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Court : Allahabad

Decided On : May-02-1962

Reported in : AIR1963All335; 1963CriLJ4

Judge : Jagdish Sahai and ;T. Ramabhadran, JJ.

Acts : [Constitution of India](#) - Articles 19(1), 19(2) and 228; [Indian Penal Code \(IPC\), 1860](#) - Sections 153A

Appeal No. : Criminal Misc. No. 742 of 1961

Appellant : Sheikh Wajih Uddin

Respondent : The State

Advocate for Def. : Gopinath Kunzru, Adv.

Advocate for Pet/Ap. : Syed Sadiq Ali, Adv.

Judgement :

Jagdish Sahai, J.

1. Sheikh Wahaj Uddin (hereinafter referred to as the accused) is being prosecuted for an offence punishable under Section 153-A, I.P.C. in the court of the Judicial (Officer (III) at Kanpur. He made an application to this Court under Article 228 of, the [Constitution of India](#) which was allowed by Desai, C. J. who

directed the transfer of the case to this Court for decision of the question of vires of Section 153-A, I.P.C., but expressly said in his order that only this question shall be decided here.

2. We have heard Mr. Kunzru for the accused and the (earned Government Advocate for the State. Mr. Kunzru has made only the following two submissions before us:

1. That this Court had under Article 228 of the constitution of India no jurisdiction to direct that only the question of vires shall be decided by this Court and the case itself will not be disposed of here. He has therefore requested us to ignore the direction of Desai, C. J. dated the 9th of May, 1961, directing that only the question of vires shall be decided by this Court.

2. That the provisions of Section 153-A are void under Article 13 of the [Constitution of India](#).

No other submission has been made before us. We will take the submissions seriatim: Article 228 of the Constitution reads as follows:--

'If the High Court is satisfied that a case pending in a Court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may--

(a) either dispose of the case itself, or

(b) determine the said question of law and return

the case to the Court, from which the case has been so withdrawn together with a copy of its judgment on such question, and the said Court shall on receipt thereof proceed to dispose of the case in conformity with such Judgment.'

The first part of this Article deals with the power to withdraw the case, It is only after the case has been withdrawn that the Court would decide either to act under Clause (a) and dispose of the case itself or to act under Clause (b) and after determining the question of law alone return the case to the Court from which it

has been so withdrawn together with a copy of its judgment on such question, on the receipt of which the Court shall proceed to dispose of the case in conformity with such judgment. It appears to us that there is substance in Mr. Kunzru's contention that Desai, C. J. who was acting under Part I of Article 228 of the Constitution and was merely concerned with the question as to whether or not the case should be withdrawn, could not have passed an order restricting the discretion of the Bench before whom the case intimately came up for hearing by directing that only the question of law and not the whole case would be decided by it. In our judgment this Bench is completely free to either act under Clause (a) or Clause (b) of Article 228 of the constitution and thus either dispose of the whole case itself or determine the question of law alone. It is obvious that it is only after the case has been heard on merits that the Court will be in a position to decide whether to dispose of the case itself or to decide the question of law alone. That being so, we ignore the direction of Desai, C. J. and would ourselves decide whether we would under the circumstances of the present case like to act under Clause (a) or Clause (b) of Article 228, of the Constitution.

3. Coming to the second submission of the learned counsel it would be profitable to reproduce the provisions of Section 153-A I.P.C. The said section reads as follows:--

'Whoever by words, either spoken or written, or by signs, or by visible representations or otherwise promotes or attempts to promote feelings of enmity or hatred between different classes of the citizens of India shall be punished with imprisonment which may extend to two years, or with fine or with both.

Explanation; It does not amount to an offence within the meaning of this section to point out, without malicious intention and with an honest view to their removal, matters which are producing or have the tendency to produce feelings of enmity or hatred between different classes of the citizens of India.'

Mr. Kunzru has not been able to point out any good reason for holding the provisions of Section 153-A, I.P.C. to be ultra vires. All that he could contend was that the section is so widely worded as to infringe Article 19 of the constitution. That section only makes an act punishable if it promotes or attempts to promote

feelings of enmity or hatred between different classes of the citizens of India. The language of the section is exact. There is neither any ambiguity nor vagueness about it. What has been made punishable has been stated in unambiguous, precise and clear words. The provision cannot be used to punish any one except those who either attempt to promote or promote class hatred or class enmity. The language used in the section is not of an all pervading nature and does not suffer from being all embracing with the result that because of language no one who does not either promote or attempt to promote class hatred or enmity can be convicted. We are therefore unable to hold that the section is either too widely worded or is indefinite, it has also been half heartedly suggested that the condition imposed by the section on the fundamental right of freedom of speech and expression guaranteed by Article 19(1)(a) of the constitution are not reasonable. We are also unable to agree with this submission. Our country is inhabited by persons belonging to different religions, castes and classes. Our Constitution is based upon the principle that we must all sink or swim together and that in the long run prosperity and salvation are in union and not in division. The preamble of the Constitution solemnly declares the resolve to secure to its citizens fraternity and unity of the nation, its enacting Clauses also enshrine the same principle.

4. Under the provisions of Article 19(2) of the constitution restrictions can be imposed. That provision reads as follows:--'

'19 (2) 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 interests of the security of the state, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence.'

It is clear that what is contained in Sub-clause (a) of Clause (1) of Article 19 of the Constitution is subject to what is contained in Sub-clause (2). Consequently, if any piece of legislation is made in the interest of public order or in relation to incitement to an offence it would be valid. We may remind ourselves that originally Article 19(2) of the Constitution stood as follows;--

'19 (2) Nothing in Sub-clause (a) of Clause (1) shall attest 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.' The provision was amended on 18-6-1951 with retrospective effect by means of the First Amendment Act and substituted by the present Sub-clause (2). It would be noticed that originally the words were 'in so far as it relates to or prevents the State from making any law relating to'.

The present words are 'in the interest of'. Another noticeable change is that the words 'public order' did not exist in the unamended Clause (2). In our judgment the use of the words 'in the interest of' makes the ambit of the protection very wide and any provision which has been enacted in the interest of public order would be valid. If people were permitted to freely attempt to commit or commit acts promoting feelings of enmity or hatred between different classes of the citizens of India, the result would be public disorder. There may be riots or commission of offences. There may be disharmony and ill will between various classes, affecting the peace and order of the society. Therefore if the State has in the Penal Code of the country provided a provision which makes either the attempt or the actual commission of an act promoting feelings of enmity and hatred between different classes of the citizens of India punishable, it must be held that the provision is in the interest of public order. It is not necessary that the law may have been designed directly to maintain public order. It would be valid even if it had been enacted in the interest of public order.

5. The Patna High Court in *Debi Soren v. State*, AIR 1954 Pat 254, had held sections 124-A and 153-A, J. P. C. to be intra vires and constitutional. In *Ramji Lal Modi v. State of U. P.*, (S) AIR 1957 SC 620 the Supreme Court had to consider the vires of Section 295-A, 1. P. C. While upholding its validity the learned Judges observed as follows :

'It will be noticed that the language employed in the amended Clause is in the interests of and not 'for the maintenance of. As one of us pointed out in AIR 1954 Pat. 254 the expression in the interest of makes the ambit or the protection very

wide. A law may not have been designed to directly maintain public order and yet it may have been enacted in the interest of public order.'

Mr. Kunzru placed reliance upon the Full Bench decision of this Court in *Ram Nandan v. State*, AIR 1959 All. 101. In the first place that decision is on Section 124-A and not Section 153-A, I.P.C. The language of the two sections is very different from each other. We cannot therefore treat that case to be authority on section 153-A I.P.C. also. Besides, on appeal by the State Government the Supreme Court has reversed the decision on 24th January law. That case has not been reported so far but we have seen a certified copy of the judgment of the Supreme Court in *Kedar Nath Singh v. State of Bihar* and *State of U. P. v. Mohd. Ishaq limi and others* (which includes *Ram Nandan v. State*). *Ram Nandan's case*, AIR 1959 All 101 is therefore no longer good law. Our attention was also invited to *Tara Singh Gopi Chand v. State*, AIR 1951 Punj 27, in which Sections 124-A and 153-A were held ultra vires Article 19(2) of the Constitution. That case was decided before the second Clause of Article 19 had been amended by the First Amendment Act, 1951. The learned Judges who decided that case, therefore, had no occasion to consider as to what would be the effect of the changes made in that Clause and as to whether the use of the words 'in the interest of public order' would have justified holding that Sections 124-A and 153-A were not constitutional. Besides the Punjab view cannot be considered to be good law in view of the decision of the Supreme Court in (AIR 1962 SC 955) already referred to above.

6. Having given our anxious consideration to the submissions made by Mr. Kunzru we have no hesitation in rejecting the same and holding that the provisions of Section 153-A, I.P.C. are intra vires.

7. The only question that now remains to be considered is whether we should try the case ourselves in accordance with Clause (a) of Article 228 of the Constitution or having decided the question of law return back the case to the Court from which it was withdrawn for trying it on merits. Considering all the circumstances of the case it appears to us that the proper course to follow would be to send back the case for trial to the Court from which it was withdrawn. The accused lives in Kanpur

and the prosecuting agency is also located there. The case will require detailed investigation of facts and it would be necessary to record evidence. It would be conducive to the convenience of the parties, as also that of the witnesses, who reside either in Kanpur or its neighbourhood and would also save the time of this Court [f the case is tried by the Court from which it was withdrawn.

8. We, therefore, direct that the record of the case along with a copy of our judgment shall be sent to the Court of the Judicial Officer 111, Kanpur, who shall on receipt of the same proceed to try and dispose of the case on merits in conformity with this judgment.

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