

Raj Narain Vs. State

Raj Narain Vs. State

SooperKanoon Citation : sooperkanoon.com/460632

Court : Allahabad

Decided On : Aug-16-1960

Reported in : AIR1961All531; 1961CriLJ586a

Judge : A.N. Mulla and ;B.N. Nigam, JJ.

Acts : [Constitution of India](#) - Articles 13, 19, 19(1), 19(2), 19(3) and 19(5); Criminal Law (Amendment) Act, 1932 - Sections 7 and 7(1)

Appeal No. : Criminal Misc. Case No. 164 of 1960

Appellant : Raj Narain

Respondent : State

Advocate for Def. : Addl. G.A.

Advocate for Pet/Ap. : Tej Narain, Adv.

Judgement :

A.N. Mulla, J.

1. This is a petition filed by Sri Raj Narain, who is a member of the Legislative Assembly of Uttar Pradesh under Article 228 of the [Constitution of India](#). Sri Raj Narain is being prosecuted under Section 117 I. P. C. and Section 7 of the Criminal Law Amendment Act, 1932, in the: Court of a Judicial Magistrate at

Lucknow. The charge has already been framed in this case and subsequent to the framing of the charge an application on behalf of the petitioner was presented before the Magistrate under Section 432 (1) Gr. P. C. Praying that the case be referred for decision to the High Court.

The Magistrate by his order dated the 17th of June, 1960, rejected the prayer as in his opinion sufficient grounds were not made out to make this reference. The petitioner then came before the High Court under Article 228 of the [Constitution of India](#). As the question raised in this petition was a substantial question of law as to the interpretation of the Constitution and the determination of which was necessary for the disposal of the case, it was withdrawn and the matter came before us.

2. The question of law raised in this case is that Section 7 of the Criminal Law Amendment Act, 1932 is ultra vires of the Constitution and the proceedings pending against the petitioner were illegal. Before deciding this question we may briefly mention the acts alleged against the Petitioner which are the subject-matter of this prosecution.

3. The prosecution case is that the petitioner is one of the leaders of the Socialist Party and he distributed about a thousand Printed Pamphlets which bore his signatures inciting the members of his party to do certain acts. From the order of the Magistrate it appears that these acts consisted of a large number of activities. We may cite an extract from the order of the Magistrate which would give an 'idea of the acts for which an incitement was given in these Pamphlets. The extract runs as follows:-

'The allegations against the petitioners in this case are that they incited public and party members numbering more than 10 persons to come in thousands and to take possession over Parti land, and to distribute same amongst landless Persons, to surround Tahsils with thousands of cultivators who were cultivating land on loss and to continue this act of surrounding till their demands for remission of rent were conceded or they were arrested, to picket liquor shops in hundreds till the shop was closed, to picket peacefully courts, Sales Tax Offices etc. also to colour wash English sign-boards, and to remove English writing at public places, to get grain

distributed out of godowns at fair and cheap price, to picket Harijan Sahayak offices and District Magistrate's office for getting backward classes employed, and to picket in thousands with Harijan and backward classes and get work stopped, till they were given employment in suitable proportion and similarly to picket canal, Tube-well and Forest Department offices with thousands of persons in protest against their high handedness.'

We do not want to express any opinion at this stage whether the allegations contained in the above extract would be made out against the Petitioner or not. We have only to decide that the incitement for the commission of these acts is punishable under Section 7 of the Criminal Law Amendment Act or not. We have further to decide that even if they are punishable under the said Act, whether the said Act is ultra vires of the Constitution Or not.

4. Section 7 of the Criminal Law Amendment Act, 1932 runs as follows :-

'7. (i) Whoever --

(a) with intent to cause any person to abstain from doing or to do any act which such person has a right to do or to abstain from doing, obstructs or uses violence to or intimidates such person or any member of his family or person in his employ, 'or loiters at or near a place where such person or member or employed person resides or works or carries on business or happens to be, or persistently follows him from place to place', or interferes with any property owned or used by him Or deprives him or hinders him in the use thereof or

(b) loiters or does any similar act at or near the place where a person carries on business, in such a way and with intent that any person may thereby be: deterred from entering or approaching or dealing at such place,' shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Explanation -- Encouragement of indigenous industries or advocacy of temperance, without the commission of any of the acts prohibited by this section is not an offence under this section.'

5. The counsel who appeared on behalf of the petitioner contended that the underlined (here into ' ') portions in the Section cited above are ultra vires of the Constitution because they violate the fundamental rights guaranteed to every citizen of India under Article 19 of the [Constitution of India](#). Our attention has been drawn to Sub-clauses (a), (b) and (d) of this Article. We might as well give the relevant Part of Article 19 which runs as follows:-

'19. (1) All citizens shall have the right --

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms;

(d) to move freely throughout the territory of India.'

The contention is that the underlined (here into ' ') portions of Section 7 of the Criminal Law Amendment Act restricts these rights and, therefore, it transgresses the constitutional safeguards. We may as well quote Clauses (2), (3) and (5) of Article 19 of the Constitution, for they are to be read along with the rights mentioned in (a), (b) and (d):-

'(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 State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence.

(3) Nothing in Sub-clause (b) of the said clause shall effect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of Public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

5. Nothing in Sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the

rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.'

A mere reading of these circumscribing clauses is sufficient to indicate that the theory of unfettered liberty and absolute rights is not envisaged by the Constitution. In the world today such unfettered rights cannot be given to the citizens and restrictions have to be placed on these rights in the interests of the community as a whole. The basic principle is that the welfare of the community holds priority over everything else and if there is a conflict between the welfare of the community and the right of an individual, it is the right of the individual which will have to give way to the welfare of the community,

The doctrine of 'laissez faire' advocated by Adam Smith has lost ground in the world today and now it is one of the accepted Principles of a welfare State that the State can interfere in the affairs of individuals in the interests of the social and economic well being of the entire community. A Plea of absolute and unfettered rights, therefore, cannot be entertained and the courts have only to see that the restrictions which are placed on the enjoyment of these rights by penal or other enactments come within the limit of the control mentioned in Clauses (2), (3) and (5). It was observed by Mukheijea, J. in *A. K. Gopalan v. The State of Madras* : 1950 CriLJ1383 :--

'There cannot be any such thing as absolute or uncontrolled liberty wholly freed from restraint, for that would lead to anarchy and disorder. The possession and enjoyment of all rights, as was observed by the Supreme Court of America in *Jacobson v. Massachusetts*, (1904) 197 U.S. 11 are subject to such reasonable conditions as may be deemed by the governing authority of the country essential to the safety, health, peace, general order and morals of the community.'

We have, therefore, to see whether the prohibitions contained in Section 7 of the Criminal Law Amendment Act are reasonable restrictions for the maintenance of public order or they transgress this limit.

6. In approaching this question we would first mention that the Criminal Law Amendment Act was passed in the year 1932, many years before the [Constitution](#)

[of India](#) came into existence. If there is any conflict between the provisions of this enactment and the Constitution, it must be held to be void to the extent these provisions are inconsistent with the rights safeguarded by the Constitution under Article 13(1) of the [Constitution of India](#). In order to understand the purpose of placing the Criminal Law Amendment Act on the Statute, we would cite an extract from the statement of objects and reasons given when the said Act was passed. The extract runs as follows :-

'The Civil Disobedience Movement has made it necessary to supplement the Criminal Law by means of certain Ordinances promulgated by the Governor-General in exercise of his powers under Section 72 of the Government of India Act. The Special Powers Ordinance, which combines powers taken by the earlier Ordinances, expires on the 29th December, 1932. Though the Ordinances have enabled Local Governments and their officers to control the movement, its organisers have not yet abandoned their attempt to Paralyse Government and to coerce law-abiding citizens.'

It, therefore, appears that the Criminal Law Amendment Act, 1932 was a weapon placed in the hands of the executive authorities to check the attempts to paralyse Government and to safeguard law-abiding citizens from being subjected to coercion. No doubt the Criminal Law Amendment Act was passed to meet a certain situation which was precipitated by our national struggle to achieve independence, but we have still to see the purpose for which this law was placed on the Statute. After the passing of the Constitution, every law, whether old or new, is on the anvil and if it contains certain provisions which are inconsistent with, the rights guaranteed by the Constitution then they must be held to be void to the extent of this conflict.

7. We now proceed to decide whether the provisions of Section 7 of the Criminal Law Amendment Act are in such conflict with the rights conferred on the citizens of India under Article 19(1)(a), (b) and (d) of the Constitution.

8. In the first place we would like to observe that the rights given to citizens are not given only to a few persons, but to all the citizens of India. The basic essential factor in deciding whether a person has a right to do something or not is whether

his doing so interferes or not with a similar right given to another citizen. The State cannot have favourites and it cannot hold that where there is a conflict between group A and group B and when group A wants to enforce its rights even though they may amount to a suppression of the rights of group B, they are protected by the words of Article 19.

This interpretation would be absolutely unreasonable. The State has, therefore, to see that no citizen exercises his rights in such a manner that this exercise violates the rights of another citizen. The basic principle contained in these rights is contained in the maxim 'Live and let live'. No group or individual can claim that he has a better right to do what he pleases irrespective of the fact that by so doing he is stopping the other from doing what he pleases.

We are, therefore, of the opinion that the rights conferred upon the citizen under Article 19 of the Constitution give him the liberty of doing something, but this doing something does not include the right of stopping another from doing what he wants to do. Article 19 does not grant the right to interfere with the liberty of another citizen. Therefore, where the conduct ascribed amounts to an interference with the liberty of another, it is difficult to accept the plea that the offender is only exercising a right which was granted to him under the Constitution. We, therefore, feel that on this basic ground alone the prohibitions contained in Section 1 of the Criminal Law Amendment Act cannot be held to be ultra vires of the Constitution.

9. So far as we are aware, there are only two Bench decisions in which the question which is before us has been considered. The first case was decided by a Bench of the Bombay High Court and it is *Damodar Ganesh v. State* : AIR1951 Bom459 . The learned Judges came to the conclusion that Section 7 of the Criminal Law Amendment Act is intra vires of the Constitution. The second case was decided by a Bench of our own High Court and it is *Vimal Kishore Mehrotra v. State of U.P.* : AIR1956 All56 .

In this case the learned Judges came to the conclusion that certain portions of Section 7 of the Criminal Law Amendment Act are definitely intra vires of the Constitution, though it may be questionable whether some others are also intra vires or not. In the case before them, they found that the conduct ascribed to the

accused was covered by those parts which were intra vires of the Constitution and so they did not definitely decide whether the other parts were intra vires or not.

They also held that these parts which were not held to be intra vires, even if they were ultra vires could be severed and Section 7 of the Criminal Law Amendment Act would not be ultra vires as a whole. The learned Judges who heard the Allahabad case made no reference to the Bombay decision cited above and, therefore, it appears that it was not placed before them. We have carefully perused these two decisions and we find ourselves in agreement with the view expressed by the Bombay High Court. In our opinion the whole of Section 7 of the Criminal Law Amendment Act, 1932 is intra vires of the Constitution. We now proceed to give our reasons for coming to this conclusion.

10. The main contention advanced before us is that parts of Section 7 of the Criminal Law Amendment Act prohibit innocuous acts such as peaceful picketing and this violates the basic right guaranteed to a citizen. The argument needs a careful examination. There are two decisions of the United States Supreme Court which to a certain extent support this contention. These decisions are *B, Thornhill v. State of Alabama* (1939) 84 Law Ed 1093 and another case which immediately follows this case, *Carison v. California*, (1939) 84 Law Ed 1104.

These two decisions were Pronounced by the same Judge on the same date. In these decisions it was held that Peaceful picketing cannot be stopped, because it infringes the basic rights given to the citizens. On the analogy of these decisions it was contended that Clause (b) of Section 7 of the Criminal Law Amendment Act and the middle part of Clause (a) are ultra vires of the Constitution, because under these provisions peaceful picketing is also forbidden.

These two decisions were considered by the learned Judges of the Bombay High Court, but they did not agree with the view expressed in these decisions. We also find it difficult to accept the view taken in these two American cases. It is so difficult to apply the rule of law laid down in one country to another country, for conditions of life vary materially and what may not create chaos in one country may do so in the other country. Even in *Thornhill's case*, (1939) 84 Law Ed 1093 the learned Judge observed:

'The State urges that the purpose of the challenged statute is the protection of the community from the violence and breaches of the peace, which it asserts, are the concomitants of picketing. The power and the duty of the State to take adequate steps to preserve the peace and to protect the privacy, the lives, and the Property of its residents cannot be doubted. But no clear and present danger of destruction of life or property, or invasion of the right of privacy, or breach of the Peace can be thought to be inherent in the activities of every person who approaches the premises of an employer and publicizes the facts of a labour dispute involving the latter. We are not now concerned with Picketing en masse or otherwise conducted which might occasion such imminent and aggravated danger to these interests as to justify a statute narrowly drawn to cover the precise situation giving rise to the danger.'

A reading of the extract shows that where picketing is to be done en masse or conducted otherwise which may occasion a danger to the liberty and property of others then in those cases it would be lawful to declare that picketing illegal, and it can no longer be called Peaceful picketing. At another place in the same judgment the learned Judge observed at pages 1100 to 1101 :-

'The statute as thus authoritatively construed and applied leaves room for no exceptions based upon either the number of persons engaged in the proscribed activity, the peaceful character of their demeanor, the nature of their dispute with, an employer or the restrained character and the accuracy of the terminology used in notifying the public of the facts of the dispute.'

11. This extract again shows that it was the sweeping character of the prohibition in that Provision of law which was being considered in that case that was responsible for declaring it void. We do not want to express any opinion on the allegations made against the applicant, lest they might prejudice the applicant, but we cannot help observing that the directions contained in the pamphlet which is the subject matter of the charge against him, if successfully carried out, would paralyse the administration and create an internal revolution and revolutions are seldom peaceful, The learned Judges of the Bombay High Court also dealt with this aspect of the case and they observed at page 465:

'Thirdly, it has to be remembered that Peace ful picketing by its nature should, in all probability, not result in any violence. But we have seen frequent instances where peaceful picketing may degenerate or has degenerated into violence. It may be that having regard to the development of the society in which we live, the standard of education among the masses and the sense of civic duty among the persons on whom these restrictions are sought to be imposed, the Legislature may well have thought fit to enact restrictions in the terms of Section 7 of the Criminal Law Amendment Act. In all such cases, the presumption should be in favour of the reasonableness of the restriction, although the final decision as to whether it is reasonable or not must under the Constitution, remain with the Court'.

If we may say so with respect, we are in entire agreement with the observations made above. In our opinion the analogies of American law cannot be applied to the conditions that exist in this country. Perhaps in the United States picketing has not yet been forged as a weapon to disrupt the administration and paralyse the functioning of the State departments nor has it ever been resorted to 'en masse' on a large scale. We also feel that unless a Court is in a position to determine that the restrictions imposed are definitely unreasonable it is not possible to come to the conclusion that such a law is ultra vires of the Constitution.

12. The Supreme Court in several cases has given a guidance as to how the question should be approached when the constitutionality of an enactment is challenged, We will cite only one extract from Hamdard Dawakhana v. The Union of India : 1960 CriLJ671 :

'Therefore when the constitutionality of an enactment is challenged on the ground of violation of any of the articles in Part III of the Constitution, the ascertainment of its true nature and character becomes necessary i.e. its subject matter, the area in which it is intended to operate, its Purport and intent have to be determined. In order to do so it is legitimate to take into consideration all the factors such as history of the legislation, the purpose thereof, the surrounding circumstances and conditions, the mischief which it intended to suppress, the remedy for the disease which the legislature resolved to cure and the true reason for the remedy; Bengal Immunity Co. Ltd. v. State of Bihar, : [1955]2SCR603 ; Chamarbaugwala v.

Union of India : [1957]1SCR930 ; Moti Das v. S. P. Sahi : AIR 1959 SC942 .

Another principle which has to be borne in mind in examining the constitutionality of a statute is that it must be assumed that the legislature understands and appreciates the need of the people and the laws it enacts are directed to Problems which are made manifest by experience and that the elected representatives assembled in a legislature enact laws which they consider to be reasonable for the purpose for which they are enacted. Presumption is, therefore, in favour of the constitutionality of an enactment. Charattjit Lal v. Union of India : [1950]1SCR869 ; State of Bombay v. F. N. Balsara, 1951 SCR 682 at p. 708 : (AIR 1951 SC 318 at p. 326); : AIR 1959 SC942 .'

13. The first duty of the Court is to make an attempt to harmonise the impugned law with the Constitution and if any harmony can be reached, it should be done. It is only where a harmony cannot be reached that a law has to be declared void. There is a presumption in favour of the constitutionality of an enactment and this presumption fails only where the conflict cannot be resolved. Applying this test we find that a harmonious interpretation is possible.

We have mentioned above the intention and purpose behind the enactment of the Criminal Law Amendment Act. It was to stop the Government from being paralysed and to protect persons from being coerced. If all the provisions of Section 7 of the Criminal Law Amendment Act are interpreted in the background of this purpose, we find no disharmony between the Constitution and the Criminal Law Amendment Act. In interpreting the words of a Statute that interpretation which brings about harmony should be preferred.

That the State should Prohibit the citizens from creating chaos and anarchy and to that extent limit their liberty must be held to be a reasonable restriction in the interests of the community. Even the alleged peaceful picketing can be a danger to public order when it is resorted to 'en masse' as was conceded even in the American decisions cited above, for 'picketing en masse' cannot be peaceful and it is clearly a coercion exercised by a group upon another group in order to force its will.

Only that picketing which is done by a few and which does not go beyond the length of persuasion and inducement and which does not restrain the others from doing what they please can be excepted. Looking closely to the words of Section 7 of the Criminal Law Amendment Act, we would take out the impugned portions and see whether they prohibit any peaceful pursuits. Section 7 of the Criminal Law Amendment Act runs as follows :-

'(1) (a) Whoever with intent to cause any person to abstain from doing or to do any act which such person has a right to do or to abstain from doingloiters at or near a place where such person or member or employed person resides or works or carries on business or happens to be or persistently follows him from place to place.....

(b) loiters or does any similar act at or near the place where a person carries on business, in such a way and with intent that any person may thereby be deterred from entering or approaching or dealing at such place.....'

The contention is that according to the terminology used in this section, a Peaceful picketer would be held to be guilty for all that he has to do to bring him in the clutches of the law is to loiter near the place where such person or member or employed person resides or works. The contention is not sound because this loitering becomes an offence only when it is done with intent to cause any person to abstain from doing or to do any act which such person has a right to do or to abstain from doing.

In other words it is only in those circumstances where the act of loitering amounts to a clear coercion that Section 7 of the Criminal Law Amendment Act would be applicable. Coercion by itself implies a restraint by use of force or show of force or by creating an apprehension in the mind of the victim that force would be used against him. It is not merely the act of loitering which has been made punishable, but such loitering from which on the facts proved it can be inferred that this loitering was for the purpose of exercising coercion.

We, therefore, feel that the word 'loitering' should be interpreted not merely as an act of hanging round, but where there is an element of menace in this hanging

round and only this aspect of loitering has been made an offence. Similarly in Clause (b) of Section 7 the word 'deterred' has been used which again qualifies the type of loitering which has been made punishable. In the Bombay decision the learned Judges observed at page 462 :-

'The use of the word 'deter' suggests engendering some kind of feeling of fear or fright in the person who wishes to enter or approach Or deal at the place, and it is, therefore, passible to argue that peaceful picketing would not strictly be covered by Clause (b) of Section 7(1). Even peaceful Picketing, as generally understood, may engender a feel- . ing of fear or fright and thus deter a person from entering or approaching any place of business, if it is carried on in a particular way or by Persons of particular status, type, persuasion of antecedents,' It would, therefore, be seen that plain and simple loitering has not been made Punishable and it is only that loitering which amounts to coercion which has been made an offence. We think the words of Clauses (a) and (b) of Section 7 of the Criminal Law Amendment Act are capable of this interpretation and as this interpretation is not only consistent with the object of the enactment but it also harmonises Section 7 of the Criminal Law Amendment Act with the Constitution, this interpretation should be preferred. Interpreted this way, Section 7 ceases to be an encroachment on any rights but really becomes a safeguard for the protection of those very rights.

14. Even in the American cases the impugned law was held to be void because mere persuasion and inducement could also be made Punishable under that provision. The interpretation which we have put uPon the word 'loitering' will not make it possible for the provisions of this Section to be utilized against strictly peaceful picketers. Where only one or two persons do peaceful picket-ing without using any threats or without putting any physical obstruction or restraint upon any person, they would not come under the definition of loitering. It would be a matter of evidence in the case whether the picketing advocated by the applicant was legal or illegal, peaceful or coercive, and we do not want to express any opinion on that point.

15. The counsel for the applicant placed before us a decision of the Supreme Court in the Superintendent, Central Prison, Fatehgarh v. Dr. Ram Manohar Lohia,

: 1960 CriLJ1002 . The view expressed in this case does not help the applicant because there is a great deal of difference between the terminology of Section 3 of the U. P. Special Powers Act, 1932 and the words of Section 7 of the Criminal Law Amendment Act. In the first Act the words were too general and sweeping and as observed by the learned Judges even innocuous speeches were prohibited by threat of punishment. Section 7 of the Criminal Law Amendment Act does not threaten any innocent persons and even if it is held that it does the offending part can be severed.

16. In view of what we have observed above, we are of the opinion that Section 7 of the Criminal Law Amendment Act is intra vires of the Constitution of India. We are also of the opinion that if it is found that the two sub-clauses that deal with loitering are ultra vires of the Constitution, they are severable and they can be separated. Of course if the words of Section 7 had been such that a severance was not possible, another view might have been taken, but we agree with the view expressed by the learned Judges in Vimal Kishore Mehrotra's case : AIR1956 All56 that these words are severable.

In the first place we think that the entire, Section 7 of the Criminal Law Amendment Act is intra vires, but in case the other view is preferred, the first part of Clause (a) of Section 7 is definitely intra vires. When the Magistrate rejected the prayer made by the applicant before him, he came to the conclusion that Section 7 of the Criminal Law Amendment Act so far as it relates to the allegations in this case was not void. Even the counsel for the applicant conceded that the prohibition contained in this first part of Clause (a) and the last part of the same clause are not in conflict with the rights given under Article 19 of the Constitution.

17. We have deliberately avoided referring to the merits of the case and we have refrained from expressing any opinion as to which part of Section 7 will cover the conduct of the applicant if the allegations made against him are proved. We leave it to the trial Court.

18. In view of the conclusions to which we have reached, we send this case back to the Magistrate for disposal. A copy of this judgment shall be sent to the Magistrate along with the file of the case with the direction that he should now

proceed with the case in conformity with our decision.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com