
(1946) 02 AHC CK 0007
In the Allahabad High Court
Case No : Criminal Revision No. 186 of 1945

Madan Manohar Misra

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 20-02-1946

Acts Referred:

Press and Registration of Books Act, 1867 — Section 5

Citation : (1946) 02 AHC CK 0007

Hon'ble Judges : Misra, J

Bench : Single Bench

Advocate : P.N. Asthanz, for the Appellant; I.A. Abbasi, holding brief of the Assistant Government Advocate for Crown, for the Respondent

Final Decision : Allowed

Judgement

Misra, J.—This is an application in revision against an order of the City Magistrate, Lucknow, convicting the Petitioner Madan Manohar Misra under Rule 81(4) of the Defence of India Rules for contravention of Clause 10(a) of the Government of India Paper Control (Economy) Order, 1944 and sentencing him to pay a fine of Rs. 200. The conviction was upheld by the learned Sessions Judge Lucknow, in appeal, but the fine was reduced to Rs. 50. The charge against the Petitioner was as follows:

That you, on or about the 24th day of January, 1944, printed and published the Weekly Lokwani Newspaper without obtaining permission from the Central Government and thereby committed an offence punishable under Rule 81, Defence of India Rules, and within my cognizance.

2. The Petitioner was the printer and publisher of a Hindi Duly newspaper known as "Vijai" which was issued from Cawnpore since 17th February, 1942, a declaration in accordance with Section 5 of the Press and Registration of Books Act (Act XXV of 1857) having been filed by him before the District Magistrate of Cawnpore on 5th January, 1942. Later in 1942 the Government of India

promulgated a Paper Control Order, Clause 3 of which prohibited the printing and publishing of a newspaper except under the authority in writing of the Central Government if such paper was not printed or made in British India or published therein prior to the date on which the order came into force (namely 7th November, 1942). Obviously the "Vijai" could not be affected by this provision. In 1943 Madan Manohar Misra conceived the idea of shifting the press to Lucknow and issuing the paper as a Hindi Weekly which he renamed "Lokwani". He accordingly filed a fresh declaration at Lucknow on 5th July, 1943 under Sections 5, Sub-Sections 2 and 3 which enjoin that a new declaration should be made as often as the place of printing and publishing is changed. The accused stated in this declaration that the "Vijai" is to be incorporated in the "Lokwani". Sanction was accorded by the District Magistrate on 21st August, 1943, and thereafter the accused printed and published his paper under the changed name, and in all its issues on the record except one he prominently mentioned that the "Vijai" was amalgamated with it.

3. The Paper Control Order of 1942 was superseded by the Government of India Paper Control (Economy) Order which came into force from 12th June, 1944. Clause 10 of this order provided inter alia that

No person shall except under the authority in writing of the Central Government

(a) print or make or publish in any language any newspaper that was not both printed or made in British India and regularly published therein in the same language during the period immediately preceding the 7th November, 1942;

(b) ...

(c) ...

(d) change the name or change from one district to another district the place of printing or making or the place of publication of any newspaper;

(e) ...

(f) ...

4. The language makes it clear that the injunction prescribed by Sub-clauses (a) and (d) are prospective and not retrospective. It has been stated already that the charge related to a publication of 24th January, 1944. At the date mentioned therein the Government of India Paper Control (Economy) Order was not in force, and since the charge was framed in 1945, it could not relate to the earlier order of 1942 which had by then been superseded. It follows that the date of infringement mentioned in the charge was wrong. I find, however, that the "Lokwani" continued publication after the 12th June, 1944, and the error, therefore, in stating the date cannot be said to have prejudiced the accused or to have occasioned any injustice. It must therefore, be held that the defect in the charge is hardly of much consequence.

5. The crucial question which needs determination and which was debated at the

bar with commendable fairness on both sides is whether the "Lokwani" should be regarded as a new publication or only as a new garb for the old daily. The name as well as the place of publication were changed, but this had been done long before the order of 1944 came into force. The lower Court is, I think, mistaken in its view that the accused had contravened Sub-clause (d) of Clause 10 also. I may further point out that on the charge as framed the accused could be convicted only for issuing and publishing the paper without the requisite authority and not for altering the name of the paper or its place of printing and publication.

6. A significant feature of Clause 10 is that change of name or place of issue apparently does not amount to printing and publishing a new newspaper, for if it did, Sub-clause (d) would have been wholly redundant. In the case before me that "Vijai" was and the "Lokwani" is owned, printed, published and edited by the same man. The declaration of 1943 was under Sub-Sections 2 and 3 of Section 5 of the Press and Registration of Books Act which, as mentioned above, prohibit a fresh declaration each time the place of printing and publishing is changed. In these circumstances it would be difficult to hold that the "Lokwani" was a new newspaper within the contemplation of Clause 10(a) of the new order. In support of the contention that the two papers are different from each other, the learned Crown Counsel stresses the fact that the "Vijai" was a daily, while the "Lokwani" is a weekly, and that one was issued from Cawpore, while the other is printed and published at Lucknow. These elements, in my judgment, would not materially alter the legal position. Further the mere fact that the applicant did not state in his declaration before the District Magistrate of Lucknow that he was "changing" the name and place of issue but said that he was incorporating the "Vijai" in the "Lokwani" is scarcely of any significance. It is conceded that the "Lokwani" was not in existence as a distinct paper from before the date of declaration, and the adoption of the new name in which the old name was said to be incorporated could mean only one thing namely that the "Vijai" was thereafter to be known as the "Lokwani."

7. It was also urged that the accused ought to have shown that the "Vijai" was regularly issued prior to 7th November, 1942, and in the absence of such proof the provision of Sub-clause (a) of Clause 10 would apply. The language of Clause 10 clearly indicates that the prohibition is applicable only to papers other than those which were regularly published prior to the specified date. The burden would seem, therefore, to rest upon the prosecution to prove that the accused had contravened the provisions of the Sub-clause (a) and if it was desired to rely on the irregularity of the "Vijai" for bringing him within the prohibition contained in it, it was incumbent on the prosecution to produce evidence in that behalf, I am convinced that the accused cannot be convicted of contravention of the provisions of Sub-clause (a) of Clause 10 of the Order of 1944.

8. I accordingly allow the application in revision set aside the order of the Courts below and direct that the accused be acquitted of the charge. The fine, if realized

shall be refunded.