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Court : Punjab and Haryana

Decided On : Feb-07-1958

Reported in : AIR1959P& H379; 1959CriLJ1022

Judge : Tek Chand, J.

Acts : Punjab Secrurity of State Act, 1953 - Sections 9; Penal Law; Code of Civil Procedure (CPC) , 1908

Appeal No. : Criminal Revision No. 762 of 1957

Appellant : Mahipat Ramjas

Respondent : The State

Advocate for Def. : K.S. Kwatra, Adv. for;Adv. General

Advocate for Pet/Ap. : Rajindar Sachar, Adv.

Disposition : Petitions allowed

Judgement :
ORDER

Tek Chand, J.

1. These are two connected petitions of revision and may be disposed of by one judgment. In Criminal Revision No. 762 of 1957, the petitioner Mahipat has been

prosecuted under Section 9 of the Punjab Security of State Act, No. 12 of 1953, for making an objectionable speech in village Ellenahad on 10-2-1956. He is said to be a worker of Socialist Party and was addressing a public meeting organised by the Socialists. The objectionable words uttered in Urdu, which are the subject-matter of the charge, may be translated as under :

'This despicable and mean Magistrate (Shri Nagpal Magistrate First Class, Sirsa) does not Know that he is drawing his pay from our treasury. Does this despicable person not know that if his mother, sister father or brother were to remain hungry for two days, then he would feel the pain? This Magistrate is most contemptible and mean. If Socialist Party were in power, then such a contemptible and mean Magistrate would be stripped and flogged. This bastard does not know that he is drawing his salary from our treasury.'

2. The accused denied having made the above speech, but Shri Rule N. Mahna, Magistrate, on consideration of the prosecution evidence, came to the conclusion that the speech containing the above words was made by him. The Magistrate was of the view that this utterance was within the mischief of Section 9 of the Act and finding him guilty, he sentenced him to nine months' rigorous imprisonment. The Additional Sessions, Judge, Hissar, agreed with the view of the Magistrate and maintained the conviction as well as the sentence.

3. The facts of the case from which Criminal Revision No. 763 of 1957 has arisen, are, that while the case under Section 9 of the Punjab Security of State Act, 1953, was pending in the Court of Shri G. L. Nagpal, Magistrate First Class, Sirsa, the accused was being taken on 15-3-1956, from the judicial lock-up, Sirsa, to the court-room of Shri Nagpal. It was about noon and while Shri Nagpal was busy doing judicial work in his Court, the accused raised objectionable slogans within the hearing of the Magistrate. These slogans were 'Goonda Nagpal Magistrate ki goonda gardi nahin chalegi. Ise jail ki kothri men band kar do.'

4. The uttering of the above slogans led to his second prosecution under Section 9 of the Punjab Security of State Act. The Magistrate, Shri R. N. Mahna, was of the view that he was guilty under Section 9 of the Act and he accordingly sentenced the accused to rigorous imprisonment for nine months. An appeal against the

conviction and sentence was dismissed by the Additional Sessions Judge, Hissar.

5. Mr. Rajindar Sachar, appearing on behalf of the petitioner, has argued that assuming the accused having used in his speech the words attributed to him and having raised the objectionable slogans, no offence under Section 9 of the Act has been committedby him. Section 9 of the Punjab Security of State Act runs as under :

'Whoever-

(a) makes any speech, or

(b) by words, whether spoken or written, or by signs or by visible or audible representations or otherwise publishes any statement, rumour or report,

shall, it such speech, statement, rumour or report undermines the security of the State, friendly relations with foreign States, public order, decency or morality, or amounts to contempt of Court, defamation or incitement to an offence prejudicial to the security of the State or the maintenance of public order, or tends to overthrow the State, be punishable with imprisonment which may extend to three years or with fine or with both.'

6. Mr. Sachar argues that the words in the speech do not undermine the security of the State, friendly relations with foreign States, public order, decency or morality. He also contends that, neither the speech nor slogans amount to contempt of Court of the type which may be either prejudicial to the security of the State or to the maintenance of public order. It is true that even if the words amount to contempt of Court, that alone is not sufficient for bringing the case within the mischief of this provision. The law requires that the words amounting to contempt of Court should further be prejudicial to the security of the State or to the maintenance of public order. I have been referred to a Division Bench authority of this Court in Mani Ram Bagri v. State of Punjab, 58, Pun LR 259 : (AIR 1956 Punj 169).

7. With a view to make the meaning of Section 9 clear, Khosla J. in that case expanded the provisions so as to run as under :

'Whoever-

(a) makes any speech, or

(b) by words, whether spoken or written, or by signs, or by visible or audible representations or otherwise publishes any statement, rumour or report, shall

(A) if such speech, statement, rumour or report undermines the security of the State, undermines friendly relations with foreign States, undermines public order, undermines decency or undermines morality, or

(B) if such speech, statement, rumour or report amounts to contempt of Court prejudicial to the security of the State or the maintenance of public order, amounts to defamation 'pre-judicial to the security of the State or the maintenance of public order, or amounts to incitement to an offence prejudicial to the security of the State or the maintenance of public order, or

(C) if such speech, statement, rumour or report tends to overthrow the State, be punishable with imprisonment which may extend to three years or with fine or with both.'

8. The main question that is to be seen in this case is whether the offensive words fall within the narrow ambit of Section 9 of the Punjab Security of the State Act. It is an Act narrowly drawn and limited in scope. It is to be construed in a manner so as not unduly to impair liberty of expression. In the words of Lord Abinger in Henderson v. Sherborne, (1837) 150 E.R. 743,

' x x x x that a penal law ought to be construed strictly, is not only a sound one, but the only one consistent with our free institutions. The interpretation of statutes has always, in modern times, been highly favourable to the personal liberty of the subject, and I hope will always remain so.'

9. But this rule is applicable where an equivocal word or ambiguous sentence leaves a reasonable apprehension as to its meaning, that benefit of doubt should be given to the subject and against the Legislature which has failed to explain itself, but this general rule yields to the paramount rule that every statute, is to be

expounded according to its expressed or manifest intention. In construing the statute, it is desirable to ascertain the legislative intent as effectuated by the language used and to harmonize the words in the context, with the policy and object of the Legislature. The Act was passed principally for ensuring the security of the State and for maintenance of public order.

10. The first question, therefore, is to see if the words used in the slogans and in the speech undermine decency or morality. The words without doubt are vituperative, vulgar, highly offensive to good taste and to refined feelings. The language! is insulting though not indecent. The words are abusive but not conducive to immorality. It was a wanton and vicious attack on the Magistrate, offending his self-respect and impairing his dignity. But I will hesitate to consider the language used as either obscene or otherwise offensive to decency or modesty,

11. In its general sense, decency means propriety or seemliness of action, speech, etc., conforming to the standards in vogue among civilized people. But the words 'decency or morality' used in the context of Section 9 do not refer 'to vague or general standards of appropriateness, in conformity with what is becoming or considered to be in good taste. To my mind, the use of the words 'decency or morality' suggests that the language that the law penalizes must be obscene, signifying lewd or lustful ideas, offensive to modesty, and forbidden by delicacy, purity or chastity. A language which is otherwise scurrilous, insulting or abusive need not be obscene, suggestive of depravity and such as is calculated to corrupt minds open to immoral influences. The language used by the petitioner can be termed vulgar, signifying lack of culture or refinement, but not obscene or indecent in the sense of being offensive to modesty or morality. This Act, forbids speech which undermines decency or morality. The use of the language, employed by the petitioner, is not calculated either to overthrow or enfeeble decency or morality.

12. I am constrained to hold that the slogans and the speech do not come within the mischief of Section 9, not being offensive to decency or morality.

13. In an unreported judgment of Khosla J. in Criminal Revision No. 25 of 195S, Sultan Singh v. The State, a case which also arose under Section 9 of the Punjab

Security State Act, 1953, the words used with respect to a Deputy Superintendent of Police by the accused were -

'Let such a D. Section P. be stripped and Bogged.' While acquitting the petitioner, Khosla, J. observed- 'The opinion of the trial Magistrate that the passage is indecent, merely because there is a mention of the D.S.P, being stripped and flogged is to stretch the law of decency beyond the strain that it can bear. I can find nothing in the passage which violates any one's sense of decency or morality. It is no doubt a somewhat violent criticism of the D.S.P. but it cannot be said to contain anything which would undermine the security of the State or the maintenance of public order. No one on hearing the speech would proceed to strip the D. S. P. and flog him.'

14. The next question is, whether the words amount to contempt of Court, prejudicial to the security of the State or the maintenance of public order, There is no doubt, that the words used with respect to the Magistrate, were highly contemptuous and the petitioner was guilty of contempt of Court, but thatalone is not sufficient for establishing his guilt under Section 9. The contemptuous words should also be prejudicial to the security of the State or to the maintenance of public Order. It has not been suggested, that by the use of the words, the security of the State was or could be prejudiced. It was, however, contended that the offensive language did put in jeopardy public order.

15. The term 'public order' is synonymous with public peace, which means a state of rest or tranquillity which is enjoyed by a community where good order reigns among its members. It is an invisible sense of security which every man feels as essential to his well-being, which is the aim of all good governments. The language, which without doubt, is filthy and scurrilous, cannot be said to be such, as can cause disturbance of public order, or such, as can stand in the way of its maintenance. Decent people, who must have heard such words when they were uttered, either in the verandah of the Court or at the place where the speech was delivered, must have felt offended.

The Magistrate must have felt incensed, but it cannot be said that for this reason the words uttered were prejudicial to the maintenance of public order. Surely, the

Magistrate, whose feelings must have been actually hurt, or the public assembled in his Court, on hearing the words, would not have disturbed public order. There is no suggestion that there was any apprehension of any riots breaking out, in consequence of the objectionable speech and slogans. The violent language does not appear to me to be of a type which would have led to any violent action.

16. In Kartar Singh v. State of Punjab, (S) AIR 1956 SC 541, vulgar abuses were hurled against the Chief Minister and the Transport Minister of Punjab and filthy slogans were uttered. Their Lordships at the Supreme Court expressed the view, that howsoever reprehensible the slogans were, they certainly would not have the effect of undermining the security of the State or public order, or decency or morality. Bhagwati J. said -

'Even assuming that some members of the public who had congregated near the Parbhat Studio felt annoyed at these slogans and took them ill it is far cry from that annoyance to undermining of the public order, decency or morality or incitement of an offence prejudicial to the maintenance of public order. The only offence prejudicial to the maintenance of public order which could be thought of in this context was that of rioting and there is not the slightest evidence on record to Justify an inference that the effect of the utterance of these slogans by the appellants against the Transport Minister and the Chief Minister, would, but for the police arrangements, have led to the undermining of the public order or would have led to rioting which would be certainly prejudicial to the maintenance of public order.'

17. In Sodhi Shamsher Singh v. State of Pepsu, AIR 1954 SC 276, the Chief Justice of Pepsu High Court was subjected to a scurrilous attack upon his character and integrity. The petitioners, who were said to have published the pamphlets, were put under detention under the Preventive Detention Act. Applications were made to the Supreme Court for issuance of writs of habeas corpus on behalf of the detenus. The orders of detention Were held to be illegal and set aside. B. K. Mukherjea J., who delivered the judgment of the Supreme Court, observed-

'Whatever, other remedies that might be open to the aggrieved party or to the Government to prevent such scurrilous attack upon the head of the judiciary in the State, we do not think that the provisions of the Preventive Detention Act could be made use of for that purpose. The utmost that can be said isthat the allegations in the pamphlets are calculated to undermine the confidence of the people in the proper administration of justice in the State. But it is too remote a thing to say, therefore, that the security of the State or the maintenance of law and order in it would be endangered thereby.'

18. It is utterly futile to suggest that fundamental right to freedom of speech and expression is absolute. The constitutional guarantee under Article 19 of the Constitution does not permit unrestrained or unbridled licence. It is subject to well-defined limitations and the exercise of the right is susceptible to reasonable restrictions mentioned in Article 19(2). The Punjab Security of the State Act punishes the abuse of the right of freedom of speech in those cases, which are specifically excepted by the Constitution and fall within the reservation under Clause (2) of Article 19, that is to say, 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 prejudicial to the security of the State or the maintenance of public order. Under our Constitution a very narrow and stringent limitations have been set to permissible legislative abridgment of the right of free speech and expression.

19. The words used in this case with respect to the Magistrate deserve severe censure, but the accused cannot be convicted if his utterances do not transgress the statutory inhibitions. There lurk far-reaching constitutional questions relating to freedom of speech and expression, despite the irresponsible and provocative utterance of the accused. The Courts will resist attempts to curb or abridge the fundamental freedoms, save in cases, where the objectionable words are clearly covered by exceptions provided by the Constitution, to prevent grave and immediate danger to interests which the State is required to lawfully protect. Constitutional provisions which secure fundamental guarantees, have to be construed liberally in favour of the subject.

20. After giving anxious thought to the facts of this case, and to the requirements of law, I do not think I can uphold conviction of the accused, without doing violence to the language of Section 9 of the Punjab Security of State Act. The prosecution of the accused-petitioner under this provision was misconceived and resort should have been made to other penal or remedial measures under which the accused might be held liable.

21. I allow both the petitions and set aside the convictions and sentences of the petitioner.

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