

Dev Dutt Vs. State of Manipur and anr.

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Court : Guwahati

Decided On : Jun-06-1979

Judge : Baharul Islam, Actg. C.J., D. Pathak and B.L. Hansaria, JJ.

Appellant : Dev Dutt

Respondent : State of Manipur and anr.

Prior history : Baharul Islam, Actg. C.J. 1. This is an application under Section 99-B of the Code of Criminal Procedure, 1898 (hereinafter 'the Code') and is directed against an order dated 23-9-72 of the Govt. of Manipur, Home Department, and published in the Manipur Gazette Extraordinary dated Sept. 25, 1972. By the said Notification, the Home Department of the Govt. of Manipur, purporting to act under the powers conferred on it by Section 99-A of the Code read with Government of India Notification No. F

Judgement :

Baharul Islam, Actg. C.J.

1. This is an application under Section 99-B of the Code of Criminal Procedure, 1898 (hereinafter 'the Code') and is directed against an order dated 23-9-72 of the Govt. of Manipur, Home Department, and published in the Manipur Gazette Extraordinary dated Sept. 25, 1972. By the said Notification, the Home Department of the Govt. of Manipur, purporting to act under the powers conferred on it by Section 99-A of the Code read with Government of India Notification No. F

2/3/68. UTL dated 6-5-1968 declared that every copy of the weekly journal 'Point of View' dated 9-9-72 together with all other documents containing copies, reprints and translations of, or extracts from, the said journal be forfeited to the Government.

2. Mr. P. Barthakur, learned Counsel appearing for the petitioner, submits that in the impugned notification the Government did not state the grounds as required under Section 99-A of the Code and as such is bad in law. The impugned notification is in the following terms:

Imphal, the 23rd Sept. 1972.

No. 7/52/72 Pol. I - Whereas it appears to the Governor, Manipur, that the weekly journal 'Point of View' dated 9-9-72 printed and published by Shri Devdutt at 2C/36, Rohtak Road, New Delhi-5 contains matters which are intended to promote feeling of enmity and hatred and contempt, and excite disaffection towards the Government established by law in India, the publication of which is punishable under Sections 153A and _124A _of the Penal Code (45 of 1860).

Now, therefore, in exercise of the powers conferred by Section 99-A of the Code of Criminal Procedure, 1898 (5 of 1898) read with Government of India, Ministry of Home Affairs Notification No. F 2/3/68. UTL dated 6-5-68, the Governor, Manipur, hereby declares every copy of the aforesaid journal and all other documents containing copies, reprints and translations of, or extracts from, the journal to be forfeited to Government.

By Order etc.

K. GOURKISHORE SINGH,

Joint Secretary of Government of

Manipur.

Obviously the first part of the Notification has done nothing more than practically quoting Section 99-A of the Code itself.

3. It has been authoritatively held by their Lordships of the Supreme Court that it is mandatory on the part of the Government to state the grounds for confiscation of the documents in question. Absence of statement of grounds would vitiate the order.

In the case of *State of U.P. v. Lalai Singh Yadav* reported in : 1977 CriLJ186 , their Lordships have observed:

A drastic restriction on the right of a citizen when imposed by statute calls for a strict construction, especially when quasi-penal consequences also ensure. The imperial authors of the Criminal Procedure Code have drawn up Section 99A with concern for the subject and cautionary mandates to Government. The power can be exercised only in the manner and according to the procedure laid down by the law. Explicitly the Section compels the Government to look at the matter which calls for action to consider it as to the clear and present danger it constitutes in the shape of promoting feelings of enmity and hatred between different segments of citizens or as to its strong tendency or intendment to outrage the religious feeling of such segments ...and quite importantly, to state the grounds of its opinion. We are concerned with the fast ingredient. When the section says that you must state the grounds it is no answer to say that they need not be stated because they are implied. You do not state a thing when you are expressively silent about it. To state 'is to declare or to set forth, especially in a precise, formal or authoritative manner, to say (something), especially in an emphatic way; to assert' (Random House Dictionary). The conclusion is inescapable that a formal authoritative setting forth of the grounds is statutorily mandatory-If you laze and omit, the law visits the order with voidness and this the State Government must realize especially because forfeiture of a book for a penal offence is a serious matter, not a routine act to be executed with unconcern or indifference. The wages of neglect is invalidity, going by the text of the Code. These considerations are magnified in importance when we regard the changeover from the Raj to the Republic and the higher value assigned to the great rights of the people. Where there is a statutory duty to speak, silence is lethal sin for a good reason disclosed by the scheme of the fasciculus of sections. For Section 99-C enables the aggrieved party to apply to the High Court to set aside the prohibitory order and the Court examines the

grounds of Government given in the order and affirms or upsets it. The Court cannot make a roving enquiry beyond the grounds set forth in the order and if the grounds are altogether left out what is the Court to examine? And, by this omission, careless or calculated, the valuable right of appeal to the Court is defeated.

A construction of the section fraught with such pernicious consequence and impairing with the basic structures of the statutory remedy, must be frowned upon by the Court if the liberty to publish is to be restricted only to the limited extent the law allows. This reasoning is reinforced by *Harnam Das v. State of U.P.* : [1962]2SCR487 wherein this Court observed:

What then is to happen when the Government did not state the grounds of its opinion? In such a case if the High Court upheld the order, it may be that it would have done so for reasons which the Government did not have in contemplation at all. If the High Court did that, it would really have made an order of forfeiture itself and not upheld such an order made by the Government. This, as already stated, the High Court has no power to do under Section 99-D. It seems clear to us, therefore, that in such a case the High Court must set aside the order under Section 99-D, for it cannot then be satisfied that the grounds given by the Government justified the order. You cannot be satisfied about a thing which you do not know.

We do not mean to say that the grounds of reasons linking the primary facts with the forfeiter's opinion must be stated at learned length. That depends. In some cases, a laconic statement may be enough, in others a longer ratiocination may be proper but never laches to the degree of taciturnity. An order may be brief but not a blank.

4. The impugned order, therefore, is not in compliance with the mandatory provision of Section 99-A of the Code and bad in law. In the circumstances, we cannot but hold that the Government of Manipur's order of confiscation is without jurisdiction and, as such, it is liable to be quashed. We, therefore, quash the impugned Notification and allow the revision, and make the Rule absolute.

5. The Government is directed to return the seized documents and papers to the person from whom seized.

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