

Mohammad Ishaq Vs. State

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Court : Allahabad

Decided On : Sep-21-1960

Reported in : AIR1961All522; 1961CriLJ443

Judge : M.C. Desai, J.

Acts : [Constitution of India](#) - Articles 13 and 14; [Criminal Law Amendment Act, 1932](#) - Sections 7(1); [Indian Penal Code \(IPC\), 1860](#) - Sections 506

Appeal No. : Criminal Revn. No. 1225 of 1959

Appellant : Mohammad Ishaq

Respondent : State

Advocate for Def. : K.L. Misra and ;S.N. Upadhya, Advs.

Advocate for Pet/Ap. : Padam Nath Singh, Adv.

Judgement :

ORDER

M.C. Desai, J.

1. The applicant challenges his conviction under Section 7 of the [Criminal Law Amendment Act, 1932](#). He is a retired sub-inspector of police and was President of the police Union of Non-Gazetted Personnel, Sultanpur, since 1-9-1957. A warrant

for his arrest for the offence of Section 3 of the Police Incitement of Disaffection Act was issued and a Circle Inspector went to execute it. He arrested the applicant who intimidated him saying that his arrest would not stop the Union activities and that he would make false complaints against him and get him dismissed.

Thereupon an offence of Section 7, Criminal Law Amendment Act, was registered against him and the police investigated the matter, arrested the applicant and prosecuted him. He has been convicted by the Courts below. The conviction is fully supported by evidence, which the Courts below were justified in relying upon. The threat given by the applicant to the Circle Inspector brought him within the four corners of Section 7(1)(a) of the Criminal Law Amendment Act and he was rightly convicted.

2. The applicant challenges His conviction principally on the ground that Section 7, Criminal Law Amendment Act, is ultra vires because it infringes Article 14 of the Constitution.

3. 'Criminal intimidation' is defined in Section 503, I. P. C. to mean threatening another person with any injury to his person, reputation and property with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do or to omit to do any act which he is legally entitled to do, as the means of avoiding the execution of such threat. Whoever commits the offence of criminal intimidation is punishable under Section 506, I. P. C. with imprisonment of either description for a term which may extend to two years, or with fine, or with both, and if the threat be to cause death etc., with imprisonment which may extend to seven years.

The offence punishable under Section 506 is bailable, compoundable and triable by a Magistrate of the first or second class and not cognizable; if the threat be to cause death etc. it is not compoundable and can be tried by a Magistrate of the first class only. Section 10 of the Criminal Law Amendment Act authorizes the State Government by notification in the Gazette to declare that the offence be cognizable and non-bailable; the State Government had issued a notification declaring it to be cognizable and non-bailable but withdrew it in 1935 and the position at the time when the applicant committed the offence and was tried was

that the offence of Section 506, I. P. C., was bailable and non-cognizable.

Since the applicant threatened the Inspector with an injury to his reputation and property with intent to cause alarm to him and to cause him to omit to do the act of arresting him which he was legally entitled to do, as the means of avoiding the execution of the threat, he committed criminal intimidation and was liable to be prosecuted and punished under Section 506, I. P. C. Had he been prosecuted under it, there would ordinarily have been no investigation by the police because the offence was not cognizable, he could not be arrested without a warrant and he would have been entitled to be released on bail as a matter of right.

He could have also compounded the offence with the Inspector. But he was prosecuted not for this offence but for the offence of Section 7, Criminal Law Amendment Act. This Act was enacted to supplement the criminal law by amending certain Acts. Section 7(1)(a) of it creates a new offence of intimidating a person with intent to cause him to abstain from doing any act which he has a right to do, and doing certain other acts.

It is punishable with imprisonment of either description for a term which, may extend to six months, or with fine which may extend to Rs. 500/-, or with both. No Court can take cognizance of this offence except upon a report in writing of the facts which constitute it made by a police officer not below the rank of an officer in charge of a police station; the offence is triable by a Magistrate of the first class, is cognizable and is non-bailable and not compoundable. The applicant was arrested by the police without a warrant and bail was refused to him and he remained in the lockup till his conviction.

4. As mentioned above, Section 7 punishes several acts including that of intimidating a Person with intent to cause him to abstain from doing an act which he has right to do. The word 'intimidate' is not defined in the Criminal Law Amendment Act, but it means according to Webster's Dictionary '(1) make timid, make afraid, overawe: (2) force or deter with threats or violence, cow.' Intimidation may be accompanied by violence or threat of violence but can be committed without them.

This Act made punishable under Section 7 is equally punishable under Section 506, I. P. C. The other acts made punishable by Section 7 may not be punishable under Section 506 but that of intimidating with intent to cause the Person to abstain from doing an act which he has a right to do is. The applicant was prosecuted under Section 7 but could have been prosecuted under Section 506 with different consequences, i.e., a complaint by the Inspector would have been necessary, he could not have been arrested without a warrant, he would have been, entitled to be released on bail and he could have a right to compound the offence with the Inspector.

There is no provision laying down which person doing the act of intimidating another person with intent to cause him to abstain from doing an act should be prosecuted under Section 506, I. P. C., and which persons under Section 7, Criminal Law Amendment Act; the matter has been left at the absolute and uncontrolled discretion of the prosecutor. The contention advanced on behalf of the applicant is that this division of the Persons who do this act into two classes, (1) of those who are prosecuted and punished under Section 506 and (2) of those who are prosecuted and Punished under Section 7, infringes the guarantee of equality before the law and the equal protection of the law contained in Article 14.

5. The contention must be rejected. It cannot be disputed that there are some differences between the trials for the two offences and the punishments prescribed for them. In this case I am concerned with the question whether Section 7(1)(a) is unconstitutional or not. Article 14 is said to be infringed by the existence of Sections 506 and 7(1)(a) both. Upto 1932 only Section 506 existed and there was no division of persons intimidating with intent to cause abstention from doing an act in accordance with the right because they were all punishable only under Section 506.

It was since 1932 that they became also Punishable under Section 7(1)(a) and so the division said to have come into existence in 1932. Though it came into existence, if at all, on the enactment of Section 7(1)(a), it would be incorrect to say that Section 7(1)(a) brought it into existence. Nothing turns upon which section was enacted later; the earlier section was no more constitutional than the later

section was unconstitutional. Really the so called division was created for the first time when two sections applicable to one act came into force.

The enactment of Section 7 furnishes an occasion for pleading the division, but was not the cause of it. It cannot be said that Section 7(1)(a) only is unconstitutional : Section 506 also may be equally unconstitutional. A person who is prosecuted under Section 7(1)(a) may complain that Section 7(1)(a) is unconstitutional and similarly a person prosecuted under Section 506 may complain that Section 506 is unconstitutional.

Though thus either or both of the sections may be unconstitutional, since in this case I am concerned with only Section 7(1)(a), I have no jurisdiction to decide the question of the constitutionality of Section 506. Even though a law becomes void automatically under Article 13, without the necessity of any declaration by a Court, a declaration that a law has become void is necessary before a Court can refuse to take notice of it. The voidness of a law is not a tangible thing which can be noticed as soon as it comes into existence; a declaration that it is void is necessary before it can be ignored. Therefore, a declaration by the Court that a law is void is necessary even though it has become void automatically under Article 13.

It is a well recognized principle that a Court does not grant a declaration in respect of the unconstitutionality of a law except at the instance of a person aggrieved by it; it does not declare laws unconstitutional at the instance of mere volunteers. Section 7(1)(a) might have become unconstitutional on the enactment of Article 13 but it has not been declared so far to be unconstitutional and unless I declare it to be unconstitutional in this case, I would have no power to set aside the applicant's conviction and sentence. I can declare it unconstitutional at his instance if he is aggrieved by it. Since he has not been prosecuted and convicted under Section 506, there would arise no question of his being aggrieved by it and I would have no jurisdiction to declare it to be unconstitutional.

6. When I say that I am concerned in this case with the constitutionality of Section 7(1)(a), I really mean the constitutionality of the Provision 'whosoever with intent to cause any person to abstain from doing.....any act which such person has a right

to do intimidates such Person ..' contained in it and not that of any other provision of it. The section really contains several provisions, each severable from the rest, and the constitutionality of the particular provision reproduced above is in question. It is Possible for it or any other provision or provisions to be unconstitutional without affecting the constitutionality of the remaining provisions. That the remaining provisions are constitutional or unconstitutional does not mean that this provision is constitutional or unconstitutional.

7. The applicant would not be aggrieved merely because there are differences between the trials and the punishments Prescribed for the two offences; if the trial and the punishment prescribed for the offence of Section 7(1)(a) is more favourable to the accused than those prescribed for Section 506, the applicant cannot be said to be aggrieved even though the differences exist That the offence of Section 7(1)(a) is cognizable means two things, (1) that there can be investigation by the police and a Court can take cognizance of the offence on a report by the police and (2) that the police can arrest without a warrant.

I am not satisfied that the first of these two propositions operates adversely against the accused. It cannot be said that investigation into an offence by the police is an act prejudicial to the accused or that the procedure prescribed for the trial of a warrant case on a complaint is more favourable than that prescribed for the trial on a police report. There may be some sense in saying that a Preliminary investigation, even if by the police, is a matter in favour of the accused because in the investigation he may be found to be innocent or there may be found to be dearth of evidence against him and he may not be prosecuted at all.

Prior to the amendment of Cr. P. C. in 1956 there was one procedure for the trial of a warrant case, whether on a complaint or on a police report. Since 1956 the procedure in a trial on a police report is simplified, but it cannot be said to be more unfavourable to the accused than the procedure in a complaint case. As regards the liability to be arrested without a warrant, the position is different. The learned Advocate-General pleaded that there is no difficulty in obtaining a warrant from a Magistrate and that the Provision that a person accused of an offence of Section 7(1)(a) can be arrested without a warrant is not more unfavourable to the accused

than the provision that he cannot be arrested without a warrant.

A warrant may in practice be had from a Magistrate just for asking, but that is not what is contemplated under the law and a warrant may not always be issued by a Magistrate. In a cognizable case the accused can be arrested by the police without a warrant regardless of the nature of the entry made in Col. 4 of Schedule II of the Cr. P. C. but if the offence is non-cognizable and the accused is prosecuted on a complaint, the Court will ordinarily issue a summons or warrant in the first instance in accordance with the entry made in Col. 4.

In a complaint case for the offence of Section 506 the Court will ordinarily issue a summons in the first instance and there may arise no question at all of the accused being arrested. Consequently the trial for the offence of Section 7(1)(a) is more unfavourable to the accused than that for the offence of Section 506 on account of its being a cognizable offence. It cannot be disputed that it is more unfavourable on account of the offence being non-bailable. The question whether the absence of the right to compound operates adversely against the accused or not does not arise in the present case because there is no evidence of any intention on the applicant's part to compromise with the Inspector.

The provision that the trial for the offence of Section 7(1)(a) can take place only before a first class Magistrate is not a provision prejudicial to the accused; on the other hand it can be said to be favourable to him because he will have the advantage of a more experienced Magistrate than a second class Magistrate. The punishment prescribed for Section 7(1)(a) is much lighter than that prescribed for Section 506, but this advantage differs so much in quality from the disadvantages arising out of the offence being cognizable and non-bailable that it cannot be said that it outweighs the disadvantages and that on the whole the trial for the offence of Section 7(1)(a) is more advantageous than that for the offence of Section 506.

Further it is only the maximum punishments that differ. The punishment actually inflicted would be in conformity with the act done and the same punishment would be inflicted whether the conviction is under Section 506 or under Section 7(1)(a). It must be recognized that the procedure for the trial under Section 7(1)(a) is more unfavourable to the accused than that for the trial under Section 506.

8. Though the procedure in a trial for the offence of Section 7(1)(a) is more unfavourable to the accused and though it has not been laid down which person should be prosecuted under Section 7(1)(a) and which under Section 506, the State cannot be said to have denied to the applicant equality before the law or the equal protection of the laws. A law creating an additional offence with different incidents can never be said to deny equality before the law. There are many acts which are offences punishable under two or more laws and having different incidents.

The reason is that the different laws punishing an act are cumulative and not alternatives; a person doing the act is liable to be punished under all the laws and not under only one of them. When the laws do not operate as alternative laws, there is no division of the persons doing the act into two or more classes. A person doing the act of intimidating another with intent to cause him to abstain from doing an act which he has a right to do, is liable to be prosecuted and convicted for both the offences in the same trial.

A person convicted under Section 506 for such an act may not be liable to be convicted under Section 7(1)(a) for the same act subsequently and similarly a person convicted under Section 7(1)(a) may not be liable to be convicted for the same act under Section 506, but a person can always be convicted under both the sections in the same trial, if it takes place before a first class Magistrate and there is a police report against him. It may be that after the conviction for the two offences only one sentence may be inflicted to cover both in view of the provisions of Section 71, I. P. C., but the fact remains that he is liable to be convicted for both.

When the provisions contained in the two sections are cumulative and not in the alternative, there arises no question of selecting who should be prosecuted under Sec. (1) (a) and who under Section 506, i. e. there is no classification at all. If any choice is given in the matter, it is to the person who wants the offender to be punished; he can himself lodge a complaint in the Court of a Magistrate, though the complaint will have to be for the offence of Section 506, or he may lodge a report at the police station and the Police may investigate and make a report for

prosecution of the offender, or he may take both the steps.

Giving this choice does not amount to infringement of Article 14. It is reasonable to give such a choice to the prosecutor and whatever classification is involved in giving the choice is not arbitrary. Thus in respect of every person who does the act there may be a complaint for the offence of Section 506 against him by the person intimidated for by any other person) and there may also be a report in writing for his Prosecution for the offence of Sub-section 7 (1) (a) by the police and the Court can take cognizance of both the offences.

Once the police investigate a cognizable offence they are competent to include in the report non-cognizable offences committed in the same transaction; so a police report for the offence of Section 7(1)(a) can include the offence of Section 506 as well and even on the absence of a complaint for the offence of Section 506 the Court can take cognizance of both the offences, try the accused for both and convict him of both. If the police make a report against an accused of both the offences, it cannot be contended that any question of infringement of Article 14 would arise.

The question of infringement arises when a person is put in one class governed by one Provision while others are arbitrarily put in another class governed by another provision, but not when he is put in both the classes, and is governed by both the provisions. There can be no question of classification when he is dealt with in both the ways. If the police instead of mentioning both the offences in the report, and thereby avoid the charge of infringing Article 14, mention only the offence of Section 7(1)(a), in it, they may be said to divide the doers of this act into two classes, (1) of those who are reported for both the offences and (2) of those who are reported for only the offence of Section 7(1)(a), but not to divide them into two classes, (1) of those reported for the offence of Section 506 and (2) of those reported for the offence of Section 7(1)(a).

The applicant could have been prosecuted by the police not only for the offence of Section 7(1)(a) but also for that of Section 506, in which case he would have no occasion of arguing that Article 14 was infringed; when instead, he was prosecuted only under Section 7(1)(a), it was an act done in his favour and I am

astonished at his argument that he has been denied the equality before the law. Instead of being tried for both the offences he was tried for only one.

Even though the police reported him only for the offence of Section 7(1)(a) it was competent to the Magistrate to take cognizance of the offence of Section 506 as well; there were absolutely no limitations on his Power to take cognizance of this offence. The facts contained in the report made out both the offences and the Magistrate could take cognizance of both and could charge him with, and convict him for both. Thus even the failure of the police to include in the report the offence of Section 506 did not matter; he was still liable to be tried and convicted for it as well.

The State has not issued any instructions either to the police or to Magistrate first class in respect of offences to be included in police reports offences to be taken cognizance of, offences to be included in the charge and offences for which conviction can be recorded. The Courts are expected to take cognizance of all offences made out of the facts stated in the police report and to frame charges in respect of all offences prima facie made out and to record conviction on all such charges as are proved by evidence, the State has given them no arbitrary discretion in the matter.

The State has not given arbitrary freedom to the police also to select offences to be included in their reports; they are expected to include all offences in respect of which they have discovered evidence during the investigation. If the police or the Courts fail to report some offences or to take cognizance of some offences, not only does this failure not cause prejudice to the accused but also the State cannot be accused of having infringed Article 14.

9. On behalf of , the applicant reliance was placed upon *Lachmandas v. State of Bombay*, (1952) SCR 710 : (AIR 1952 SC 235), and *State of West Bengal v. Anwar Ali*, (1952) SCR 284 : (AIR 1952 SC 75), but neither of them dealt with Section 7(1)(a). The former dealt with the Bombay Public Safety Measures Act, which authorized the Government to direct particular cases to be tried by Special Judge without indicating how the Government's choice was to be exercised, and the latter dealt with the West Bengal Special Courts Act, which was similar to the

Bombay Act. In neither of the Acts there arose the question, as in the instant case, whether Article 14 is infringed by the mere fact that an act is made Punishable under two offences, each of which can be tried by the regular Courts in accordance with the ordinary procedure and simultaneously in the same trial.

10. I am not impressed with the argument of the applicant that the exact words used by him in the intimidation have not been proved. It was not essential for the prosecution to reproduce the exact words. The sentence of five months' imprisonment and Rs. 300/- fine imposed upon the applicant is unnecessary harsh; there was no reason for the Magistrate to take such a serious view of the offence committed by the applicant. A sentence of fine would have amply met the ends of justice.

11. I maintain the conviction of the applicant but reduce his sentence to a fine of Rs. 300/- in default R. I. for one month. He is allowed two months to pay a fine in the Court of the Magistrate concerned failing which he shall surrender himself, and the Magistrate also shall issue a non-bailable warrant to take him into custody, to undergo the imprisonment in default.

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