

APPELLATE CRIMINAL

Before Mr. Justice Dixit and Mr. Justice Vyas.

DURGAPRASAD PRASANNAKUMAR *v.* THE STATE OF BOMBAY
AND ANOTHER.*

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Oct. 7

*Press (Objectional Matter) Act (LVI of 1951), ss. 3 (v), Expl. 1, 10, 22—
'Objectional matter' within meaning of s. 3 (v), what is—Freedom
of Press, limitations of—Explanation I to s. 3, scope of.*

The scope of s. 3 of the Press (Objectionable Matter) Act, 1951, is determined by two considerations viz. the freedom of the Press and the limits within which such freedom may be allowed.

In determining whether a writing is objectionable matter under s. 3 of the Press (Objectionable Matter) Act, 1951, it must be read as a whole. The Court is not concerned with the correctness or otherwise of the views expressed by the writer; the Court has to consider its tenor and effect.

The Appellant, who was the keeper of a Press and also the Publisher of a Weekly, was called upon to furnish security for printing and publishing objectionable matter, which was likely to promote feelings of enmity or hatred between different sections of the people of India within the meaning of s. 3 (v) of the Press (Objectionable Matter) Act, 1951. The impugned article, while commenting upon a marriage of a Hindu girl (who was first converted to Islam) with a Muslim and her subsequent immediate divorce by the Muslim husband, made an attack on the Muslim community in general the effect of which was to show up Muslims as a community in the blackest possible light. On the question whether the writing fell within the language of s. 3 (v) of the Press (Objectionable Matter) Act, 1951, or whether it fell within Explanation I to that section,

Held, (i) that upon a fair, free and liberal reading of the article the effect produced upon the mind of an average reader was to promote feelings of enmity between the Hindus and the Muslims, and

(ii) that as in the impugned article there was no question of any comment expressing disapprobation or criticism of any law, or policy of Government or any administrative action of Government it did not fall within the scope of Explanation I to the section.

Emperor v. Bal Gangadhar Tilak,⁽¹⁾ referred to.

Appeals against the Orders passed by J. M. Shelat, Sessions Judge, Greater Bombay.

One Durgaprasad Prasannakumar *alias* Pandit Bakhale (appellant) was the Publisher of the Marathi Weekly entitled "The Hindu" and was also the keeper of the Press known as Nirbhaya Mudranalaya, situated at Dadar, Bombay, in which the said Weekly was being printed. In the issue of the Weekly of July 19, 1954 an article was published under the pen-name "Veerketu" which had as its subject the marriage between a Hindu girl and a Muslim.

The Commissioner of Police, Greater Bombay, lodged two cases under the Press (Objectionable Matter) Act, 1951, against

* Criminal Appeal No. 803 of 1955 with Criminal Appeal No. 798 of 1955.

1. (1916) 19 Bom. L. R. 211.

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the appellant as the Publisher and Keeper of the Press, in the Court of Session for Greater Bombay. The Sessions Judge held that the article in question contained objectionable matter and was not protected by Explanation I to the s. 3 of the Act.

The appellant was called upon to furnish security of Rs. 1,500 as the Publisher of the Weekly and was given a warning as the Keeper of the Press under s. 4 of the Act.

The appellant appealed to the High Court.

N. D. Dange and *L. G. Khare*, for the appellant.

H. M. Choksi, Government Pleader for the State.

Dixit J.—These two appeals raise a question under s. 3 (v) of the Press (Objectionable Matter) Act, 1951. The facts of the two cases which give rise to the appeals are simple and they may be shortly stated.

The appellant is the keeper of a press known as Nirbhaya Mudranalaya situate at Vithal Wadi, Ranade Road, Dadar, Bombay 28. He is a publisher of a weekly called "Hindu" published in Marathi language, which is printed at the said press. On May 5, 1954, he made a declaration to that effect before the Chief Presidency Magistrate, Bombay.

In its issue of July 19, 1954, there appeared an article headed "Statement of repentant Kamal. Vijayalaxmi became Hindu again" under a pen-name "Veerketu". The Commissioner of Police, Greater Bombay, having taken the view that the said article was objectionable within the meaning of s. 3 (v) of the Act, filed before the Sessions Judge, Greater Bombay, a complaint against the appellant, firstly as the keeper of the press and, secondly, as the publisher of the weekly. Upon the two complaints, a notice was issued to the appellant and upon the evidence adduced before him, the learned Sessions Judge made two orders, by one of which he called upon the appellant to furnish a security of Rs. 1,500 and by another he issued a warning to the appellant, holding that the issue of the said weekly "Hindu" dated July 19, 1954, contained objectionable matter within s. 3 (v). Feeling aggrieved by the two orders, the original respondent i.e. the keeper and publisher has filed two separate appeals.

As these two appeals involved a common question, it will be convenient to dispose of them by a common judgment.

The only question for decision in both the appeals is whether, as the State contends, the article referred to above falls within the language of s. 3 (v) or whether, as the appellant contends, it falls within Explanation I to s. 3. It will, I think, be convenient first to set out the relevant provisions. Section 3 defines 'objectionable matter' and provides that:

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

(v) promote feelings of enmity or hatred between different sections of the people of India."

There are three explanations added to this section, two of which need be mentioned in this place, Explanation I is as follows:

"Comments expressing disapprobation or criticism of any law or of any policy or administrative action of the Government with a view to obtain its alteration or redress by lawful means, and words pointing out, with a view to their removal, matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different sections of the people of India, shall not be deemed to be objectionable matter within the meaning of this section".

Explanation II runs 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 news-sheet, as the case may be, shall be taken into account."

In ascertaining the scope of s. 3, two considerations arise. The first is the freedom of the press and the other is the limits within which the freedom of the press may be allowed to be enjoyed. These two considerations are set out in the section and the explanations attached to the section. On the one hand, there is the freedom of the press and on the other, there are limits within which the freedom of the press may be allowed to be enjoyed and it is for the nice balancing of these two considerations that s. 3 together with the explanations has been enacted. While the freedom of the press is a very important freedom, it has to be recognised that there are limits to the exercise of that freedom and the limits within which that freedom is to be enjoyed are indicated in the section.

Now, before I refer to the article which is alleged to be objectionable matter within s. 3 (v), it will, I think, be convenient to set out the story of certain experiences of a film actress by name Kamal Varma as was recited by her in the July 1954 number of "Film India". The article is based upon the account given by her and I propose to state that account as briefly as possible. On January 4, 1954, Kamal Varma was married to one Ata Mahomed, after embracing Islam. She lived with her mother for about two months after the marriage, but thereafter Ata Mahomed and Kamal Varma who, by marriage, became Anjuman Ara, lived in the Taj Mahal Hotel for about two months until May 29, 1954, when Ata Mahomed left for Palanpur. In the evening of May 29, Kamal Varma *alias* Anjuman Ara went to the Bombay Central Station to see her husband off who promised that he would return within four or five days. On May 30, 1954, i.e. on the next day one Akhatar Hussein, a common friend of Ata Mahomed and Kamal Varma, saw Kamal Varma and gave her a writing which was a *talaknama* which is a deed of divorce bearing date May 14, 1954. The writing stated that Anjuman Ara had been divorced by

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Ata Mahomed as from May 14, 1954, and an amount of emoluments was deposited with the Chief Kazi Murghay. According to Kamal Varma, she was stunned, as she says, and to put it in her own words:

“For several hours I just could not realise what had happened; only the previous evening, till the moment of the train’s departure he was whispering in my ears all the love talk the sort of which a bride likes to hear from the mouth of her husband. I could not understand how the man who had already divorced me on the 14th May could live with me, love me and beguile me for 15 days more without feeling the least uneasiness of mind or conscience. Being in love I was, of course, behaving with blind trust like all Indian women.”

She then goes on to say:

“I had now realised that I had made a mistake in giving up everything for a man who did not deserve the love and faith of a woman.”

She says that she was returning to her old religion, suggesting that she wanted to be converted back to Hinduism and the account concludes in her own words:

“Fortunately in that religion there are no restrictions which can dissolve a marriage in half a second and that is why a marriage tie has attained more sanctity and security in it. I hope that owing to my unfortunate experience other women would be on the alert and avoid trusting the undeserving (persons)”.

It is this story as given by Kamal Varma which became the subject of the article called “the Clarification by Vijayalaxmi” in the issue of the paper dated July 19, 1954.

Now, before I refer to the article which is a fairly lengthy one and runs into something like nine pages of the record, it may be as well to state the principles in approaching the consideration of the question which arises for decision. In the first place, one has to read the writing quietly and attentively. The writing is to be read as a whole and not merely isolated passages here and there. It is not right to pick up a strong expression here and a strong expression there. The general tenor and the drift of the writing is to be considered. Further, the Court is not concerned with the correctness or otherwise of the views expressed by the writer. The court has to consider the general drift of the writing, its tenor and its effect. These principles are laid down in several cases and it would be enough to quote the remarks of Mr. Justice Shah in the case reported in *Emperor v. Bal G. Tilak*.⁽²⁾ Mr. Justice Shah was dealing with the speeches delivered by Bal Gangadhar Tilak and this is what he said:

“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 petitioners: See *Reg. Burns*."⁽³⁾

Now, in order to appreciate the dispute it is as well to point out the nature of the appellant's defence. In the Court below the appellant filed a written statement, in paragraph 5 of which it is stated as follows:

"The matter appeared to be very serious, considering the interest of the citizens of India (Bharat) and the subject of conversion. The policy of the Government was thought to be, not what it ought to be. With a view therefore, to obtain alteration or redress by lawful means, comments expressing disapprobation or criticism in respect of existing circumstances, were thought necessary in the matter".

In paragraph 7 of the written statement it was stated:

It is submitted that the said article written by Veerketu in the issue of 'Hindu' dated July 12, 1954 is continued in the next issue of the Hindu dated July 19, 1954 which article is the subject matter of the present case, so that both the articles must be read together as counterpart of each other or at least the two extracts (Annexures C and D herewith) from the article dated July 12, 1954 and the article dated July 19, 1954 must be read together and as one article".

Finally, paragraph 8 of the written statement is as follows:

"It is further submitted that the article in question dated July 19, 1954 is protected by Explanation I to s. 3 of the Press (Objectionable Matter) Act LVI of 1951".

In substance, therefore, the position is that, according to the State, the (Hindu) of July 19, 1954 contains matter which is likely to promote feelings of enmity or hatred between different sections of the people of India i.e. between Hindus and Mahomedans. But the defence of the appellant is that the article is protected by Explanation I to s. 3 and Mr. Dange's contention is that in the article there is a criticism of the policy of Government and so the article is justified on that ground.

Now, turning to the article, the article, in the first place, refers to the sanctity of a Hindu marriage and the security given to Hindu women by the Hindu marriage institution. What happened was that Kamal Varma, a film actress, felt attracted towards Ata Mahomed. She embraced Islam and lived with him only to find that after a few months of an apparently happy married life Ata Mahomed suddenly left for Palanpur, giving his wife Anjuman Ara a deed of divorce, thus ending the marriage tie. The occasion, therefore, was an occasion of indignation felt by Kamal Varma towards her husband. Now, Kamal Varma was free to marry Ata Mahomed or not to marry him, but she chose to marry him. He was a Mahomedan and under Mahomedan law a divorce can take place by a method known as *talaknama*. If Ata Mahomed chose to divorce Kamal Varma, it was entirely a matter of his choice. If Kamal Varma found that the marriage tie was suddenly put an end to, it was an affair

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entirely between Ata Mahomed and Kamal Varma. Nobody compelled Kamal Varma to marry Ata Mahomed and one must assume that she chose freely to marry him. One must also assume that she knew that Ata Mahomed, being a Mahomedan, was in a position to end the marriage by the method of a *talaknama*. This was, therefore, an individual affair between the two, but the writer Veerketu takes this as a theme for his subject and begins by saying:

“The Alamgiri tradition itself which puts the father in Jail, assassinates the brothers and keeps an evil eye on sisters-in-law had made the Palanpur son proficient in this mean art of breach of trust. Betrayal, rape, lust and deceitfulness constituted his ancestral tradition. When Kamal Varma overwhelmed with love become Anjuman Ara, she fell victim to this beastly tradition with open eyes. Had not Ata Mahomed rumbled and thrown her away like a used garment the heirs to this same mean tradition would have been born from Vijayalaxmi's womb”.

This passage shows that Ata Mahomed is a representative of a tradition known as “the Alamgiri tradition”. According to that tradition, there is nothing wrong in putting a father in jail. Equally, there is nothing wrong in assassinating a brother and further, there is nothing wrong in keeping an evil eye upon a sister-in-law. It is evident that this is nothing but an attack upon the Muslim community. What is noteworthy is the fact that the writer says that it is a tradition and it is an ancestral tradition, suggesting that this tradition is peculiar to Mahomedans. But this is not all. The next passage which may be referred to in this connection runs as follows:

“Then Kamal Varma had not the slightest consciousness that Muslim marriage meant betrayal of women, Muslim marriage meant betrayal of the nation, Muslim marriage meant betrayal of one's self and that Muslim marriage meant betrayal of humanity”.

This again is an attack upon what the writer describes the sort of Muslim marriage and the consequent betrayal following it. The suggestion implied is that Kamal Varma embraced Islam and married Ata Mohomed and the result of the Muslim marriage was nothing more than the betrayal of womanhood, betrayal of the nation, betrayal of one's individuality and betrayal of the entire humanity. This is again a tirade against the Muslims as a community. There is a further passage which is equally striking:

“Kamal Varma had expected ‘quiet domestic life’ from a person born in a Muslim family who (whose community) detain women in purdah, regard them merely as a thing of enjoyment, deny to them all rights of humanity and who ultimately become only one-fourth husband of any woman.”

This passage suggests that, according to the writer, women in the Muslim community are nothing but objects of enjoyment and they are not even human beings because even ordinary rights accorded to human beings are denied to them. This is again a generalisation and would constitute a tirade upon the

Muslim community. There is then a reference made to Pakistan which is described as Papastan which, I apprehend, means a land or place of sins. The writer laments the country's vivisection laments the partition of India into Bharat and Pakistan and goes on to condemn what he calls secularism in the country. He described the secularism as selfish, suicidal, self-deceptive, impudent and licentious. Then at page 43 of the record the writer says that Kamal Varma, had she lived as a Muslim, would have shared bed with a cow-eater throughout her life and she would have become the mother of the unborn generations of idol breakers. This is again an attack upon the Muslim community. Finally, persons residing in Pakistan are described as fanatic neighbours lying in wait "for our life and our existence". The writer says: "We and our Papastani friends are today standing facing each other in almost a belligerent State" Then he says:

"This strife is not merely a communal one. This is an ancient conflict between truth and falsehood, good and bad, God and devil, sin and meritThe side of the Hindus is the same as that of God. The side of the Hindus is the same as that of freedom. The side of the Hindus is the same as that of morality. The Hindus in this country have to gird up their loins in the name of all these divine values in order that tolerance may survive, mercy may not be rooted out, independence may be unaffected, humanity may bear fruits and flowers".

This is the language of hyperbole. One may say this is merely picturesque language. But it is clear that the effect of the writing was to show the Muslims as a community in the blackest possible light and evidently if this was the effect, then the writing would come within s. 3 (v). I must observe that I am not concerned with the opinions expressed by the writer. He may be right or he may be wrong. The Court is not concerned with the correctness of these views. What I have to consider is whether the effect produced upon the mind of an average reader is the effect which is described within s. 3 (v) and I am clear that upon a fair, free and liberal reading of the writing the effect is to promote feelings of enmity between Hindus and Mahomedans. Reference to Pakistan as Papastan is but one illustration. The lament over partition is another. The country's vivisection is another illustration of that mentality and on the whole, I think, the learned Judge of the Court below was right in taking the view that the article fell within s. 3 (v).

But Mr. Dange for the appellant contends that the writing fell within Explanation I to s. 3. I read the article, there is no question of any comment expressing disapprobation or criticism of any law; nor is there any comment expressing disapprobation or criticism of any policy of Government. Equally, there is no question of any comment expressing disapprobation or criticism of any administrative action of Government, and if the writing is read in a spirit in which it should be read, there is

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no concrete suggestion as to what should be done. But Mr. Dange says that in reading the article of July 19, 1954, we should read the article of July 12, 1954 and he says that this course is permissible, having regard to s. 22 of the Act which provides:

"In any inquiry before a Sessions Judge with reference to any newspaper of news-sheet, any previous or subsequent issue of such newspaper or news-sheet may be given in evidence in aid of the proof of the nature and effect of the words, signs or visible representations in respect of which the complaint is made."

Now, this section evidently means that in order to appreciate the true nature and effect of the article impugned, it is open to the Court to look at any previous or subsequent issue of the newspaper and even if one reads the issue of July 12, 1954, no other conclusion than the one at which I have arrived is possible. The issue of July 12, 1954, contains an article under the title "Vijayalaxmi proselytised by Mohemmed: Crescent over Indian Screen World. Dreadful aggression of Muslim Communalism on Bharatiya National Religion". With regard to the Muslims; the article says: "Our Islamic brothers too are fleecing us.....Our relations with Pakistan are not friendly and crores of creators of Pakistan are stealthily entrenched in this very land". It is difficult to say that even if one gives the most liberal meaning to this article, one would reach the conclusion that this article falls within Explanation I.

As I said at the commencement of this judgment, while the freedom of the press is undoubtedly a valuable right, there are limits within which the freedom is to be enjoyed and it is for the nice balancing of these two considerations that s. 3 together with Explanation I is enacted in the Act. In our view, the article, read as a whole, in a free, fair and liberal spirit falls within s. 3 (v) and does not fall within Explanation I to s. 3.

That being so, the only remaining question is one of the amount of the security. In the complaint filed by the Commissioner of Police, Greater Bombay, the amount mentioned was a sum of Rs. 3,000. The learned Judge of the Sessions Court considered that a sum of Rs. 1,500 would suffice and the question for decision is whether, having regard to the circumstances of the case, this is an adequate amount of security. In determining the amount of the security regard is to be had to s. 10 which provides:

"The amount of security, required to be deposited by the keeper of a press or the publisher of any newspaper or news-sheet under s. 4 or s. 5 or s. 7 or s. 8, shall be fixed with due regard to the circumstances of the case and shall not be excesssive, and shall, in no case, be larger than the amount specified in the complaint under s. 16".

It is clear that s. 10 does not lay down any particular amount as the amount of security and this would be natural because the amount of security must depend upon the facts of each case.

But there are three important considerations and they are: (1) the Court must have regard to the circumstances of the case, (2) the amount of security should not be excessive and (3) the amount shall, in no case, exceed the amount mentioned in the complaint. The question is whether this amount is excessive or is commensurate with the circumstances of the case. Now, the circulation of this newspaper is about 3000 copies per week. Mr. Dange has suggested that this is not a newspaper in the sense in which one understands the expression "newspaper", but the paper is devoted to the cause of the Hindus and the Hindu religion in general. There is no evidence in the case except the extent of its circulation. But the circulation is a fair indication of its popularity. It cannot be suggested that a circulation of 3000 copies is, in any sense, a wide circulation, and on the whole, we are disposed to think that the amount of Rs. 1,500 is excessive and we propose to reduce the amount and the amount of security should be Rs. 750 and not Rs. 1,500.

The result of the aforesaid discussion is that Criminal Appeal No. 803 of 1955 fails and the same will be dismissed, and for the same reasons, Criminal Appeal No. 798 of 1955 will be dismissed subject to the variation that the amount of security will be Rs. 750 instead of Rs. 1,500.

Vyas J.—I agree with my learned brother. A short question arising for determination in these appeals is as to the construction of s. 3 cl. (v), of the Press (Objectionable Matter) Act, 1951. The circumstances under which this question has arisen have been stated by my learned brother in his judgment. Consequent upon the publication, in the Film India of July 1954, by Vijayalaxmi *alias* Kamal Varma, a Hindu film actress, of her sorrowful romance of having married a Muslim—Ata Mohamed of Palanpur—in January 1954 and having been divorced by him in May 1954, there appeared two articles in the weekly paper "Hindu". One of the articles appeared in the issue dated July 12, 1954, and the other was published in the issue dated July 19, 1954. The appellant before us is the Publisher of these articles. He is also the keeper of the Press "Nirbhaya Mudranalaya", Dadar, where the weekly "Hindu" is published. The impugned article is the one which was published on July 19, 1954 and the question before us is whether it falls within the mischief of clause (v) of s. 3 of the Press (Objectionable Matter) Act, 1951. Upon a consideration of the several statements contained in this article and upon a careful reading of the whole article in "a fair, free and liberal spirit" and not merely "pausing upon an objectionable sentence here or a strong word there", it is clear to us that the spirit of the entire article from the beginning to the end is to create hatred and feelings of enmity towards the Muslim community by referring contemptuously

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to Muslim thought and traditions. Below mentioned are some extracts from the article and they constitute quite a collection:—

(1) "The Alamgiri tradition itself which puts the father in Jail, assassinate the brothers and keeps an (evil) eye on sisters-in-law had made the Palanpur son proficient in this mean art of breach of trust."

(2) "Betrayal, rape, lust and deceitfulness constituted his (Ata Mohamed's) ancestral tradition. When Kamal Varma overwhelmed with love became Anjuman Ara, she fell victim to this beastly tradition with open eyes."

(3) "Had not Ata Mohamed rumped and thrown her away like a used garment, the heirs to this same mean tradition (the reference obviously is to the Alamgiri tradition) would have been born from Vijayalaxmi's womb.....The anti-human motherhood rearing the sinful tradition of Ata Mohamed with the manure and water of her blood and flesh would have come to her lot."

(4) "Kamal Varma had not the slightest consciousness that Muslim marriage meant betrayal of women. Muslim marriage meant betrayal of the nation, Muslim marriage meant betrayal of one's self and that Muslim marriage meant betrayal of humanity."

(5) "Kamal Varma had expected 'quiet domestic life' from a person born in a Muslim family who (whose community) detain women in purdah, regard them merely as a thing of enjoyment, deny to them all rights of humanity and who ultimately become only one-fourth husband of any woman."

(6) "The sooner every Hindu woman and man and every secularist realise that in such a situation, forming relation by any individual among us with a Papastani for any personal gain, sentiment or (any other) reason is not only a treachery to religion but also a treachery to the country, the better. This strife is not merely a communal one. This is an ancient conflict between truth and falsehood, good and bad, God and devil, sin and merit. This conflict is of perpetual nature like that of tolerance versus intolerance, humanity versus inhumanity, religiousness versus fanaticism."

(7) "The side of the Hindus is the same as that of god. The side of the Hindus is the same as that of freedom. The side of the Hindus is the same as that of morality."

(8) "When Vijayalaxmi.....got the burning water of Islam sprinkled on her Hindu body....."

(9) "But this woman who was entirely incapable and unauthorised to cope with the lofty idea of the freedom of action burnt that freedom itself on the intolerant flame of Islam."

(10) "Create a fanatic nation like Papastan."

(11) "She (the reference obviously is to Vijayalaxmi) has bought the dreadful experience of Islam by paying a price which ought not to have been paid."

(12) "Had not Ata Mohamed thrown her into the rubbish of forgetfulness like a chappal made old by using, she would not have come back to the Hindu religion. She would have remained only Muslim; she would have shared bed with cow-eater throughout her life. She would have become the mother of the unborn generations of iconoclasts."

(13) "Vijayalaxmi walked the infernal way to the Muslim harem with her own legs and came out merely by an accident."

(14) "A Muslim harem has got only an entrance and no exit."

To say that the Muslims as a community are inheritors to the tradition (Alamgiri tradition) of imprisoning father, assassinating

brothers and having immoral intentions towards sisters-in-law, and of betrayals, rapes and lust; to say that if Ata Mohamed had not discarded Vijayalaxmi, heirs to the abovementioned tradition would have been born of her womb; to say that it would have been an anti-human motherhood, in that Vijayalaxmi would have nursed and reared the Alamgiri tradition of rapes and betrayals of women with her blood and flesh, and to say that for a Hindu woman to marry a Muslim was a betrayal of womanhood a betrayal of nation, a betrayal of one's self and a betrayal of humanity are all statements *per se* inflammatory of communal hatred. To accuse the Muslims as a community that they detain women in purdah, regard them merely as a thing of enjoyment and deny to them all the rights of humanity and to characterise the marriage of Hindu with a Muslim as being a marriage which raises a question of communal strife and represents a conflict between truth and falsehood, good and bad, God and devil, sin and merit are statements calculated to arouse the passions of the Muslims generally and exasperate the Muslim community. To suggest that Hindus are godly and the Muslims are devilish, that the Hindus are meritorious and the Muslims are sinful, that the Hindus represent truth and morality and the Muslims falsehood and immorality is to engender feelings of bitter enmity between the two communities and substitute disharmony, discord and hatred in place of peaceful relations between the communities. It is futile to contend that statements such as those saying that the ways of the Muslim harem are infernal that Pakistan is Papastan (the literal meaning being 'the abode of sin'), that Vijayalaxmi had got the dreadful experience of Islam and would have become the mother of the unborn generations of iconoclasts (idol-breakers), that the Muslims are a fanatic nation of Papastan, that the flame of Islam was intolerant and that the burning water of Islam had been sprinkled upon the Hindu body of Vijayalaxmi can lead to any other result, but the communal tension, hatred and bitterness. I do not think that I need say anything more to point out that the article dated July 19, 1954 from which the extracts have been quoted above falls clearly within the mischief of s. 3, cl. (v), of the Press (Objectionable Matter) Act, 1951.

The defence of the appellant is that the impugned writing is protected by Explanation I to s. 3. Explanation I to s. 3 says:

"Comments expressing disapprobation or criticism of any law or of any policy or administrative action of the Government with a view to obtain its alteration or redress by lawful means, and wards pointing out, with a view to their removal, matters which are producing, or have a tendency to produce, feelings of enmity or hatred between different sections of the people of India, shall not be deemed to be objectionable matter within the meaning of this section."

Mr. Dange for the appellant says that the statements contained in the impugned article, dated July 19, 1954, were comments

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on the policy of the State as a secular State and on the administrative acts of the State done in pursuance of that policy. It is impossible to accept this contention. It is nowhere laid down that the policy of Government is that Hindu girls should marry Muslims and it is nowhere suggested—and indeed it would be idle to suggest, that there is any administrative action taken by the State that the Hindu girls should marry Muslims. India is a secular State recognising no distinction between religions, castes, creeds and sects, and, therefore, the Government would of course not prevent such marriages. But that is not to say that the policy of the State is that the Hindus should marry Muslims. In a secular State, everybody is free to marry whomsoever he or she likes. The State imposes no restrictions upon the liberty and right of a person to marry anybody of his or her choice. In the exercise of that right, if a Hindu girl chooses to marry a Muslim, it is a matter entirely of her individual choice and not a matter of any policy of the State or an administrative or executive act of the State. When it is said that a particular thing is a policy of the State, it means that the State expects that the said thing should be done. Now, it could not be said by any stretch of imagination that the State wishes that the Hindu girls should marry Muslims. It is entirely a matter for the girls and boys to decide whom they will marry. The State has nothing to do with it either by way of policy or administratively.

Mr. Dange has next contended that the impugned article would be protected because it was written with a view to point out the undesirability of such a marriage as the one into which Vijayalaxmi had entered. Mr. Dange says that the idea was that Government should look into the matter and remove the grievances like the one from which Vijayalaxmi had suffered in this particular case. It is not possible to accept this contention of Mr. Dange either. There is nothing in the whole of the article dated July 19, 1954 to suggest that the writer had requested the State of Bombay or any other authority to look into the matter and see that the grievances like the one from which Vijayalaxmi had suffered should be removed. Mr. Dange says that, having regard to the provisions of s. 22 of the Act, we should read the article dated July 12, 1954 in conjunction with the article dated July 19, 1954. As a matter of fact, we do not agree with Mr. Dange's submission that the two articles should be read together. The article, dated July 12, 1954, is not an impugned article and the article with which we are concerned is the only one article, namely the article dated July 19, 1954. But, even if we were to read the two articles together, there is nothing even in the article dated July 12, 1954, to suggest that the writer had requested the Government to look into the matter and see that such grievances were removed in future.

For this purpose, it would be relevant to turn only to the last paragraph of the article dated July 12, 1954, and the pertinent recitals therein are:

"Let the time of getting up in this matter for our secular Government come when it may. Our society however should remain extremely alert in the matter. It would be just to declare illegal such invasions made by Christian and Muslim religions on our national religion. But if it is not going to happen, our society should see to it that such degradation becomes impossible."

There is nothing in these statements to show that the writer was making a request to Government that they should look into the matter of such grievances. On the contrary, the writer wrote slightly of the State in this connection when he said:

"Let the time of getting up in this matter for our secular Government come when it may."

He was merely expressing his own view and not making a request to Government when he observed:

"It would be just to declare illegal such invasions made by Christian and Muslim religions on our national religion."

The point, therefore, is that there is nothing either in the article, dated July 12, 1954 or in the article, dated July 19, 1954, to show that, by writing those articles, the writer was making a request to Government that the grievances such as the one from which Vijayalaxmi had suffered should be removed.

Then Mr. Dange has contended that all that the writer did by writing the impugned article was to protest against a fraudulent conversion of Vijayalaxmi from Hinduism to Islam. It is not possible for us to subscribe to Mr. Dange's submission that this was a case of a fraudulent conversion. Vijayalaxmi had walked into this marriage with open eyes. She had known Ata Mohamed before agreeing to marry him. It would not be wrong to presume that she must have been attracted by his personality. It would also not be incorrect to assume that she must have been drawn by his wealth, position and status. If attracted by these circumstances she walked into the marriage with him, it could hardly be said that this was a case of fraudulent conversion, if, for the purpose of getting Ata Mohamed to agree to the marriage, she had to convert herself from Hinduism to Islam. There is nothing to show that even at the date when Ata Mohamed married this girl, he had an idea to divorce her later. But, even apart from all this, there is not one little syllable in the whole of the article, dated July 19, 1954, that the writer was protesting against fraudulent conversion. The only object which the writer had in mind was to hold in ridicule and contempt the Muslim religion, the Muslim culture and the Muslim traditions.

Now, it is evident that in a democratic State, the press must have the freedom of expression. Free expression of views and comments upon the acts of individuals and the State is one of

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the valuable rights of the Press, through the healthy exercise of which the press can make an effective contribution to the welfare of the Society. Unless this right is recognised and respected, democratic institutions cannot have a healthy growth. It is natural and human for individuals and even the State to make mistakes with the best of intentions and unless those mistakes are criticised and commented upon by the Press, which must of course be done in a healthy and restrained manner, a democracy cannot function efficiently. An enlightened and fully-informed public opinion upon vital questions affecting the well-being of the society cannot be formed if the Press is under a disability to express its views freely. In a democratic State, it is of fundamental importance that people's political consciousness should be awakened and they should be made to understand 'the pros and cons of every political system and every political ideology.' Free expression of views, even if strong and emphatic words are used, would not necessarily fall within the mischief of cl. (v) of s. 3 of the Act unless of course it is illegal to propagate those views or the propagation is likely to lead to an outburst of violence. But it is to be noticed that this is not a case of using words which are merely strong words. This is a case where the Muslim religion, the Muslim morality, the Muslim thought, the Muslim culture, the Muslim traditions, Muslim social institutions such as marriages of the Muslims and the entire mental make-up of the Muslims were brought into ridicule and contempt by words which were intemperate and inflammatory and by language which was violent and vicious. Any Hindu reader in whose hands the article is likely to fall is likely to have the feeling of hatred aroused in his mind towards the Muslims and the Muslims are likely to react violently towards the Hindus by the reading of an article such as this.

Mr. Dange for the appellant invited our attention to a decision of this Court in *Manohar Damodar v. Government of Bombay*.⁽⁴⁾ It was a case under s. 3 of the Indian Press (Emergency Powers) Act, 1931. It was held in that case that the Press was entirely free to propagate any views, provided that those views were not prohibited or were not likely to lead to any breach of the peace. It was observed that it was not wrong or contrary to law for any editor of a paper or any propagandist to draw the attention of his readers to the existence in this country of a bad or evil influence and to make the readers to eliminate that influence. Whether the writer was right or wrong was another matter altogether, but in advocating a particular cause and by using a strong language in support of that cause, the writer did not necessarily come within the mischief of that Act. Mr. Dange has contended on the authority of this decision that, just as in that case a writing containing a propaganda in favour of the Communist Party was held protected, so in the present

case also the writing containing the propaganda in favour of the Hindu religion and culture should be held protected. Now, it is important to remember that the clauses which came up for construction in *Manohar Damodar v. Government of Bombay*,⁽⁴⁾ were cls. (d) and (f) of s. 3 of the Indian Press (Emergency Powers) Act, 1931, and not cl. (h) the terminology whereof is similar to that of cl. (v) of s. 3 of the Press (Objectionable Matter) Act, 1951. In other words, the question whether the article was calculated to promote feelings of enmity and hatred between different sections of the people of India did not arise for consideration at all in that case. Besides, the article in that case was intended for Communist propaganda, and the Communist Party had not been declared an unlawful association in India. The Court pointed out that there was nothing in law to prevent the Communists from carrying on propaganda with regard to their own philosophy and to extol their own ideology as against the Socialist or Congress ideologies. Now, what really distinguishes the present case from *Manohar Demodar Patil's* case is that the Constitution of this country prohibits the carrying on of a propaganda against any religion. The Constitution of India recognises no distinction whatever between religions, nationalities, cultures, castes, creeds, sects etc. Under the Constitution, it would not be legal for a Hindu or a Muslim or a Christian to carry on a propaganda against another's religion. The Constitution is based upon the recognition of absolute equality between all religions, and mutual respect for all religions, all cultures, all creeds and sects is required of every citizen of India. Accordingly, it would be illegal for anybody to carry on any propaganda against another's religion and this would distinguish this case from *Manohar Damodar Patil's* case.

The next case to which Mr. Dange drew our attention is the case of *Annadurai v. Province of Madras*.⁽⁵⁾ It was held in that case that when a writer set out to ventilate the grievances of a class or community, there was a likelihood of criticising adversely the action of the class or community which was alleged to have taken an unfair advantage. In all such cases it would be wrong to say that a writing which ventilated the grievances of a particular class or community would fall within the mischief of the enactment. It was observed that 'enmity' and 'hatred' in s. 4 (1) (h) of the Press Act were strong words. It was also pointed out that in a world of conflicting claims, it would be manifestly unfair to characterise every expression of dissatisfaction and every ventilation of grievances as tending to the promotion of enmity and hatred. Now, in *Annadurai's* case, the impugned writing consisted of two articles. The first article started with a praise of the good qualities of Ramaswami Reddiar and then posed the question: "Why was there any

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4. (1950) 52 Bom. L. R. 275.

5. [1951] Mad. 8.

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opposition to such a man?" A part of the article was devoted to an analysis of events and circumstances with a view to demonstrate that the opposition was due to the intrigue and the 'communal frenzy' of selfish group in the Congress Legislative Party consisting of Brahmins. A major portion of the second article was in no way offensive. The writer referred to the fact that in Hindu society in that Province the vast majority were non-Brahmins and a minority were Brahmins, but that the majority were treating the minority as members of a superior caste. He pointed out that the majority did not get equal rights and facilities in educational, industrial, economical, political, religious and other fields, whereas the minority community, namely, the Brahmins, had made great advance in all the fields. The writer pleaded for destroying the system which had for the last several thousands of years spread and struck root and had rendered the majority community 'born slaves' and 'walking corpses'. It is pertinent to see that the writer hastened to assure that he and those who held opinions similar to his had no hatred against the Brahmins and they were opposing only the system, namely, Brahminism, because it was on account of this that several troubles had arisen in the body politic. The Court was satisfied in that case on a reading of the entire article that the writer was denouncing the system, whether it was called a caste system or Brahminism, which had led to the superior position in society of the Brahmins. According to the learned Judges who decided the case, nowhere in the article did the writer say that the Brahmins of the present day had actually done anything. The complaint in the article was that the system "had in the last several thousands of years" spread and struck root and he expressly said that he had no hatred against the Brahmins as individuals and stated in the clearest of terms in places more than one that it was the system which should be destroyed. According to the learned Judges, upon the language of the writing, there was no incitement anywhere of the non-Brahmins to act in any inimical way or to inspire them with hatred against the Brahmins. The case with the present writing is entirely different. As I have pointed out, the impugned article, dated July 19, 1954, contains condemnation in violent and inflammatory language of practically everything which belongs to the Muslim community i.e., the Muslim thought, the Muslim way of thinking, the Muslim religion and the Muslim social institutions.

That being so, I have no hesitation in agreeing with the judgment just delivered by my learned brother that the article would not be protected by Explanation I to s. 3. In my view, the learned Sessions Judge of Greater Bombay has rightly passed an order requiring security from the appellant.

Appeal dismissed.

K. B. S.