Santokh Singh

Vs

Delhi Administration

Criminal Appeal No. 197 of 1972

(C.A. Vaidialingam, I.D. Dua, A. Alagiriswami JJ)

20.02.1973

JUDGMENT

DUA, J. -

1. This appeal by special leave is directed against the judgment and order of a learned single Judge of the High Court of Delhi, dated February 24, 1972, rejecting the appellant's revision petition under Sections 439 and 561-A of the Code of Criminal Procedure. In that revision he had prayed that the charge framed against him by a Magistrate, First Class, New Delhi on July 3, 1969, under Section 9 of the Punjab Security of State Act (Punjab Act No. 12), 1953 (hereinafter called the Act) be quashed. The special leave petition originally came up for preliminary hearing before a bench of this Court on August 18, 1972, when notice to show cause was issued. On September 19, 1972, the hearing was again adjourned for a week to enable the petitioner's counsel to file a writ petition. It appears that no writ petition was filed but on September 26, 1972, this Court granted special leave on usual terms. The appeal was also directed to be heard on the existing paper book with liberty to the parties to file such additional documents as they wished to file from the record. The appeal was directed to be listed for hearing in the second week of January, 1973. Sometimes in January, 1973 the appellant presented criminal miscellaneous Petition No. 32 of 1973 seeking permission to urge additional grounds. In that application the constitutional validity of Section 9 of the Act was questioned. The said section, according to the averment in that petition, infringes the fundamental right of speech guaranteed under Article 19(1)(a) of the Constitution.

2. It is allege by the prosecution that the appellant had addressed a public meeting of the employees of the Defence Department on October 9, 1968, and in the course of his speech he had incited the said employees to commit offences prejudicial to the security of the State or to the maintenance of public order. The Magistrate had, no perusal of the documents filed under Section 173, Cr.P.C., framed a charge against the appellant punishable under Section 9 of the Act. According to the judgment of the High Court the offending portion of the speech which had been delivered in Hindi reads as follows :

> "There will be hunger strike at Chavan Sahib's kothi No. 1 Race Course Road. If Chavan Sahib thinks that they will be in position to crush us with the assistance of C.R.P and B.S.F. then that is his misunderstanding. Chavan Sahib when the Britishers had to leave this country then the same military and police will push you out. Because these children of military and police personnels are also hungry they also require bread for eating. Therefore, the day has to come when after their unity these workers will send you out. Comrades the Government suffered the moral death when it promulgated the ordinance. Because we had no idea of starting any violence,

> when we demanded bread, clothes and house. This struggle of ours will continue. If Government servants die then other labourers will take this struggle ahead. One thing more I want to tell you that if there will be no celebration of Diwali in the houses of our fifty thousand people, then there shall be darkness in the houses of these ministers. I want to tell you Chavan Sahib that if your repression continued in the same way, one Udham Singh will be born amongst these labourers who will not let you live as Udham Singh killed Dyre after going to London."

3. Annexures I and II attached to the petition under Article 136 of the Constitution stated in Para 4 thereof to be the English translation of the statements of the two police officers on the basis of which the charge-sheet had been filed in court contained a couple of more sentences which do appear to be of some importance. But we consider it unnecessary for our present purposes to refer to them. The High Court considered the part of the speech reproduced above and after referring to the decisions of this Court in State of Bihar v. Shrimati Shailbala Devi (AIR 1952 SC 329 : 1952 SCR 654 : 1952 Cr LJ 1503); Ram Manohar Lohia v State of Bihar (AIR 1966 SC 740 : (1966) 1 SCR 709 : 1966 Cr LJ 608) and Sudhir Kumar Saha v. The Commissioner of Police ((1970) 1 SCC 149) dismissed the revision holding that prima facie the remarks made by the appellant in his speech amounted to an offence under Section 9 of the Act. It was, however, added that it was open to the petitioner either by cross-examination of the prosecution witnesses or by adducing evidence in defence to show that in the circumstances under which these remarks were made they did not amount to an incitement to an offence prejudicial to the security of the State or the maintenance of public order. The High Court felt that at that stage it could not be said that there was no prima facie case against the petitioner under Section 9 of the Act.

4. In this Court Shri S. C. Agarwal questioned the vires of Section 9 of the Act, contending that this section is violative of the fundamental right guaranteed by Article 19(1)(a) of the Constitution. No doubt, this point was not raised in the High Court and in this Court also it was specifically sought to be raised only in the subsequent applications presented in January, 1973 but as the speech in question was itself sought in Para 5 of the petition for special leave to be protected by Article 19(1)(a) and as it was a pure question of law raising the constitutionality of Section 9 of the Act we premitted the counsel to raise it.

5. Section 9 of the Act reads :

> "9. Dissemination of rumours, etc. - Whoever -
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> (a) makes any speech; or
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> (b) by words, whether spoken or written, or by signs or by visible or audible representations or otherwise publishes any statement, rumour or report,
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> shall, if such speech, statement, rumour or report undermines the security of the State, friendly relations with foreign States, public order, decency or morality, or amounts to contempt of court, defamation or incitement to an offence prejudicial to the security of the State or the maintenance of public order, or tends to overthrow the State, be punishable with imprisonment which may extend to three years or with fine or with both."

This section on its own plain reading takes within its fold all the objectionable matters which had

been taken by sub-article (2) of Article 19 out of the guaranteed freedom of speech and expression protected by clause (a) of Article 19(1). In order to fully understand the freedom of speech and expression guaranteed by the Constitution it is necessary to reproduce Article 19(1)(a) and (2) :

> "19. Right to freedom. - (1) All citizens shall have the right -
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> (a) to freedom of speech and expression;
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> #* * * *##
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> (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, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, 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."

It may appropriately be pointed out here that sub-article (2) was amended in 1963 so as to include in the limitation contained therein reasonable restrictions in the interest of the sovereignty and integrity of India. This limitation was not in this sub-article in 1953 but as it does not affect the question raised in this case we need say nothing more about it.

6. Reading Section 9 of the Act and Article 19(2) of the Constitution it is obvious that the only matter specifically contained in Section 9 in addition to those stated in Article 19(2) relate to the offending speech, words or other publications which "tends to overthrow the State". Now this matter would clearly also fall within the sweep of the expression "incitement to an offence prejudicial to the security of the State" contained in Section 9 and within Article 19(2) where it speaks of "reasonable restrictions ..... in the interest of ..... the security of the State". Anything tending to overthrow the State must necessarily be prejudicial to the security of the State and, therefore, a law can be made placing reasonable restrictions on the right of freedom of speech and expression in this respect in the interest of security of the State. Prima facie, therefore, Section 9 clearly falls within the express language of Article 19(2).

7. On behalf of the appellant great stress was laid on Superintendent of Central Jail, Fatehgarh v. Ram Manohar Lohia ((1960) 2 SCR 821 : AIR 1960 SC 633 : 1960 Cr LJ 1002) where this Court struck down as unconstitutional Section 3 of the U.P. Special Powers Act (U.P. Act 14 of 1932). This section reads :

> "3. Whoever by word, either spoken or written or by signs or by visible representations or otherwise, instigates, expressly or by implication, any person or class of persons not to pay or to defer payment of any liability, and whoever does any act with intent or knowing it to be likely that any words, signs or visible representations containing such instigation shall thereby be communicated directly or indirectly to any person or class of persons, in any manner whatsoever, shall be punishable with imprisonment which may extend to six months, or with fine, extending to Rs. 250, or with both."

8. On the face of its plain language this section is materially different from Secion 9 of the Act. It therefore does not require elaborate argument for distinguishing this decision. Section 3 of the U.P. Act is clearly hit by Article 19(1)(a) and can on no reasonable or rational argument be saved by

Article 19(2). There being absolutely no similarity between that section and Section 9 of the Act with which we are concerned, the ratio of that decision cannot serve as a precedent for invalidating Section 9 of the Act. The appellant's learned counsel then drew our attention to Kedarnath Singh v. State of Bihar (1962 Supp 2 SCR 769 : AIR 1962 SC 955 : (1962) 2 Cr LJ 103) in which Sections 124-A and 505, I.P.C. were held to be in the interest of public order and within the ambit of constitutional limitations contemplated by Article 19(1)(a), read with Article 19(2). On the analogy of Section 124-A as construed in this decision it was contended that in order to bring Section 9 of the Act within the constitutional limits of Article 19(2) it must similarly be construed narrowly so that the fundamental freedom of speech and expression is not unduly restricted. The operation of Section 9 of the Act, it was submitted, should be limited only to such matters as involve incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace. The fundamental right guaranteed by Article 19(1)(a) and the interest of public order protected by Article 19(2) according to Shri Agarwal's submission, must be properly adjusted and a correct balance struck between the two.

9. In our opinion, the principle governing the construction of Article 19(1)(a), read with Article 19(2) is well crystallised by now in various decisions of this Court and it is unnecessary to cover the whole ground over again by going through them extensively.

10. We of course agree with Shri Agarwal that the fundamental right guaranteed by Article 19(1)(a) and the interest of public protected by Article 19(2) must be properly adjusted and reasonable balance struck between the two. There can be no dispute that there is no such thing as absolute or unrestricted freedom of speech and expression wholly free from restraint for that would amount to uncontrolled licence which would tend to lead to disorder and anarchy. The right to freedom of speech and expression is undoubtedly a valuable and cherished right possessed by a citizen in our Republic. Our government set-up being elected, limited and responsible we need requisite freedom of animadversion, for our social interest ordinarily demands free propagation of views. Freedom to think as one likes, and to speak as one thinks are, as a rule, indispensable to the discovery and spread of truth and without free speech discussion may well be futile. But at the same time we can only ignore at our peril the vital importance of our social interest in, inter alia, public order and security of our State. It is for this reason that our Constitution has rightly attempted to strike a proper balance between the various competing social interests. It has permitted imposition of reasonable restrictions on the citizen's rights of freedom of speech and expression in the interest of, inter alia, public order, security of State, decency or morality and impartial justice, to serve the larger collective interest of the nation as a whole. Reasonable restrictions in respect of matters specified in Article 19(2) are essential for integrated development on egalitarian, progressive lines of any peace-loving, civilised society. Article 19(2) thus saves the constitutional validity of Section 9 of the Act. The analogy between Section 124-A, I.P.C. and Section 9 of the Act is wholly misconceived and in view of the comprehensive sweep of Article 19(2) we are unable to restrict Section 9 of the Act only to those speeches and expressions which incite or tend to incite violence.

11. Learned counsel also tried to refer us to some American decisions for developing the argument that the guaranteed freedom of speech and expression should be broadly construed but we did not consider it necessary to go into the American decisions, notwithstanding the fact that in Express Newspapers (P) Ltd. v. Union of India (1959 SCR 12 : AIR 1958 SC 578 : 1958 SCJ 1113) it was observed that American decisions were relevant for the purpose of understanding the scope of Article 19(1)(a). In our opinion, it is hardly fruitful to refer to the American decisions particularly when this Court has more than once clearly enunciated the scope and effect of Article 19(1)(a) and 19(2). The test of reasonableness of the restriction has to be considered in each case in the light of

the nature of the right infringed, the purpose of the restriction, the extent and the nature of the mischief required to be suppressed and the prevailing social and other conditions at the time. There can be no abstract standard or general pattern of reasonableness. Our Constitution provides reasonably precise, general guidance in this matter. It would thus be misleading to construe it in the light of American decisions given in different context. Section 9 of the Act is, in our view, plainly within the legislative competence of the Punjab Legislature and it would be for the court in which the appellant is being tried to decide as to how far the appellant's speech is covered by this section.

12. Shri Agarwal made a strenuous effort to persuade us to construe the offending portion of the speech as reproduced in the judgment of the High Court and express our opinion whether or not the charge against him has been lawfully framed. The charge reads as under :

> "That you, on or about the 9th day of October, 1968 at 4.30 to 5.55 p.m. near the Railway Pathak in the area of Delhi Cantt. made a speech at a public meeting organised by the Delhi Defence employees in which you demanded or caused incitement to an offence prejudicial to the security of the State or the maintenance of public order and thereby committed an offence punishable under Section 9 of the P.S. Act and within my cognizance."

13. The appellant, it may be pointed out, had approached the Sessions Court on revision to have this charge quashed. That court apparently did not agree with the appellant. He then approached the High Court on revision where also he failed. The impugned judgment of the High Court does not show any serious legal infirmity resulting in failure of justice which should induce this Court to interfere under Article 136 of the Constitution.

The submission that as this Court has already granted special leave we must decide the question of the legality of the charge on the merits has not appealed to us. Even at the final hearing of an appeal by special leave this Court s to apply the same test which is attracted at the preliminary stage when the leave to appeal is asked for. after leave the scope of the appeal is not enlarged and even at the stage the appellant cannot as of right claim adjudication on the merits if this Court feels that there is no grave injustice done to the appellant as a result of any serious legal infirmity. We are unable to find any such infirmity in the impugned judgment. The additional factor against our inference in this case is the interlocutory character of the order sought to be quashed. We have, however, no doubt that the learned Magistrate trying the appellant's case will deal with all the points raised before him on the merits without being influenced by the tentative view expressed by the High Court which the appellant himself invited. We also hope that this case which relates to speech said to have been delivered in October, 1968 and in which the prosecution was initiated as far back as January, 1969 when the charge was put into court, would be disposed of with due dispatch and without avoidable delay. This appeal fails and is dismissed.

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