Ramji Lal Modi

Vs

The State of U.P.

Petition No. 252 of 1956

(CJI S. R. Dass, S. K. Das, A. K. Sarkar, Syed Jafar Imam, P. Govinda Menon JJ)

05.04.1957

JUDGMENT

DAS C.J. -

This is a petition filed under Art. 32 of the Constitution of India praying for a declaration that s. 295A of the Indian Penal Code is ultra vires and unconstitutional and for a writ in the nature of certiorari quashing the petitioner's conviction under that section and for ancillary reliefs.

The material facts lie within a narrow compass. The petitioner is the editor, printer and publisher of a monthly magazine called Gaurakshak. The magazine is devoted to cow protection. In July or August, 1954, a Hindi Daily newspaper named 'Amrit Patrika' of Allahabad Printed and published an article or a cartoon about a donkey on which an agitation was started by the muslims of Uttar Pradesh. The editor and printer and publisher of 'Amrit Patrika' were prosecuted by the State, but they have been eventually acquitted by the High Court of Allahabad. In the meantime, in its issue for the month of Kartik Samvat 2009, corresponding to November, 1952, an article was published in the petitioner's magazine 'Gaurakshak.' On December 12, 1952, the State Government ordered the prosecution of the petitioner on the basis of the said article. Accordingly of June 8, 1953, a complaint was filed in the court of the District Magistrate, Kanpur, by the Senior Superintendent of Police, Kanpur, against the petitioner for offences under ss. 153A and 295A of the Indian Penal Code. The Magistrate by his order dated August 5, 1953, charged the petitioner under ss. 153A and 295A and committed the petitioner to the Sessions Court of Kanpur for trial. The petitioner pleaded not guilty. The learned Sessions Judge, by his judgment dated November 16, 1953, acquitted the petitioner of the charge under s. 153A but convicted him under s. 295A and sentenced him to 18 months rigorous imprisonment and a fine of Rs. 2,000 and, in default of payment of the fine, to further rigorous imprisonment of 4 months. The petitioner filed and appeal to the High Court at Allahabad. The learned Single Judge, by his judgment dated October 25, 1956, held that the article was published with the deliberate and malicious intention of outraging the religious feelings of muslims and that the petitioner was guilty under s. 295A of the Indian Penal Code. The learned Judge, however, reduced the sentence of imprisonment to 12 months and the fine from Rs. 2,000 to Rs. 250 only. An application for certificate to appeal to this Court under Arts. 132 and 134 having been rejected by the High Court on October 30, 1956, the petitioner moved this Court for special leave to appeal from the judgment of the Allahabad High Court dated October 25, 1956. The petitioner also on December 5, 1956, presented the present petition under Art. 32 for the reliefs mentioned above. The petitioner also made an application in this Court along with the writ petition for stay of the sentence passed on him. On December 18, 1956, both the stay application and the petition for special leave were dismissed by this Court. The petition under Art. 32 has now come up for hearing. Presumably the petitioner has surrendered and is undergoing the sentence of

imprisonment.

Learned counsel appearing in support of this petition urges that s. 295A of the Indian Penal Code is ultra vires and void inasmuch as it interferes with the petitioner's right to freedom of speech and expression guaranteed to him as a citizen of India by Art. 19(1)(a) of our Constitution. The contention is that this section cannot be supported as a law imposing reasonable restrictions on the exercise of the right conferred by Art. 19(1)(a) as provided in cl. (2) of the said Article. Learned counsel says that the interest of public order is the only thing in cl. (2) which may possibly be relied upon by the State as affording a justification for its claim for the validity of the impugned section. A law interfering with the freedom of speech and expression and imposing a punishment for its breach may, says counsel, be "in the interests of public order" only if the likelihood of public disorder is made an ingredient of the offence and the prevention of public disorder is a matter of proximate and not remote consideration. Learned counsel points out that insulting the religion or the religious beliefs of a class of citizens of India may not lead to public disorder in all cases although it may do so in some case. Therefore, where a law purports, as the impugned section does, to authorise the imposition of restriction on the exercise of the fundamental right to freedom of speech and expression in language wide enough to cover restrictions both within and without the limitation of constitutionally permissible legislative action affecting such right, the court should not uphold it even in so far as it may be applied within the constitutionally permissible limits as it is not severable. So long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out it must, according to learned counsel, be held to be wholly unconstitutional and void. Reference has been made to the cases of Romesh Thappar v. The State of Madras [(1950) S.C.R. 594] and Brij Bushan v. The State of Delhi [(1950) S.C.R. 605].

In Romesh Thappar's case, in exercise of powers conferred on him by s. 9(1-A) of the Madras Maintenance of Public Order Act, 1949, the Governor of Madras, being satisfied that for the purpose of securing public safety and the maintenance of public order it was necessary so to do, prohibited the entry into or the circulation, sale or distribution in the State of Madras or any part thereof of the newspaper entitled 'Cross Roads', an English Weekly published at Bombay. The impugned section - s. 9(1-A) - was a law enacted for the purpose of securing the public safety and the maintenance of public order. 'Public order' was said to be an expression of wide connotation and to signify that state of tranquillity which prevailed among the members of a political society as a result of the internal regulation enforced by the Government which they had established. 'Public safety' used in that section was taken as part of the wider concept of 'public order'. Clause (2) of Art. 19, as it stood then, protected a law relating, inter alia, to a matter which undermined the security of or tended to overthrow the State. Some breach of public safety or public order may conceivably undermine the security of or tend to overthrow the State, but equally conceivably many breaches of public safety or public order may not have that tendency. Therefore, a law which imposes restrictions on the freedom of speech and expression for preventing a breach of public safety or public order which may not undermine the security of the State or tend to overthrow the State cannot claim the protection of cl. (2) of Art. 19. Section 9(1-A) was challenged as it embraced both species of activities referred to above and as the section was not severable, the whole section was held to be bad.

In Brij Bushan's case (supra) the validity of s. 7(1)(c) of the East Punjab Public Safety Act, 1949, as extended to the Province of Delhi, came up for consideration. That section provided that "the Provincial Government or any authority authorised by it in this behalf, if satisfied that such action is necessary for preventing or combating any activity prejudicial to the public safety or the maintenance of public order, may, by order in writing addressed to the printer, publisher or editor,

require that any matter relating to a particular subject or class of subjects shall before publication be submitted for scrutiny". It was held by this Court (Fazl Ali J. dissenting) that inasmuch as the section authorised the imposition of restrictions on the fundamental right to freedom of speech and expression guaranteed by Art. 19(1)(a) for the purposes of preventing activities prejudicial to public safety and maintenance of public order, it was not a law solely relating to a matter which undermined the security of or tended to overthrow the State within the meaning of cl. (2) of Art. 19 as it then stood. The principles laid down in Romesh Thappar's case were applied to this case and the law was held to be void.

The case of Chintaman Rao v. The State of Madhya Pradesh [(1950) S.C.R. 759] has also been relied upon in support of the contention that where the language employed in the Statute is wide enough to cover restrictions on a fundamental right both within and without the limits of constitutionally permissible legislative action affecting the right and the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out, the law must be held to be wholly void.

After this Court decided the cases of Romesh Thappar (supra) and Brij Bushan (supra), cl. (2) of Art. 19 of the Constitution was amended. Clause (2), as amended, protects a law in so far as such law imposes reasonable restrictions on the exercise of the right conferred by sub-cl. (a) of cl. (1) of Art. 19 "in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence." The question for our consideration is whether the impugned section can be properly said to be a law imposing reasonable restrictions on the exercise of the fundamental right to freedom of speech and expression in the interests of public order. It will be noticed that the language employed in the amended clause is "in the interests of" and not "for the maintenance of". As one of us pointed out in Debi Soron v. The State of Bihar [A.I.R. (1954) Patna 254], the expression "in the interests of" makes the ambit of the protection very wide. A law may not have been designed to directly maintain public order and yet it may have been enacted in the interests of public order.

It is pointed out that s. 295A has been included in chapter XV of the Indian Penal Code which deals with offences relating to religion and not in chapter VIII which deals with offences against the public tranquillity and from this circumstance it is faintly sought to be urged, therefore, that offences relating to religion have no bearing on the maintenance of public order or tranquillity and, consequently, a law creating and offence relating to religion and imposing restrictions on the right to freedom of speech and expression cannot claim the protection of cl. (2) of Art. 19. A reference to Arts. 25 and 26 of the Constitution, which guarantee the right to freedom of religion, will show that the argument is utterly untenable. The right to freedom of religion assured by those Articles is expressly made subject to public order, morality and health. Therefore, it cannot be predicated that freedom of religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion cannot under any circumstances be said to have been enacted in the interests of public order. These two Articles in terms contemplate that restrictions may be imposed on the rights guaranteed by them in the interests of public order.

Learned counsel then shifted his ground and formulated his objection in a slightly different way. Insults to the religion or the religious beliefs of a class of citizens of India may, says learned counsel, lead to public disorders in some cases, but in many cases they may not do so and, therefore, a law which imposes restrictions on the citizens' freedom of speech and expression by simply making insult to religion and offence will cover both varieties of insults, i.e., those which may lead to public disorders as well as those which may not. The law in so far as it covers the first variety

may be said to have been enacted in the interests of public order within the meaning of cl. (2) of Art. 19, but in so far as it covers the remaining variety will not fall within that clause. The argument then concludes that so long as the possibility of the law being applied for purposes not sanctioned by the Constitution cannot be ruled out, the entire law should be held to be unconstitutional and void. We are unable, in view of the language used in the impugned section, to accede to this argument. In the first place cl. (2) of Art. 19 protects a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression "in the interests of" public order, which is much wider than "for maintenance of" public order. If, therefore, certain activities have a tendency to cause public disorder, a law penalising such activities as an offence cannot but be held to be a law imposing reasonable restriction "in the interests of public order" although in some cases those activities may not actually lead to a breach of public order. In the next place s. 295A does not penalise any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens but it penalises only those acts of insults to or those varieties of attempts to insult the religion or the religious beliefs of a class of citizens, which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section. It only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. The calculated tendency of this aggravated form of insult is clearly to disrupt the public order and the section, which penalises such activities, is well within the protection of cl. (2) of Art. 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Art. 19(1)(a). Having regard to the ingredients of the offence created by the impugned section, there cannot, in our opinion, be any possibility of this law being applied for purposes not sanctioned by the Constitution. In other words, the language employed in the section is not wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting the fundamental right guaranteed by Art. 19(1)(a) and consequently, the question of severability does not arise and the decisions relied upon by learned counsel for the petitioner have no application to this case.

For the reasons stated above, the impugned section falls well within the protection of cl. (2) of Art. 19 and this application must, therefore, be dismissed.

Application dismissed.

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