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SAMRESH BOSE V. AMAL MITRA

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INTRODUCTION

Samaresh Bose v. Amal Mitra case was one of its kinds. In this case the concepts of obscenity and vulgarity in text discussed in length.

INTERPRETATIONS OF THE TEXT

Samaresh Bose's 'Prajapati' had received various interpretations. Samaresh Basu said that the existence of Sukhen is a burning question in our society. He is a product of our society. He used first person narrative style so that he could portray Sukhen in a lively manner.

Amal Mitra's argument was that Prajapati has no literary value whatsoever. That only thing it could do was to corrupt the reader and cause moral degradation in them. In this novel he found Sukhen no more than ruffian. Another witness Kalaboron Ghosh said Prajapati was entirely obscene. There could be no reason except earning money as the possible reason behind writing this. No one can hand it over to his children or family member.

The trial judge and high court regarded the convicted passages as obscene because of the descriptions of female body and frequent use of slang.

The Supreme court freed the accused of the charges and concluded : “On a very anxious consideration and after carefully applying our judicial mind in making an objective assessment of the novel, we do not think that it can be said with any assurance that the novel is obscene merely because slang and unconventional words have been used in the book in which there have been emphasis on sex and description of female bodies and there are the narrations of feelings, thoughts and actions in vulgar language.”

Finally it took 12 years and the verdict of the Supreme Court for the novel to be cleared of charges. Sagarmoy Ghosh, the working editor of *Desh* of that time noted this event as an historical landmark in Bengali literature. He said that there were some books that got banned and subsequently released from conviction from the local court. But he said that he did not know of any such event like *Prajapati* that had gone on to face conviction for seventeen years. The novel was published again.

FACTS OF THE CASE

Samaresh Bose, the first appellant, was a well-known writer of Bengali Novels and stories. He authored a novel under the caption "*Prajapati*", which came to be published in "*Sarodiya Desh*" (the annual pooja number of the Bengali Journal '*Desh*') for the Bengali year 1374 B.S.

The novel's protagonist was one Sukhen. The novel seeks to express the feelings, thoughts and actions of Sukhen and portray his character. In the novel Sukhen himself narrates his experience, feelings, thoughts and actions in his own words, what he has seen in others, what he despised and what he himself did and how he fell a victim to wine and women and slid into a life bereft of any love, affection and proper guidance.

"*Desh*" was a journal of repute with wide circulation and the pooja number was read by lovers of Bengali literature of all age groups all over India. Sitangshu Kumar Dasgupta, the second appellant was the publisher and the printer of the journal containing the said publication.

On the 2nd of February, 1968, Amal Mitra, the second respondent, made an application in the Court of the Chief Presidency Magistrate at Calcutta complaining:

- (a) That the said novel "*Prajapati*" contains matters which are obscene;
- (b) That both the accused persons have, sold, distributed, printed and exhibited the same which has the tendency to corrupt the morals of those in whose hands the said "*Sarodiya Desh*" may fall and the reading public as well"; and
- (c) That therefore, both the accused persons have committed an offence punishable under section 292 Indian Penal Code read with section 109 of IPC.

On the basis of the said complaint and in compliance with the necessary formalities, a criminal Case No. 353/68 was started against both the accused persons and disposed of by the then Chief Presidency Magistrate of Calcutta by his judgment. Both the accused were, therefore, found guilty by the Trial Judge under section 292 I.P.C. read with 109 I.P.C. The Trial Judge accordingly convicted both the accused and sentenced both of them to a fine of rupees 201 each and in default to undergo simple imprisonment for two months each. The Trial Judge also directed that the pages from 174 to 226 of the journal be destroyed under the provisions of section 521 Criminal Procedure Code after the period of appeal was over.

Against the judgment and order passed by the Trial Judge both the accused preferred an appeal to the High Court at Calcutta. The complainant also filed a criminal revision in the High Court for enhancement of the sentence imposed by the Chief Presidency Magistrate on the two accused persons. The Calcutta High Court dismissed the appeals.

The author and publisher then filed an appeal in the Supreme Court. The question for consideration in this appeal was whether the two appellants could be said to have committed an offence under Section 292. In order to decide this, the court looked at whether or not the novel *Prajapati* was obscene¹.

ISSUES

1. Whether both the accused persons have, sold, distributed, printed and exhibited the same which has the tendency to corrupt the morals of those in whose hands the said "Sarodiya Desh" may fall and the reading public as well?
2. Whether references to kissing, descriptions of the body and the figures of female characters in the book and suggestions of sex acts by themselves have the effect of depraving and debasing, and encouraging lasciviousness among, readers of any age, and must therefore be considered obscene?
3. Whether both the accused persons have committed an offence under section 292 of Indian Penal Code read with section 109 of IPC (abetment)?

ARGUMENTS

FROM THE RESPONDENTS

1. The novel 'Prajapati' is obscene.
2. *Prajapati* has no literary value whatsoever.
3. The novel is likely to corrupt and deprave those whose minds are open to influence of this sort and into whose hands the book is likely to fall.
4. There could be no reason except earning money as the possible reason behind writing this.

¹ *Samaresh Bose v Amal Mitra* [1985] 4 SCC 289.

5. The two accused are liable under section 292 of the IPC.

FROM THE APPELLANTS

1. The appellants argued that the novel depicts the feelings, thoughts, actions and life of Sukhen, the hero of the novel and its main character; and that through the speeches, thoughts and actions of Sukhen the novel seeks to condemn and criticize various prevalent aspects of life in various strata of society.

2. They argued that if different kinds of words - cultured and sophisticated - were to be used for the thoughts, speeches and actions of Sukhen, the entire portrayal of Sukhen's character would become unreal and meaningless.

3. They argued that in literature there was a distinction between obscenity and vulgarity, and it was only obscenity in literature that attracts the provisions of Section 292.

4. They argued that the book had a social purpose to serve and had been written with the primary object of focusing the attention of persons interested in literature to the various ills and maladies ailing society and destroying the social fabric.

JUDGEMENT

HIGH COURT JUDGEMENT

The Criminal Appeal and the Criminal Revision of 1969 were heard together. It was disposed of by a Single Judge of the High court by a common judgement delivered on 27.6.1972.

The High Court discharged the rule in the Criminal Revision and dismissed the appeal affirming the conviction and sentences imposed on both the accused persons.

SUPREME COURT JUDGEMENT

Judges: Amarendra Nath Sen, R.S. Pathak

The Supreme Court allowed the appeal and dismissed the charges of obscenity in 1985. They directed that the fine, if paid by the appellants, shall be refunded to them.

RATIO DECIDENDI OF THE SUPREME COURT

The Supreme Court discussed the validity of sec.292 in this case and referred to *Ranjit D. Udeshi v. State of Maharashtra*², where it had to decide the question of constitutional validity of Sec. 292 I.P.C. and also had to interpret the word 'obscene' used in the said Section.

This court also quoted and applied the Hicklin's³ test to discuss what can be considered as obscene as laid down by Cockburn. He laid down the test of obscenity in these words : '....I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt

² *Ranjit D. Udeshi v. State of Maharashtra* [1965] 1 SCR 65.

³ *Regina v Hicklin* [1868] LR 2 QB.

those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall.... it is quite certain that it would suggest to the minds of the young of either sex, or even to persons of more advanced years, thoughts of a most impure and libidinous character” was obscene, regardless of its artistic or literary merit.

It referred to Roth's case⁴. Mr. Justice Brennan, who delivered the majority opinion in that case observed that if obscenity is to be judged of by the effect of an isolated passage or two upon particularly susceptible persons, it might well encompass material legitimately treating with sex and might become - unduly restrictive and so the offending book must be considered in its entirety. Chief Justice Warren on the other hand made 'substantial' tendency to corrupt by arousing lustful desires' as the test. Mr. Justice Harlan regarded as the test that must 'tend to sexually impure thoughts'. In our opinion, the test to adopt in our country (regard being had to our community mores) is that obscenity without a preponderating social purpose or profit cannot have the constitutional protection of free speech and expression, and obscenity is treating with sex in a manner appealing to the carnal side of human nature, or having that tendency. Such a treating with sex is offensive to modesty and decency but the extents of such appeal in a particular book etc. are matters for consideration in each individual case.

In holding the book *Lady Chatterley's Lover* which had come up for consideration before this Court to be obscene the Court held that:

"There is no loss to society if there was a message in the book. The divagations with sex are not legitimate embroidery but they are the only attractions to the common man. When everything said in its favour we find that in treating with sex the impugned portion viewed separately and also in the setting of the whole book pass the permissible limits judged of from our community standards and as there is no social gain to us which can be said to preponderate, we must hold the book to satisfy the test we have indicated above."

It quoted *Chandrakant Kalyandas Kakodkar*⁵ that "It is apparent that the question whether a particular Article or story or book is obscene or not, does not altogether depend on oral evidence because it is the duty of the court to ascertain whether the book or story or any passage or passages therein offend the provisions of S. 292. Even so as the question of obscenity may have to be Judged in the light of the claim that the work has a predominant literary merit, it may be necessary if it is at all required, to rely to a certain extent on the evidence and views of leading litterateurs on that aspect particularly when the work is in a language with which the Court is not conversant. Often a translation may not bring out the delicate nuances of the literary art in the story as it does in the language in which it is written and in those circumstances what is said about its literary quality and worth by persons competent to speak may be of value, though as was said in an earlier decision, the verdict as to

⁴ 354 US 476.

⁵ *Chandrakant Kalyandas Kakodar v. State of Maharashtra* [1970] 2 SCR 80.

whether the book or article or story considered as a whole panders to the prurient and is obscene must be judged by the courts and ultimately by this Court.

The Supreme Court held that vulgar writing is not necessarily obscene. “Vulgarity arouses a feeling of disgust and revulsion and also boredom but does not have the effect of depraving, debasing and corrupting the morals of any reader of the novel, whereas obscenity has the tendency to deprave and corrupt those whose minds are open to such immoral influences.” “We feel that the readers as a class will read the book with a sense of shock and disgust and we do not think that any reader on reading this book would become depraved, debased and encouraged to lasciviousness.”

The court said that although, in some places in the book there may have been an exhibition of bad taste, it was up to readers of experience and maturity to draw the necessary inference. The court said that it was not sufficient to bring home to adolescents any suggestion that was depraving or lascivious. “We have to bear in mind that the author has written this novel which came to be published in the Sarodiya Desh for all classes of readers and it cannot be right to insist that the standard should always be for the writer to see that the adolescent may not be brought into contact with sex. If a reference to sex by itself in any novel is considered to be obscene and not fit to be read by adolescents, adolescents will not be in a position to read any novel and have to read books which are purely religious”⁶.

COMMENT

This was a landmark case in India which adopted a very progressive approach and brought respite to authors for generations to come. It discussed in length as to what could be considered as an obscene writing and thus what could attract the penal provisions of section 292 of the IPC. It distinguished between Vulgar and Obscene writing. The judgement of the Supreme Court is appreciated. It was a necessary reasoning adopted by the court in question in keeping with the changing times.

Any writer cannot possible cater to the taste of each and every type of individual in the society. If a certain class of people do not wish to read a certain type of literature it is upon their discretion to not do so but a blanket ban just to accommodate a small portion’s interest is inherently wrong. Every unconventional thing cannot be said to be unconstitutional. So, it is upon the masses to be more accepting and mature.

The judgement is more appreciated as the authors now have far more freedom of words and can bring in newer styles of writing for the masses without being penalized or banned (subject to certain conditions). Thus this judgement upholds the validity of article 19(a) of the constitution of India.

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⁶ Siddharth Narrain, ‘Obscenity under the law: A review of significant cases’ (2009) <http://indiatgether.org/uploads/document/document_upload/2141/blawobsenity.pdf> accessed 28th August