

be recorded by the while the statements recorded by the District Court room and then in his hearing on February, 1953 the District Magistrate proved and he was removed from service.

In my opinion therefore Art. 16 would not apply to the petitioner's case. When a government servant enters government service there is an implied contract that he would abide by the rules and conditions of service. He cannot try to avoid the restrictions imposed by the rules and conditions of service by saying that they offend the Constitution of India which recognises fundamental rights in favour of the citizens of this country. Such restrictions as are imposed by the rules far from being infringement of a fundamental right are fundamental obligations arising out of an implied contract entered into by the petitioner.

The petitioner by his conduct would be deemed to have waived those fundamental rights: see *Krishnan Kutty v. State of Travancore-Cochin*, AIR 1952 Trav.-Co. 287 (A).

(8) I do not think there is any substance in the allegation of the petitioner that he was not supplied with copies of the reports which formed the basis of the charges. The persons who had made reports against him were examined and the petitioner was allowed to cross-examine them. The reports which they had made were not evidence. It is the statement of the witness which is the evidence and the reports could only be used for refreshing the memory.

(9) The ground on which I am inclined to agree with the petitioner is that he was removed from service without a reasonable opportunity having been given to him to show cause against the order of removal which was ultimately passed against him. This I say for two reasons. In the first place the report of the enquiring officer, copy of which was not supplied to the petitioner, would have indicated the grounds on which the petitioner's removal was recommended and inasmuch as that was not supplied to the petitioner he had no reasonable opportunity of showing cause against the action proposed. It was held in the case of *High Commissioner for India v. I. M. Lall*, reported in AIR 1948 PC 121 (B), that—

"If the civil servant has been through an enquiry under R. 55 it would not be reasonable that he should ask for a repetition of that stage, if duly carried out for that would not exhaust his statutory right and he would still be entitled to represent against the punishment proposed as the result of the findings of the enquiry."

How could the petitioner represent against the punishment proposed as the result of the findings of the enquiry if he never saw the report of the enquiring officer?

(10) Another ground on which I say he had no reasonable opportunity of showing cause is that the District Magistrate, who as I have already said above was not the enquiring officer, has observed in the order removing the petitioner as follows:—

"After a thorough enquiry conducted by Sri C. E. David, Deputy Collector, S. D. O. Sadar and other Shri Ramesh Chandra had been given an opportunity of producing defence, the charges framed were found to have been established. He was found guilty being a member of a political party

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while in government service, and was consequently asked to show cause as to why he should not be removed from service. He submitted a lengthy statement in this connection. At this stage he was asked to show cause as to why the punishment proposed should not be given to him. The question, therefore, of going into the merits of the case does not arise."

In my view the petitioner could urge before the District Magistrate that no case had been made out against him and therefore the notice asking him to show cause why he should not be removed from service be discharged. It was open to the District Magistrate to have considered the merits of the case and agreed with the opinion of the enquiring officer. It was equally open to the District Magistrate to have after reconsidering the merits of the case come to the conclusion that the charges which were found proved by the enquiring officer had not really been proved and thus to have refrained from imposing the punishment which he inflicted upon the petitioner.

The view the District Magistrate took was that he could not consider the question of merits at all. The opportunity of showing cause contemplated by Art. 311 is the opportunity after the issuing of the show cause notice and it is always open to a government servant against whom an enquiry has already been held to urge before the dismissing or removing authority that on the basis of the material on the record the proposed punishment should not be awarded to him. Therefore the observations of the District Magistrate that "at this stage he was asked to show cause as to why the punishment proposed should not be given to him. The question, therefore, of going into the merits of the case does not arise" is based on a complete misconception of the provisions of Art. 311 of the Constitution of India.

In that view of the matter it must be held that the petitioner had no reasonable opportunity of showing cause against the action proposed. It is thus not one of those cases where there has been any disregard of rules only. It is a case where there has been a clear disregard of the provisions of Art. 311 of the Constitution itself.

(11) I therefore allow this petition with costs and quash the order passed by the District Magistrate of Farrukhabad dated 1-4-1953 removing the petitioner from government service as also the orders of the Commissioner dated 27-3-1954 and of the Board of Revenue dated 31-8-1955 refusing to interfere with the order of the petitioner's removal. I further issue a writ of mandamus directing the respondents to treat the petitioner as in service.

V.R.B.

Petition allowed.

AIR 1959 ALLAHABAD 49 (V 46 C 19)

D. N. ROY AND S. N. SAHAI, JJ.

State, Appellant v. Thakur Prasad and others, Respondents.

Government Appeal No. 124 of 1955, D/- 14-5-1958, against order of acquittal passed by Addl. City Magistrate, Banaras, D/- 25-5-1954.

Penal Code (1860), S. 292 — Obscene matter.

The word "obscene" is not defined in the Penal Code; but it may be taken as meaning offensive to chastity or modesty, expressing or personating to the mind or view something that delicacy, purity and decency forbid to be expressed. The test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences

and into whose hands a publication of this sort may fall, and in determining whether or not such a book is obscene regard must be had to that book alone; other books not the subject of charges may not be referred to. A picture of a woman in the nude is not per se obscene. For the purpose of deciding whether a picture is obscene or not one has to consider to a great extent the surrounding circumstances, the pose, the posture, the suggestive element in the picture, and the person or persons in whose hands it is likely to fall.

The publication concerned was not a medical one. Neither was it sold to registered subscribers nor had its circulation or sale been restricted to members of the medical and legal professions and to students of Psychology and Sociology. The book was written, printed and published and brought into circulation for prurient tastes. The probable effect of the publication was to prejudice public morals and decency. It was intended for those who had ardent sex appeal in them and it was for the delectation of the married and the unmarried for the gratification of their normal and abnormal sex appetites and it described varieties of sexual intercourse in a manner which to say the least was obscene.

Held that if the probable effect of the publication was to prejudice public morals and decency, the accused must be taken to have intended the natural consequences of his acts. It was no justification that the matter published was by an eminent writer or was composed in a style not easily understood by all. The matter constituted obscene matter contemplated under section 292. Case law discussed. (Paras 17, 21)

Anno : AIR Man., Penal Code, S. 292, N. 1.

CASES REFERRED :	Paras
(A) (1838) 2 Lewin 237: 168 ER 1140, Gathercole's case	17
(B) (1814) 3 M and S 11: 15 RR 381, R. v. Dixon	17
(C) (1868) 3 QB 360: 37 LJ MC 89, R. v. Hicklin	17, 18
(D) (1954) 1954-1 All ER 741: 1954-2 QB 16, R. v. Reiter	17
(E) (1954) 1954-2 All ER 683: 1954-1 WLR 1138 R. v. Martin Secker and Warburg Ltd.	17
(F) (1872) 7 CP 261: 41 LJ MC 85, Steele v. Brannan	18
(G) (1932) 23 Cr. App. Rep. 182, R. v. De Montalk	18
(H) (1952) 1952-1 All ER 1256: 116 JP 320, Paget Publications Ltd. v. Watson	22

J. R. Bhatt, Asst. Govt. Advocate, for Appellant;
Krishna Shankar, for Respondent.

D. N. ROY, J. :

This is an appeal by the State against an order of acquittal of the respondents who were charged with an offence punishable under section 292 of the Indian Penal Code. Respondent No. 1 Thakur Prasad Gupta is a bookseller at Banaras and he owns a press known as the Bombay Press. Ram Lagan Pandey respondent No. 3 is the author and writer of a book in Hindi styled as "Asli Kokshastra."

Ganesh Prasad Gupta respondent No. 2 is the publisher of the book which was printed at his press known as the "Swatantra Bharat Press" of Banaras. On 29-6-1953, upon a raid by the police of the shop of Thakur Prasad Gupta fifty copies of the book were recovered in the presence of this accused. On 5-7-1953 another raid was made by the police on the Bombay Press and the Swatantra Bharat Press and several copies of the book had been recovered along with ten blocks and certain paper covers of these books containing a nude picture of a woman.

In that raid, it was alleged certain books styled as the "Romance of Lust" and four blocks contain-

ing obscene matter were also recovered from the Bombay Press. The prosecution alleged that these books, blocks and the picture on the title page were "obscene" and they contained matter punishable under section 292, I. P. C.

(2) Thakur Prasad Gupta admitted the recovery of the books known as "Asli Kokshastra" which he contended he had kept for sale. He further admitted that he got the book written by Ram Lagan Pandey with the intention of selling the same. He denied that the "Romance of Lust" was printed at his press. He further denied that copies of this book and four of the offending blocks had been recovered from his press.

As regards "Asli Kokshastra" his plea was that it contained no obscene matter and that it was a book relating to the "Vaidyak Shastra" and was therefore not punishable under section 292.

(3) Ram Lagan Pandey admitted the authorship of the book known as "Asli Kokshastra" from pages 1 to 370. But he denied authorship of the remaining part of the book covered by pages 371 to 401. As regards the offending matter contained on pages 222 and 223 of the book, his contention was that they were only translations of a book known as "Rati Ratan Pradipika" which he contended is an authoritative book on the subject.

The other offending passages contained at pages 393 to 395 of the book were not claimed by him as not being obscene. As we have already said, his contention in regard to the matter contained in those pages was that he was not the author of it.

(4) Ganesh Prasad accused admitted that the book "Asli Kokshastra" was printed at the Swatantra Bharat Press of which he is the proprietor but he contended that the book is not obscene and that it is an authoritative text on the science of Sex written after the style of well known authors and that as such it is not punishable.

(5) The learned Magistrate came to the conclusion that the book styled as "Asli Kokshastra" is not obscene and he accordingly acquitted all the three respondents of the charge under section 292 in regard to that book. As regards the book styled as the "Romance of Lust" and also as regards the four blocks the Magistrate came to the conclusion that they contained obscene matter and he accordingly found Thakur Prasad guilty in respect thereof under section 292, I. P. C., and sentenced him to a fine of Rs. 100 or in default to undergo one month's simple imprisonment, and he further directed that "the obscene books and blocks be destroyed". We are told that Thakur Prasad preferred an appeal against his conviction under section 292 I. P. C., before the Sessions Judge and his appeal has been allowed and the conviction and sentence set aside.

(6) In the present case we are not concerned with the book entitled as the "Romance of Lust" or with the four blocks. The short point for determination is whether the publication styled as the "Asli Kokshastra" written in Hindi with an outer covering of a nude picture of a woman, priced at Rs. 4 is a publication of obscene matter falling under the purview of section 292 of the Indian Penal Code.

The book mostly deals with sex, sexual organs, curiosities of love and of sex life and gratification of normal and abnormal sex appetites and varieties of sexual intercourse and there can be no doubt that it caters for prurient tastes and is therefore a publication of obscene matter falling under the mischief of section 292.

The preface appended to the book by the author Ram Lagan Pandey states that at the request of Thakur Prasad accused to write a book on "Kam Shastra" which along with the normal aspects of

family life, should comprehend the married and the woman, and which should furnish which lie in the way of gratification those who have the sex appeal the appeal of communion with which should contain measures to come them, he undertook the book.

The book has been dedicated to those who have entered family life and who desire a success and it has further been dedicated to the married, and unmarried, young men and women who have ardent sex appeal. The emphasis was laid on behalf of the passages contained at page 393 of the book, the authorship of which was denied by Ram Lagan Pandey.

The prosecution evidence is that Ram Lagan Pandey is the author of the book from cover to cover. The prosecution contended that Ram Lagan Pandey did not contend that Ram Lagan Pandey was the author of part of it and in fact their contention was that Ram Lagan Pandey was the author of the entire book which was given on behalf of Ram Lagan Pandey that he was the author of only a part of the whole.

We are therefore driven to the conclusion that the whole of the book was written by Ram Lagan Pandey inclusive of the contents of pages 222 and 223 and at pages 393 to 395.

(7) We would now proceed to deal with the description of certain varieties of sexual intercourse. The matter is headed as :

"Now about some curious varieties of sexual intercourse."

(8) The matter then begins with a description of a woman who is called as "Sanghata" and the author calls as "Sanghata" two women and the other so much so that they lie on their thighs with one another. The description is near to them first engages with the other (Outward caresses, etc.) while the other by the acts of inner coitus, returns to the first one after the other.

(9) The other description is of a woman who is stated under that head is that the woman is close together in the same fashion as described above and the woman is described by the acts of inner coitus and joyment to the other man by putting her mouth which is known as "Kam" by giving him enjoyment by oral intercourse.

(10) Then there is the description of a woman known as "goyudhakam". The description follows. A number of women lie on one another take for their coitus with a single man who effects copulation by turn. In the same manner the man engages a number of youths for heterosexual intercourse.

(11) Then follows a description of a woman known, according to the author, as "The description of it has been compared to a male elephant at the time of the rut in the midst of a female herd engaged with each of them by turn. In the same manner a man playing in water with a number of women enjoys with each of them by turn.

(12) After describing "Varik" above the author mentions that

matter were also recovered from the press. The prosecution alleged that these and the picture on the title page were and they contained matter punishable under section 292, I. P. C.

Thakur Prasad Gupta admitted the recovery of books known as "Asli Kokshastra" which he had kept for sale. He further admitted that he got the book written by Ram Lagan Pandey with the intention of selling the same. He said that the "Romance of Lust" was printed at Allahabad. He further denied that copies of this book of the offending blocks had been removed from his press.

Thakur Prasad's "Asli Kokshastra" his plea was that it was not obscene matter and that it was a part of the "Vaidyak Shastra" and was not punishable under section 292.

Ram Lagan Pandey admitted the authorship of the book known as "Asli Kokshastra" from pages 222 to 223 and pages 393 to 395. But he denied authorship of the remaining part of the book covered by pages 371 to 400. The offending matter contained on pages 222 and 223 of the book, his contention was that it was only translations of a book known as "Rati Ratna Pradipika" which he contended is another book on the subject.

The other offending passages contained at pages 393 to 395 of the book were not claimed by him as obscene. As we have already said, his contention in regard to the matter contained in pages 371 to 400 was that he was not the author of it.

Thakur Prasad accused admitted that the book "Asli Kokshastra" was printed at the Swatantra Press of which he is the proprietor but he contended that the book is not obscene and that it is a treatise on the science of Sex written in a simple and plain style of well known authors and that as such it is not punishable.

The learned Magistrate came to the conclusion that the book styled as "Asli Kokshastra" is not obscene and he accordingly acquitted all the three accused of the charge under section 292 in relation to the book. As regards the book styled as "Romance of Lust" and also as regards the four other books, the Magistrate came to the conclusion that they were obscene matter and he accordingly convicted Thakur Prasad guilty in respect thereof under section 292, I. P. C., and sentenced him to a fine of Rs. 100 or in default to undergo one month's imprisonment, and he further directed that the books and blocks be destroyed. He also directed that Thakur Prasad preferred an appeal against his conviction under section 292 I. P. C. The Sessions Judge and his appeal has been allowed and the conviction and sentence set aside.

In the present case we are not concerned with the book entitled as the "Romance of Lust" or the other books. The short point for determination is whether the publication styled as the "Asli Kokshastra" written in Hindi with an outer cover of a nude picture of a woman, priced at Rs. 100, is a publication of obscene matter under the purview of section 292 of the Indian Penal Code.

The book mostly deals with sex, sexual organs, love and of sex life and gratification and abnormal sex appetites and varieties of intercourse and there can be no doubt that it is a publication of obscene matter for prurient tastes and is therefore a publication of obscene matter falling under the mischief of section 292.

The preface appended to the book by the author Ram Lagan Pandey states that at the request of Thakur Prasad accused to write a book on "Kam Shastra" which along with the normal aspects of

family life, should comprehend matters of sex life.

The author states that a single woman enjoys simultaneously with a number of youths and that in the same manner a single man and woman, and which should further state the obstacles which lie in the way of gratification of desire of those who have the sex appeal in them and also the appeal of communion with others' wives, and which should contain measures as to how to overcome them, he undertook the task of writing the book.

The book has been dedicated to those who have entered family life and who desire to make their life a success and it has further been dedicated to the married and unmarried, young men and women, who have ardent sex appeal in them. Particular emphasis was laid on behalf of the prosecution upon the passages contained at pages 222 and 223 of the book, the authorship of which had been owned by the author himself, and also on the passages at pages 393 to 395 of the book the authorship of which was denied by Ram Lagan Pandey.

The prosecution evidence was to the effect that Ram Lagan Pandey is the author of the entire book from cover to cover. Two of the accused, namely, Thakur Prasad Gupta and Ganesh Prasad did not contend that Ram Lagan Pandey was only the author of part of it and not of the whole. In fact their contention was that Ram Lagan Pandey was the author of the entire book. No evidence was given on behalf of Ram Lagan Pandey to show that he was the author of only part of it and not of the whole.

We are therefore driven to the conclusion that the whole of the book was written by Ram Lagan Pandey inclusive of the contentious passages at pages 222 and 223 and at pages 393 to 395.

(7) We would now proceed to quote the passages aforesaid. At pages 222 and 223 we get a description of certain varieties of sexual intercourse. The matter is headed as:

"Now about some curious and unusual ways of intercourse."

(8) The matter then begins with what the author calls as "Saughata asan". It is said that under this "asan" two women are friendly with each other so much so that they lie down crossing their thighs with one another. The man placing himself near to them first engages with one in bahyarata (Outward caresses, etc.) while he satisfies the other by the acts of inner coitus, repeating the action by turn one after the other.

(9) The other description of "saughata asan" stated under that head is that two men lie down close together in the same fashion as the two women described above and the woman enjoys with one man by the acts of inner coitus and she gives enjoyment to the other man by putting his penis into her mouth which is known as "mukh maithun" or by giving him enjoyment by outer caresses, etc.

(10) Then there is the description of the "asan" known as "goyudhakam". This is described as follows. A number of women who are friendly with one another take for their common enjoyment a single man who effects copulation with each of them by turn. In the same manner a single woman engages a number of youths for her enjoyment simultaneously.

(11) Then follows a description of what is known, according to the author, as "varikelit asan". The description of it has been given like this. A male elephant at the time of playing in water in the midst of a female herd engages in sexual action with each of them by turn. In the same manner a man playing in water with a number of women, enjoys with each of them by turn.

(12) After describing "Varikelit asan", as stated above the author mentions that in the country of

Varanasi a single woman enjoys simultaneously with a number of youths and that in the same manner a single man and woman, and which should further state the obstacles which lie in the way of gratification of desire of those who have the sex appeal in them and also the appeal of communion with others' wives, and which should contain measures as to how to overcome them, he undertook the task of writing the book.

(13) The contention of the author is that the above is nothing but a reproduction of what is contained in "Rati Ratna Pradipika". It was also contended that the Rati Ratna Pradipika of Sri Deva-raja Maharaja has been translated into English by Pandit K. Rangaswami Iyengar the Librarian of the Government Oriental Library Mysore, and the passages aforesaid are to be found in Chapter V. Paragraphs 33 to 37, at pages 30 and 31 of the 1923 edition of the book.

This argument however, loses sight of the fact that that book is not a priced publication and it is not put into the hands of the public at large, but has been expressly stated as meant "for private circulation only."

(14) The offending matter at pages 393 to 395 of the book is headed "Mukh maithun". In paragraph 1 it is stated that the woman holding her master's penis with her hands places its tip just over her lip shaking her head from one side to the other and lets it go. In paragraph 2 it is stated that the action called "parsvatodastam" consists of holding the end of the penis in her fist, and leaving its lower part bare, and she with her lips would grasp it on all its bare parts without the action of the teeth.

In paragraph 3 the action called "bahissandamsam" has been described as having been urged again by the master she would place the tip of his organ in her mouth and after drawing it in pressing it from between her closed lips would let it go. In paragraph 4 the action called "antassandamsam" has been described as having been urged again by the master that this much is not sufficient she would by pushing down the outer skin make the upper part of the penis bare and then place it into her mouth.

In paragraph 5 the action called Chumbitakam has been described as follows. At some other time holding the penis in her hand she would imply kiss its end as she would do the lip. In paragraph 6 the action called "parimistakam" has been said to consist in the following. If in the above act of kissing the woman hits with the tip of her tongue the bare end of the penis at the part where the tip comes out, it is called "parimistakam".

The description given in paragraph 7 mentions that the penis is made bare by pushing down the outer skin, she places half its length into her mouth and drawing it inside pressingly and unhesitatingly and after chewing it she would let it go. This according to the author, is "ambrachusitam" (ambra-mango fruit so called by the act resembling the chewing of the mango fruit).

In paragraph 8 it is described that lastly the whole of the bare penis is placed in her mouth and she with the action of the tongue and lips sucks the organ till the master attains the satisfaction of the discharge of his semen, and this action is called "sangara" or complete swallowing. Then follows what is stated at page 395 on the top. It says that prostitutes, libertines and such like women only resort to the above acts and not the family woman and that these methods should not be practised upon ones own wife.

(15) It is contended that these methods are found described in Vatayana's Kam-sutra and also in Rati Ratan Pradipika and consequently they must not be regarded as containing obscene matter.

(16) The Kam Sutra of Vatsyayana the text of which is in Sanskrit appears to have been translated and edited by Dr. B. N. Basu M.B. (Calcutta) D.T.M., D.P.H., and it has run into several editions. The translation expressly mentions that

"the sale of the book is strictly restricted to the members of the medical and legal professions and to students of Psychology and Sociology and the publication is sold for their personal use only, and in no case should be lent or given away to others for obvious reasons."

In the foreword to the translation it has been mentioned by Dr. Bagchi that a careful study of the whole book "Kam Sutra" of Vatsyayana in original would show that if it has any interest at all, it is nothing more than historical and that although the book has inspired hundreds of treatises written by princes, nobles and wealthy dilettantes still the importance which is attached to it by some scholars is misplaced; and that although the "Kam Sutra" is included by ancient writers in the class of Ayurveda i.e. Medical Science, the work has nothing in common with the medical treatises except on two things, namely stereotyped classification of men and women according to their sexual habits and a list of aphrodisiacs, both of which have no inherent bearing on medical literature and consequently there was no reason for including the book in the Ayurveda. Vatsyayana's Kam Sutra is in Sanskrit. The translation of the book by Dr. Basu though in English, is not intended for all and sundry; and as has been expressly stated by the publishers, the translation is strictly restricted to the members of the medical and legal profession and to students of Psychology and Sociology.

The same may be said about the translation of "Kalyanamallas Ananga Ranga by Tridibnath Ray with a foreword by Dr. Girindrashekar Bose, D.Sc. M.B., F.N.I. On the first page of that translation it is expressly stated that the sale of the book is strictly restricted to members of the medical and legal professions and to students of Psychology and Sociology and that the publication is sold for their personal use only and in no case should it be lent or given away to others for obvious reasons.

It is therefore clear that the respondents cannot put the publication which is in question in the present case on the same footing as the translation of "Kam Sutra" of Vatsyayana by Dr. Basu or the translation of the Ananga Ranga by Mr. Ray, or the translation of the Rati Ratan Pradipika by Pandit Iyengar.

(17) Section 292 of the Indian Penal Code, inter alia, provides that whoever for the purposes of sale makes, produces or has in his possession any obscene book, paper, representation or figure or any other obscene object whatsoever, or takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes specified in clause (a) of section 292 made, produced or in any manner put into circulation, shall be punished.

The word "obscene" is not defined in the Penal Code; but it may be taken as meaning offensive to chastity or modesty expressing or personating to the mind or view something that delicacy, purity and decency forbid to be expressed; impure as obscene language obscene pictures anything expressing or suggesting unchaste and lustful ideas, impure indecent, lewd. The idea as to what is deemed as obscene of course varies from age to age and from region to region dependent upon particular social conditions.

As has been observed by Dr. Hari Singh Gour in the Penal Law of India, there cannot be an immutable standard of moral values. If a publication is detrimental to public morals and is calculated to produce a pernicious effects in depraving and debauching the minds of the persons into whose hands

it may come it will be seen as an obscene publication which it is the intention of the law to suppress. Anything calculated to inflame the passions is obscene.

Anything distinctly calculated to incite a reader to indulge in acts of indecency or immorality is obscene for example a book containing a description of defective sexual enjoyment with advice for heightening and prolonging such enjoyment in the case of normal persons. A book may be obscene although it contains but a simple obscene passage. A picture of a woman in the nude is not per se obscene.

For the purpose of deciding whether a picture is obscene or not one has to consider to a great extent the surrounding circumstances, the pose, the posture, the suggestive element in the picture, and the person or persons in whose hands it is likely to fall. The publication with which we have to deal is not a medical one. Neither is it sold to registered subscribers nor has its circulation or sale been restricted to members of the medical and legal professions and to students of Psychology and Sociology.

It is no justification that the matter published is by an eminent writer or is composed in a style not easily understood by all. In the present case Ram Lagan Pandey does not and cannot claim to be an eminent writer, nor can it be said that the book in Hindi is composed in a style which is not easily understood by all. There can be no doubt that the book was written, printed and published and brought into circulation for prurient tastes.

The probable effect of the publication was to prejudice public morals and decency. It was intended for those who have ardent sex appeal in them and it was for the delectation of the married and the unmarried for the gratification of their normal and abnormal sex appetites and it described varieties of sexual intercourse in a manner which to say the least was obscene. If the probable effect of the publication was to prejudice public morals and decency the accused must be taken to have intended the natural consequences of his acts.

As was observed by Alderson B. in Gathercole's case, (1838) 2 Lewin 237 (A), "every man, if he be a rational man must be considered to intend that which must necessarily follow from what he does. And in R. v. Dixon, (1814) 3 M and S. 11 (B), Lord Ellenborough C. J. said that it is a universal principle that when a man is charged with doing an act of which the probable consequences may be highly injurious, the intention is an inference of law resulting from the doing of the act."

Therefore even if the object of publicising the book in question was innocent (which we cannot say it was in this case), the contention that no offence was committed is not in our judgment well founded. If the publication is obscene, it is an offence against the Act, although there was no intent on the part of the publishers to corrupt morals.

As was observed by Cockburn C. J. in R. v. Hicklin, (1868) 3 Q. B. 360 (C) and approved in R. v. Reiter, (1954) 1 All E. R. 741 (D) the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall and in determining whether or not such a book is obscene regard must be had to that book alone; other books not the subject of charges may not be referred to.

See also the summing up of Stable, J. in R. v. Martin Secker and Warburg Ltd., (1954) 2 All E. R. 683 (E).

(18) Publication of indecent matter may be justified if it is genuinely in the interests or for the

purposes of art, science or any other fitting. The justification must however be the facts of the particular case on the matter, the circumstances of its public nature of the accused's business. In if the necessary or natural effect of is prejudicial to the public morality or motive of the accused in publishing matter is immaterial.

If the work is manifestly obscene must be taken to have published it with full intent and he cannot be heard to say he broke the law, he did so from a salubrious motive and not for gain: O. B. 360 (C) Steele v. Brannan, (1871) (F) and R. v. De Montalk, (1932) 23 Rep. 182 (C). Some matter may be published, for example, to practitioners of medicine or surgery the publication to boys or girls or even to the public in would necessarily tend to the corruption and therefore be illegal.

(19) On the side of the prosecution the evidence of Sub-Inspector Shah Me of the District Intelligence Staff who what is contained in the book, particularly on p. 393 are definitely obscene. The statement of Inspector J. A. Criminal Investigation Department who the book is obscene on account of the contained at pp. 222 and 223 and also at particularly those contained at pp. 39. Lari further stated that the nude picture on the front page is also obscene, regard being to the attendant circumstances.

(20) On the other side there was of Sri Gauri Nath D. W. 4, Examiner Government Sanskrit College, Banaras a Sanskrit College Banaras who stated read the "Kam Sutra" of Vastayana Ranga" and the Rati Ratan Pradipika the Kokshastra of the respondents an opinion that no portion of the book enclosed. We are not in agreement with of Sri Gauri Nath D. W. 4. The result from all the attendant circumstances leads us to a contrary conclusion.

(21) Bearing in mind the principle above, if we examine the matter under, are definitely of opinion that it constitutes matter contemplated under section 292 of the Indian Penal Code. The publication is to be sold to pruriently minded adolescent sundry in order to stir the sex impurity to sexual and impure thoughts. The publication is therefore obscene.

The general character and the dominant tendency of the publication is obscene impure, indecently tending to the corruption of youth intended to be fair (fare ?) for the filthy minded who may secure it from the book-seller on payment of a sum. It does not become less smutty or more because the information has been copied in works. Therefore the learned Magistrate at all justified in coming to the conclusion that the publication does not constitute obscene matter falling within the scope of section 292 of the Indian Penal Code.

We are therefore of opinion that the respondents are clearly guilty under section 292 of the Indian Penal Code in regard to the publication of the Asli Kokshastra with its outer cover containing the nude picture. We accordingly appeal, convict the respondents Thakur Ganesh Prasad and Ram Lagan under section 292 of the Indian Penal Code and sentence each of them to

