Onkar Nath and Others

Vs

The Delhi Administration

Criminal Appeal No. 502 of 1976

(Y.V. Chandrachud, P.K. Goswami, P.N. Shringhal JJ )

15.02.1977

JUDGMENT

CHANDRACHUD, J. –

1. The appellants who are Railway employees, were convicted by the learned Metropolitan Magistrate, Delhi under Rules 118 and 119 of the Defence of India Rules, 1971 and were sentenced to six months' rigorous imprisonment. The order of conviction was upheld in appeal by the learned Additional Sessions Judge and in revision by the Delhi High Court with the difference that whereas the former upheld the sentence too, the latter has reduced it to the period already undergone. In this appeal by special leave the legality of conviction is questioned by the appellants.

2. The case of the prosecution is that the appellants are leaders of the Northern Railwaymen's Union and that on May 5, 1974 they held a meeting in Tughlakabad Railway Yard inciting railway workers to go on strike from May 8. This is alleged to be in breach of the order passed by the Government of India under Rule 118(1) of the Defence of India Rules, 1971. That rule reads thus :

> 118. Avoidance of strikes and lock-outs. - (1) If in the opinion of the Central Government or the State Government it is necessary or expedient so to do for securing the defence of India and civil defence, the public safety, the maintenance of public order or the efficient conduct of military operations, or for maintaining supplies and services essential to the life of the community, notwithstanding anything contained in any other provisions of these rules, the Central Government may, by general or special order, applying generally or to any specific area and to any undertaking or class of undertakings, make provision -
>
> (a) for prohibiting, subject to the provisions of the order, a strike or lock-out in connection with any industrial dispute;
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> (b) for requiring employers, workmen, or both, to observe for such period as may be specified in the order such terms and conditions of employment as may be determined in accordance with the order :
>
> Provided that no order made under clause (b) shall require any employer to observe terms and conditions of employment less favourable to the workmen than those which were applicable to them at any time within three months preceding the date of the order.

> By sub-rule (2), if any person contravenes any order made under sub-rule (1) he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

3. The order issued under Rule 118(1) by the Government of India in its Ministry of Labour on November 26, 1973 recites that in the opinion of the Central Government it was necessary and expedient for maintaining supplies and services essential to the life of the community to prevent strikes in the Railway Services and that therefore "the Central Government hereby prohibits a strike in connection with any industrial dispute/disputes in the said Railway Services in India for a period of six months w.e.f. November 26, 1973."

4. In support of its case the prosecution examined three witnesses called S. D. Sharma, Dilbagh Rai and Jasbir Singh. Sharma's evidence is in the nature of hearsay and indeed he admits in so many words that his knowledge regarding the incitement given by the appellants to the Railway workers to go on strike was derived solely from information received by him. The witness admits that he had he heard their speeches. The second witness Dilbagh Rai was in charge of the Police Post at Tughlakabad Railway Station and was entrusted with the investigation of the case. In the nature of things he too has no personal knowledge of what the appellants did or said.

5. Jasbir Singh who was in change of the Diesel Shed at Tughlakabad is in the circumstances the only witness whose evidence could, if at all, help the prosecution to establish the charge that the appellants had contravened the order issued by the Government of India under Rule 118(1)(a) of the Defence of India Rules, 1971, but even that evidence, in our opinion, is inadequate for proving the charge levelled against the appellants. Jasbir Singh claims to have attended a meeting addressed by the appellants but he has not stated as to what exactly the appellants said in the meeting. He has given his own gist or summary of what the appellants meant to convey to the audience stating that they incited the workers to go on strike and threatened them with dire consequences if they did not respond to the call. Such a brief resume is not safe to rely upon for holding the charge proved. In view of the total absence of evidence showing what the appellants in fact said in the meeting, the summary coined by Jasbir Singh of the happenings in the meeting cannot from the basis of conviction. What is chargeable as contravening the prohibition imposed under the order issued by the Government of India under Rule 118(1)(a) is in the circumstances of this case the words used by the speakers and not the gist of the speeches made by a member of the audience. A summary of a speech may broadly and generally not be inaccurate and yet it may not faithfully reflect what the speaker actually said and in what context. Therefore, we would prefer not to rely on the gist given by the witness without knowing the data on the basis of which the gist was given. The charge must therefore fail.

6. One of the points urged before us is whether the courts below were justified in taking judicial notice of the fact that on the date when the appellants delivered their speeches a railway strike was imminent and that such a strike was in fact launched on May 8, 1974. Section 56 of the Evidence Act provides that no fact of which the Court will take judicial notice need be proved. Section 57 enumerates facts of which the Court "shall" take judicial notice and states that on all matters of public history, literature, science or art the Court may resort for its aid to appropriate books or documents of reference. The list of facts mentioned in Section 57 of which the Court can take judicial notice is not exhaustive and indeed the purpose of the section is to provide that the Court shall take judicial notice of certain facts rather than exhaust the category of facts of which the Court may in appropriate cases take judicial notice. Recognition of facts without formal proof is a matter of expediency and no one has ever questioned the need and wisdom of accepting the existence of

matters which are unquestionably within public knowledge. (See Taylor, 11th edn., pp. 3-12; Wigmore, Section 2571, footnote; Stephen's Digest, notes to Article 58; Whitley Stokes' Anglo-Indian Codes, Vol. II, p. 887.) Shutting the judicial eye to the existence of such facts and matters is in a sense an insult to commonsense and would tend to reduce the judicial process to a meaningless and wasteful ritual. No court therefore insists on formal proof, by evidence, of notorious facts of history, past or present. The date of poll, the passing away of a man of eminence and events that have rocked the nation need no proof and are judicially noticed. Judicial notice, in such matters, takes the place of proof and is of equal force. In fact, as a means of establishing notorious and widely known facts it is superior to formal means of proof. Accordingly, the Courts below were justified in assuming, without formal evidence, that the Railway strike was imminent on May 5, 1974 and that a strike paralysing the civic life of the Nation was undertaken by a section of workers on May 8, 1974.

7. But the matter does not rest there. Rule 118(1)(a) empowers the Government to issue an order prohibiting a strike "in connection with any industrial dispute". The order issued by the Government on November 25, 1973 recites, as required by the Rule, that the Central Government prohibits a strike "in connections with any industrial dispute" in the Railway Services in India for a period of six months. Rule 118(2) prescribes punishment for a person who contravenes any order made under the Rule. We have no doubt that the Government possesses the power to issue an appropriate order under Rule 118(1) even if there is no existing industrial dispute because the power can be exercised prophylactically for preventing a strike in connection with an imminent industrial dispute. But the prosecution must establish, in order that the conduct charged as penal may fall within the mischief of the order, that the strike in regard to which the incitement was given was in connection with an industrial dispute. Unless that is established, there can be no contravention of the order issued by the Government, because the contravention consists in doing what is prohibited by the order. And what is prohibited by the order is a strike in connection with an industrial dispute. Thus, the prosecution has to establish not only that a strike was imminent or had actually taken place, of which judicial notice may be taken, but further that the strike was in connection with an industrial dispute, which is a matter of evidence. Rule 118(1)(a) limits the power of the Government to issue an appropriate order, general or special, for prohibiting inter alia a strike in connection with any industrial dispute. Since the rule does not empower the Government to issue an order prohibiting strikes generally, whether they bear any connection with an industrial dispute or not, there can be no contravention of the order unless it is established by evidence that the strike was in connection with an industrial dispute. The prosecution did not lead any evidence to prove this important ingredient of the offence and the generalisation made by the witness in their evidence is wholly inadequate for accepting that the appellants gave incitement to a strike in connection with any industrial dispute.

8. It is urged by the learned Counsel appearing for the Delhi Administration, who are respondents to the appeal, that what is contemplated by Rule 118(1)(a) itself is a strike in connection with an industrial dispute and therefore it is not necessary for the prosecution to establish that the strike was in connection with any industrial dispute. There is no warrant for this submission and nothing contained in sub-rule (3) of Rule 118 which defines the expressions "industrial dispute" and "strike" lends support to the counsel's submission. It is well-known that strikes are sometimes undertaken for purposes unconnected with an industrial dispute, as for example when the workers demand a closure of the establishment on the demise of a person of national importance. In fact, strikes are not unoften launched for reasons which do not reasonably bear any connection with an industrial dispute.

9. An argument was advanced before us on behalf of the appellants that the conduct attributed to the

appellants does not fall within the mischief of the order because inciting other workers to go on strike is outside the definition of the word "strike" contained in Rule 118(3)(b) of the Defence of India Rules, 1971. It is unnecessary to consider this question in view of our finding that the evidence led by the prosecution is insufficient to establish the charge levelled against the appellants. We would however like to point out that the appropriate provision of the Defence of India Rules under which an incitement to strike as in the instant case may be punished is Rule 36(6)(j) read with Rule 43(1)(a). The former defines a "prejudicial act" to include instigation or incitement for cessation or slowing down of work by a body of persons employed in any place of employment in which 100 persons or more are normally employed, in furtherance of any strike which is prohibited under Rule 118 or is illegal under any law for the time being in force. The latter provides that no person shall without lawful authority or excuse do any prejudicial act. By Rule 43(5) a person who contravenes any of the provisions of Rule 43 is punishable with imprisonment which may extend to 5 years or with fine or with both.

10. In the result we allow the appeal, set aside the order of conviction and sentence and acquit the appellants.

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