

In the High Court of Judicature at Patna.

Criminal Jurisdiction.

193/2

District

PART I

(THIS FILE MUST BE PRESENTED FOR EVER.)



Miscellaneous case.

No. 56

Hare Krishna Mahatah

PETITIONERS.

Through *Mr. H. Mohapatra*

VERSUS

Am...

OPPOSITE PARTY.

SUBJECT.

Praying that the

CR-56/1942-01

To Magistrate :—No. _____ Cr.,
dated _____ 193 .

To Sessions Judge :—No. _____ Cr.A.,
dated _____ 193 .

To Government Advocate :—No. Do. Cr. S.,
dated _____ 193 .

From Sessions Judge :—No. _____
dated _____ 193 .

From Magistrate
dated _____ 193 .

Date of session of High Court
_____ 193/2

P. L. _____ 193/2

Intimates that the _____ of _____ 193 , has been fixed for the hearing, when the Court will consider any cause which may be shown by him why the _____ should not be _____ and requests him to forward the record on or before the _____ 193 .
Copy for information with the request that he will forward the record on or before the _____ 193 .

Copy for information.

Lay before the Hon'ble Mr. Justice

Assistant Registrar.

In the High Court of Judicature at Patna.

Criminal Jurisdiction. TABLE OF CONTENTS.

Criminal Revision No. *56* of 1942.

Harekrishna Mahatah

Appellant
Petitioner

versus

Empur

Respondent
Opposite-party

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2	Judgment of the High Court	2-4
3	Letter of Reference Petition of appeal Application	5-10
4	Lower Court judgment	11-27
5	Explanation	*
6	paper Books	copy

Compared and found correct.

Em
Signature of Officer of Court.

Date *8/1*

Em
Receiver-keeper.

In the High Court of Judicature at Patna.

Cuttack Circuit.

ORDER-SHEET.

Cr. Rev. Appeal No. 56 of 1942.

Harekrishna Mahatab ... Petitioner *Appellant,*

versus

King Emperor ... O. Party. *Respondent.*

CR-56/1942-03

Serial No of Order.	Date of Order.	ORDER WITH SIGNATURE.	Office Note as to action (if any) taken on Order.
1	12-5-42	Presented. Stay fine. Sd. J. G. Maner Registrar	
2	24.6.42	<i>Trial Court Judgment be filed by 1/7/42</i>	<i>T. C. of. wanting.</i> <i>or 3</i> <i>T. C. of. not filed.</i>
3	9.7.42	<i>10 days further time is allowed to comply with order No. 3 calling which the case will be laid before the Bench for orders.</i> <i>or 3</i> <i>and</i>	<i>or 3</i> <i>Trial Court's judgment not yet filed, though time allowed by me.</i>
4	21 ⁹ / ₄₂	<i>Two weeks' time is allowed to file a copy of trial Court's judgment, failing which the application will stand dismissed without further reference to a Bench.</i>	<i>W. L. Maner</i>

Serial
No. of
Order.

Date of
Order.

ORDER WITH SIGNATURE.

Office Note as to action
on Order.

5

10/10/42

Let this case be
passed over.

Trial Court judgment
filed on 1.10.42.

Warrant

Registrar

For Admission

6

28/10/42

Admit
in return

Ref
1/10

one copy to be filed.

7

4.11.42

one copy of petition be filed
by 12/11.

SP
28/10

Qua
HR

copy filed. notice
issued. Date fixed

2.12.42

8

5.12.42

Heard by his Hon.
Mr. Justice Rowland
judgment delivered
application allowed
fine conviction
set aside. The
fine if paid be
refunded.

Ref

SP

Ref
1/11

2 c. R with copies of pt
sent to S.G. with Memo
no. 359/11.12.42 & D.A. with all
with Memo no. 2592/11.12.42

Ref
1/12

From an order of J.E. Maher, Esqr., I.C.S.
Sessions Judge of Cuttack, dated the 21st April,
1942, modifying an order of Maulavi Musaheb Khan,
Subdivisional Magistrate, Cuttack, dated the 11th
March, 1942.

Harekrishna Mahatab-----petitioner,

versus

The King Emperor.

For petitioner : Mr. H. Mohapatra.

For Crown : The Advocate General.

P R E S E N T :

The Hon'ble Mr. Justice Rowland,

Rowland, J. The petitioner has been convicted of the offence punishable under Rule 33(5) of the Defence of India Rules an offence punishable with imprisonment for a term which may extend to five years. An appeal by him to the Sessions Judge resulted in reduction of the sentence from a fine of Rs. 100/ to a fine of Rs. 30/ only.

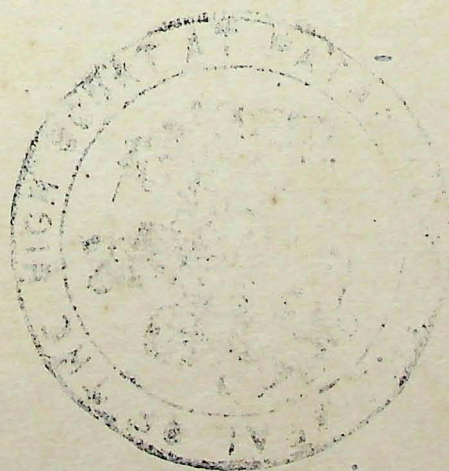
In revision it is contended that there should have been no conviction because the document which he published or distributed did not contain information likely to assist the enemy. The Sessions Judge in his judgment has pointed out that the article in question did not contain information which, using language in its ordinary sense and apart from the statutory definitions, he would have considered as likely to assist the enemy; but on examining the rules he found that the definition in Rule 34(5) of "information likely to assist the enemy" was wider than the meaning which would popularly be attached to the expression defin-

ed.

CR-56/1942-04



He concluded that the information in the article was to be deemed information likely to assist the enemy within the meaning of the rule. The passage which has to be considered is one containing an imputation that a political organization (not named) to which "some members of the Ministerial party (not named) owe allegiance" have a programme for removing by arrest and imprisonment members of the Congress assembly party because Congress "is the only obstacle in the way of the Fifth Columnists coming in helpful contact with the enemy while he overwhelms our country". The Sessions Judge has regarded this passage as containing information likely to assist the enemy because it refers to activities of Fifth Columnists who are to be deemed to be enemy agents. The term 'Fifth Columnist' has not, I think, ever been the subject of a precise legal definition, but in its general sense I take it to mean a person who is sympathetically disposed towards the enemy but not necessarily a person actively engaged in giving him assistance. The expression 'Fifth Columnist' may not therefore be enough to bear the consequence that any reference to a Fifth Columnist in any statement must be deemed ipso facto a reference to an enemy agent. But the Advocate General contends that the statement complained of imputes not only sympathy but positive action to certain persons and such action it is suggested in the statement is directed to the end of removing obstacles to the enemy's success. That it is said amounts to engaging in assistance to the enemy. Perhaps it may be conceded that the statement contains an imputation that certain persons are enemy agents; but I feel doubtful whether the statement can be said to contain or convey any information regarding enemy agents. 'Information' is not defined in the rules, but in its ordinary sense the expression would seem to require some positive allegation of fact. In the article complained of there is no assertion of any act or event



or thing done by anyone. The fact that certain persons had been arrested was no news; it was not a piece of information which there was any objection to publishing. Indeed the other portions of the statement were allowed by the Press Advisor to go into the newspaper. The portion complained of was not a statement of anything done, but an insinuation as to corrupt motive ^{vague} so that it can hardly be said to convey information. That being so, I would hold that the prosecution has not established that the act complained of falls within the mischief of the rule.

The application will be allowed and the conviction set aside. The fine if paid will be refunded.

Circuit Court,
Cuttack,
The 8th December, 1942.

B. Chowdhury.

R. Paul

