APPELLATE CRIMINAL

*Before Dulat and Bishan Narain, JJ.*

THE STATE,—*Appellant*

*versus*

DINA NATH AND OTHERS,—*Respondents.*

**Criminal Appeal No. 468 of 1954**

1955

October, 6th

*Press (Objectionable Matters) Act (LVI of 1951)—Penal Code (XLV of 1860)—Section 292—General Clauses Act (X of 1897)—Section 26—Section 292, Penal Code, whether repealed by the Press (Objectionable Matters) Act—Repeal by Implication—Word "Obscene" in section 292, Penal Code, meaning of.*

*Held,* that the Press (Objectionable Matters) Act is not inconsistent with the provisions of section 292 of the Indian Penal Code. Hence section 292 cannot be deemed to have been impliedly repeald by the Press (Objectionable Matters) Act. Courts of law are not in favour of holding that a Statute or a section thereof has been repealed by implication by subsequent legislation and this principle has been recognized in section 26 of the General Clauses Act.

*Held also,* that the word 'obscene' has not been defined in the Indian Penal Code and the determination of this question depends on various circumstances. The idea as to what is to be deemed to be obscene varies from age to age, from region to region and even from person to person. As a matter of fact all that can be done in such a case is to apply a set of tests which depends on every individual's notion of obscenity. The test of obscenity is this: whether the tendency of the matter charged as obscene 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.

*Rex* v. *Wright* (1), *Lowe* v. *Dorling and Son* (2), *The State* v. *Gurcharan Singh* (3), *Sukanta Halder* v. *The State* (4), *The Queen* v. *Hicklin* (5), and *The State* v. *Mulkh Raj, etc.* (6), referred to.

(1) (1750) 1 Burr. 543
(2) (1906) 2 K.B. 772
(3) A.I.R. 1952 Punjab 89
(4) A.I.R. 1952 Cal. 214
(5) (1868) 3 Q.B. 360
(6) Cr. A. No. 212 of 1952

*State Appeal from the order of Shri Harbans Singh, Sessions Judge, Ludhiana, dated 16th June, 1954, reversing that of Shri Banwari Lal, Section 30, Magistrate, Ludhiana, dated 2nd April, 1954, acquitting the accused.*

K. S. CHAWLA, Assistant Advocate-General, for the Appellant.

H. R. SODHI and DALJIT SINGH, for Respondents.

JUDGMENT

BISHAN NARAIN, J. Hakim Dina Nath, the editor and publisher of a journal called 'Munawwar', Nand Singh the keeper and Joginder Singh the manager of Guru Nank Press were prosecuted under section 292, Indian Penal Code, for the article printed in the two issues of May and June, 1953 of that journal. Separate charges were framed for each issue of the journal. Dina Nath admitted that he was the editor and the publisher of this journal and that he was the author of the same but he denied that it was obscene. Nand Singh admitted that he was the keeper of the press but pleaded that the article was printed in his absence while Joginder Singh pleaded that he was working merely as a clerk in the press and that he had no knowledge that the article was obscene. After hearing the evidence produced by the parties the trial Magistrate came to the conclusion that the said article was obscene and sentenced Dina Nath to undergo one month's rigorous imprisonment and to pay Rs. 200 fine on each charge but the sentence of imprisonment was ordered to run concurrently. Nand Singh and Joginder Singh were ordered to pay Rs. 75 and Rs. 25 respectively, on each charge. The trial Magistrate confiscated the copies of the journal containing the offending article under section 521, Criminal Procedure Code. On appeal Dina Nath and Nand Singh were acquitted by the Sessions Judge,

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Ludhiana, on the finding that section 292, Indian Penal Code, had been impliedly repealed by the Press (Objectionable Matter) Act No. LVI of 1951 (hereinafter called the 1951 Act). It was further held that in any case Joginder Singh could not have been prosecuted under the 1951 Act and, therefore, he was rightly prosecuted under section 292, Indian Penal Code, but as the prosecution had failed to prove that Joginder Singh had any knowledge of the offending article being obscene his acquittal was ordered. The State has appealed to this Court against the order of acquittal under section 417, Criminal Procedure Code.

The point that requires decision in this appeal is whether section 292, Indian Penal Code, must be deemed to have been impliedly repealed by the 1951 Act so far as the keeper of the press and the publisher are concerned.

Now it is well established that Courts of law are not in favour of holding that a statute or a section has been repealed by implication by subsequent legislation. The implied repeal may, however, be inferred if the special Act read as a whole is intended to be complete in itself. Farwell, L. J., approved of the rule stated in *Rex* v. *Wright* (1), in his judgment in *Lowe* v. *Dorling and Son* (2), and observed at page 784 in these words—

> "The rule was recognized by Lord Mansfield in *Rex* v. *Wright* (1), and in a note to 2 Hawkin's Pleas of the Crown (1824 ed.), P. 290, is thus stated: 'The true rule seems to be this: where the offence was punishable before the statute prescribing a particular method of punishing it, then such particular remedy is cumulative, and does

(1) (1758) 1 Burr. 543
(2) (1906) 2 K.B. 772

not take away the former remedy; but where the statute only enacts 'that the doing an act, not punishable before, shall for the future be punishable in such and such a particular manner", there it is necessary to pursue such particular method, and not the common law method of indictment.' The same principles apply equally whether the offence is regarded as an invasion of public rights calling for criminal or of private rights calling for civil proceedings".

The rules relevant for the purpose of solving this problem are summarised in Maxwell's well-known book "Interpretation of Statutes" and it is not necessary to repeat them in this judgment. For proper decision of the matter it is necessary to find out the object and purpose of the 1951 Act. Now, no person can keep a press and no newspaper can be published unless a declaration specified in sections 4 and 5 of the Press and Registration of Books Act, 1867 (Act No. XXV of 1867) is made and subscribed before a Magistrate. The 1951 Act applies mainly to keepers of the press and publishers and its object is to provide against the printing and publication incitement to crime and other objectionable matter. The objectionable matter is defined in section 3 which reads—

"3. In this Act, the expression 'objectionable matter' means any words, signs or visible representations which are likely to—

(i) incite or encourage any person to resort to violence or sabotage for the purpose of overthrowing or undermining the Government established by law in India or in any State thereof or its authority in any area; or

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(ii) incite or encourage any person to commit murder, sabotage or any offence involving violence ; or

(iii) incite or encourage any person to interfere with the supply and distribution of food or other essential commodities or with essential services; or

(iv) seduce any member of any of the armed forces of the Union or of the police forces from his allegiance or his duty, or prejudice the recruiting of persons to serve in any such force or prejudice the discipline of any such force; or

(v) promote feelings of enmity or hatred between different sections of the people of India; or which—

(vi) are grossly indecent, or are scurrilous or obscene or intended for blackmail."

The Explanation II given in this section reads as follows :—

"In judging whether any matter is objectionable matter under this Act, the effect of the words, signs or visible representations, and not the intention of the keeper of the press or the publisher of the newspaper or newssheet, as the case may be, shall be taken into account."

In the present case we are concerned with sub-clause (vi) relating to grossly indecent or obscene matter.

Sections 4 to 6 deal with the keeper of a press. When on the complaint of the competent authority appointed by the State Government for the purpose a Sessions Judge is satisfied that sufficient grounds exist for demanding security from the keeper of the press he shall make enquiries in the manner provided in the Act. If he is satisfied that the press is used for the purpose of printing and publishing newspapers or news-sheets, etc., containing objectionable matter, and if he is further satisfied that there are sufficient grounds for demanding security, then he shall direct the keeper of the press to deposit security. Section 5 empowers the Sessions Judge to forfeit the security already deposited and demand deposit of further security on the same grounds and in the same manner as laid down in section 4 of the Act. If the required security is not deposited within time under section 6, then the keeper's declaration under the Press Registration Act shall be deemed to be annulled and a fresh declaration will not be allowed to be made unless the orders made under sections 4 and 5 are complied with and if without complying with these orders a press prints or publishes any matter whether obscene or otherwise it shall be forfeited to Government after necessary inquiries held into the matter. Similar provisions are enacted in sections 7 to 9 relating to the publisher of the newspapers or news-sheets, etc., but in section 9 (3) it is provided that the keeper of the press, who knowingly prints and publishes any newspaper, etc., in contravention of section 9 (2), is liable to punishment with imprisonment and fine and if he repeats the offence the press is liable to be forfeited.

Section 26 of this Act provides that if the keeper of the press publishes or prints in contravention of sections 4 and 5 and the publisher does so in contravention of sections 7 and 8, then they shall be punishable with imprisonment and fine. Penalties are also laid down in section 27 of the Act for a person who disseminates unauthorised newspapers, etc.

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Section 34 lays down that for the same act or omission proceedings shall be taken against the keeper of the press and the publisher either under section 4 or section 5 or section 7 or section 8 or they shall be prosecuted under section 26, but that they will not be proceeded against under both the provisions of law.

Broadly speaking, under the 1951 Act printing of obscene matter is an objectionable matter and the Sessions Judge has authority to demand security, and if objectionable matter is again printed then he may forfeit the security already deposited and demand fresh security. If any publication is made, whether objectionable or otherwise, without depositing the required security, then the persons concerned are liable to punishment with imprisonment and fine. Section 26, it is to be noticed, has no direct application to a keeper of the press or a publisher who is responsible for publishing an obscene matter. Moreover even if a Sessions Judge is satisfied that the article in question is obscene, he need not pass order forfeiting security or demanding deposit of fresh security unless he is further satisfied that such an order is necessary. Therefore, the publication of an obscene matter by itself is not necessarily punishable even if it be assumed that demand of security is a punishment. Such a demand, I may point out, is not considered to be a punishment under section 53 of the Indian Penal Code. What is made punishable in the 1951 Act is the printing and publication without filing declaration required under the 1867 or 1951 Act. In the circumstances it appears to me that the 1951 Act does not provide for punishment for printing and publishing obscene matter but provides only against the repetition of such publications. It is preventive in nature regarding objectionable matters and not penal. This conclusion is supported by the fact that the Act specifically states that the intention of the publisher or keeper of the press is not

to be taken into consideration in deciding whether a matter is objectionable matter or not and further as far as proceedings under sections 4 to 9 are concerned, they are called 'proceedings' as distinct from the word 'prosecution' as used in section 26.

On the other hand under section 292, Indian Penal Code, once a person is found to have been concerned with the publication of obscene matter, the Court must convict and punish him. It is not left to the discretion of the Court to hold him guilty under the section and not yet to convict him. Of course the extent of punishment is left to the discretion of the Court subject to the maximum prescribed in the Act. Moreover a person found guilty under section 292, Indian Penal Code, is considered as an offender and is guilty of having committed an offence.

Taking the two Acts together, I am unable to see that section 292, Indian Penal Code, cannot be read together with the 1951 Act. It seems to me that the provisions of section 292, Indian Penal Code, are not inconsistent with the provisions of the 1951 Act, and, therefore, it cannot be said that section 292, Indian Penal Code, is repealed by implication by the subsequent Act.

The learned counsel for the respondents strongly relied on the decision by a Division Bench of this Court reported in *The State* v. *Gurcharan Singh* (1), but in my opinion that decision is of no assistance in deciding the present case. In that case it was held that section 409, Indian Penal Code, concerning public servants has been impliedly repealed by section 5(1)(c) of the Prevention of Corruption Act, 1947, and it was so held on the grounds that the 1947 Act has made a provision for previous sanction of the appropriate authority for prosecution as necessary, the accused has been given a right to give evidence as a witness and there is a change in the sentence that can be

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awarded under the 1947 Act. In the present case, however, the inquiry to be held by the Sessions Judge is not a trial or a prosecution nor is there any punishment prescribed for printing or publishing an obscene matter as that word is not defined in the Indian Penal Code. Moreover it cannot be said that the ingredients of the offence laid down in section 292, Indian Penal Code, have been repeated in the 1951 Act or that the 1951 Act *qua* this provision of Indian Penal Code covers the same ground.

Even if it be held that the publication of obscene matter is an offence and is punishable under the 1951 Act as well as under the Indian Penal Code, I am of the opinion that section 292, Indian Penal Code, cannot be held to have been impliedly repealed in view of section 26 of the General Clauses Act which reads—

> "Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

The statute books of the Central and State Legislatures are full of enactments in which acts and omissions which are made punishable by Indian Penal Code are also dealt with under special Acts and in my opinion this section 26 of the General Clauses Act was enacted with a view to avoid implied repeal of the general Acts by the enactment of special Acts. It is to be noticed that the Legislature when enacting the 1951 Act did not consider that section 26 of the General Clauses Act covered the case of persons under sections 4 to 9 and enacted a separate section 34, and this fact to my mind indicates that the Legislature did not consider the proceedings under sections 4 to 9 as dealing with offences at all.

Taking all these matters into consideration, I hold that the learned Sessions Judge was in error in holding that section 292, Indian Penal Code, has been impliedly repealed by the 1951 Act so far as it is applicable to the keepers of the press and publishers of offending articles. The result is that this appeal must be accepted and the case remanded to the Sessions Judge for decision in accordance with law.

At this stage the learned counsel for the respondents submitted that Dina Nath has migrated from Ludhiana and has settled down in Chandigarh and further that he has stopped publishing the journal 'Munawwar' and requested on the ground of convenience that the case may be decided on merits by this Court. To the taking of this step no serious objection was raised by the learned Counsel appearing for the State. In the circumstances we have transferred the case from the Court of Sessions Judge, Ludhiana, to this Court on the ground of general convenience and in the interest of justice under section 526, Criminal Procedure Code, and we now proceed to deal with the matter on merits. We have read the articles upon which prosecution is based and have also examined the journal's general tenor. The article deals with matters of sex and reproduces for the most part passages and stories published in several books and journals. The article is also illustrated. There is no doubt that some passages deal with intimate matters of sex but I am of the opinion that these passages cannot be considered to be obscene.

The word 'obscene' has not been defined in the Indian Penal Code and the determination of this question depends on various circumstances. The idea as to what is to be deemed to be obscene varies from age to age, from region to region and even from person to person. As a matter of fact all that can be

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done in such a case is to apply a set of tests which depends on every individual's notion of obscenity and there is no doubt, as laid down in *Sukanta Halder* v. *The State*, (1), that there cannot be an immutable standard of moral values. "The test of obscenity was laid down by Cockburn, C.J., in *The Queen* v. *Hicklin*, (2), and has been accepted by all the Courts in this country. Cockburn, C. J., has laid down that "the 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 was accepted in *The State* v. *Mulkh Raj, etc.* (3), by a Division Bench of this Court consisting of Khosla and Falshaw, JJ. Adopting this test it cannot be said that the object of this article or its tendency is to corrupt the innocent or to deprave the ignorant. I do not consider it necessary to examine the particular passages to which objection has been taken by the learned counsel appearing for the State and I think it is sufficient to say that the test laid down by Cockburn, C. J., has not been satisfied in the present case.

As far as Joginder Singh is concerned, there is another additional fact and that is that there is no evidence that he had any knowledge that this article was obscene.

For the reasons given above, I set aside the decision of the trial Magistrate and order that the accused persons be acquitted. Dina Nath is on bail and his bail bond shall stand cancelled. The fine imposed on the three accused persons shall, if paid, be refunded.

DULAT, J. I agree.

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(1) A.I.R. 1952 Cal. 214
(2) (1868) 3 Q.B. 360
(3) Cr. A. No. 212 of 1952