

(1964) 02 GUJ CK 0008

In the Gujarat High Court

Case No : Special Civil Application No. 814 of 1960

Mrs. Taramati Pranlal Shah

APPELLANT

Vs

Additional District Magistrate, Kutch District

RESPONDENT

Date of Decision : 14-02-1964

Acts Referred:

Press and Registration of Books Act, 1867 — Section 14, 4, 5, 6

Citation : AIR 1964 Guj 278 : (1964) 5 GLR 825

Hon'ble Judges : J.M. Shelat, C.J.; J.B. Mehta, J

Bench : Division Bench

Advocate : S.H. Sheth and J.C. Saha, for the Appellant; J.M. Thakore, General and K.L. Talsani, Addl. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Shelat, C.J.—The petitioner claims to be the owner and keeper of a printing press styled as Tara Printery and also claims to be in possession thereof. According to her, her brother, one Shantilal Jevatlal Shah, her husband Pranlal Nanchand Shah and she entered into a partnership in 1949 and that partnership then carried on the business of printing in the name and style of Pravin Printery. Thereafter, disputes arose between the parties and Shantilal filed a civil suit, being Suit No. 84 of 1951 in the District Court at Bhuj, for the dissolution of the partnership. On January 2, 1953 a consent decree was passed in that suit whereunder the partnership was dissolved and the press with all its good-will and assets was taken over by the petitioner and the petitioner started her own business of printing as the sole owner in the name of Tara Printery. According to her, the press was run by her under a declaration made by her as the keeper and owner thereof u/s 4 of the Press and Registration of Books Act, 1867, and her brother the said Shantilal acted as her manager. But as the work of the press entailed going often to Government offices, she allowed Shantilal to make a declaration u/s 4 of the Act in his own name as the keeper, although in fact she was the owner and in actual possession of the printing press. That happened in 1956, According

to her case, Shantilal misused the trust reposed by her in him and started entertaining a dishonest intention to appropriate the press and therefore, the petitioner relieved him of his post as her manager. Shantilal thereafter applied for the cancellation of the declaration made by him in 1956 as the keeper of Tara Printery, On August 13, 1959 the petitioner gave an intimation to the Additional District Magistrate that she intended to carry on business as the keeper of that press and on September 12, 1959 she filed a declaration u/s 4 of the Act to the effect that she was the keeper of the said press.

2. On September 11, 1959 the Additional District Magistrate gave notice to her that Shantilal who, as aforesaid had filed a declaration as the keeper of Tara Printery and who had got it subsequently cancelled, had made a fresh declaration to the effect that he was the keeper of the said press but this time in the name and style of Shanti Press. There being thus two declarations by two individuals as keepers of the same press, a notice was issued to the petitioner by the Additional District Magistrate to furnish information about the location of the press of which she claimed to be the keeper, with certain particulars as regards the ward number, house number etc., where the press was kept. That enquiry was made by the then Additional District Magistrate and ultimately, on September 12, 1959 the then Additional District Magistrate accepted the declaration of the petitioner u/s 4 of the Act. According to the petitioner, she has since then been carrying on business as the keeper of the said press in the name and style of Tara Printery.

3. In the meantime, Shantilal filed a criminal complaint against the petitioners her husband and certain other individuals alleging therein that he was the rightful owner of the press and charged the petitioner, her husband and others of trespass and other offences. An order issuing a search warrant was thereafter made by the Judicial Magistrate, First Class, in that criminal case and the learned Judicial Magistrate also issued a notice to show cause why the said press should not be attached. We may observe that against that order the husband of the petitioner, but not the petitioner although she claimed to be the owner of the press, filed a revision application in this Court, being Civil Revision Application No. 152 of 1960.

4. On August 5, 1960 the respondent issued a notice and served it on the petitioner to show cause why the declaration made by her on September 12, 1959 should not be suspended, withdrawn or cancelled. It seems that the notice was issued because the respondent found that in respect of the same press, two individuals, namely, the petitioner and the said Shantilal, were claiming to be the owners and keepers thereof and therefore, it was clear to him that one of them must be setting up a false claim, and if the petitioner was not the keeper and in actual possession of the said press, obviously the declaration made by her on September 12, 1959 would be a false declaration and, therefore, the petitioner would be guilty of the offence u/s 14 of the Act and would be liable to be punished with fine and imprisonment under that section. An enquiry thereafter was held by the respondent who, after taking evidence, passed an order on

August 23, 1960 suspending the declarations filed both by the petitioner as also the said Shantilal. It appears from the order of the respondent that though the petitioner, in answer to the notice, appeared before him and filed her written statement, she declined to lead any evidence, oral or documentary, regarding her title to the said press and her right to possession thereto against the claim made by Shantilal, and stated that the respondent was not entitled to go into the question of the ownership or title of the press or the question of her right to possession. The petitioner in these circumstances has challenged the notice as also the said order dated August 23, 1960 as being illegal, ultra vires and without jurisdiction on the ground that once a declaration is made u/s 4 of the Act, the District Magistrate has no power under the Act to suspend or cancel it. She has also alleged that the acts of the respondent in issuing the said notice and holding the said enquiry and in passing the said order were mala fide. Her husband, as the publisher of the two newspapers printed by this press, had had in the past to criticise the District Magistrate at Bhuj and his subordinate and it was with a view to take revenge for the writings of her husband that the said notice was issued and the said order was passed.

5. As against the statements made by the petitioner, we have the return filed by the respondent from which it appears that in consideration of Shantilal agreeing to give up his interest in the said press, the petitioner, under the said consent decree, agreed to pay Rs. 10,000/- to him and the decree farther, provided that Shantilal would have a first charge over the said Pravin Printery until the said amount of Rs. 10,000/- was paid to him. It seems that she failed to pay the said amount of Rs. 10,000/- to Shantilal and apparently because of that failure and her title to the press not being complete due to that failure she made a declaration dated August 7, 1956 to the effect that she had ceased to be the keeper of the said press and thereupon Shantilal filed a fresh declaration though he continued the name of the press as Pravin Printery, that it was he who was the keeper of that very same press. It appears that this position continued until 1959 and no objection appears to have been taken by the petitioner to the declaration filed by Shantilal. Furthermore, no declaration was made by the petitioner that she was the keeper or the owner of that press. On the contrary, it appears from the return that the sales tax registration, the receipts for the rent of the premises where the press was installed, the licence for the press and the Income Tax returns filed in respect of the income of the press, were all in the name of Shantilal. As late as March 28, 1959 the petitioner had also addressed a letter to the Income Tax Officer which indicated that Shantilal and not she was the keeper of the press. Disputes seem again to have arisen between the petitioner and her husband on the one hand and Shantilal on the other, for we find that in August 1959 Shantilal lodged the said criminal complaint against the petitioner and her husband and some others under Sections 448, 354, 341, 403 and 506(2) read with Section 34 of the Penal Code, and it was in connection with this complaint that the learned Judicial Magistrate issued the said order of search warrant and also the notice to show cause why the press should not be attached.

It thus appears from the return that the petitioner's allegations of trust having been reposed by her in Shantilal and Shantilal having misused that trust and of Shantilal having filed his declaration as HER manager, do not appear to be true.

6. As pointed out earlier, the only declaration on file with regard to this press was the one filed by Shantilal, the petitioner having made a ceased declaration and not having filed a fresh declaration alleging to be the keeper of the press. As the name of the press continued to be Pravin Printery, Shantilal seems to have thought of changing the name of the press and it was then upon that fresh trouble arose between the parties for, we find that on August 7 and 10, 1959 Shantilal gave notice to the respondent of his intention to file a fresh declaration as the keeper of two presses which he intended to name as Praful Printery and Shanti Printing Press and that he had ceased to carry on business in the name of Tara Printery, which name appears to have been given to the said press formerly carried on in the name of Pravin Printery after the said consent decree was passed. On August 9 and 10, 1959 Shantilal lodged two declarations before the Additional District Magistrate as the keeper of the Praful Printery and Shanti Printing Press. On August 13, 1959 the petitioner also gave a notice that she intended to make a declaration for two presses in the name of Nikhil Printery and Tara Printery. Since the notice given by the petitioner as also by Shantilal indicated that the press in question was located at one and the same place, both the applicants making their respective claims to the same press a notice dated September 11, 1959 was served upon the petitioner to give details of the location of the press, where she intended to run the presses and in respect of which she desired to lodge the declarations. On September 12 1959 the petitioner lodged her declarations and according to the return, were accepted and authenticated, through mistake, on that very same day by the then Additional District Magistrate. Looking to these facts, it is manifest that there cannot be two persons claiming to be the keepers of the same press and therefore, one of them at least must be making a false claim.

7. The question, however, is whether the respondent had the authority to pass the order of suspension of the declarations filed by the petitioner and order them to be inoperative, thereby deciding the question of the right of possession of the press as between the petitioner and Shantilal which questions were, it appears, the questions involved in the said criminal complaint filed by Shantilal and whether the respondent can by such an order disable the petitioner from carrying on her business of printing.

8. Mr. Sheth for the petitioner contended that the respondent had no jurisdiction to issue the said notice upon the petitioner to hold any enquiry and to pass the aforesaid order and that therefore, all the aforesaid acts done by the respondent were totally invalid. In order to appreciate the contentions made before us on behalf of the petitioner, it would be necessary to look into certain provisions of the Act and to ascertain therefrom the scheme of the enactment. The title and the preamble of the Act show that the Act was passed for regulating printing

presses and news papers, for the preservation of copies of every book and newspaper printed in India and for the registration at such books and newspapers. It is clear that the objects in passing this enactment was not for establishing control over printing presses and newspapers, but the primary concern of the Legislature was to pass an enactment which would help regulate printing presses and newspapers and the preservation of copies of books and newspapers printed in this country. The provisions of the Act, therefore, have to be appreciated in the light of the object of the Act. Section 4 of the Act, with which we are mainly concerned in this petition, provides that no person shall keep in his possession any press for the printing of books or papers who has not made and subscribed a declaration therein set out, and the declaration therein set out indicates that what has to be declared is that the declarant is in actual possession of the press at the time of making the declaration. It is clear, therefore, that the declarant need not be the owner having a title and ownership in the press, and it would be sufficient if the person is a possession at the date of the declaration. The purpose of enacting Section 4 is clearly to enable the authorities to know where the press is situate and who the person in-charge of such press is, Section 5 lays down rules as to publication of newspapers and provides that every copy of every newspaper shall contain the names of the owner and the editor thereof printed, on such copy and the date of its publication. Sub-section (a) of Section 5 provides that the printer and the publisher of every such newspaper shall appear in person or by an agent authorised in that behalf before the authorities therein named and shall make and subscribe in duplicate the declaration therein set out Section 5 obviously has no bearing on printing presses or the keepers thereof and applies only to the owner and the editor, the printer and the publisher of a newspaper. Section 6 deals with authentication of declaration and provides that each of the two originals of every declaration so made and subscribed as is aforesaid, shall be authenticated by the signature and the official seal of the Magistrate before whom such declaration shall have been made. The proviso to that part of the section then lays down that where any declaration is made and subscribed u/s 5 in respect of a newspaper, the declaration shall not save in the case of newspapers owned by that same person, be so authenticated unless the Magistrate is on enquiry from the Press Registrar satisfied that the newspaper proposed to be published does not bear a title which is the same as, or similar to, that of any other newspaper published either in the same language or in the same State. Section 6 then provides that one of the said originals is to be deposited among the records of the office of the Magistrate and the other should be deposited among the records of the High Court or other principal Civil Court for the place where the declaration shall have been made. Section 6 furthermore provides that the officer in-charge of each original shall allow any person to inspect that original on payment of a fee of Re. 1/- and shall give to any person applying a copy of the said declaration, attested by the seal of the Court which has the custody of the original, on payment of a certain fee. The provision for authentication u/s 6 would appear to apply to a declaration made u/s 5 and not

u/s 4. This is indicated by the words "each of the two originals of every declaration so made and subscribed as is aforesaid" in Section 6. These words would seem to apply to the declaration made under Section 5(2), for, it is under that section, that the printer and the publisher have to make a declaration in duplicate, and it further appears that when such declarations made and subscribed in duplicate are authenticated, one of such duplicate has to be deposited among the records of the office of the Magistrate and the second duplicate among; the records of the High Court or the principal Civil Court for the place where such declaration, has been made. As already stated, Section 6 also provides for the inspection and supply of copies of such declaration and the last part of Section 6 provides that a copy of the declaration attested by the official seal of the Magistrate or a copy of this order refusing to authenticate the declaration shall be forwarded to the person making the declaration and also to the Press Registrar. Thus, it is only in the case of a declaration to be made u/s 5 that a power is given to the Magistrate to refuse to authenticate on the ground mentioned in the proviso to the first part of Section 6. u/s 7, the production of a copy of the declaration made u/s 5 and authenticated u/s 6 attested by the seal of the Court empowered to have the custody of such declarations, is made presumptive evidence against the person whose name has been subscribed to such declaration.

9. Thus, it is clear that the only obligation of a keeper of a press is to make and subscribe a declaration as provided by Section 4 and such a declaration does not appear to need any authentication provided u/s 6. This conclusion is supported by the provisions of Section 13 which provides for penalty for keeping a press without making a declaration required by Section 4. It would be noticed that Section 13 does not provide any penalty for failure to have such a declaration authenticated u/s 6. But Section 14 applies to all declarations and other statements to be made and subscribed under the Act and lays down penalty to which a person, who makes a false statement and knowing it to be false or believing it to be false or not believing it to be true, is liable for.

10. Therefore, the only statutory obligation under the Act upon a keeper of a press is to make and subscribe a declaration as provided u/s 4. Once such a declaration is made and lodged with the District Magistrate there is no power under the Act for the Magistrate either to suspend or cancel it or to declare it to be inoperative or to decide the question of ownership or title in regard to the press or the question of the right of possession thereof. The duty to receive a declaration u/s 4 is purely a ministerial one and not a judicial one, enabling the Magistrate to hold an enquiry and decide whether to permit a person to make such a declaration or not. Such a power does not appear to have been given to a Magistrate in respect of declarations to be made and subscribed under Section 4. On the other hand, where the Legislature wanted to give a power to refuse, it has done so, as in the case of the proviso to the first part of Section 6. Therefore, where a Magistrate finds, as in the present case, that two individuals have made and subscribed declarations in respect of the same press, claiming to

be in exclusive possession thereof and the District Magistrate finds that one of them at least must have made a false declaration or statement, he can, acting under the provisions of Section 14, file a complaint against such a declarant and if such a declarant is convicted, he would be liable to the penalty prescribed in Section 14 of the Act. But there is no provision in the Act which empowers a District Magistrate to hold an enquiry and decide the question of title or ownership or the right of possession and then pass an order suspending or cancelling a declaration made by a party or declaring the declaration to be inoperative, thereby disabling such a party from carrying on the business as a keeper of a press. The impugned order passed by the respondent was therefore, without jurisdiction and invalid. We are supported in this conclusion by a decision of the Calcutta High Court in *Ajay Kumar Das Vs. Pramatha Kumar Das*, . The applicant there filed a petition before the District Magistrate, saying that his father Pramatha Kumar Das had purchased a press known as Vidyasagar Press and asking for permission to file a declaration for starting printing work. The petition was enquired into by the police and under the orders of the District Magistrate, Ajay Kumar Das was allowed to file a declaration under Sections 4 and 5 of the Press Act and the applicant actually filed the declaration on December 10, 1951. On August 2, 1952 his father Pramatha Kumar Das filed a petition asking for permission to file another declaration to the effect that he was the proprietor, keeper and printer of the said press and he also was allowed to file this declaration. The police thereafter made investigation and from the police report, it appeared that Pramatha Kumar Das had purchased the press but the house where the press was located was the property of his wife, that is, the mother of the applicant. The Magistrate found that Pramatha Kumar Das was the real owner of the press and declared cancellation of the declaration filed by the applicant. The Calcutta High Court held that the Magistrate had no power under the Act to cancel such a declaration and that all that the Magistrate had to do under the Act was to keep the declarations filed in his office and beyond this, he had no responsibility and no powers. If there was a dispute between two or more persons about the ownership of a press, it would not be open to him to decide the dispute and therefore, the order of cancellation of the declaration passed by the Magistrate was held to be without jurisdiction and was set aside. Another decision which fortifies our conclusion is to be found in *K.N. Ganesh Vs. Chief Presidency Magistrate, Egmore, Madras and Another*, and though, the decision was concerned with Sections 5(2) and 6 of the Act, there are certain observations therein which support our conclusion. The petitioner in that case had acquired proprietorship of a quarterly journal called "Manikkodi" and on February 3, 1950 declared himself to be the publisher of that journal u/s 5 of the Act. This was followed by the publication of a monthly short story journal under the name of Manikkodi for some time, but the publication of the journal was discontinued thereafter though the petitioner continued running his office in the same premises under the name of Manikkodi Karyalam, dealing with books, journals, etc. With a view to renew the publication of the journal, he filed in September 1956 an application u/s 5(2) of the Act to make a declaration as the

publisher of that journal. "Meanwhile, one Krishnan applied and made a declaration on August 11, 1956 to the Chief Presidency Magistrate for a similar purpose on the ground that he contemplated the starting of a journal in the name of "Manikkodi". That declaration, however, lapsed under the provisions of Section 5(2)(a) and therefore, on September 25, 1956 the said Krishnan applied that he intended to commence this journal and applied to make a fresh declaration to that effect. The Chief Presidency Magistrate obtained a report from the Police Commissioner and the Press Registrar and after hearing both the parties, ordered that Krishnan should be allowed to declare himself as the editor and publisher of ""Manikkodi" and wrote to the petitioner that as there was already a journal published by Krishnan under the name of "Manikkodi", the petitioner should change the title of his proposed journal. After examining the provisions of Sections 5 and 6 of the Act, the High Court came to the conclusion that Section 5 did not invest the Magistrate concerned with any jurisdiction to decide the matter as to who would be entitled to make a declaration as the editor of a newspaper with a particular name and therefore it would follow that he who comes first should be entitled to make a declaration u/s 5. The High Court also held that though under the proviso to Section 6 there was a limited jurisdiction conferred on the Magistrate to enquire as to whether there is any other newspaper published in the same language or in the same State having the same name by some other person and if there was one such, he has the power to refuse to authenticate the proposed declaration, that provision did not invest a Magistrate with any authority to decide between two rival claimants for using the same name or title to the newspapers. The right to start a newspaper and to make a publication did not depend upon any licence to be granted by any authority and that being so, it followed that there could be no discretion in the Magistrate to refuse to record a declaration except in the case provided for in the proviso to Section 6. The High Court also held that the duty of the Magistrate was merely administrative, that is to record the declaration or refuse to authenticate it in the event of there being a newspaper of the kind referred to in the proviso to Section 6. If, as held by the High Court of Madras, the duty of the Magistrate u/s 5 is merely administrative and that duty is merely to record the declaration, the same reasoning must also apply to the provisions of Section 4 and it cannot be said that the District Magistrate u/s 4 has any other power except an administrative one, namely, to take, on record a declaration filed by a declarant under that section and consequently the District Magistrate cannot be said to have any power to hold an enquiry into the rival claims of parties with regard to the right of possession of a press and as a result of such enquiry to suspend or cancel a declaration already taken on record and to declare such a declaration as inoperative. If the District Magistrate, in the particular circumstances of a case, finds that a declarant has made a false statement, he may lodge a complaint against such a declarant and if "such a declarant is convicted, he would be liable to punishment prescribed u/s 14 of the Act. In the present case, if the District Magistrate finds that the petitioner or Shantilal has made a false statement, he will be entitled, if so advised, to file a complaint

against either of them under the provisions of Section 14 of the Act.

11. In the view that we take of the provisions of the Act, it is not necessary for us to go into the question of mala fides alleged by the petitioner. The order passed by the respondent was clearly without jurisdiction and must, therefore, be set aside. The petition therefore is allowed and rule made absolute. The respondent will pay to the petitioner the costs of this petition.