

Emperor Vs. Narayan Vasudev Phadke

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Court : Mumbai

Decided On : Jul-23-1940

Reported in : (1940)42BOMLR861

Judge : John Beaumont, Kt., C.J. and ;Wassoodew, J.

Appeal No. : Criminal Appeal No. 244 of 1940

Appellant : Emperor

Respondent : Narayan Vasudev Phadke

Judgement :

John Beaumont, Kt., C.J.

1. This is an appeal by the accused against his conviction by the Resident First Class Magistrate of Kalyan under Section s 124A and 153A of the Indian Penal Code.

2. The speech, which lays the foundation for the charges, was delivered by the accused on February 26, 1940, to an audience consisting of the members of the Peasants' Union, Kalyan taluka. The circumstances in which the speech was made, according to¹ the statement of the accused, were these. The accused had been for some years a member of the Servants of India Society, and his activities were devoted principally to measures for the amelioration of the distress of agriculturists. He says that in October, 1939, the previous Government of Bombay,

generally known as the Congress Government, had passed through the Legislative Assembly and the Legislative Council of Bombay three Acts,- the Bombay Small Holders' Relief Act, the Bombay Tenancy Act and the Bombay Agricultural Debtors' Relief Act,-the last two of which in particular the accused considered to be of great importance to agriculturists. Those measures had not in February, 1940, been brought into operation, and the accused was organising a march of the peasants of Kalyan to take place on March 13, a march to the Mamlatdar's kachery, in order to protest against the delay of Government in bringing these measures into operation. So far, of course, the accused was on perfectly safe ground. He was quite entitled to protest against these measures not having been brought into operation, and was quite entitled to organise a march of peasants as long as that did not result in a breach of the peace. But the particular object of the speech which he made on February 26 was to instil into the peasants sufficient enthusiasm to induce them to take part in this march on the 13th of the next month, and in order to do that he had to make something) in the nature of a fighting speech and to give the tenants a target at which their anger might be aimed. It was obviously no good in a speech of that sort to tell the peasants that their misfortunes were partly of their own making, that they married too young produced more children than their land could support, and spent too much on marriage ceremonies. That would not have inspired any enthusiasm and induced the peasants to attend the march. So the accused in his speech made, as he was likely to do, an attack on the landlords, the money-lenders and Government, and the question is whether his attack brings him within either of the two Sections to which I have referred. We have to take the speech as a whole and give it a liberal interpretation, not laying too much stress on any particular sentence.

3. The general argument is, as I have no doubt the accused would admit, a rather crude presentation, to an illiterate audience, of the socialist case, that if only the landlords, the money-lenders and, the Government were abolished, what a perfect world it would be for the peasants: no rent to pay; no debts to pay; no taxes to pay. That sort of speech, although inviting an answer, is certainly not illegal, but the accused unfortunately went rather too far in his abuse of the landlords and the money-lenders and in associating Government with those classes. The whole gist of his speech is to say that these zamin-dars and sawkars are oppressing the

tenants and Government is behind them, and you cannot get rid of the sawkars, and zamindars unless you get rid of the Government. He says in one passage:

If this Government disappears no one will take down speeches and these Government Officials, that is, talatis, bailiffs, policemen and other persons who inflict zulum on us and help the zamindars and effect unlawful attachments these people will no longer inflict zulum on you after this Government disappears, for they will get no food.

4. Then in another passage later on He says:

If sawkars have no support of Government behind them, these sawkars will not recover their rent. The aim of our Sangh (Association) is that the zamindar-rule and sawkar-rule must perish. And he who toils on the land must become the owner 'of that land. And for this zamindars and sawkars must perish. Similarly this zamin-dari system and sawkari system must also perish. And if these oppressive institutions are to perish, the brute force behind them must perish or it must come into our hands. We must consider what we must do in order that it may perish. If this Government disappears no one will help sawkars and; not even a penny of his will be recovered. This means that the sawkar-rule, the zamindar-rule and the present Government are closely united.

5. It seems to me in those passages, and they are merely samples of the tendency of the whole speech, the accused has used words which bring the Government established by law in British India into hatred or contempt and which tend to excite disaffection towards that Government.

6. The case is not dissimilar from *Emperor v. Maniben Kara* : (1932)34BOMLR1642 , where it was pointed out that to accuse the Government of gross partiality in favour of one Section of the community against another Section is calculated to cause disaffection towards Government. The plain effect of this speech is to suggest that Government is not looking after the interests of the peasants, but supporting those who oppress the peasants. In my opinion, therefore, the conviction of the accused under Section 124A is right.

7. The case under Section 153A is rather different. That Section makes it an offence to promote or attempt to promote feelings of enmity or hatred between different classes of His Majesty's subjects, and that Section is not always easy to apply. It is difficult in many cases to say what constitutes a class of His Majesty's subjects. The learned Magistrate was of opinion that sawkars and zamindars were definitely classes of His Majesty's subjects; they were a class on one side, and the peasants were a class on the other side. So far as sawkars are concerned, it is, I think, impossible to say that they constitute a class. No doubt in many villages there are recognized sawkars or moneylenders, but there are probably many other people who indulge casually in money-lending, and it would be very difficult to say whether they came within the description or not. I think that the term 'sawkars' in the sense of money-lenders is much too vague a term to designate a class within the meaning of Section 153A.

8. There is more difficulty about zamindars. It is, however, clear that the expression 'zamindars' is not used by the accused in its technical sense, because there are no zamindars in the technical sense in this Province. So that we are not concerned to consider whether zamindars in a technical sense may constitute a class. I believe there is some authority for the proposition that they may, but we have not to consider that question at all. The accused uses the word in the speech in question in the sense of landlords, -landlords, that is, who have let out their land at a rent. There are difficulties in saying that landlords who let out their land at a rent constitute one class, and the persons to whom the land is let out another, because obviously people might come into both classes in respect of the same land. If A lets land to B, and B sub-lets to C, B is a tenant taking the land on rent and a landlord letting it on rent, and it is difficult to think that the classes referred to in Section 153A are not mutually exclusive. But then it is argued by the learned Government Pleader that in this particular speech, which was directed to the members of the Peasants' Association at Kalyan, the zamindars referred to were the particular landlords to whom the peasants of Kalyan paid their rent, and, therefore, there would be no difficulty in ascertaining that class. But I think that to bring any body of persons within the description of a class of His Majesty's subjects within the meaning of Section 153A, the body of persons must possess a certain degree of importance numerically. One cannot say that every group of

persons is properly designated a class of His Majesty's subjects. For example, I should say that any one who attempted to promote feelings of enmity between members of the Appellate Side Bar of this Court, and members of the Original Side Bar could not be said to be infringing Section 153A, because I should say that two sides of the Bar in a particular Court could not be designated as classes of His Majesty's subjects; they are mere groups. It is obviously very difficult to draw a line and say exactly what constitutes a class, and what does not, and we can only deal with the particular case which is before us. In my view the peasants of Kalyan and the persons to whom they pay their rent cannot be treated as classes of His Majesty's subjects within the meaning of Section 153A, and it is not necessary for our decision to go beyond that. I think, therefore, that the conviction under Section 153A is not justified and must be set aside.

Wassoodew, J.

1. I should add nothing on my own account to what has already been said by my Lord the Chief Justice but for the fact that the question relating to the charge under Section 153A of the Indian Penal Code is of some importance and, so far as the actual decision is concerned, of almost first impression. In my opinion, the expression 'classes of His Majesty's subjects' in Section 153A of the Code is used in a restrictive sense as denoting a collection of individuals or groups bearing a common and exclusive designation and also possessing common and exclusive characteristics which may be associated with their origin, race or religion, and that the term 'class' within that Section carries with it the idea of numerical strength so large as could be grouped in a single homogeneous community. It is true that in the development of citizenship a sharp distinction has arisen between one group of citizens and another based on purely materialistic or economic conceptions. For instance, the functional group, according to the economic theory, would be capable of being sub-divided into numerous, smaller groups each described as a class in itself. The functional group might include the priestly class, the workers and the artisan class. Society could also be grouped according to the economic theory into the propertied class, the capitalistic class like the sawkars and the rentier class who live on the income of the property, and the labour class. That was not, in my opinion, what was contemplated by the framers of Section 153A of

the Code. None of these groups can claim both exclusive and common characteristics which could be readily ascertained, and which, I think-, constitute the essential, quality of the class mentioned in Section 153A of the Indian Penal Code. The distinction will appear clear when one has regard to the racial grouping of society such as Mahars, Chambhars, Chandals, and the like, or the sectarian division like the Brahmins, Lingayats, etc. In my opinion the term ' landlord ', assuming that it was confined by the accused in his lecture to persons holding lands in Kalyan, could not be re- garded as applicable to a class of His Majesty's subjects as contemplated by Section 153A of the Code, who could be ascertained with certainty and who could be distinguished from any other class. The difficulty of distinguishing that class would arise from the possession of some lands by the tenant class also, for it is perfectly conceivable that a person holding land would also be a tenant. The reference to landlords as opposed to tenants in the speech is based principally upon the economic; grouping of society. Assuming that society is capable of such grouping, it would be dangerous to say that any particular group is so well defined as could be regarded as a distinct and ascertainable class within the meaning of the Section.

2. On the charge under Section 124A of the Indian Penal Code, I have carefully read and re-read the Marathi speech, as transcribed by the police stenographer, and its translation. The translation does sufficient justice to the vernacular record. The impression created on my mind is that the first part of the speech is not offensive. It could reasonably be said that in that part of his speech the accused was attacking the policy of Government in relation to landlords, in that the ameliorative legislation was not brought into effect on account of want of sympathy with the needs of the peasants. If the attack was merely against the policy of Government in that respect, perhaps it could be said that the speech does not offend against the law. But there is a sudden digression noticeable in the later part of the speech, and the impression created on my mind on reading that part of the speech is that the intention was to infuse hate of Government. The argument of the speaker is that unless the landlord and the money-lender were exterminated, there could be no sufficient food for the peasants, and that as the Government was the ally of the landlord, the Government must also disappear, so that there could be no rent, no debt, no police, etc. Having regard to the occasion and place

and the class of people invited to listen to that sort of oratory, assuming that the primary object of the meeting was to induce the hearers to join the procession, I think the peasants in their ignorance would be led to think on hearing the speaker that he was promoting insurrection. That is clearly punishable.

3. Per curiam. With regard to the sentence under Section 124A we suspend the substantive sentence of imprisonment for eight months' rigorous imprisonment for a year, and if within that time the accused is brought before us and we think that he has made any further speech objectionable under Section 124A, we shall remove the suspension, and he will have to go to jail without any further trial. We maintain the fine of Rs. 200 imposed under that Section.

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