

Surendra Kumar Lath Vs. State

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Court : Orissa

Decided On : Apr-25-1977

Reported in : 43(1977)CLT671; 1977CriLJ1399

Judge : S. Acharya, J.

Appellant : Surendra Kumar Lath

Respondent : State

Judgement :

ORDER

S. Acharya, J.

1. The petitioner stands convicted for the offences under Rules 43(5) and 46(5) of the Defence and Internal Security of India Rules, 1971 (hereinafter referred to as the 'Rules') and has been sentenced to R. I. for six months on each count. He also stands convicted Under Section 143, I. P. C. and has been sentenced thereunder to undergo R. I. for two months. The sentences have been ordered to run concurrently.

2. The prosecution case against the petitioner, in short, is that the petitioner, along with four other persons, who were tried together in the same trial, were members of a banned organisation, and they on 18-12-1975 at about 5.30 P. M. came out in a procession in the Sambalpur town shouting objectionable and prejudicial slogans

and were holding two placards (M. Os. I and II) containing prejudicial reports. While they were so moving in a procession, the petitioner and the other four persons with him were apprehended near the Gol Bazar Crossing, and the placards held by them were seized from their possession as per Ext. 1. On the aforesaid allegations the petitioner and his four co-accused were charged for offences under Rule 33(5) read with Rule 60(4) Rules 43(5) and 46(5) of the Rules and Under Section 143, I. P. C. read with Section 34 of the Police Act.

3. The accused persons completely denied the prosecution case against them.

4. The trial court, however, acquitted all the accused persons of the charges under Rule 69(4) of the Rules and Under Section 34 of the Police Act, and convicted them under Sub-rule (5) of Rules 33, 43 and 46 of the Rules and Under Section 143, I. P. C.

5. The appellate court on a consideration of the oral and documentary evidence on record arrived at the finding that there was no reliable evidence to establish as to what slogans the accused persons were shouting while they were moving- in the procession. It also arrived at the finding that the prosecution could not establish the charge under Rule 33(5) as it could not establish that the accused persons were members of the R. S. S. S. and B. J. S., which were banned organisations, and that even if it was assumed that they were members of the said organisations, it could not be established that the accused persons managed or assisted in managing the said banned organisations. Of the two placards seized from the possession of the processionists, the court below found that the placard M. O. II, which was held by the petitioner, did not contain any prejudicial report, and so holding the said placard and/or publishing the contents of the same did not amount to a prejudicial act or publishing a prejudicial report.

With regard to the other placard M. O. I, the court below has however held that it contains a prejudicial report, and as the accused persons published that report they are guilty of the offence under Rule 43(5) of , the Rules. It has also been held that as the accused persons had in their possession that placard (M. O. I.) containing a prejudicial report they are guilty of the offence under Rule 46(5) of the Rules. As the accused persons marched together in a procession with, M. O. I.

containing prejudicial report and committed offences under Rules 43(5) and 46(5) of the Rules, they were all members of an unlawful assembly and hence are guilty Under Section 143, I. P. C.

6. Mr. Panda, the learned Counsel for the petitioner, contends that as M. O. I. does not contain any prejudicial report, the possession or publication of the same does not constitute any offences under Rule 43(5) or 46(5). As possession or publication of the contents of that placard does not amount to any offence, the petitioner and the accused persons cannot also be held 1 guilty Under Section 143, I. P. C. for merely marching in a procession with the said placard.

7. Rule 48 prohibits various acts including the doing of any 'prejudicial act' or publication of any 'prejudicial report' which alone are relevant for this case. Rule 46 prohibits possession of certain things including a document containing any prejudicial report, which only is relevant for this case. Clause 5 of each of the above Rules provides the punishment for contravening any of the provisions of the said Rules.

8. In this case for the purpose of assessing as to whether the conviction of the petitioner under Rule 43(5) or under Rule 46(5) is correct or not one has to examine if the petitioner did any 'prejudicial act' or published or possessed any 'prejudicial report'.

9. The term 'prejudicial act' has been defined in Rule 36(6) of the Rules. It is admitted by the learned Counsel appearing for the State that out of the acts mentioned in clauses (a) to (s) of Rule 36(6), Clause (e), i e, 'to bring into hatred or contempt, or to excite disaffection towards the Government established by law in India' is the only clause which is relevant for the purpose of this case, and the acts mentioned in the other clauses are not relevant for our consideration.

'Prejudicial report' has been defined in Sub-rule (7) of Rule 36 as follows :

'Prejudicial report' means any report, statement or visible representation, whether true or false, which, or the publishing of which, is or is an incitement to the commission of, a prejudicial act.

10. In this case the petitioner has been convicted of the different offences mentioned above for publishing and possessing the 'prejudicial report' contained in M. O. I while he along with others were moving together in a procession in the Sambalpur town. So in this case it is at first to be seen if the contents of the placard M. O. I can bring into hatred or contempt, or excite disaffection towards the Government established by law in India. The contents of M. O. I are as follows :

Indira Ekachhatrabad Dhwanasa Heu'. A fair translation of the above into English would read as follows :

Indira's autocracy should perish.

The said caption does not in any manner bring into hatred or contempt, or excite disaffection towards the Central and/or the State Government established by law in India. The contents of M. O. I may at best amount to a criticism of the policy, attitude, disposition or stance of the particular person mentioned therein, but by no means it can be said that the caption intended or in any manner was likely to bring into hatred or contempt or to excite disaffection towards the Government established by law in India.

11. The word 'Government' has not been defined anywhere in the Constitution Of India. From the different provisions in the Constitution the word 'Government' obviously appears to mean an executive machinery of the Union, and the States consisting of the President and/or the Governors acting with the aid and advice of their councils of ministers.

In Mrs. Annie Besant's case reported in ILR 39 Mad 1085 ; AIR 1918 Mad 1210 ; 18 Cri LJ 157 (SB), it has been said :

Government denotes an established authority entitled and able to administer the public affairs of the country. On the other hand Government is not identical with any particular individuals who may be administering the Government.

In Kedar Nath's case reported in : AIR 1962 SC955 , their Lordships have held :. the expression 'the Government established by law' has to be distinguished from the persons for the time being engaged in carrying on the administration.

'Government established by law' is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted.

Batty, J. in *Emperor v. Bhaskar Balwant* (1906) 8 Bom LR 421 at p. 438 : 4 Cri LJ 1 at p. 16 explains the word 'Government' as follows :

What is contemplated under the section is the collective body of men--the Government defined under the Indian Penal Code.

...It means the person or persons collectively, in succession, who are authorised to administer the Government for the time being. One particular set of persons may be open to objection, and to assail them and to attack them and excite hatred against them is not necessarily exciting hatred against the Government, because they are only individuals and not representatives of that abstract conception which is called Government.... The individual is transitory and may separately be criticised but that which is essentially and inseparably connected with the idea of the Government established by law cannot be attacked without coming within this section.

In the decision reported in AIR 1939 Gal 529 ; 40 Cri LJ 782 (SB) (*Emperor v. Hemendra Prosad*), it has been held that although in popular language the ministers may be referred to as the Government, they are not the Government within the meaning of Sections 17 and 124A of the Indian Penal Code.

In the Full Bench case of the Allahabad High Court in *Bam Nandan's case* (AIR 1959 All 101) a large number of decisions on this point have been considered and it has been held that Government is 'the institution consisting of President and the Governors acting with the aid and advice of their councils of ministers, and not the actual persons holding the offices of the President and Governors and the ministers advising them'. Their Lordships have further held :.Exciting a feeling of hatred, contempt, or disaffection towards a person holding the office of the President or a Governor or a Minister is, therefore, not exciting such a feeling towards the Government and is not punishable Under Section 124A.

12. So, the actual persons holding the offices of the President, Governors and of the Central or State ministers do not constitute the 'Government' established by law in India, 'Government established by law in India' cannot certainly be equated or identical with any particular individual who may be working in some capacity or other to keep the machinery of the Government functioning. That being so, if any act of exciting disaffection, hatred or contempt is done or directed only against any such individual, it may not necessarily excite hatred, disaffection or contempt against the Government established by law in India.

13. In the present case, the caption in the placard M. O. I in effect criticises the personal attitude, policy, disposition or stance of the then Prime Minister of India, and there is nothing therein against the entire Government established by law and it does not bring the Government as such into hatred, contempt or disaffection, In a democratic country such criticisms of an elected representative holding an office in the Government cannot be avoided or shut out. The aforesaid criticism reflects the opinion of the accused persons about the then Prime Minister of India. If citizens of independent India feel that a particular person at the helm of affairs of the Government is not conducting himself in a proper manner as expected of him, they should be able to speak out in public their grievance against that person so that he can know the reactions of the persons for whom he is discharging his duties in the Government, and can modulate his stand, stance or attitude in performing his job in the Government on a consideration of the weight and the bona fides of the criticism. For obvious reasons this applies with greater force when the functionary is an elected representative. Such utterances in public also enable people to gauge the weight and the general acceptability of the criticism levelled by them against such a functionary. Such criticisms of the representatives of the people holding office in the Government should be considered as necessary instruments in the hands of the citizens to control the activities of such persons in the Government. As the citizens of free India have to remain vigilant about their rights and obligations, they have also to remain vigilant and watchful about the activities and attitude of the persons whom they have elected to hold office in the Government, and therefore in public interest they should be allowed to voice their opinion about the working of their representatives in the Government. But if criticisms' directed against such individuals ultimately reflect against any

Government so as to cause disaffection, hatred or contempt against that Government, then such criticisms may come within the term 'prejudicial acts' as defined in the Rules. The caption in the placard M. O. I can by no stretch of imagination be said to be a criticism of any Government, nor by its publication it was intended or it was likely to bring into hatred or contempt or to excite disaffection towards any Government established by law in India.

14. The decision reported in 1977 Cri LJ 335 (Pat), Anirudh Singh Azad v. State of Bihar was in respect of a pamphlet which described Smt. Indira Gandhi as a dictator. It also said that dictators go the same way as Ravan, Kansa, Julius Caesar and Hitler and that the Government by Smt. Indira Gandhi must be opposed fearlessly and for that purpose the people should come to the fold of Chhatra Sangha and Loka Sanghar-sha Samities. Distribution of the said pamphlet was described by the State agencies as 'prejudicial acts' within the meaning of Rule 86(6) of the Rules, Even though the said pamphlet contained criticism against the Government by Smt. Indira Gandhi the court held that though the contents of the said pamphlet were couched in very harsh language, yet those contents did not amount to anything more than hurling of abuses against a particular person or a party in power of the Government. The learned Judge held :.Whatever else may be said about its contents, possibly it is difficult to call it an act of exciting disaffection, hatred Or contempt against the Government of India. Unless the action is such as may tend to disrupt the Government by inciting violence, it would be difficult to call it an act inciting disaffection, hatred or contempt against the Government.

15. On the above facts and finding, I am of the opinion that the contents of the placard M. O. I were not intended or likely to bring into hatred or contempt or to excite disaffection towards the Government established by law in India. Accordingly the publication of the same did not amount to a prejudicial act and publication and/or possession would not amount to an offence under Rule 43(5) or Rule 46(5) of the Rules.

16. As the possession or publication of M. O. I does not constitute any offence, the accused persons, including the petitioner, cannot be held guilty for being members

of an unlawful assembly merely because they moved together in a procession with the said placard with them. Hence the conviction of all the accused persons including the petitioner Under Section 143, I. P. C. is bad in law.

17. On the above considerations the conviction of the accused persons including the petitioner under Rules 43(5) and 46(5) of the Rules and Under Section 143, I. P. C. is bad in law.

Accordingly, the conviction of the petitioner under the aforesaid provisions and the sentences passed against him thereunder are set aside and he is acquitted of the same.

The Revision is allowed.

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