation and in cases of physical disproportion between a husband and wife..

It would, therefore, perhaps be difficult to hold that a book is obscene, merely because it describes in a language, which cannot be said to be indecent or calculated to rouse the sexual impulses, the various positions which may be adopted in sexual intercourse. We have gone through the portion of the book in which the descriptions of the various suggested postures are given. We do not think that any objection can be taken to the language in which these postures are described. It is, therefore, doubtful whether the book can be held to be objectionable within the meaning of the Act, only on the ground that it gives a detailed description of forty coital postures.

5. Mr. Mandgi, who appears for the State, has however urged that the pictures, which are printed at the end of the book, are most objectionable and that the book is consequently obscene. Mr. Purshottam has, on the other hand, strenuously argued that it was necessary to give pictures of the different postures in order to enable the readers of the book to understand the descriptions given in the book. He has invited our attention to Dr. Dickinson's book in which diagrams of some postures have been given in order, as stated by the author, that the teaching might be "clear and effective".

The diagrams given in Dr. Dickinson's book are sketches in black pencil and are quite different from the coloured pictures printed in the book, which has been forfeited by the State Government. It may also be mentioned that Dr. Dickinson's book appears to have been written mainly for the medical profession, whereas the book which has been forfeited is written primarily for, and is likely to be read principally by, the lay- men. Dr. Pillay in his book has given pictures of two postures. In these pictures he has only shown the positions which a woman might adopt at the time of the sexual intercourse. The private parts of the woman are also covered.

No one can reasonably object to such pictures. The third book, which has been referred to in the course of arguments, Dr. Velde's book, does not contain any pictures. It, therefore, appears that Dr. Pillay and Dr. Velde did not consider that any pictures of coital postures were necessary in order to enable the readers of their books to fully understand the different postures described in those books! Assuming, however, that some diagrams or pictures are necessary for this purpose, they need not be such indecent and lewd pictures as are given in the book, which is the subject-matter of this application.

As pointed out in 15 Bom LR 307 (C), the important thing to look at is the form of the expression rather 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. We have seen the pictures and the diagrams given in the book and, as I have already mentioned, the pictures are all full size coloured pictures of naked men and women united for the purpose of sexual intercourse.

They are nude pictures and are clearly calculated to rouse sexual passions of and suggest impure and libidinous thoughts and desires to the minds of the young of either sex, or even to persons of more advanced age. We cannot accept the argument that these pictures were included only in order to make the descriptions of the various positions more intelligible. If that was the only object, it could have been achieved by giving pictures to which no objection could be taken.

The object of giving such lurid naked pictures evidently was to increase the sales of the book. We have no doubt that these pictures are likely to corrupt the minds and the morals of those into whose hands the book might fall, and particularly of young impressionable persons, who are more amenable to immoral influences and on whom it is consequently likely to have a most undesirable effect.

6. Mr. Purshottam has contended that the pictures cannot be said to be obscene because they do not show the private organs. There is no substance in this argument. A picture may be obscene even without the private organs being shown. Also for many of the postures described in the book, it would not have been possible to show these organs, though it is undoubtedly true that some pictures could have been made more vivid and more expressive. I may also mention that by the side of each picture there is a diagram in which the position of male organ inside the female organ is shown.

7. Mr. Purshottam has also contended that we should take into consideration the manner in which the sales of the book are effected and the precautions taken to prevent its falling into wrong hands. He has referred us to the statements in the petition that the book was supplied only on receiving a declaration that the purchaser was a married person. That such a declaration was required was also mentioned in the advertisements about the book. Mr. Purshottam has also stated that the price of the book was kept sufficiently high at Rs. 7-8-0 per copy with a view to restrict its circulation and that the book was published openly and not in a secret manner.

We do not think that we can attach much importance to the fact that the purchasers of the book were required to declare that they were married persons, for this could not effectively prevent unmarried persons from obtaining it. An unmarried person, who wanted a copy of It, could easily get it from a married friend or by declaring, though falsely, that he was a married person. The high price of the book was also not likely to restrict its circulation, for it is well known

that books, which promise to give secret information about sex matters, command a wide sale. The book appears to have been widely advertised both in English and vernacular newspapers.

In the advertisement in English it was stated that the book included "detailed secret instructions" about sex relations and that it would open the eyes of readers "to new pleasant experiences" which they had "missed until now". The manner in which the book was advertised therefore shows that it was published not in order to provide scientific information on sex matters, but with the object of attracting a large body of purchasers by an appeal to their sex instincts and urges. The object with which a book is published is of Course immaterial for the purpose of determining whether it is or is not obscene.

8. All persons could, therefore, obtain copies of this book and its sale cannot be said to have been restricted to married persons, merely because declarations were required from purchasers that they were married. At the end of the book, lurid coloured pictures of naked persons are given. It was not necessary to give such pictures even for the purpose of making clear the descriptions of the different coital postures. We have no doubt that these pictures are calculated to deprave or corrupt the minds of the readers of the book and particularly of young persons, whose passions would be roused by the sight of these pictures. The book was, therefore, rightly held to be ob-cene by the State Government.

9. The application, therefore, fails and the rule wilt be discharged with costs amounting to Rs. 300.

April 13, 1954.

10. Mr. Purshottam has made a motion today that having regard to our finding that the book is obscene principally because of the pictures contained in it, we should vary the order passed by Government and direct that only the portion of the book containing the pictures, and not the whole book, should be forfeited. It is true that S 24, which provides for. an appeal against an order of forfeiture, empowers the High Court to pass such order as it deems fit confirming, varying or reversing the order of the State Government. But the main question which has to be determined in such appeals is whether the order of forfeiture was or was not justified. u/s 11 Government is given the power to forfeit any book which contains any objectionable matter. We doubt whether under this section Government can forfeit only a part of a book.

There are also likely to be considerable prac tical difficulties in enforcing such an order. Ac cording to our findings, the book printed bv the applicants contained obscene and objectionable matter. Consequently Government were right in forfeiting the book. As we cannot say that the order of the State Government was wrong, we do not think that we would be justified in interfer ing with or varying that order.

11. Rule discharged.