PATNA HIGH COURT

Debi Soren

Vs

The State (Patna)

Criminal Appeals Nos. 303, 306 and 312 of 1951

(Das and Rai, JJ.)

31.05.1951 and 21.07.1951. 24.09.1953

JUDGMENT

Das, J.

1. These are three appeals which have been heard together. The appellant in Criminal Appeal No. 303 of 1951 is one Debi Soren who has been found guilty under Section 124A. Penal Code and sentenced to pay a fine of Rs. 500/- or in default to undergo simple imprisonment for six months by the learned Sub-divisional Magistrate of Dumka. In Criminal Appeal No. 306 of 1951, the appellant is Mrs. Hanna Bodra, who has been convicted by the same Magistrate under Sections 124A and 153A, Penal Code, and sentenced to pay a fine of Rs. 300/- and Rs. 200/- respectively, or in default to undergo rigorous imprisonment for a period of three months. In the third appeal (Criminal Appeal No. 312 of 1951) the appellant is Yunus Soren, who has been convicted by the same Magistrate for offences under Sections 124A and 153A, Penal Code and sentenced to pay a fine of Rs. 300/- and Rs. 200/- respectively, or in default to undergo rigorous imprisonment for a period of three months. The appeals have been preferred to this Court under Clause (c) of the proviso to Section 408 Criminal Procedure Code.

2. The cases against the appellants were instituted on a complaint made by the Superintendent of Police, Santal-Parganas, after the necessary sanction or authority had been obtained from the State Government in accordance with the provisions of Section 196, Criminal Procedure Code. Originally, the three appellants were on trial in one case. By an order dated 12.12.1950, the trial was split up into three separate cases, one case against each of the appellants. The learned Sub-divisional Magistrate delivered three separate judgments from which three appeals have been filed. The appeals have been heard together in this Court as common questions of law and facts arise in these appeals. We have heard Mr. S. Anwar Ahmad in two of the appeals and Mr. Basanta Chandra Ghose in Criminal Appeal No. 312 of 1951. Mr. S.C. Chakravarty has represented the State of Bihar in all the three appeals.

3. Very shortly put, the case against these three appellants was the following. There was an annual conference of the Bhagalpur Adibasi Mahasava at a place called Lakhikundi in the district of the Santal Parganas, on the dates 24th 25th and 26th of March 1949. Debi Soren presided over

the conference. He and the other two appellants, Mrs. Hanna Bodra and Yunus Soren, were the principal speakers. The prosecution case was that on two dates, 25th and 26th of March 1949, the appellants made speeches at the conference which brought or attempted to bring into hatred or contempt and excited or attempted to excite disaffection towards the Government established by law in India. Against two of the appellants, Mrs. Hanna Bodra and Yunus Soren it was further alleged that by the speeches which they delivered they promoted or attempted to promote feelings of enmity or hatred between different classes of the citizens of India. In the charge framed against the appellants certain extracts from their speeches were quoted. It was alleged that Debi Soren made the following statements in his speeches :

> "Government want to suppress and oppress us. It is a matter of shame for the Bihar Government. The Government do not want to see us developing in business. This clearly shows Zulum on us. Government have promulgated Bihar Maintenance of Public Order Act on us with a view to suppress us. Government have brought false allegations against our Secretary, Kamlu Kinkar, that they have been instigating Adibasis against non-Adibasis. Bihar Government have done many such things in the Damin tract to repress us..... We hould not believe the Bihar Government."

Mrs. Hanna Bodra, it was alleged, made the following statements in her speeches :

> "The Britishers had not done so during their rule. I spit on such Government which did merciless firing on our females. We should not respect the Bihar Government. The Bihar Government is cowardly. They opened fire. We are ready to fight..... The Bihar Government has imposed taxes on dogs even and one day they will impose taxes on females also. They would drive us from this place."

It was alleged that she also said :

> "Dikus are thieves and dacoits. Biharis entered first like needle but became plough-shares. Go back, Biharis, to your country and construct a hut by the side of the Ganges and sit like a crow and sell oil and salt."

Yunus Soren, it was alleged, had made the following statements :

> "The Bihar Government is placing bars on our way for achieving Jharkhand in various ways, by instituting false cases. Several Adibasis were killed due to Government firing at Kharsawan and other places and dead bodies were carried away in trucks like fuel. We are not afraid of such firing..... Bihar Government is taking undue advantage because we are all poor. The Bihar Government is oppressing us in various ways."

He is also alleged to have said :

> "Biharis are oppressing us. Biharis had moved Jharkhand. They were our ancestors but

hate us now-a-days. Our chests are made of stone. We are not afraid of Bihari bullets."

I have quoted above extracts from the charge made against the appellants in order to show the nature of the case against them. I shall deal with the speeches in greater detail when I proceed to consider the points urged on behalf of the appellants.

4. On behalf of the appellants several points were urged before the learned Sub-divisional Magistrate. Firstly, it was stated that the speeches which were recorded to have been made by the appellants were not actually made by them, and Debi Soren took the particular point that he did not say many of the things which were recorded as having been spoken by him; secondly, Mrs. Hanna Bodra and Yunus Soren alleged that they did not attend the conference; thirdly, it was urged on behalf of the appellants that the speeches, read as a whole and with reference to the context in which they were made, did not come within the mischief of either Section 124A or Section 153A, Penal Code; and lastly, it was contended on behalf of the appellants that after the coming into force of the Constitution of India on 26.1.1950, Sections 124A and 153A, Penal Code, the provisions of which are inconsistent with the fundamental right of freedom of speech and expression guaranteed under Article 19(1) (a) of the Constitution, are void by reason of Article 13(1), Constitution of India.

5. The learned Sub-divisional Magistrate overruled these pleas, and held that the appellants had made the speeches complained of, which in his opinion came within mischief of Sections 124A and 153A, Penal Code. On that finding the learned Sub-divisional Magistrate convicted and sentenced the appellants.

6. The plea that two of the appellants did not attend the conference was not persisted in before us; but the other three pleas have been very seriously pressed before us.

7. I think it is convenient to deal, first, with such of the questions as are common to the three appeals; thereafter, I shall take up the question whether the speeches delivered by the appellants come within the mischief of Section 124A or Section 153A, Penal Code and while dealing with that question, I shall take the case of each appellant separately with reference to the speeches alleged to have been made by him or her.

8. I proceed now to consider those points which are common to the three appeals. One of the points strongly urged before us is that the speeches as recorded do not correctly represent what the appellants had said at the annual conference of the Bhagalpur Adibasi Mahasava. The evidence in the record shows that two Magistrates and two Sub-Inspectors of Police attended the conference on all the three days. The Magistrates were Messrs. G. Prasad and S. K. Sinha and the Sub-Inspectors of Police were S. Baski and J., Murmu. Both these officers were Santals and knew Santali in which the speeches were made. These officers said that they recorded the speeches verbatim and then made an English translation thereof which was signed by the two Magistrates. The Magistrates, it appears, also knew Santali. So far as Mrs. Hanna Bodra was concerned, the evidence was to the effect that she spoke in mixed Santali and Mundari and also used some expressions in Hindi. Mr. Baski admitted in cross-examination as follows :

"There were about 8 or 10 words of Mundari which the accused (used?) in her speech and

> which I could not understand. Those words were omitted by me.....The accused's speech was a mixture of Santhali, Hindi and Mundari expressions."

Referring to Mrs. Hanna Bodra, Mr. Murmu said :

> "She made speeches at the conference in Santali but her knowledge of the language appeared to be poor as she was consulting persons near her for Santali expressions.....

I do not know Mundari. The accused did not speak in Mundari, except one or two expressions. She used to ask for Santali expression when she did not know one. I omitted to record the Mundari expressions she used." Mr. Murmu further gave evidence to the effect that the speeches which he recorded were recorded word by word. So far as Yunus Soren is concerned, Mr. Murmu said :

> "This is accused Yunus Soren. He made speeches in Santali but he did not seem to know the language well and consulted the persons sitting around him for Santali expressions."

Mr. Baski said that in the speech of Yunus Soren also, there were Mundari expressions which the witness could not understand.

9. It is against the background of the aforesaid evidence that the English translations of the speeches which have been exhibited in the cases against the appellants, have to be considered. Mr. Basanta Chandra Ghose pointed out to us that the records of the speeches as prepared by the two officers, Messrs. Baski (sic) and Murmu, do not tally with each other and on the basis of the difference in the two records he has argued that the prosecution has failed to prove with reasonable certainty that the speeches, on the basis of which the charges against the appellants have been made, were actually made by them. I have examined and compared the speeches recorded by the two officers. Except in some particulars the records substantially agree. When two persons try to make verbatim records of speeches delivered by word of mouth and then make translations, some difference in the two records is inevitable, however accurate the reporters may try to be; first of all each reporter may not be able to take down each word as it is spoken and may miss a few words; secondly, the English translation will also result in some difference, because the same Santali word will not be translated by the same English word by the two reporters. Therefore, in the two records prepared there are some verbal differences; some particulars have been included in one whereas they have been omitted from the other record; with regard to some of the speeches one record is fuller than the other. I have made allowances for all these differences in favor of the appellants, and consider that only that part of the record should be accepted where both the reporters agree as to a particular statement having been made by one or other of the appellants. I do not accept the contention of Mr. Basanta Chandra Ghose that the reporters have falsely or incorrectly reported the speeches. There is substantial agreement between the two records, and that shows that the records are substantially correct. The first point urged on behalf of the appellants must, therefore, be overruled.

10. The next question is if Sections 124A and 153A, Penal Code are void by reason of Article 13(1), Constitution of India, on the ground that they are inconsistent with the fundamental right

of freedom of speech and expression guaranteed to all citizens of India under Article 19(1) (a), Constitution of India. It is to be remembered that the speeches in this case were delivered on the 25th and 26th of March 1949, that is on dates prior to the coming into force of the Constitution of India. Apart, however, from the consideration, I am unable to accept the contention that the provisions of Sections 124A and 153A, Penal Code were rendered void, on the ground alleged, after 26.1.1950, the date on which the Constitution of India came into force except certain provisions of the Constitution with which we are not concerned in the present case.

The two learned counsel for the appellants have placed reliance on the decision in - '*Tara Singh Gopi Chand v. State*[1]*,* That was a case in which the speeches impugned were delivered after the coming into force of the Constitution of India, and the question arose whether Sections 124A and 153A, Penal Code were void as contravening the right of freedom of speech and expression guaranteed by Article 19 of the Constitution. Their Lordships held that those two sections were void. Since that decision there has been a change in the Constitution to which a reference must now be made. Article 19(1)(a) lays down that all citizens shall have the right to freedom of speech and expression. Article 19(2) as it originally stood in the Constitution of India said :

> "Nothing in sub-clause (a) of Clause (1) shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State."

By the Constitution (First Amendment) Act, 1951, which was made on 18.6.1951 with retrospective effect, Clause (2) of Article 19 was altered to read as follows :

> "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 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 point of difference is that Clause (2) of Article 19 as it originally stood mentioned the security of the State or overthrow of the State; the amendment considerably widened its scope and referred to, 'inter alia', "public order" - an expression which did not occur in the clause as it originally stood. The decision of the East Punjab High Court cited above proceeded on two main grounds : (1) the interpretation of Section 124A as given by the Privy Council in - '*Emperor v. Sadashiv Narayan*[2]*',* - an interpretation to which I shall presently refer; and (2) the interpretation of Clause (2) of Article 19 (as it originally stood) given by the Supreme Court of India in two decisions, - '*Romesh Thapper v. State of Madras*[3]*',* and - '*Brij Bhushan v. State of Delhi*[4]*',* Of the two reasons given above, the second, in my opinion, is no longer tenable by reason of the alteration made by the Constitution (First Amendment) Act, 1951. His Lordship Weston, C.J., (as he then was) observed as follows with regard to Clause (2) of Article 19 :

> "The limitation placed by Clause (2) of Article 19 upon interference with the freedom of speech, however, is real and substantial. The unsuccessful attempt to excite bad feelings is an offence within the ambit of Section 124A. In some instances at least the unsuccessful

> attempt will not undermine or tend to overthrow the State. It is enough if one instance appears of the possible application of the section to curtailment of the freedom of speech and expression in a manner not permitted by the constitution. The section then must be held to have become void."

In my view, this reason is no longer valid and on two grounds firstly, the scope of Clause (2) of Article 19 has now been widened, and the clause says in express terms that nothing in sub-clause (a) of Clause (1) shall affect the operation of any existing law in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of, amongst other things, public order; the clause is no longer confined to the security or overthrow of the State but includes also public order. In other words, any reasonable restriction on the exercise of the right conferred by sub-clause (a) of Clause (1) in the interests of public order is now permissible, and any such reasonable restriction imposed by any existing law will be valid and good. The two decisions of the Supreme Court on which his Lordship Weston, C.J., relied were explained in a subsequent decision of the Supreme Court, in an appeal from a decision of this Court, in - '*State of Bihar v. Sm. Shailabala*[5]*',* It was pointed out by his Lordship Mahajan, J., that the decisions of the Supreme Court in - ' AIR 1950 Supreme Court 124 ' and - ' AIR 1950 Supreme Court 129 ', were more than once misapplied and misunderstood. His Lordship further observed that the matter was now concluded by the language of the amended Article 19(2) made by the Constitution (First Amendment) Act which is retrospective in operation. I do not think that it can now be held on the strength of - 'Romesh Thapper's case (C)', or - 'Brij Bhusan's case (D)', that the provisions of Sections 124A and 153A are void.

11. The question still remains if they are saved by Clause (2) of Article 19 as it now stands. The contention of Mr. Basanta Chandra Ghose is that if the provisions of Section 124A are interpretated in the way laid down by the Bombay High Court and approved by the Privy Council in - 'Queen Empress v. Bal Gangadhar Tilak', 22 Bom 112 (F) and - 'Bal Gangadhar Tilak v. Queen *Empress*[6]*',* then those provisions are inconsistent with the guaranteed right of freedom of speech and expression and are not saved even by Clause (2) of Article 19 as it now stands. Mr. Ghosh has elaborated his argument in the following way. There has been a difference of opinion with regard to the true meaning and effect of Section 124A, Penal Code with its three explanations. In - '*Niharendu Dutt v. Emperor*[7]*',* Gwyer, C.J., (as he then was) said :

> "Public disorder, or the reasonable anticipation, or the likelihood of public disorder, is thus the gist of the offence. The acts or words complained of must either incite to disorder, or must be such as to satisfy reasonable men that that is their intention or tendency."

He pointed out that the phrase "to bring Government into contempt" was not intended to minister to the wounded vanity of Governments; but the purpose was that where Government and the law ceased to be obeyed, there was no respect felt any longer for them and anarchy was likely to follow. In Bhalerao's case (B) referred to above, the Privy Council did not accept the aforesaid interpretation. It was observed :

> "Their Lordships are unable to find anything in the language of either Section 124A or the

> Rule which could suggest that 'the acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency'. The first explanation to Section 124A provides. The expression 'disaffection' includes disloyalty and all feelings of enmity'. This is quite inconsistent with any suggestion that 'excites or attempts to excite disaffection' involves not only excitation of feelings of disaffection, but also exciting disorder".

Their Lordships reaffirmed the view expressed by Strachey, J., in - '22 Bom 112 (F)', where Strachey, J., said :

> "The offence consists in exciting or attempting to excite in others certain bad feelings towards the Government. It is not the exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by these aritcles, is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within Section 124A, and would probably fall within other sections of the Penal Code. But even if he neither excited nor intended to excite any rebellion or outbreak or forcible resistance to the authority of the Government, still if he tried to excite feelings of enmity to the Government, that is sufficient to make him guilty under the section".
> "Their Lordships also reaffirmed their earlier decision in - '*Annie Besant v. Advocate General of Madras*[8]', (1) and '*Wallace Johson v. The King*'[9],

12. Mr. Basanta Chandra Ghose has contended before us that if the provisions of Section 124A are given such a wide interpretation as was given by Strachey, J., and approved by the Privy Council, then those provisions cannot be said to be reasonable restrictions in the interest of public order; they go beyond public order and impose an unreasonable restriction on the freedom of speech and expression guaranteed by sub-clause (a) of clause (1) of Article 19 of the Constitution. I must say that the argument of Mr. Ghose is a very plausible argument. The decision of the Privy Council in - 'Bhalerao's case (B)', was referred to by the Supreme Court in - 'Romesh Thapper's case (C)'. where his Lordship Patanjali Sastri, J., (as he then was) observed :

> "Deletion of the word 'sedition' from the draft Article 13(2), therefore, shows that criticism of Government exciting disaffection or bad feelings towards it is not to be regarded as a justifying ground for restricting the freedom of expression and of the press, unless it is such as to undermine the security of or tend to overthrow the State. It is also significant that the corresponding Irish formula of 'undermining the public order or the authority of the State' (Article 40(6) (i) of the Constitution of Eire, 1937) did not apparently find favor with the framers of the Indian Constitution".

It is worthy of note, however, that his Lordship was considering clause (2) of Article 19 as it originally stood, and his Lordship pointed out pertinently that the framers of the Indian

Constitution did not accept the Irish formula of "undermining the public order or the authority of the State". That formula has now been accepted by the Constitution (First Amendment) Act, 1951. It may be relevant to refer to certain observations of Fazl Ali, J., (as he then was) in - 'Brij Bhusan's case (D)', though his Lordship's judgment was a dissenting Judgment in that case. After referring to the decisions in - 'Niharendu Dutt Majumdar's case, (H)' and - 'Bhalerao's case, (B)', his Lordship observed :

> "The framers of the Constitution must have therefore found themselves face to face with the dilemma as to whether the word 'sedition' should be used in Article 19(2) and if it was to be used in what sense it was to be used. On the one hand, they must have had before their mind the very widely accepted views supported by numerous authorities that sedition was essentially an offence against public tranquility and was connected in some way or other with public disorder; and, on the other hand, there was the pronouncement of the Judicial Committee that sedition as defined in the Indian Penal Code did not necessarily imply any intention or tendency to incite disorder.

In these circumstances it is not surprising that they decided not to use the word 'sedition' in Clause (2) but used the more general words which cover sedition and everything else which makes sedition such a serious offence. That sedition does undermine the security of the State is a matter which cannot admit of much doubt. That it undermines the security of the State usually through the medium of public disorder is also a matter on which eminent Judges and jurists are agreed. Therefore, it is difficult to hold that public disorder or disturbance of public tranquillity are not matters which undermine the security of the State." It seems to me that in construing the provisions of Sections 124A and 153A, Penal Code, it should be the effort of the Court to give that interpretation of those provisions which would make them consistent with the Constitution of India, unless the language of the provisions precludes such an interpretation. Section 153A condemns, amongst other things, such speeches as promote feelings of enmity or hatred between different classes of the citizens of India. Acts which promote such feelings or attempt to promote such feelings undoubtedly affect public order in its wide meaning, though there may be no immediate incitement to violence. Section 124A condemns, amongst other things, such speeches as bring or attempt to bring into hatred or contempt, or excite or attempt to excite disaffection towards, the Government established by law in India.

The first explanation to the section says that "disaffection" includes disloyalty and all feelings of enmity. The second explanation says that comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under the section. The third explanation says that comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection do not constitute an offence under the section. If the section is read as a whole together with the explanations it seems clear that the mischief which it contemplates has a reference to public order in its widest sense, even though the section does not make it necessary that there should be a direct incitement to violence or disorder. My view is that even accepting the interpretation put upon the section by their Lordships of the Privy Council, the restrictions it imposes on freedom of speech and expression are reasonable restrictions in the interests of public order. It is worthy of note that the expression used in Clause (2) of Article 19 is "in the interests

of public order" and not "public order" simpliciter. The expression "in the interests of public order" has a wide connotation and should not be confined to only one aspect of public order, viz., incitement to violence or tendency to violence. Public order can be affected in other ways also; and creating disaffection, hatred or contempt towards the Government established by law (not merely comments which express disapprobation of Governmental measures or administrative and other action of Government) may seriously affect the interests of public order even though there may be no tendency or incitement to violence. Incitement to violence no doubt directly affects the maintenance of public order; but the expression "In the interest of public order" is not confined merely to such incitement. It has a much wider content, and embraces such action as undermines the authority of Government by bringing it into hatred or contempt or by creating disaffection towards it; one must however always keep in view the distinction which the section itself makes between disaffection and mere disapprobation of Governmental measures of action. From this point of view, Clause (2) of Article 19, as it now stands, saves the provisions of Sections 124A and 153A, Penal Code.

13. I am, however, prepared to go a little further and hold that if a somewhat narrower interpretation of the provisions of Sections 124A and 153A will make these provisions consistent with the Constitution of India, that interpretation ought to be preferred unless the language coerces the Court to hold otherwise. In - '*Bowman v. Secular Society*[10]', (K), Lord Sumner said :

> "The words, as well as the acts, which tend to endanger society differ from time to time in proportion as society is stable or insecure in fact, or is believed by its reasonable members to be open to assault. In the present day meetings or
> processions are held lawful which a hundred and fifty years ago would have been deemed seditious, and this not because the law is weaker or has changed, but because the times having changed, society is stronger than before."

The question whether a particular speech does or does not come within the mischief of Sections 124A and 153A is a question of fact, and on a question of fact it is permissible to take note of the changing times and circumstances. As Lord Sumner said so well in - 'Bowman's case (K)' :

> "The fact that opinion grounded on experience has moved one way does not in law preclude the possibility of its moving on fresh experience in the other, nor does it bind succeeding generations when conditions have again changed. After all, the question whether a given opinion is a danger to society is a question of the times and is a question of fact."

It is true that if a maxim is expressed as a positive rule of law, "time cannot abolish it nor disfavor make it obsolete" as per Lord Finlay in - 'Bowman's case (K)'. I agree that a change in the spirit of the time cannot justify a change in a principle of law by judicial decision, though changes in public opinion may lead to legislative interference and substantive alteration of the law. But where two interpretations can be given to the words of an existing law, the Court should accept that interpretation which is in favor of constitutionality rather than an interpretation which will make the law unconstitutional. In - '*State of Madras v. V.G. Row*'[11], , his Lordship Patanjali Sastri, C.J., said :

> "It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. In evaluating such elusive factors and forming their own conception of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for the people of their way of thinking but for all, and that the majority of the elected representatives of the people have, in authorizing the imposition of the restrictions considered them to be reasonable."

In my opinion, unless compelled by the words used in Sections 124A and 153A, the Court should not hold that the provisions of those two sections impose unreasonable restrictions on the guaranteed right of freedom of speech and expression, or that the restrictions imposed are not in the interests of public order. I do not wish to pursue
this question any further as my view is that even on the interpretation given by the Privy Council the provisions of Sections 124A and 153A. Penal Code impose reasonable restrictions in the interests of public order, giving that expression a fair and reasonably wide meaning Speaking personally and with very great respect, it appears to me that the interpretation put by the Privy Council on the provisions of Section 124A is updulv literal and verbal; it was given in the context of a state of affairs existing prior to the Constitution of India and, in my humble opinion, does not give full effect to the second and third explanations appended to the section in the context of freedom of speech and expression now guaranteed under the Constitution. The second point urged on behalf of the appellants must therefore, be overruled.

14. I now propose to take up the case of each individual appellant and consider whether the speeches delivered by him or her come within the mischief of Section 124A or Section 153A, Penal Code.

15. In considering the speeches on merits two points have to be kept in mind, and in fairness to the learned Sub-divisional Magistrate, it must be said that he did mention these points in his judgment. The first point is that the speeches made must be considered as a whole and in a fair, free and liberal spirit, not dwelling too much upon isolated passages or upon a strong expression used here and there; in other words, an attempt should be made to gather the general effect of the speeches as a whole. The second point is that the intention of the speaker in using the words complained of is relevant; but the intention must be gathered from the language used, as also from the whole of the circumstances in which the speeches were made including the audience to whom they were addressed.

16. On 25.3.1949, Debi Soren said (I am quoting the portion Mr. S.C. Chakravarty referred to as

objectionable) :

> "Ten years ago the Adibasi Mahasabha was laughed at and ridiculed as an agitation of a few job-hunters. To-day the All India Adibasi Mahasabha can rightly boast of being the only organisation commanding the respect and allegiance of thousands of Adibasis. Now the Bihar Government is afraid of such organization and wants to oppress us in various ways. I know how you people have come, you had to come here on foot as the buswalas did not let you come by the bus. I know even the S. D. O. of Godda opposed you people and said to some people "Debi Soren is in jail there is no need of going to Dumka" (Shouting by audience 'S. D. O. Godda Jhutha Hai'). I do not understand what for Government has kept such officers. For such propaganda many officers have been posted. It is said that wells, dand, bandh have been constructed for the Adibasis. It is also said that at Hansdiha there is a welfare institution for the Adibasis. I have not seen such institution at Hansdiha and such Bandhs, Nahars, Wells are only on paper but not in action.

The Government money is being spent uselessly. If any body points out such improper action he receives bullets. (Shouts 'Bihar Sarkar ko sharam hai'). Social gatherings are also being banned. Damin Magistrates have been deputed for misrepresenting real state of affairs of Damin area. Why the Government does not post any Magistrate towards Raneshwar side? It is therefore clear that Government attitude is not for the good of Adibasis. Hindi proverb "Mukh me Ram Ram bagal me Chura" applies to them. Therefore we must have Jharkhand so that we may not be oppressed.

* * *

Authorities will not allow us to develop in the business also.....
The Bihar Maintenance of Public Order Act ought not to have been extended in this area. This Act is only for oppressing and to bind us down uselessly. We are prosecuted falsely. They arrested us only for harassment. This Act should be withdrawn forthwith....."

On the 28th, he said :

> "We will not take rest unless we achieve Jharkhand. Whatever you have heard here, keep it in your mind and act accordingly. If you do not do so, it is of no use. Time is fast changing and we must march with time. Bihar Government has done many works in Damin, but all these works are intended to suppress with our votes. Consequently no work should be done without our consent. There are several instances of injustice against us. Bihar Government claims to have spent much money for making Dand Bandh etc., but these are more in paper circulation than in actual work."

The general effect of these two speeches, as one reads them, is that the Adibasi Mahasabha, of which Debi Soren was the President, wanted a separate State or region called Jharkhand with a separate administration for the Adibasis; and in giving reasons for such a claim or demand criticisms were made of certain administrative and legislative measures of the Government of

Bihar. I do not understand how much criticisms can be said to bring the Government of Bihar into hatred or contempt or create any disaffection towards it. Mr. Chakravarty has contended that a demand for a separate region for Adibasis will mean dismemberment of the State of Bihar; that, however, is a political question on which this Court need express no opinion; nor is it necessary or desirable to make any judicial observations with regard to the merits of the controversy which has been recently raised for the formation of linguistic States - a controversy which may be political, economic or even cultural, but which has very little bearing on the questions at issue before us. It is sufficient to point out that our Constitution contains provisions for the formation of new States, alteration of the boundaries of existing states etc.; and an agitation for the formation of a new State does not necessarily come within the mischief of Section 124A. It may, if the agitation is based on an incitement to violence or brings or attempts to bring the existing Government into hatred or contempt etc. This, in my opinion, Debi Soren's speech does not do, though some of the criticisms appear to be ill-informed and couched in crude and impolite language. The general effect of the speeches is that the Government of Bihar have not done much or enough for the Adibasis; therefore, the Adibasis must have a separate Jharkhand. Whether this claim is right or wrong is not the question at issue before us; but it is clear that the expression of such a claim does not necessarily bring one within the mischief of Section 124A or 153A, Penal Code - whether we take the wider interpretation of - 'Tilak's case (F)', or the interpretation of - 'Niharendu Dutt Majundar's case (H)'.

17. I now proceed to the case of Mrs. Hanna Bodra. On 25.3.1949, she gave the following speech :

> "Brothers and sisters, for the last six thousand years we have been serving Dikus in various ways in order to have their sympathy and love. But instead they hate us. They are foreigners. They do not want to mix with us. They cannot understand us and hence they will not treat us kindly. Referring to Mrs. Kanhu Kisku she said that she (Mrs. Kanhu) was in District Board School but she was not paid for one year. Had there been a Diku teacher, they would not have done so. They are oppressing us in various ways. In Mayurbhunj we have been shot and killed. Women have been killed. I spit upon such Government who can do Zulum, to the helpless. Britishers did not do like this but why Bihar Government did like this. But I say sisters do not be afraid and be bold.

We served the Biharis as our king but they have never protected us. They cannot help us to give us Jharkhand. Sisters, think over the matters. We must obtain Jharkhand. In Ranchi colored water was poured on our girls by the Hindu boys. They do not care for our religion. So we must obtain Jharkhand." On the 26th she said :

> "We Adibasis were very prosperous, but the Dikus (non-Santhals) who are dacoits, thieves and mischievous have taken away all our wealth. They made our people to take intoxicants and in drunken state they get promises of liberal transactions and they looted us. Our people fought at Rohtasgarh and females defeated the enemy. To commemorate that, female-hunting is observed and hunting is due in 1952. In Mayurbhanj Government opened fire on the Adibasis and took away their ornaments etc., worth Rs. 1200/- but we should not be afraid of this. Suna Ram was also shot but he escaped. That time also they

took away properties worth Rs. 3 lacks. We should be prepared to fight. The Government is coward. By resorting to firing Government prove its weakness. Orissa Government cannot continue its rule either resorting to firing or using Atom bomb. Who made this demon-like (Bhut) Government? In Republican Government consent of the people should be taken. They have got no understanding capacity. Who made such "nasamaih" Government. Bihar Government has imposed taxes on dog even and one day they will impose tax on the females. Brothers and sisters, raise funds for us by staging drama and we will also collect money by sewing etc. Otherwise they will drive us from this place."

18. Mrs. Bodra no doubt used stronger and vituperative language; she talked of spitting on the Government and called the Government cowardly. In using such expressions she was abusing the privilege of a woman, and perhaps exceeding the bounds of decency. But the general effect of the speeches is the same as that of the speeches of Debi Soren. The avowed claim is the formation of Jharkhand, and in giving reasons in support of that claim, strong criticisms of Governmental measures and administrative action have been made. In a democratic country such criticisms are to some extent unavoidable, they are made for the purpose of enlisting popular support, and in considering the effect of such criticisms no serious notice ought to be taken of crude, blundering attempts or of rhetorical exaggeration by which nobody is likely to be impressed. The reference to Dikus (non-Santhals) is not for the purpose of promoting hatred or ill-feeling amongst different classes of citizens, but rather in support of the claim for Jharkhand. As Lord Sumner pointed out with the change of times, the effect of criticisms also changes; what was damaging contempt or hatred of a bureaucratic Government is not so of a popular Government - a Government which can neither afford to be hyper-sensitive, nor impervious, to criticism.

19. The effect of the speeches of Yunus Soren is the same. On the 25th he said :

"Our ancestors have occupied this land from the very beginning and cleared
the jungles of this land and so we have every claim over it. But these Dikus are driving us from the land and are oppressing us. This land is about 57665 square miles in area and our population (Adibasis) is 13187754. According to Mahatma Gandhi's version the land which is populated by one big community should be administered by the same community, so we should administer this land. But Bihar Government is a great opponent in this matter, and is in various ways. We have established this Government by vote and if the Government will oppress and suppress us and instead of doing good it will harm us, we cannot support this Government. Many Adibasis were killed by firing at Tapkara, Mayurbhanj and some other places and they were loaded in truck like fuel and carried away to some unknown places for disposal. How can we side such a Government?

The policy is divide and rule like that of Britishers. Now-a-days Ministers can spend public money uselessly. At Palkot meeting in Ranchi district 3 bags of sugar and 3 bags of Ata were consumed by the Ministers. I say wherefrom they got these stuff when the public are not getting them. The present ministry say that the Christian Adibasis and non-Christian Adibasis are different. I challenge the Ministers that it is not so. I say that they are the one and the same. Let this be the bet. If it is proved that these Christian and non-Christian Adibasis are separate then let

Yunus Soren be hanged and his properties be distributed among the poor. But if it is proved contrary then let Mr. Srikrishna Sinha and Krishna Ballabh Sahai be hanged and their properties be distributed among the poor. But for proving this foreign experts from Germany, France, Russia, England and U.S.A. be called for blood culture."
On the 26th, he said :

> "If we can withstand all the obstacles we must get Jharkhand. It is a universal belief that a country will gain its objective if the females of that country join the struggle for its emancipation. So also if we try for Jharkhand we must achieve. The Bihar Congress Government is taking undue advantage because we are poor. If we can collect even one lac as our fund the mouth of Bihar Congress Government will be sealed itself. We cannot live under the Bihar Congress Government. Fund is necessary for achieving our goal which is Jharkhand and without money nothing can be done..... The Bihar Government is oppressing us in various ways. Bihar Government keep our men in jail. We must co-operate with Bengalee Brahmins, Rajput and other castes who support our Jharkhand movement. We must subscribe for Jharkhand."

20. Shorn of all exaggerations, the speeches put forth a claim for Jharkhand, and in putting forth that claim, asked for the co-operation of all classes of people. I do not think that it is a fair construction of the speeches, read as a whole, to say that they created disaffection towards Government established by law or brought or attempted to bring that Government into hatred or contempt, or promoted feelings of class hatred.

21. In the result, I would hold that none of the speeches come within the mischief of Section 124A or Section 153A, Penal Code - whether a narrow or wider interpretation of the provisions of those sections be taken. The appeal must, therefore, be allowed; the convictions and sentences are set aside, and the appellants are acquitted. The fines if they have been paid, must be refunded to the appellants.
Rai, J.

22. I agree.

Appeal allowed.

Cases Referred.

[1] AIR 1951 Pun 27
[2] AIR 1947 PC 82
[3] AIR 1950 SC 124
[4] AIR 1950 SC 129
[5] AIR 1952 SC 329
[6]22 Bom 528 (PC) (G)'AIR 1947 PC 82
[7] AIR 1942 FC 22
[8] AIR 1919 PC 31
[9]1940 AC 231
[10]1917 AC 406
[11] AIR 1952 SC 196