

Emperor Vs. Kalidas Amtharam

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Court : Mumbai

Decided On : Jul-16-1948

Reported in : (1949)51BOMLR100

Judge : M.C. Chagla, C.J. and; Gajendragadkar, J.

Appeal No. : Criminal Revision Application No. 584 of 1948

Appellant : Emperor

Respondent : Kalidas Amtharam

Judgement :

M.C. Chagla, C.J.

1. This is an application for revision against an order made by the Second Additional First Class Magistrate, Ahmedabad, rejecting the petitioner's contention that the Act under which he was charged was invalid. That view was also upheld by the learned Sessions Judge, Ahmedabad. The accused was charged for an offence under Section 7 of the Bombay Harijan (Removal of Social Disabilities) Act, 1946, for having refused To serve tea to a Harijan in his tea shop, and the contention raised by the applicant was that this Act was ultra vires of the Provincial Legislature. This contention was based on the argument that the subject of removal of social disabilities of Harijans does not form part either of List II or List III in the Seventh Schedule to the Government of India Act, and therefore the Provincial Legislature was not competent to legislate on this subject. The learned

Magistrate took the view that as this Act had received the assent of the Governor General, the Governor General by implication had constituted this subject as a new subject on which the Provincial Legislature could legislate, that subject not having been originally included in List II or List III in the Seventh Schedule. The learned Sessions Judge rightly, in our opinion, did not accept that contention because there has been no public notification by the Governor General as required by Section 104 of the Government of India Act. The learned Sessions Judge took the view that the subject of the Act was covered by item 28 in List II, which item is 'Inns and innkeepers.' Now, in construing the Lists in the Government of India Act we must not overlook the fact that this is a Parliamentary Legislation and Parliament was using language which is well known and understood in English legal phraseology, and the expression 'Inns and innkeepers' has a definite connotation in English law. In our opinion, it would not be correct to say that the law regulating restaurants or tea shop-keepers would fall in the category of inns and innkeepers. But with respect to the learned Sessions Judge, it is taking too narrow a view of this Legislation to say that all that it did was it regulated the business of a tea shop-keeper and prohibited the tea shop-keeper from refusing to serve tea to a Harijan. In any case, it is not necessary finally to decide this question as to whether the learned Sessions Judge on this point is right or not, because, in our opinion, the subject of the impugned Legislation clearly falls under item 1 of List III which is the concurrent List. That item is :

Criminal law including all matters included in the Indian Penal Code at the date of the passing of this Act, but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of His Majesty's naval, military and air forces in aid of the civil power.

Therefore, the Provincial Legislature concurrently with the Federal Legislature is competent to legislate with regard to all matters included in the Indian Penal Code. They are also competent to legislate with regard to all matters relating to criminal law so long as they do not affect offences against laws which are enumerated in List I and List II.

2. Now, the whole basis of Mr. Thakor's argument is that the subject matter of this legislation does not fall in List I or List II and, therefore, in our opinion, it is competent to the Provincial Legislature to create a new offence with regard to a (subject which is not dealt with in List I or List II. Now, turning to the scheme of the impugned. legislation, the preamble states that the legislation is passed in order to provide for the removal of the social disabilities of Harijans. Section & enumerates what are the disabilities of the Harijans and how they should be got rid of and declares their rights in these respects. Section 4 refers to the discriminations exercised against Harijans. Section 5 calls upon the Courts not to recognise any custom or usage imposing any civil disability on any Harijan. Section 6 gives a direction to legal authorities not to recognise any custom or usage Imposing any civil disability on the Harijans. And Section 7 is the penal section which provides for penalties for offences committed by anyone who contravenes the provisions of the Act. Now, reading this statute as a whole, it is clear that it was the view of the Legislature that social disabilities from which the Harijans suffer should be removed. According to the Legislature, anyone who was privy to the continuance of these social disabilities should be punished, and the Legislature also took the view that the only way that the Harijan's status and position could be improved was by punishing those who continued to inflict disabilities upon Harijans. Therefore, in passing this Act, what the Legislature has done is to add to the body of Criminal law. It has created new offences. According to Mr. Thakor, the pith and substance of this Act is really to create rights in favour of Harijans, and according to him that is a subject which does not find a place in any of the three Lists. Mr. Thakor has further argued that if item 1 in List III was to be interpreted in the manner in which we are doing, the result would be that the Legislature could legislate on any of the subjects not mentioned in List I and List II by merely creating a new offence and by including in the statute a penal clause. Now, it is well known that the whole scheme of the Government of India Act is to make all the three Lists exhaustive. Parliament did not follow the model of the American, the Australian, or the Canadian constitution. Its intention was to enumerate, as far as possible, all possible subjects of legislation and to include them in one of the three Lists. The residual Section 104 was not intended to be resorted to ordinarily. It was enacted merely for the purpose of emergency or in case some subject had

been overlooked by inadvertence. Therefore, there is nothing wrong in giving an interpretation to item 1 in List III which would enable the Provincial legislature to pass legislation with regard to social reforms. The only way the Legislature can carry out social reforms is by punishing those who do not conform to the standards laid down by the Legislature. In this case the Legislature says the Harijans shall be treated as equal citizens with the Hindus, and if anyone does not conform to that, he shall be punished. Similarly, in other matters of social reform the Legislature may also impose penalties upon those who do not conform to the view taken by the Legislature.

3. In our opinion, therefore, this particular Act falls in item 1 of List III and it was competent to the Legislature to pass this piece of legislation. Therefore, the contention urged by the applicant must fail and we must discharge the rule.

4. Certificate granted to go to the Federal Court.

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