

1927

November 23.

Before Mr. Justice Fawcett.

EMPEROR

v.

SHANTARAM S. MIRAJKAR.*

Criminal Procedure Code (Act V of 1898), Sec. 239—Criminal trial—Joint trial—Printer and publisher of an alleged seditious pamphlet—Indian Penal Code (Act XLV of 1860), Sec. 124 A

The printer and the publisher of a pamphlet alleged to be seditious can properly be tried jointly for an offence punishable under s. 124 A of the Indian Penal Code, 1860.

SHANTARAM S. Mirajkar (accused No. 1) was the publisher and Kamalshi K. Chitalia (accused No. 2) was the printer of a pamphlet styled "India and China."

The pamphlet was charged as seditious. A joint inquiry was held against the two accused by the acting Chief Presidency Magistrate of Bombay, and the accused were jointly committed to the High Court Sessions to take their trial.

The trial was held before Fawcett J. and a special jury.

A preliminary objection was raised that the two accused should be tried separately.

Kanga, Advocate General, with *O'Gorman*, for the Crown.

Dalvi, with *Ambedkar*, for accused No. 1.

Sir Chimanlal Setalvad, with *F. J. Patel* and *Ratanlal Ranchhodas*, for accused No. 2.

FAWCETT J. Sir Chimanlal for accused No. 2 in this case asks that the trial of his client should be separated from the trial of accused No. 1. Accused No. 2 is the printer of the pamphlet, which is the subject matter of the charge, and accused No. 1 is its publisher. He contends that there is evidence in the case affecting accused No. 1 only, which might confuse the jury and that his client would be prejudiced, if he is tried along with accused No. 1. The Advocate General opposes the application. There are, undoubtedly, considerations which go against an application of this kind. First of all, the two accused have been committed jointly by the Committing Magistrate, as opposed to the commitment of the author of the pamphlet who was committed separately; and certainly I should have thought that if the defence really had an anticipation of prejudice in a joint trial, that would have been a stage when an application could have been put forward, so that the Magistrate could have committed the two accus-

*Case No. 2 of 1927 (Fifth Criminal Sessions).

ed separately. Then, secondly, there is the consideration of the time taken for the trial by this Court. There has already been one trial in regard to the writer of the pamphlet, and if we are to have separate trials for the printer and publisher, undoubtedly more time of the Court will be taken up than if there is a joint trial. In a joint trial in cases of this kind the printer and publisher are concerned in the same transaction in regard to the publication of the pamphlet, and I know that there have been cases, where the author, the printer and publisher have all been tried together or, at any rate, the author and the publisher. More objection can be raised to the joint trial of the author with the printer or publisher than can, I think, legitimately be urged against a joint trial of the printer and publisher, because they are both on very much the same footing with regard to being able to raise pleas, that possibly the author himself could not raise. This is moreover a trial by a special jury, and I do not think there is a likelihood that they will take the evidence that affects only one accused into consideration against the other accused. I do not think that there are adequate grounds for the application. I accordingly reject it.

Application rejected.

Attorney for prosecution: Government Solicitor.
Attorneys for accused: *Rustomji & Ginwalla.*

Before Mr. Justice Madgavkar.

EMPEROR

v.

BABULAL BEHARI.*

1928

January 10.

Indian Evidence Act (I of 1872), Sec. 45—Palm impression—Expert evidence—Admissibility of reasons and opinion of the finger print expert.

Under s. 45 of the Indian Evidence Act 1872, the reasons as well as the opinion given by a finger print expert as to the identity of a palm impression are admissible in evidence.

TRIAL before Madgavkar J. and a special jury.

The accused, six in number, were tried for murdering a Marwari boy on April 28, 1927. Among the incriminating evidence was a palm impression in blood on a brass vessel found near the scene of offence. The impression was photographed and enlarged. It was then examined by Saldanha, a finger print expert; and he formed an opinion that the impression was from the palm of Mathuraprasad (accused No. 3).

* Fifth Criminal Sessions (1927) (Case No. 17).