

## REVISIONAL CRIMINAL

Before S. K. Kapur, J.

PARAS DASS JAIN,—Petitioner.

versus

THE STATE,—Respondent.

Criminal Revision No. 291-D of 1964.

*Press and Registration of Books Act (XXV of 1867)—s. 3 and 12—Publishers of a pamphlet which does not have his name printed on it—Whether liable to punishment—Mere distributor of such pamphlet—Whether liable to conviction—Code of Criminal Procedure (Act V of 1898)—S. 429—Finding of fact based on misreading of evidence—Whether binding on the High Court.*

1965

December 16th

*Held*, that if a book or a pamphlet which does not fulfil the requirements of section 3, is published the person responsible for its publication will be liable to conviction and punishment under section 12 of the Press and Registration of Books Act, 1867. The name of the publisher and the place of publication are required to be printed on every book or pamphlet and if they are not there, the person responsible for its publication will be guilty under section 12 of the Act. If a person gets a book or pamphlet printed for distribution and public use and distributes the same to the public, he would be publisher, within the meaning of sections 3 and 12. A mere distributor of a book or pamphlet, however, cannot be held to be a publisher within the meaning of section 3 of the said Act.

*Held*, that a finding of fact based on misreading of evidence is not binding on the High Court and can be interfered with in revision.

*Petition for revision of the Order of Shri C. G. Suri, Additional Sessions Judge, Delhi, dated the 12th October, 1964, affirming that of Shri M. M. Aggarwal, Magistrate Ist Class, Delhi, dated the 24th August, 1964, convicting the petitioner.*

KESHAV DAYAL, ADVOCATE, for the Petitioner.

NANAK CHAND, ADVOCATE, for standing Counsel AND D. R. SETHI, ADVOCATE, for the complainant.

## JUDGMENT

S. K. KAPUR, J.—The petitioner has been convicted under section 12 of the Press and Registration of Books Act, 1867, and sentenced to simple imprisonment for one month and a fine of Rs. 200 only. In default of

Kapur, J.

**Paras Dass Jain** payment of fine, he is required to further undergo simple imprisonment for one month.

v.

**The State**

**Kapur, J.**

A complaint was lodged by the State Press Officer, Delhi, on 19th September, 1963, in the Court of Shri M. M. Aggarwal, Magistrate, First Class, Delhi, that (1) respondent Paras Dass Jain published two handbills captioned "Janta Ko in Desh Drohiyon Se Bachaiye" and "Safed Posh Dakuon Se Savdhan", (2) under section 3 of the said Act, he was required to give the names of the printer and publisher and the places of printing the publication on the handbills, which he failed to do; and (3) under section 12 of the said Act, he was liable to penalty. The trial Court decided against the petitioner and convicted and sentenced him as above. Aggrieved by the said judgment, the petitioner filed an appeal in the Court of the Additional Sessions Judge, Delhi, which was dismissed on 12th October, 1964.

The first contention raised by Mr. Keshav Dayal on behalf of the petitioner is that a publisher of any book or paper cannot be convicted under the said Act inasmuch as section 3 only refers to the printing of a book or paper and not its publication. According to the learned counsel, the words "or published any book or paper otherwise than in conformity with the rule contained in section 3" in section 12 make no meaning and, therefore, the words "or publish" must be ignored. In support of this plea, he has relied on *Abdul Hakim v. State* (1). In that judgment the view urged by the learned counsel for the petitioner was upheld. It is difficult for me to accept that contention and place that limited meaning on section 12 of the said Act. Section 3 requires that "every book or paper printed within India shall have printed legibly on it the name of the printer and the place of printing, and if the book or paper be published, the name of the publisher and the "place of publication." Section 12 says that whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 shall, on conviction, etc., be punished. It follows that if a book, which does not fulfil the requirements of section 3, is published, the person responsible for the publication would be punishable under section 12. Take a case where a person goes to a press and gets a paper or a book printed for

(1) A.I.R. 1960 All. 450.

public use. If that book or paper is to be published, it can be published only if it contains the name of the publisher and the place of publication. Publication of a book or paper not containing those particulars would be in violation of section 12. Such a publisher, would, therefore, be guilty. In *Abdul Hakim's case*, M. C. Desai, J., said, "he could be guilty under section 12 only if he published it otherwise than in conformity with the provision of section 3, but section 3 does not govern the act of publishing at all. The act of printing is quite distinct from the act of publishing and section 3 only regulates the act of printing, it requires certain matters to be printed in the book. Merely because one of the matters to be printed in the book is the name of the publisher and the place of publishing, it cannot be said that it regulates the act of publishing. If the name of the publisher and the place of publication are not printed, it is only the printing that can be said to be not in conformity with the provision of section 3 and not the act of publishing." With utmost respect to the learned Judge. I am of the opinion that that is placing too narrow a construction on the language of section 12. The words "whoever shall print or publish any book or paper otherwise than in conformity with the rule contained in section 3 of this Act" must embrace within themselves the publication of a book or paper which does not bear the name of the publisher or the place of publication. If a publisher finds that the book, which he is seeking to publish, does not conform to the said requirement of section 3, he must either abstain from publishing it or suffer a penalty under section 12. That appears to me to be the true scope of section 12 when read with section 3. In *Public Prosecutor, Andhra Pradesh v. T. Amrath Rao* (2), it was held that "it is also his duty to see that the book or paper complies with section 3 and to refrain from publishing it if the requirements are not satisfied." In my humble opinion, that is the correct approach to section 12.

Mr. Keshav Dayal then says that the only evidence led against the petitioner and the only act proved is that he distributed the said pamphlets. According to the learned counsel, mere distribution of a pamphlet does not amount to publication. In support of this plea, he has relied upon a Bench decision of the Bombay High Court in *Dattatraya Malhar Bidkar v. Emperor* (3), wherein it

(2) A.I.R. 1960 A.P. 176.

(3) A.I.R. 1937 Bom. 28.

Paras Dass Jain  
 vs.  
 The State  
 Kapur, J.

Paras Dass Jain  
*v.*  
 The State  
 Kapur, J.

was held that "the only person who can be guilty of publishing under section 12 is the person who is performing the act of a publisher within sections 3 and 5. The publisher of a paper referred to in sections 3 and 5 is the man who publishes it in the ordinary sense of the term, that is arranges with the proprietor for its distribution, and a mere seller or distributor of the paper is not a publisher under either of the sections 3 and 5". Again, in *re: G. Alavandar* (4), it was held that the word 'publisher' has been used in the Act in a restricted sense and does not include the vendor of the newspaper or books. According to that case, a person who causes a book to be printed and offers it to the public for sale is a publisher within the meaning of section 3 and section 12 of the Act. Varying expressions have been used to describe the ambit and scope of section 3, but that appears more due to the flexibility in the language than due to any divergence on the true scope thereof. I think, it has now been well established that a mere distributor of a book or pamphlet would not be a publisher within the meaning of section 3. At the same time, if a person gets a book or pamphlet printed for distribution and public use, he would be a publisher within the meaning of the said provision. The heart of problem in this case that calls for consideration is whether or not the petitioner got the pamphlets printed for dissemination to or distribution among the public. If it be held that he merely distributed the pamphlets, he cannot be termed as a publisher and consequently his conviction would be bad. If, on the other hand, it is held that he got them printed and he distributed them to the members of the public, he would be guilty under section 12. The learned Additional Sessions Judge, no doubt, found as a fact that the posters, exhibits P. 1 and P. 2, were got printed by the petitioner and for this he relied on the statement of Manohar Lal, P.W. 8, Dharam Vir, P.W. 9 and the photograph exhibit P.W. 9/A. I am not unmindful of the limitations on the powers of this Court generally observed in interfering with the finding of fact. Having read the entire evidence, however, I am of the opinion that this finding of fact is based on misreading of the evidence. Reference to the evidence of Manohar Lal, P.W. 8 would show that he merely stated that about a year back the

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(4) A.I.R. 1957 Mad. 427.

petitioner had gone to him for getting a pamphlet, like exhibit P. 4, printed. He further said that he got that pamphlet signed from the petitioner, he showed the same to one Paras Dass Jain (not Parasdas the petitioner) and ultimately returned it to the petitioner. This evidence does not show that the pamphlets distributed, and which form the subject-matter of the charge, were the pamphlets got printed by the petitioner. The next evidence is of Dharam Vir, P.W. 9, a photographer, who merely says that he took a photograph of the pamphlets which is signed by the petitioner. That also admittedly is not the pamphlet, which was distributed, since the pamphlets distributed did not bear the name or the signatures of the petitioner. An effort was made on behalf of the respondent to sustain that finding by reference to the evidence of K. K. Wadhwa, an Advocate, P.W. 7, and V. K. Johri, an Income Tax Officer, P.W. 6. So far as Wadhwa is concerned, he spoke about the distribution of pamphlet, exhibit P. 3, in the Income Tax Office on 20th March, 1963. He then stated that some people caught hold of the petitioner and took him to the room of Shri Bhargava, where V. K. Johri, P.W. 6 and Shri N. H. Nakvi, Director, also came, and the petitioner confessed before Shri Nakvi that he had got the pamphlet printed. It is significant that the witness does not say that the said confession was made in his presence as well while Shri Nakvi has not been produced. When V. K. Johri, P.W. 6, appeared as a witness, he did not speak about printing, but merely stated that the (the petitioner) distributed the pamphlets as confessed by the petitioner. In this state of evidence, I find it impossible to hold that the petitioner got the pamphlets printed. If that be so, then the evidence would at the most establish that he merely distributed the pamphlets. Mr. Keshav Dayal wishes to challenge the finding as to distribution as well, but having regard to the view that I have taken of sections 3 and 5 that a mere distributor of a pamphlet cannot be convicted under section 12, it is unnecessary to consider the evidence as to distribution. In the circumstances of this case, therefore, the petitioner must be allowed and the judgment of the Additional Sessions Judge set aside and the conviction and sentence quashed.

Paras Dass Jain  
v.  
The State  
Kapur, J.