



Bombay High Court.

Emperor vs Bal Gangadhar Tilak

Justice Batchelor and Justice Shah

9 November, 1916

(1917)19BOMLR211

1916 Daksha Legal 1

1. This is an application by Mr. Bal Gangadhar Tilak praying this Court to revise an order made by the District Magistrate of Poona under Section 108 and the following sections of the Criminal Procedure Code.

2. The order complained of directs that the applicant do enter into a bond in a sum of Rs. 20,000 with two sureties each in a sum of Rs. 10,000 to be of good behaviour for a period of one year. The ground of the order was that in the learned District Magistrate's opinion the applicant disseminated seditious matter in the three speeches which are now upon the record.

3. These speeches were admittedly made by Mr. Tilak. They were made in the Marathi language, but the translations before us are, it is admitted, substantially correct and in my view nothing turns upon certain small niceties of expression in which the defence suggest that the official translation contains slightly harsher words than the Marathi warrants. Thus the only question is, whether in the three speeches the applicant is proved to have excited, or to have attempted to excite, disaffection towards the Government established by law in British India within the meaning of Section 124A of the Indian Penal Code. In my opinion the application does not give rise to any real question of law. But I must notice a mistake of law into which the learned Magistrate has inadvertently fallen. Following Mr. Justice Strachey's original pronouncement to the Jury in *Queen-Empress v. Bal Gangadhar Tilak* (1897) I.L.R. 22 Bom. 112, 151 he has held that 'disaffection' is the equivalent merely of 'absence of affection'. I cannot say whether this expression did or did not influence the learned Magistrate's decision, but it is plain that it may have done so. It is, I think,



equally plain that this construction of the word 'disaffection' is opposed to all ordinary English usage in words compounded with the particle 'dis.' Dislike, for instance, is not a mere absence of liking, nor is disgust for a thing a mere absence of taste for it. This, indeed, was recognized by the Full Bench which amended Mr. Justice Strachey's definition : see *Queen-Empress v. Bal Gangadhar Tilak* (1897) I.L.R. 22 Bom. 112, 151. The present Explanation No. 1 appended to Section 124A now sets the point at rest. With these definitions before us I say that there is not in my opinion any real doubt about the law governing the case.

4. Next there were on behalf of the defence two preliminary arguments on which a word must be said. It will only be a word, because in my judgment the points taken are wholly devoid of substance or merit.

5. First, then, it was said that there could be no excitement or disaffection in these speeches, inasmuch as the speaker openly and sincerely professed his loyalty to His Majesty the King-Emperor and the British Parliament. To that I have only to say that, as I read Section 124A, it is clear that to a charge of exciting disaffection towards the Government established by law in British India a profession, however sincere, of loyalty to His Majesty and the British Parliament, is no answer whatever.

6. Secondly, it was contended that the speeches could not in law offend against Section 124A, because the speaker's attack was made not on the Government nominally but on the Civil Service only. That, I think, is not quite so in fact. But assuming it to be so, it affords no answer to the charge. For the Government established by law acts through human agency and admittedly the Civil Service is its principal agency for the administration of the country in times of peace. Therefore where, as here, you criticise the Civil Service en bloc, the question whether you excite disaffection against the Government or not seems to me a pure question of fact. You do so if the natural effect of your words, infusing hatred of the Civil Service, is also to infuse hatred or contempt of the established Government whose accredited agent the Civil Service is. You avoid doing so if, preferring appropriate language of moderation, you use words which do not naturally excite such hatred of Government. It is, I think, a mere question of fact.

7. Passing now to the speeches themselves, they must be read as a whole. A fair construction must be put upon them, straining nothing either for the Crown or



for the applicant and paying more attention to the whole general effect than to any isolated words or passages. The question is, whether upon such fair construction these speeches offend under 124A or not.

8. Now, first, as to the general aim of the speaker, it is, I think, reasonably clear that in contending for what he describes as swarajya his object is to obtain for Indians an increased and gradually increasing share of political authority and to subject the administration of the country to the control of the people or peoples of India. I am of opinion that the advocacy of such an object is not per se an infringement of the law, nor has the learned Advocate General contended otherwise.

9. I wish to be understood as confining these last observations to the case which we have before us and to the object which, as I have explained, these speeches seem to me to pursue. I desire to guard myself from being supposed to say that the advocacy of swarajya is in all cases permissible. That is a point upon which it is not necessary now to pronounce an opinion and upon which I refrain from pronouncing an opinion. For, as I understand it, the word swarajya may have a dozen - different meanings in the mouths of as many speakers. The remarks which I have made are applicable only to the object aimed at in these speeches, as I have already defined that object.

10. We must now turn to the actual language employed by the applicant, noting especially the methods which the speaker advocates for ensuring the political changes which he seeks. First it is a matter for observation that he formally and expressly repudiates all intention of sedition. That of course is by no means conclusive. But it is a fact to be considered along with other facts. For I am bound to say that a candid reading of the whole speeches does not convince me that the repudiation of disloyalty is feigned or artificial. Now the intention to create disaffection must of course be proved and following the usual rule that a man must be taken to intend the natural and probable consequences of his own acts, we must seek for the speaker's intention in the language which he has used.

11. In the course of the argument comments were made and quite properly made, on the form of many expressions to be found in the addresses, this form being in many cases offensive or insulting in the personal sense. These matters, however, though they may convict the speaker of bad taste or bad temper, do



not seem to me to go very far towards convicting him of a violation of the criminal law. Now it not being contended that the main object of the speaker's advocacy is in itself forbidden, we must see whether there is anything in the language used or the methods urged which fairly brings the applicant within the penal section. The answer must of course depend on the effect likely to be produced by the speeches on the minds of the hearers. Would that effect naturally and probably be to excite disaffection, as defined in the section, or to excite only such measure of disapprobation as is not forbidden by the law? The arguments which we have heard to assist us in answering this question are no doubt helpful. But it must be borne in mind that all such arguments necessarily concentrate upon certain selected passages, whereas the Court's aim is to decide upon the general effect of the speeches as a whole. Probably the fairest way to ascertain that effect is to read the three speeches from beginning to end quietly and attentively, remembering the arguments and remembering the politically ignorant audience whom Mr. Tilak was addressing. I have so read these speeches not once, but several times and the impression left on my mind is that on the whole, despite certain passages which are rightly objected to by the prosecution, the general effect would not naturally and probably be to cause disaffection, i.e., hostility or enmity or contempt, but rather to create a feeling of disapprobation of the Government, for that it delays the transference of political power to the hands of those whom the speaker designates as 'the people'. For this conclusion I can only appeal to the general purport of all the three speeches as a whole. They cover 34 pages of print and of course I cannot set them out in extenso in this judgment. I must, therefore, perforce refer to particular passages of particular consequence. But I wish it to be understood that my decision is based not on particular passages, but upon the general effect.

12. I proceed now to cite a few passages in order to show what in the speaker's own language is the meaning of that swarajya which he was advocating to his audience. He tells them: "But however good may be the arrangement made by other people, still it is not the case that he who wants to have the power to make this arrangement always approves of it. This is the principle of swarajya. If you got the powers to select your Collector, it cannot be said with certainty that he would do any more work than the present Collector. Perhaps he may not do. He



may even do it badly. I admit this.... To put it briefly, the demand that the management of our affairs should be in our hands is the demand for swarajya.... If you carry on such an effort now for five or twenty-five years, you will never fail to obtain its fruit."

13. This passage is important as showing that the speaker does not expect that the political change which he advocates is to come suddenly or by a stroke of the pen. In other passages he uses the following language: "Confer those powers upon the people so that they may duly look to their domestic affairs. We ask for swarajya of this kind. This swarajya does not mean that the English Government should be removed, the Emperor's rule should be removed and the rule of some one of our native states should be established in its place.... But we must do those things which relate to business, trade, religion and society. Unless the power of doing those things comes partially into our hands in the end it must come fully-unless it comes fully into our hands, it is impossible for us to see a time of plenty, the dawn of good fortune, advantage of prosperity. Water cannot be drunk with others' mouths. We ourselves have to drink it.... The first duty is, take a portion of this authority into your possession, it "does not matter if you take a little portion of it.... New King is not wanted. But give into our possession a portion of the powers by losing which our condition is being reduced to that of 'orphans.'" The above passages show the nature of the demand made. With this demand as a political theme I have of course no concern whatever and I decline to say a word upon the subject. My concern is to say only that as a Judge I find nothing in it that offends against the law.

14. Passing now to an enquiry as to the methods advocated for securing the result proposed, I set out the following excerpts as indicating the speaker's general views: "It is an undisputed fact that we should secure our own good under the rule of the English people themselves, under the supervision of the English nation, with the help of the English nation, through their sympathy, through their anxious care and through those high sentiments which they possess.... In this manner good management is to be asked for in this administration. Amendment is to be brought about in the present law; it is to be brought about through Parliament. We will not ask for it from others. We have not to get this demand complied with by petitioning France. The Allies may be there, we have not to petition them. The petition is to be made to the English



people, to the English Parliament.... Owing to the war which is now going on in Europe, it has begun to be thought that unless all the many parts of the British Empire unite together that Empire would not attain as much strength as it should. It has so happened now that a consciousness has been awakened in them that they stand in need of aid from other countries called colonies belonging to them-Australia, Canada and New Zealand which are inhabited by Sahebs. If you take advantage of this awakened consciousness, you too have this opportunity of acquiring some rights. No one tells you to obtain these rights by the use of the sword. But today the nation's mind has undergone a change. India can give some help to England. If India be happy, England too will acquire a sort of glory, a sort of strength and a sort of greatness. This consciousness has been awakened in England.... On the day on which you will be ready to do this-particularly in these days after the war is over-the administration shall have to be changed in some respects at least. ... I do not say to any of you that you should do unlawful things in order to acquire these rights. There is a lawful way."

15. In all these passages which I have cited as fairly typical of the speeches, as fairly exemplifying the speaker's general drift, not only is there nothing illegal, but there is a distinct "pleading that the political changes advocated should be obtained by lawful and constitutional means.

16. I need not lengthen this judgment by reference to the large mass of arguments used. It is enough to say that in my opinion the bulk of these arguments are free from legal objection and I notice as among such arguments the contentions that Indian administrators govern native states without complaint; that in British India British Officials are paid too highly and Indians, though they are free to discuss, have no effective control over finance or policy; that the present officials being in fact alien by race, though able and industrious men, do not readily understand the needs of the people. Now all this may be politically wise or politically foolish. With that I say again I have no concern. But it is in my judgment fair political criticism, not obnoxious to Section 124A. Yet it is arguments such as these which form the bulk of these three addresses and the applicant is entitled to be judged rather by his general tenor and purport than by any selected passages. It must also in fairness to the applicant be stated that these speeches are not all mere condemnation. In one passage of the speech of the 31st May 1916 he says, speaking of the Government and of the



material improvements which the Government has made in the country: " I do not say that these things have not been done, done well and have been done better by the British Government than they would have been done by the former Governments; this is an honour to them. But should we not tell it to do those things which it does not do."

17. If matters rested here, the applicant's defence would, in my opinion, be very strong. Unfortunately matters do not rest here and there are two or three passages which undoubtedly, as they stand, are to my mind impossible of justification. Nor has Mr. Tilak's learned counsel made any substantial or successful attempt to justify them, If these passages stood alone, or if I could bring myself to think that they fairly reflected the speaker's general meaning, I should feel bound to confirm the Magistrate's order. I do not intend to give these offensive passages further publicity by repeating them in this judgment. I shall sufficiently identify them by saying that one; passage, occurring in the first speech, refers to keeping Indians in a position of slavery or servitude and another passage in the second speech describes the Government as an alien Government looking mainly to its own interest. In my mind the only real difficulty in this case has been to decide whether these passages alone can properly be used as affording sufficient ground for the learned Magistrate's order.

18. Upon the best consideration that I can give to this difficult question and having regard to the whole tenor of the speeches I think that the answer should be in the applicant's favour. I think so not because these passages in themselves can be justified, but because their obvious objectionableness is somewhat mitigated by the context of the arguments in which they occur and because I do not regard them as fairly characterising the general effect of the speeches as a whole. There is no reason to think that, in these long speeches delivered orally, these particular passages, which occupy no specially prominent place in the addresses, would specially impress themselves on the minds of the audience so as to override the general effect. That general effect is not, I think, shown to exceed the limits of fair criticism as defined in Explanations 2 and 3 of Section 124A.



19. On these grounds I am of opinion that the rule should be made absolute, the order under revision being set aside. The bonds, if they are executed, must be cancelled and discharged.

Shah, J.

20. This is an application for revising an order made by the District Magistrate of Poona. The order is made in proceedings taken under Section 108, Criminal Procedure Code, against the petitioner and directs him to enter into a bond in a sum of Rs. 20,000, with two sureties, each in a sum of Rs. 10,000, to be of good behaviour for a period of one year.

21. The information under Section 108, Criminal Procedure Code, against the petitioner was that he had orally disseminated seditious matter, that is, matter, the publication of which was punishable under Section 124A of the Indian Penal Code, by making these speeches on the subject of Swarajya or Home Rule, one at Belgaum on the 1st May and the other two at Ahmednagar on the 31st May and 1st June last.

22. The learned District Magistrate has come to the conclusion that these speeches contain matter, the publication of which is punishable under Section 124A, Indian Penal Code and the order in question is based on this conclusion.

23. The principal question to be decided on this application is whether the matter complained of is such that its publication is punishable under Section 124A, Indian Penal Code. At the outset it may be mentioned that no objection is taken to the main theme of the lectures, viz., Swarajya or Home Rule for India on behalf of the Crown, nor is it suggested that the word Swarajya is used in any offensive sense in these speeches. The learned Advocate-General has contended before us, as it was contended before the lower Court, that the matter disseminated by the petitioner is seditious on account of the remarks made in various parts of his speeches imputing dishonest and corrupt motives to Government by law established in British India.

24. It has been argued that the lower Court is wrong in holding that disaffection within the meaning of Section 124A means "absence of affection." The learned District Magistrate purports to quote the words of Mr. Justice Strachey. But it seems to me that in view of the observations of the Full Bench consisting of



Farran C.J., Candy and Strachey JJ. in the case of Queen-Empress v. Bal Gangadhar Tilak (1897) I.L.R. 22 Bom. 112, 151 and of the judgments in Queen-Empress v. Ramchandra Narayan (1897) I.L.R. 22 Bom 152 it is clear that disaffection does not mean absence of affection. The section, as it stood, when these cases were decided, was repealed in 1898 and the present Section 124A was substituted for it. The first explanation to the section seems to indicate that disaffection cannot mean absence of affection within the meaning of the section. I agree on this point with the observations of Mr. Justice Batty in the case of Emperor v. Bhasltar . The learned Advocate-General does not contend otherwise; and the point is not of any practical importance in the case.

25. There has been some argument as to the meaning of the expression 'Government established by law in British India': and the observations of Mr. Justice Strachey in Tilak's case and Mr. Justice Batty in Bhaskar's case on this point have been referred to. For the purposes of this case, it seems to me to be sufficient to state that the expression would mean the various Governments constituted by the statutes relating to the Government of India now consolidated into the Government of India Act of 1915 (5 & 6 Geo. V, c. 61) and would denote the person or persons authorised by law to administer Executive Government in any part of British India. Mr. Jinnah has argued that all the criticism directed against the Indian Civil Service, generally described as 'bureaucracy' in the speeches, cannot under any circumstances be treated as criticism against the Government by law established in British India. I am unable to accept this argument. It may be that the various services under the control of the Government by law established in British India do not form part of the Government within the meaning of the section : and it may be that the criticism directed against any of the services is not necessarily criticism of the Government by law established in British India. But the feelings, which it is the object of Section 124 A to prohibit, may be excited towards the Government in a variety of ways; and it seems to me that it is possible to excite such feelings towards the Government by an unfair condemnation of any of its services. Whether in a particular case the condemnation of any service is sufficient to excite any feeling of hatred or contempt or disaffection towards Government by law established in British India, must depend upon the nature of the criticism, the position of the service in the administration and all the other circumstances



of that case. It would be a question of fact to be determined in each case with reference to its circumstances. But as a matter of law it cannot be said that the condemnation of a particular service under the Government by law established in British India can never be sufficient to excite any of the feelings prohibited by Section 124 A towards such Government.

26. I now come to the question as to whether the publication of the matter contained in these speeches is punishable under Section 124 A. It is quite clear that the speaker must not bring or attempt to bring into hatred or contempt, or excite or attempt to excite disaffection towards His Majesty or the Government established by law in British India; and it is also clear that even in the case of comments falling under Explanation 2 or 3 of the section, this essential condition must be observed. In the present case Mr. Jinnah has laid great emphasis on the fact that throughout the speeches, the speaker has expressed his loyalty to His Majesty. But this cannot avail him. He is not charged with exciting disaffection towards His Majesty. The Crown case is that he has attempted to bring into hatred or contempt or to excite disaffection towards the Government established by law in British India; and it is no answer to this charge to say that he has expressed his loyalty to His Majesty.

27. The speeches in question were delivered in Marathi and are very long. It is necessary to determine the intention of the speaker in delivering these speeches. The intention must be gathered primarily from the language used; and if on reading the speeches, the reasonable and natural and probable effect of the speeches on the minds of those to whom they were addressed, appears to be that feelings of hatred, contempt or disaffection would be excited towards the Government, the petitioner's case must fail. The question, therefore, is one of determining the reasonable, natural and probable effect of the speeches taken as a whole on the minds of those to whom they were addressed. I have read these speeches for myself. They have been fully discussed on both sides and various passages have been referred to. I do not consider it necessary to deal with these passages in detail. The speeches must be read as a whole " in a fair, free and liberal spirit". In dealing with them one " should not pause upon an objectionable sentence here or a strong word there". They should be dealt with " in a spirit of freedom" and " not viewed with an eye of narrow criticism." The case should be viewed " in a free, bold, manly and generous spirit" towards



the petitioner : see *Reg. v. Burns* (1886) 16 Cox 355, 362. In the present case it is clear from the various passages in the speeches that the avowed object of the petitioner was to create a public opinion in favour of Home Rule for India and to induce the hearers to join the Home Rule League. It is also clear from the speeches that he did not advocate for the achievement of his object any means other than strictly constitutional means. Under these circumstances it is clear that in determining the general effect of the speeches care should be taken not to attach undue importance to the objectionable passages. Undoubtedly there are some objectionable passages in these speeches. Particularly the references to the condition of slavery and to the alien character of the rule are unfair and improper. It seems to me, however, that the petitioner is entitled to the benefit of the argument that the general effect of the speeches taken as a whole should be considered, as that would be the impression on the minds of the hearers. It is possible that different minds might estimate this effect differently. Under the circumstances, I have done my best to "consider the passages in the speeches in favour of the petitioner on the one hand and in favour of the Crown case on the other and to estimate their effect. I am unable to say that the natural and probable effect of the speeches taken as a whole on the minds of those to whom they were addressed, would be to bring into hatred or contempt, or to excite disaffection towards, the Government established by law in British India. I am not, therefore, prepared to hold that the matter disseminated by the petitioner is seditious within the meaning of Section 108, Clause (a), Criminal Procedure Code. I do not ignore the fact that there are some passages, which, if they stood by themselves, might justify the inference against the accused. But their effect in the course of long speeches orally delivered is a different matter.

28. The learned Advocate General has attempted to save the order by urging that even if the publication of the matter be not punishable under Section 124A on account of the criminal intent of the petitioner not being established, the Court could still make, an order under Section 108, Criminal Procedure Code and that this is a fit case for making the order contemplated by the section. He has relied upon the case of *Sital Prasad v. Emperor* (1015) I.L.R. 43 Cal. 591. But it seems to me that it is essential under Section 108, Clause (a), that the matter disseminated must be shown to be seditious. The words of the section are clear and must be given effect to. I do not think that this view renders Section 108 of



the Criminal Procedure Code unnecessary. It seems to me that the section affords an additional remedy to the Crown which may be more appropriate in certain cases than an actual prosecution on a charge under Section 124A. I am unable to follow Sital Prasad's case in view of the clear words of the section.

29. I, therefore, concur in the order proposed by my learned brother.