Dalbir Singh and Others

Vs

The State of Punjab

Criminal Appeal No. 102 of 1960

(CJI B. P. Sinha, T. L. Venkatarama Ayyar, K. Subha Rao, N. Rajgopala Ayyangar, J. R. Mudholkar JJ)

06.02.1962

JUDGMENT

AYYANGAR, J. -

This appeal by special leave against the decision of the High Court of Punjab raises for consideration principally the constitutional validity of s. 3 of the Pepsu Police (Incitement to disaffection) Act (Act 1 of 1953), which will be referred to hereafter as the impugned Act.

The four appellants were at one time members of the Pepsu Police force and were charged, before the First Class Magistrate at Faridkot, with having committed three offences : (1) under s. 26 of the Pepsu Public Safety Ordinance (No. 7 of Samvat 2006), (2) under s. 33 of the said Ordinance, and (3) under s. 3 of the impugned Act. We shall be referring to the provisions of the relevant enactments in due course. The accused pleaded not guilty and were tried by the learned Magistrate who by his judgment dated August 28, 1958, held the prosecution case fully established against all the accused. He convicted the four appellants under s. 26 of the Public Safety Ordinance and sentenced them to imprisonment for six months. The third appellant alone was convicted of the offence under s. 33 of the same Ordinance and was sentenced to imprisonment for six months. Appellants 1, 2 and 4 were further convicted of offences under s. 3 of the impugned Act and sentenced to imprisonment for six months, the several sentences against the respective accused being directed to run concurrently. The appellants filed an appeal to the Sessions Judge at Bhatinda who upheld the convictions but reduced the sentences. In respect of the offence under s. 26 of the Public Safety Ordinance the sentence passed against the four appellants was reduced to imprisonment for three months while in respect of the third accused who had been additionally sentenced under s. 33 of the Ordinance the same was reduced to imprisonment for 1-1/2 months and the sentences on appellants 1, 2 and 4 under s. 3 of the impugned Act was reduced to imprisonment for three months, the sentences again being directed to run concurrently. With these modifications the appeals stood dismissed. The appellants thereafter preferred a revision to the High Court and this was heard by a learned Single Judge who while accepting the revision of the appellants in so far as it related to their conviction and sentence under s. 26 of the Ordinance, maintained the other convictions and sentences but reduced the sentences. It is from this judgment of the High Court that this appeal has been preferred by the four appellants.

It would be seen from the above narrative that the appeal is concerned with the propriety of the conviction of appellants 1, 2 and 4 of an offence under s. 3 of the impugned Act and of the third appellant under s. 33 of the Ordinance, all the appellants having been acquitted by the High Court of the charge against them under s. 26 of the Ordinance. It is therefore not necessary to refer to the

terms of s. 26 or the offence constituted by it. In the Courts below including the High Court no challenge was made as regards the legality of any of the provisions of law of the violation of which the appellants were found guilty but before us though learned Counsel did not raise any contention regarding the validity of s. 33 of the Pepsu Public Safety Ordinance, challenged the constitutionality of s. 3 of the impugned Pepsu Police (Incitement to disaffection) Act which appellants 1, 2 and 4 were found to have violated and for which they were sentenced to a term of imprisonment.

Learned Counsel for the appellants raised for our consideration three points : (1) the constitutional validity of s. 3 of the impugned Act, (2) if s. 3 were constitutional and valid whether appellants 1, 2 and 4 were proved to have been guilty of an offence for violating that provision, and (3) whether appellant 3 was properly held guilty of an offence under s. 33 of the Pepsu Public Safety Ordinance.

We shall first take up for consideration the attack on the validity of s. 3 of the impugned Act. Patiala and East Punjab State Union, commonly called Pepsu was one of the States specified in Part B of the First Schedule to the Constitution when the Constitution was brought into force in January 1950. For reasons not necessary to be stated here, the administration of Pepsu was taken over by the President under Art. 356 of the Constitution. The powers of the State Legislature were declared by the Presidential Proclamation issued on March 4, 1953, to be "exerciseable by or under the authority of Parliament" (vide Art. 356(1)(b)). Thereafter Parliament enacted Act XXII of 1953 which received the assent of the President on May 17, 1953, which was entitled : "The Patiala and East Punjab States Union Legislature (Delegation of Powers) Act, 1953". Section 3 of this enactment provided :

> "The power of the legislature of the State of Patiala and East Punjab States Union to make laws which has been declared by the proclamation to be exerciseable by or under the authority of the Parliament is hereby conferred on the President."

There are other provisions which are contained in the other sub-sections of s. 3 but these have no relevance for this appeal. In exercise of the power thus delegated to him by Parliament the President enacted Pepsu Act 1 of 1953 whose long title runs :

> "An Act to provide a penalty for spreading disaffection among the police and for kindred offences".

It is the 3rd section of this enactment whose validity is challenged in this appeal and that reads :

> "3. Penalty for causing disaffection, etc. - Whoever intentionally causes or attempts to cause, or does any act which he knows is likely to cause, disaffection towards any Government established by law in India amongst the members of a police force, or induces or attempts to induce, or does any act which he knows is likely to induce, any member of a police force to withhold his services or to commit a breach of discipline shall be punishable with imprisonment which may extend to six months, or with fine, or with both".

The attack upon the validity of this provision was rested on its being violative of the freedom guaranteed by Art. 19(1)(a), the submission being that the section was not saved by Art. 19(2).

Before considering the arguments advanced it is necessary to mention, for being put aside, that in construing the validity of s. 3 of the impugned Act the provision contained in Art. 33 of the Constitution has no relevance. That Article enacts :

> "Art. 33. Parliament may by law determine to what extent any of the rights conferred by this Part, shall in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them".

No doubt, the impugned provision is concerned with ensuring discipline among the forces charged with the maintenance of public order but as the powers of the President were exercised by virtue of the delegation contained in s. 3 of Act XXII of 1953 under which only the powers of the State Legislature were vested in him, any law enacted by him would not have the force of Parliamentary legislation contemplated by Art. 33.

Article 33 being out of the way the very short question that has to be considered is whether the impugned provision is saved by Art. 19(2), for it is common ground that that provision does not violate any freedom other than that of "free speech and expression" guaranteed by Art. 19(1)(a). Article 19(2) as it stands after the amendment by the Constitution (First Amendment) Act of 1951 reads :

> "19(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interest 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".

Of the criteria set out in this clause the one relevant in the present context is that which refers to "in the interests of..... public order". The contention urged by learned Counsel was that s. 3 was too wide in that it embraced within itself not merely matters which might have relevance to circumstances intimately connected with the maintenance of public order, but also those whose connection with it might be remote or fanciful. While not seriously disputing that seducing the loyalty of the police force, or inducing the members thereof not to do their duty might imperil public order and so fall within the limit of restrictions permissible of imposition under Art. 19(2), learned Counsel laid stress on the fact that the impugned section made it an offence to induce a member of the police force to "commit a breach of discipline", laying special emphasis on the fact that the words "breach of discipline" besides being vague, might include within itself acts which might be innocent as well as others of varying degrees of culpability.

The content of the expression "in the interests of ..... public order" has been the subject of detailed and elaborate consideration by this Court in Superintendent, Central Prison, Fatehgarh v. Ram Manohar Lohia ((1960) 2 S.C.R. 821) where the effect of the First (Constitution) Amendment by which the words "for the maintenance of public order" were replaced by the words "in the interests of public order" was considered in the light of the previous decisions of this Court on that topic, Subba Rao, J., speaking for this Court said that the expression "public order" in the juxtaposition of the different grounds set out in Art. 19(2) was synonymous with "public peace, safety and tranquillity". He also pointed out that the expression "in the interests of public order" though undoubtedly wider than the previous phrasing "for the maintenance of public order" could not mean that the existence of any remote or fanciful connection between the impugned act and public order was sufficient to sustain the validity of the law, but that on the other hand, the connection between the act prohibited or penalised and public order should be intimate; in other

words there should be a reasonable and rational relation between it and the object sought to be achieved, viz., public order. The nexus should thus be proximate - not far-fetched, problematical or too remote in the chain of its relation with public order.

Keeping this exposition in mind. the question to be considered is whether the connection between what is prohibited or penalised by the impugned provision and public order, i.e., the ensuring of tranquillity and orderly life is so remote or fanciful as to lead to an inference that there is no proximate connection between the two. We have no hesitation in answering this question against the appellants. The impugned enactment seeks to lay an embargo on certain activities in the interests of the Police service which is the arm of the State charged with the duty of ensuring and maintaining public order. The efficiency of that service and its utility in achieving the purpose for which it is formed and exists is sought to be secured by penalising attempts to undermine its loyalty and dissuading the members of that force from performing their functions and being available to the State as a disciplined body. Any breach in the discipline by its members must necessarily be reflected in a threat to public order and tranquillity. If the police force itself were indisciplined they could hardly serve as instruments for the maintenance of public order or function properly as the machinery through which order could be maintained among the general public. As we have pointed out earlier, learned Counsel did not seriously contest that the impugned provision in so far as to penalised the creation of disaffection among members of the police force or the incitement of the members of the police force to withhold their services from the government could properly be sustained as enacted "in the interests of public order". We consider that attempts to induce indiscipline among the police do not stand on any different footing. We do not further consider well-founded the submission of learned Counsel that the word "discipline" or the phrase "breach of discipline" is vague. We have therefore no hesitation in rejecting this challenge to the validity of s. 3 of the impugned Act.

The next question that was urged by learned Counsel was that the High Court was wrong in considering that the three appellants 1, 2 and 4 were guilty of any contravention of s. 3 of the Act. We do not consider that this submission is justified. It is needless to point out that in considering an appeal which comes before us by special leave this Court normally accepts as final every finding of fact reached by the High Court as well as its appreciation of oral testimony and that if there is evidence which could serve as a basic for any finding reached by the High Court the same cannot be canvassed before us. If the submission of learned Counsel is viewed in the light of this principle it appears to us that there is hardly any scope for argument as regards what might be termed the merits of the case. One of the witnesses whose evidence has been accepted by the Courts below and which is referred to in the judgment of the learned Judge in the High Court was Krishan Dayal P.W. 4 who deposed to the accused saying "Police brothers, come and join us, stop the office work; we will sit here in dharma, start hunger strike ..... and would not allow the office work to run." It is clear from this evidence that the accused had induced or had attempted to induce members of the police force to withhold their services as also to commit a breach of discipline by staying away without doing their duty. In our opinion, it is not shown that the conviction of appellants 1, 2 and 4 of an offence under s. 3 of Act 1 of 1953 was improper or illegal.

The last of the points arising in the appeal is as regards the conviction of Lal Singh the third appellant - of an offence under s. 33 of the Ordinance. Section 33 of the Ordinance runs :

> "Whoever induces or attempts : to induce any public servant or any servant of local authority to disregard or fail in his duties as such servant shall be punishable with imprisonment which may extend to one year or with fine or with both".

As regards this appellant this is what the learned Judge of the High Court stated :

> "As against Lal Singh there is evidence of P.W. 11 Kartar Singh and P.W. 18 Balwant Singh, Foot-Constable that he asked them on disobey their officers and should give up government work. His offence under s. 33 of the Ordinance is substantiated".

As we have pointed out earlier, the validity of s. 33 of the Ordinance was not challenged and the only question therefore was whether the third appellant was property held guilty of the offence. It was not disputed that the two prosecution witnesses 11 & 18 did state on oath the matters referred to by the learned Judge. In view of what we have stated earlier as regards the manner in which this Court deals with appeals under Art. 136 there is no ground shown for interfering with the conviction of the third appellant or the sentence passed.

Before parting with this case it is necessary to advert to one matter. In the course of his arguments learned Counsel for the appellant drew our attention to certain police rules framed by the State Government which prohibited policemen from joining unions and sought to raise a point that the said rule was unconstitutional as in violation of Art. 19(1)(b) and that all the activities of the four accused were in reality an attempt to form an union and that therefore we should consider the legality of this rule of the police force in considering the propriety of their convictions. Though there is a reference to the rule in the judgment of the High Court, it is referred to only incidentally and as part of the narrative in detailing the activities of the accused. The offence with which the accused were charged was certainly not the violation of that rule, which it might be pointed out did not create any offence, so that the validity of that rule was wholly irrelevant to their guilt when charged with substantive offences under the various enactments we have noticed earlier. It need hardly be pointed out that the fact that a person is engaged in asserting a fundamental right affords no defence to a charge of having contravened a valid penal statute while so engaged. In the High Court the validity of the police rule was never challenged and in the circumstances we declined to permit learned Counsel to argue any question before us in relation to the validity of that rule.

The appeal fails and is dismissed.

Appeal dismissed.

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