

In the High Court of Judicature at Patna.

Criminal Jurisdiction.

1942.

District

PART I.



(THIS FILE MUST BE PRESERVED FOR EVER.)

Revision under Section 435, Code of Criminal Procedure.

No. 39

Motion made on behalf of

Nabakrishna Chandhury

PETITIONERS.

Through Mr.

H. Mohapatra

versus

Emperor

OPPOSITE PARTY.

SUBJECT.

Praying that the order of the
dated the _____ day of _____

Magistrate of

194 .

To Magistrate:—No. _____ Cr.,
dated _____ 194 .

To Sessions Judge:—No. _____ Do. Cr. A.,
dated _____ Do. 194 .

To Advocate General:—No. _____ Do. Cr. B.,
dated _____ Do. 194 .

From Sessions Judge:—No. _____
dated _____ 194 .

From Magistrate:—No. _____
dated _____ 194 .

Intimates that the _____ of _____ 194 . has been fixed for the hearing, when the Court will consider any cause which may be shown by _____ why the conviction and sentence should not be _____ and requests him to forward the record on or before the _____ 194 .

Copy for information, with the request that he will forward the record on or before the _____ 194 .

Copy for information.

1/39 1942-01

Lay before the Criminal Bench
the Hon'ble Mr. Justice

Date of decision of High Court

1.10 1942.

Assistant Registrar.

In the High Court of Judicature at Patna.

Criminal Jurisdiction.

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Raja Krishna Chandhury

versus

King Emperor

*Appellant
Petitioner*

*Respondent
Opposite-party*

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Compared and found correct.

Red
Signature of Officer of Court.

Date

16/11

[Signature]
Record-keeper.

139 1942 - 02

Mr. H. Mahapatra

In the High Court of Judicature at Patna.

ORDER-SHEET.

Ci Rev Appeal No. 1942.

Nabakrishna Chaudhury Appellant,

versus

Emperat. Respondent.

Serial No of Order.	Date of Order.	ORDER WITH SIGNATURE.	Office Note as to action (if any) taken on Order.
1	23 ³ 42	<p><i>Presented. Put up tomorrow before C.J. a Member Sd. J. in presence of the P.P. for Orissa.</i></p> <p><i>A.H.</i></p>	
2.	24-3-1942.	<p>This application will be heard.</p> <p>Let the usual notices issue.</p> <p>Let this petition be heard at the next Circuit at Cuttack as soon as possible.</p> <p>The petitioner gives an undertaking that he will not deliver any further speeches until the hearing of this application. This undertaking is accepted, and the petitioner will be released on bail to the satisfaction of the District Magistrate pending the hearing of this petition.</p> <p>If the undertaking not to deliver speeches is broken, his bail bond will be cancelled for</p> <p>Let this order b</p>	

1/29 1942-03

Pr. Rec. 5/31/42

Serial No. of Order.

Date of Order.

ORDER WITH SIGNATURE.

Office Note as to action (if any) taken on Order.

by telegram to the District Magistrate and the Superintendent of the Cuttack Jail forthwith at the petitioner's cost.

id. id.

3 1.4.42

One copy of the grounds be filed by 7.4.42 at the Rakit.

Collection AR

Handwritten notes in the right column, including "one copy to be filed for issue of notice" and "copy filed. notice issued. date filed 24.4.42".

Serial No. of Order.	Date of Order.	ORDER WITH SIGNATURE.	Office Note to action (if any) taken on Order.
422	9/42	<p>Heard by me Hon'ble Mr Justice Meredith. Judgment reserved.</p>	
51	10/42	<p>Judgment delivered Application allowed & my conviction and sentence set aside.</p>	<p>B.O. Key Pr.</p>
			<p>B.O. Key Pr. / 1/39/42</p>

From an order of J. E. Maher, Esq., I.C.S., Sessions Judge of Cuttack, dated the 17th March, 1942, modifying that of Mr. Musaheb Khan, Sub-divisional Magistrate of Cuttack, dated the 28th February, 1942.

Naba Krishna Chaudhury, accused,: Petitioner,
versus

The King-Emperor, Opposite Party.

For the petitioner: Mr. H. Mahapatra.
For the Crown: The Advocate General.

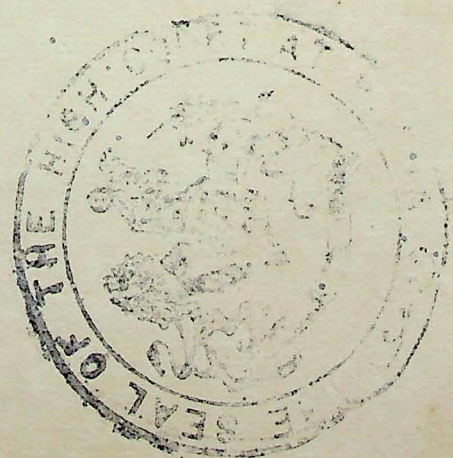
P R E S E N T.

The Hon'ble Mr. Justice Meredith.

Meredith, J.

The petitioner, Naba Krishna Chaudhury, a member of the Orissa Legislative Assembly, was convicted by a Magistrate under rule 38(5) of the Defence of India Rules, and sentenced to undergo six months' rigorous imprisonment. This sentence has been reduced to six weeks' rigorous imprisonment by the learned Sessions Judge of Cuttack on appeal.

The case against the petitioner is that on the 6th of January, 1942, at Salepur thana, in the course of a Congress meeting, he delivered a speech to an audience of rustics, which constituted a prejudicial act within the meaning of rule 34(6) of the said Rules. In the opinion of the learned Judge the speech cannot be called a prejudicial act as contemplated by sub-rule (g) of rule 34(6), but does amount to a prejudicial act under rule 34(6)(e), that is to say, it is intended or is likely to bring into hatred or contempt, or to excite disaffection towards, His Majesty or the Crown Representative or the Government established by law in British India or



in any other part of His Majesty's dominions".

The speech which forms the subject-matter of the charge was delivered in Oriya, and for its contents we have to depend upon a shorthand note made by a police reporter and his transcription of the same into English. Nevertheless, the Courts below ^{have} ~~having~~ accepted that transcription as substantially accurate, *and I see no reason to hold they are not correct in doing so.* In Revision one must proceed upon that basis.

The speech extends to 25 closely typed foolscap pages, and in order to take a just view it must be regarded as a whole. It is, therefore, necessary to attempt to paraphrase it within reasonable limits of brevity, no easy task, since it is verbose in the extreme, often illogical, and sometimes self-contradictory, and is couched largely in the language of the demagogue, which aims rather at appealing to the emotions of the crowd than at achieving lucidity of statement.

Let us see then if we can boil down the speech so that its salient points may emerge from the sea of verbiage.

The petitioner begins by telling his audience that the aim of the Congress is to achieve freedom, to remove and destroy British domination. Its aim is to overthrow Imperialism. Owing to the people having been emasculated by foreign rule this task had long seemed hopeless, but now the war is at the back door of India, and the British and other Governments are collapsing through their own foolishness. They have emasculated the people, and are now themselves suffering the consequences. They are calling to help them the sheep - the people, they have all along frightened.

Do not laugh, he says, at this. It is no matter for mirth, though no doubt there is much to laugh at in their defeats. Their biggest triumphs have been



the successful achievement of retreats. Japan on entering the war demoralised them at once. The British and the Americans had concealed the full facts regarding their reverses at the hands of the Japanese.

Yet, he says, this vile Government can't profit by advice even when ruin comes. Nevertheless, do not say to yourselves, "now they are discomfited, let us sit back and watch the fun". Don't say 'let Japan and Hitler win'.

Why ? because Hitler is no better than the British. He is their disciple. They taught him- this capitalist Government of rich people.

During the last war they said they were fighting for peace, but they did all sorts of injustice after its conclusion, and hence gave rise to Hitlerism. The British Government is at the root of Hitlerism, and instead of the capitalist British Government checking him at an early stage they thought more of lending him money.

Contrast all this, he says, with Russia. There the people drove out the capitalists. They established a peasant and workers' Government. They achieved union between the people and the Government. The British, French and Americans tried to crush them, but failed.

The Russians alone could successfully oppose Hitler. They had no fifth column. The scorched-earth policy did not frighten them.

We should learn from them, he says, but the British would not learn. They think more of retaining their own power in India than of conquering Hitler. How foolish, he exclaims, they have become. Look at the Governor of Orissa and his officers, making a town of tents at Angul, thinking more of amusing themselves than of fighting, shutting their eyes to realities, and saying 'let us eat, drink and be merry'.

The British Government, he says, should realise that if the hearts of the people are not with



the Government, they will inevitably welcome the Japs; yet this vile Government won't learn, though they have the example of China before them.

He goes on:- but the Congress does not want to harass them when in trouble. It only wants peace and brotherhood, and happiness for all. The Congress does not want Hitler and Japan to win, neither does it want British Imperialism to win. It says 'let no one win'. It wants freedom for all, and there is enough in the world for everyone. Under present conditions not even Mahatma Gandhi and Jawahar Lal Nehru could hope to draw the people into the war.

But, he repeats, the Government won't learn. The British have become fat and foolish, and so are being defeated. Conditions in England have already become pitiable. In India the British make friends of rich sycophants, zamindars and money-lenders, and treat the people as rebels.

If India had had five years independence, he says, she would be a great power, yet the British turn to things like the 'V' campaign, at which he proceeds to poke fun at some length.

Next he returns to the subject of zamindars and capitalists, and says they are the real fifth columnists.

But, he says, the British can still take the right path if they wish, and so Hitler can be defeated. In the meantime, the proper course for the people is to unite under the banner of non-violence. They should make the villages into self-contained fortresses of peace with their own stocks of food, etc., and so if the Japs come, they will have nothing to fear from them. They should remove untouchability, and the rich should become unselfish. Love will save them. That is the essence of Mahatma Gandhi's teaching.

It is necessary, I think, to attempt as it were



a second distillation before we can say with confidence what is the real significance of the speech, and what its effects were likely to have been upon the audience to which it was delivered.

What the speech amounts to would in the briefest possible language seem to me to come to this: the British are wicked people, unscrupulous and foolish too. Now they are in trouble, we Indians feel like sitting back and watching the fun. You have every excuse for doing so; but don't do it. Because the Japs and Hitler are as bad as the British. You don't want to fall out of the frying pan into the fire. Therefore, unite and pursue the only plan left open to you — non-violence. Make the villages self-contained units, follow the teachings of Gandhi, and try and live better lives.

The question is whether this speech does amount to a prejudicial act under rule 34(6)(e). The penal provision under which the petitioner has been convicted is one of those where in order to protect itself Government has to interfere with the right of the individual, thinking freely, to say freely what he thinks. It is one of those where British ideas regarding freedom of speech come into conflict with considerations of safety, and consequently it is often very difficult to fix the dividing line between what is legitimate though possibly undesirable and wrong-headed, and what is properly punishable. The dividing line is a narrow one. Moreover, it is a shifting line. Its position in times of security and peace is not the same as in times of insecurity. In time of war when the country is in danger it most certainly shifts its position. Any judgment, then, upon a particular speech cannot be based purely upon general principles, but must take into account the particular circumstances under which it was delivered, the existing conditions, and the nature of



the audience.

Fortunately there is a very recent ruling of the Federal Court, which is of great assistance in dealing with a case like the present. I refer to Niharendu Dutt Majumdar v. Emperor (A.I.R. 1942 Federal Court 22).

The first thing which we get from this ruling is that the offence under rule 34(6) of the Defence of India Rules read with rule 38(1)(a), though described in slightly different language, is exactly the same thing as the offence of sedition as defined in section 124(A) of the Penal Code. Therefore, in considering the offence under the Defence of India Rules all the law relating to sedition is applicable, and the question we have to ask ourselves in dealing with a case like the petitioner's is merely the question: Has he been guilty of sedition?

Next, we get a clear and precise explanation in this ruling of what does constitute sedition. To quote from the judgment: "The first and most fundamental duty of every Government is the preservation of order, since order is the condition precedent to all civilization and the advance of human happiness..... It is to this aspect of the functions of Government that in our opinion, the offence of sedition stands related. It is the answer of the State to those who, for the purpose of attacking or subverting it, seek to disturb its tranquillity, to create public disturbance and to promote disorder, or who incite others to do so. Words, deeds or writings constitute sedition, if they have this intention or this tendency; and it is easy to see why they may also constitute sedition, if they seek, as the phrase is, to bring Government into contempt. This is not made an offence in order to minister to the wounded vanity of Government, but because where Government and



the law cease to be obeyed because no respect is felt any longer for them, only anarchy can follow. Public disorder, or the reasonable anticipation, or likelihood of public disorder, is thus the gist of the offence. The acts or words complained of must either incite to disorder, or must be such as to satisfy reasonable men that that is their intention or tendency. " (Italics mine)

Let us apply this touch-stone to the speech of the petitioner as I have summarised it. There is plenty of vulgar and ill-informed abuse of British Imperialism; but the petitioner's object was certainly not to excite disaffection or to promote disorder; not to help the enemy, or to hinder the war effort. On the contrary, if he did not tell the people to help the Government and to join whole-heartedly in that effort, he did tell them not to hinder it. He told them to act peaceably, to retire to their villages and mind their own business. Viewed in this light, can it be said that the speech was intended to or likely to excite disaffection or promote disorder? I think not. In a recruitment area it might perhaps be regarded as likely to interfere with recruitment, but the place where it was delivered is not such an area. That the people there should remain quiet and orderly, it might well be argued, is as good a way of assisting Government as anything they could do.

It is true, as I have said, that there is ^{plenty} ~~lots~~ of vulgar abuse in the speech, but, to quote once more from the Federal Court's judgment: "There is an English saying that hard words break no bones; and the wisdom of the Common law has long refused to regard as actionable any words which, though strictly and literally defamatory,



would be regarded by all reasonable men as no more than mere vulgar abuse. Abusive language, even when used about a Government, is not necessarily seditious, and there are certain words and phrases which have so long become the stock-in-trade of the demagogue as almost to have lost all real meaning."

In the petitioner's long speech he has drawn largely on this stock-in-trade, but merely because of that he is not necessarily guilty of sedition. He has gone very near the line of which I have spoken, and it is necessary that he should be warned how near he has gone to it, but I am unable to hold that he has definitely crossed it.

In the result, therefore, I would allow this application, set aside the petitioner's conviction and sentence, and direct that he be acquitted.

Circuit Court,
Cuttack, the 1st ^{October} ~~September~~, 1942.

W. C. ...

O.P.A.

