

P.A. Jacob Vs. the Superintendent of Police, Kottayam and anr.

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SooperKanoon Citation : sooperkanoon.com/716702

Court : Kerala

Decided On : Jul-27-1992

Reported in : AIR1993Ker1

Judge : Chettur Sankaran Nair, J.

Acts : [Constitution of India](#) - Articles 14, 19, 19(1) and 21; Kerala Police Act, 1961 - Sections 19 and 23; Code of Criminal Procedure (CrPC) , 1974 - Sections 133

Appeal No. : O.P. No. 10459 of 1991

Appellant : P.A. Jacob

Respondent : The Superintendent of Police, Kottayam and anr.

Advocate for Def. : Augustine Joseph, Government Pleader

Advocate for Pet/Ap. : P.C. Chacko and; Roy Chacko, Advs.

Judgement :

ORDER

Chettur Sankaran Nair, J.

1. Claiming a fundamental right to use a loud speaker at public meetings to voice his views, petitioner seeks to restrain respondents from interfering with the use of a loud speaker by him.

2. Petitioner belongs to a denomination of Christianity, known as 'Knanaya' Christians. Thomas of Cana came to India from Mesopotamia in 344 A.D. and organised the south eastern church of Syrian Christians, as St. Thomas organised the north eastern church in A.D. 52. The followers of Thomas of Cana, came to be known as 'Knanaya' Christians. Some of the Knanaya Christians follow the rites of the Catholic Church, while others follow the Marthomite rites. Members of 'Knanaya' denomination do not marry outside that denomination, it is said -- with a view to preserve the purity of stock. This practice is denounced by petitioner. In his view, a Knanaya Christian should be free to marry anyone, professing the faith of Christianity. To propagate his views in this regard, petitioner sought permission to hold meetings using sound amplifiers. Second respondent-- Sub-Inspector of Police, granted permission (Ext. P1), but withdrew the permission later, apprehending that views of petitioner may incite to violence the conservatives in the Church. Incidentally, this apprehension or misapprehension, has been proved wrong, as a meeting could be held pursuant to interim orders of this Court, admittedly without any disturbance.

3. Petitioner submits that freedom of speech and expression imply freedom to use amplifying devices and cited the decision of the Gujarat High Court in *Indulal v. State*, AIR 1963 Guj 259 : (1963 (2) Cri LJ 502) in support of his contention. The Gujarat High Court relied on the opinion of the Judicial Committee in *Francis v. Chief of Police*, (1973) 2 AER 251 to hold that freedom of speech included freedom to circulate one's views, in any manner. The Allahabad High Court however took a contrary view, in *Rajnikant v. State*, AIR 1958 All 360 : (1958 All LJ 56). H.M. Seervai (Constitutional Law (I) 3rd Edn. page 504) prefers the view of the Gujarat High Court. There is also a decision of this Court in *D. Ananda Prabhu v. District Collector*, 1974 KLT 291 : (AIR 1975 Ker 117) following the view of the Gujarat High Court. But this Court did not consider the question whether a fundamental right was involved in the matter of using a loud speaker. The learned Judge assumed that there was a fundamental right, and proceeded to consider the reasonableness of a restriction imposed. After referring to the decision of the Gujarat High Court, the learned Judge observed:

'It appears to me that the right conferred by Article 19(1)(a).....have to be understood in the same way (as in Francis's case). I do not propose to examine this aspect, any further.'

No decision of the Apex Court on this aspect was brought to my notice.

4. The core question is whether the Constitution guarantees a right to use a sound amplifying device, or whether use of such a device is part of the right to freedom of speech. Freedom of speech and expression are rights cherished by all free societies. That freedom implies not only freedom to express the thought we approve of, but freedom to express the thought, we hate. A debate of ideas is essential in any free society. No one can forbid legitimate efforts to change the mind of society by expression of views, or advocating different persuasions or even by questioning the existing order. J.S. Mill said :

'If we never hear questions, we will forget the answers.'

Maintenance of opportunity for free political discussion is thus a cardinal principle of our Constitutional system. History bears witness to this process. Debate, brought in its wake, new thoughts and new ethos. Time has upset many fighting faiths. What was once regarded as blasphemy, became the truth of another generation. P2p15. As observed in *Abrams v. U.S.* (250US616):

'Men may come to believe, even more than they believe the very foundations of their own conduct, that the ultimate good desired is better reached by a free trade in ideas that the best test of truth is the power of thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely may be carried out. That is the theory of our Constitution.'

(Holmes, J.)

This was reiterated in *U.S. v. Schwimmer* (297 US 644):

'Every idea is an incitement.....eloquence may set fire to reason. If in the long run the belief expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community, the only meaning of free speech is that they

should be given their chance to have their way.'

6. But, there are frontiers even to freedoms. Liberty is not the right to perpetuate licentiousness. Free speech does not protect sedition, libel or obscenity. It does not sanction intrusion into rights of others.

To be let alone, is as much a freedom, as the freedom to be heard. Right to silence or solitude, is as much a right, as right to expression is. What is negatively the right to silence, is positively freedom from injury by noise.

7. The amplitude of the right of free speech in its various facets enshrined in Article 19 of the Constitution, has been considered by the Supreme Court of India in *Romesh Thappar v. The State of Madras*, AIR 1950 SC 124 : ((1950) 51 Cri LJ 1514); *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*, AIR 1986 SC 515 : (1985 Tax LR 2451); *Hamdard Dawakhana v. The Union of India*, AIR 1960 SC 554: (1960 Cri LJ 735); *Reliance Petrochemicals Ltd. v. Proprietors, Indian Expresss, Bombay (P) Ltd.*, AIR 1989 SC 190 : (1989 Tax LR 66) and other cases.

8. Likewise, the right to free speech, embodied in the First Amendment in the American Constitution, has come for consideration of the United States' Supreme Court time and time again (*Schenck v. United States*, 249 US 47; *Abrams v. U.S.*, 250 US 616; *Gitlow v. New York*, 268 US 652; *Whitney v. California*, 274 US 357; *De Jonge v. State of Oregon*, 299 US 353; *West Virginia State Board v. Barnette*, 319 US 624; *Brandenburg v. State of Ohio*, 395 US 444; *Hess v. Indiana*, 414 US 105; *Lehman v. City of Shaker Heights*, 418 US 298, *Breard v. City of Alexandria*, 341 US 622).

9. In *Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India*, AIR 1986 SC 515, the Supreme Court of India highlighted the free speech content of Article 19 and its parameters. The right is not absolute. For that matter, under the First Amendment, restrictions are not alien to the constitutional . scheme. In *Roth v. U.S.* (354 US 746), the Supreme Court held that obscenity is not a protected right. In *Mear v. Minnesota* (283 US 697) and *Times Film Corporation v. Chicago* (365 US 43), the United States' Supreme Court held that restraints on free speech were

constitutionally permissible. *Chaplinsky v. New Hampshire* (315 US 568); *Feiner v. New York* (340 US 315); *Dennis v. U.S.* (341 US 494), *Niemotko v. Maryland* (340 US 268), *Poulos v. New Hampshire* (345 US 395), *Cox v. Louisiana* (379 US 536), *Public Utilities Commission v. Pollak* (343 US 451), *Adderley v. Florida* (385 US 39) and *Grayned v. City of Rockford* (408 US 104) are also authorities for the same proposition.

10. However wide a right is, it cannot be as wide, as to destroy similar or other rights in others.

Jefferson said ;

' No one has a natural right to commit aggression on the equal rights of another.'

J.S. Mill said:

'If all mankind minus one were of one opinion, and if only one person was of contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.'

Freedom or right, is not an exclusive matter between the State and a citizen. One man's freedom, may destroy another man's freedom. A community of rights, not always synchronizing with each other, have to be harmonised, if any freedom is to be real. In *Abrams v. U.S.* (250 US 616) the United States' Supreme Court said :

'Nobody can be compelled to accept any idea... not even of national unity.'

Again in *Breard v. City of Alexandria* (341 US 622), the Court highlighted the rights of the recipient or captive audience:

'Freedom of speech or press, does not mean that one can talk or distribute where, when and how one chooses. Rights of those, other than the advocates, are involved. By adjustment of rights we can have, both liberty of expression and an orderly life.'

In this area, there are no prophets who can commend attention, and for that matter, not all propagandists and pamphleteers, are prophets.

11. The right to speech implies, the right to silence. It implies freedom, not to listen, and not to be forced to listen. The right comprehends freedom to be free from what one desires to be free from. What could be more basic, to the concept of freedom than this? Justice Douglas articulated this freedom as:

'.....right to be let alone is the beginning of all freedoms.... When we force people to listen to another's ideas, we give the propagandist a powerful weapon. One man's lyric may be another's vulgarity.'

12. Free speech is not to be treated as a promise to everyone with opinions and beliefs, to gather at any place and at any time and express their views in any manner. The right is subordinate to peace and order. Referring to the natural limits of liberty, J.S. Mill said:

'Liberty of an individual must be thus far limited -- he must not make himself a nuisance to other.'

13. In this background, the question whether use of a loud speaker is a fundamental right, or part of the complements of a fundamental right, has to be viewed.

14. With great respect, I find it difficult to agree with the view of the Gujarat High Court in *Indulal v. State* (AIR 1963 Guj 259), that freedom of Speech includes freedom to use sound amplifiers. In *Francis v. Chief of Police* (1973 (2) All England Reports 251), relied upon by the Gujarat High Court to find an absolute freedom, Pearson L.J. pointed out that:

'Some regulation of the use of loud speaker is required in order that citizens who do not wish to hear what is being said may be protected.'

This limitation was noticed by A.L. Goodhart (69 Law Quarterly Review 317). If an absolute right is conceded in this behalf, it will be an unlimited charter for aural aggression. If a sound amplifier is accepted as an attribute of freedom of expression, then on principle, use of a Radio Transmitter also cannot be denied. There can be other extensions, pernicious in their effect on national security, public order or morality.

15. Even the First Amendment did not acknowledge use of a loud speaker as part of the right of free speech. In *Kovacks v. Cooper* (336 US 77), the majority of seven Judges held that sound amplification in public places, is not part of the right of free speech. Kovacks was convicted under an Ordinance, prohibiting use of sound amplifiers in a public street. He challenged the conviction, as violative of First Amendment protection. The Court held that restrictions on free speech, imposed by the Ordinance, were constitutionally permissible. Frankfurter and Jackson (JJ) held that sound trucks in streets, can be absolutely prohibited, without violating the constitutional right of free speech. Police power of State extends beyond health and morals, and comprehends the duty to protect the well-being and tranquillity of a community. The Court observed:

'Such distractions would be dangerous to traffic at all hours....the quiet and tranquillity, so desirable for city dwellers, would be at the mercy of advocates of particular religious, social or political persuasions, we cannot believe that the right of free speech compel a Municipality, to allow such mechanical voice amplification on any of its streets. The right of free speech is guaranteed to every citizen so that he may reach the minds of willing listeners and to do so, there must be opportunity to win the attention.....Opportunity to gain the public ear, is not by objectionably amplified sound on the streets. The preferred position of freedom of speech in a society that cherishes liberty for all, does not require legislators to be insensible to claims by citizens to comfort and convenience. To enforce freedom of speech in disregard of the rights of others, would be harsh and arbitrary in itself.'

Justice Jackson, concurring with Frankfurter, J. said:

'I believe that operation of mechanical sound amplifying devices conflicts with quiet enjoyment of home and park, and with safe and legitimate use of streets and marketplaces.... Freedom of speech for Kovacks does not in my view, include freedom to use sound amplifiers to drown out natural speech of others.'

16. *Kovacks v. Cooper* (336 US 77) marked a sharp dissent, from the view then prevailing. The Court overturned the law in *Saia v. New York* (334 US 558) and held that the right to be heard, is no more important, than the right to be let alone. In *Public Utilities Commission v. Pollak* (343 US 451), the Court ruled that use of a

radio to beam commercial broadcasts in a street-car, was not protected by the First Amendment. The Court observed:

'.....the right to be let alone is the beginning of all freedoms. The present case involves a coercion to make people listen.'

The same view was reiterated in *Lehman v. City of Shaker Heights* (418 US 298):

'While petitioner clearly has a right to express his views to those who wish to listen, he has no right to force his message upon an audience incapable of declining to receive it. In my view, the right of the commuters to be free from forced intrusions on their privacy, precludes the city from transforming its vehicles of public transportation, into forums of dissemination of ideas upon a captive audience.'

17. A person can decline to read a publication, or switch off a radio or television set. But, he cannot prevent the sound from a loud speaker reaching him. He could be forced to hear what, he wishes not, to hear. That will be an invasion of his right to be let alone, to hear what he wants to hear, or not to hear, what he does not wish to hear. One may put his mind or hearing to his own uses, but not that of another. No one has a right to trespass on the mind or ear of another and commit auricular or visual aggression. Limits, must be drawn for liberties, lest they turn into licence, and the antithesis of liberty in its true sense.

18. It is useful in this context, to refer to the opinion of Jackson, J. in *Arther Terminiello v. City of Chicago* (337 US 1). Terminiello was convicted and sentenced to a fine of 100 Dollars, for making a speech stirring the public to anger, unrest and disturbance. He challenged the conviction, as violating the protection of free speech. The Court said:

'Underneath a little issue of Terminiello and his 100 Dollar fine, lurks some of the most far reaching constitutional questions, that can confront a people who value both liberty and order.....an old proverb warns us to take heed, lest we walk into a well looking at the stars..... civil liberties imply the existence of an organised society maintaining law and order, without which liberty would be lost..... Terminiello's right to speak itself will be in jeopardy, if Chicago withdrew its police

officers, or if they should look some other way, when the crowd threatened Terminiello In the long run, maintenance of free speech will be more endangered if the population can have no protection from the abuses which lead to violence. No liberty -- is more secure, by holding that its abuses are inseparable from its enjoyment. We must not forget that it is the free democratic communities that ask us to trust them to maintain peace with liberty, and that factions engaged in the battle are not interested permanently in either. What would it matter to Terminiello if police batter up some communities, or on the other hand, if the communities batter up some policemen?..... The choice is not between order and liberty. It is between liberty with order, and anarchy without either. There is a danger that if the Court does not temper its doctrinaire logic with a little practical wisdom, it will convert the constitutional bill of rights into a suicidal fact.'

19. Professions of rights, distanced from realities of life, would make liberties unreal. The liberties of some, could prove to be the end of the liberties of others. The loquacious may silence the meek. The State must protect the mute, the unorganised and inarticulate, against onslaught of enthusiasm of the vocal or the vociferous. It is no use saying hosannas to freedom, unless such freedom is real. Real they will be, only if there is an ordered society. Order to liberty, is what oxygen to life is. There is no basis to think that freedom and order are not compatible. They are complementary. Liberty will be lost in excess of anarchy, if there is no order. Regulation and suppression are not the same in purpose or result. Time it is to think, whether undisguised assertions of rights by some, have not imperilled rights of others. If one were to recognise right to protest by blocking roads and railways, it is recognition of a right, to deny rights of the peaceful citizens. Acorns of today, will grow into oaks of tomorrow.

20. As observed by Latham C.J. in *Adelaide Co. v. The Commonwealth* (67 CLR 116), the Court should take a commonsense view, and be actuated by considerations of practical necessity. A similar view finds expression in *Shamsher Singh v. State of Punjab*, AIR 1974 SC 2192 : (1974 Lab IC 1380):

'The Court true to its function, must try to reflect the gloss by balancing its ruling.....denying judicial aid to undermining the substance.... A coup can be

constitutionally envisioned by an erroneously literal interpretation.... We cannot allow a confusion of vision_ to creep into our constitutional interpretation

Rights cannot be viewed as axioms in a book of Mathematics or applied without the risk of generating, 'a constitutionally envisioned coup', making a 'suicide pact with the bill of rights'. Social dimensions, group realities of life, the great trusts of history and experiences of life, must set the tone and nuances, and modulate views. The pitfall counselled against by Hughes, C.J. must be heeded. The Chief Justice said:

'Many of our decisions are emotional. The rational part of us supplies the reasons for supporting our predilections.'

21. That apart, freedom guaranteed is freedom of expression of ideas; not freedom of modes of expression. Freedom of press means not so much the freedom to put ink on newsprint, as it is the freedom to circulate ideas or thoughts. Where it otherwise, even a tax on newsprint may be constitutionally impermissible. It is not so, as held in *Indian Express case* (AIR 1986 SC 515). Likewise, freedom to express one's views to an audience, is not freedom to stand where one likes, or in the middle of a road or to use a loud speaker. There may be matter incidental to the exercise of a right. But, they are not rights, in themselves. Not all matters peripheral to the exercise of a fundamental right, are part of that right. In *Smt. Maneka Gandhi's case* AIR 1978 SC 597, the Court held that going abroad is not part of the right under Article 19. In the words of Rajagopala Iyengar (J) in *All India Bank Employees' case*, AIR 1962 SC 171, recognition of a series of ever expanding concentric circles in the shape of rights, concomitant to concomitant rights and so on, will lead to a grotesque situation.

22. A loud speaker is a mechanical device, and it has no mind or thought process in it. Recognition of the right of speech or expression is recognition accorded to a human faculty. A right belongs to human personality, and not to a mechanical device. One may put his faculties to reasonable uses. But, he cannot put his machines to any use he likes. He cannot use his machines to injure others. Intervention with a machine, is not intervention with, or invasion of a human faculty or right. No mechanical device can be upgraded to a human faculty. A computer or

a robot cannot be conceded the rights under Article 19 (though they may be useful to man to express his faculties). No more, a loud speaker. The use of a loud speaker may be incidental to the exercise of the right. But, its use is not a matter of right, or part of the right. I am in no way, not in the least way, narrowing down free speech, nor, attempting to cabin, confine and crib a cherished right, while holding that a mechanical aid is not a complement of human faculty, or its use the extension of a constitutional right. But, I consider that any measure of cosmetic surgery on the face of a aggressive act of aural aggression or trespass on the mind of another, will not make it resemble a right.

23. Apart from the right to be let alone, -- freedom from aural aggression -- Article 21 guarantees freedom from tormenting sounds. What is negatively the right to be let alone, is positively the right to be free from noise. Exposure to high noise, is a known risk and it is proved to cause bio-chemical changes in man, elevating levels of blood catecholamine, cholesterol, white cell counts and lymphocytes. Laboratory studies made by monitoring electroencephalographic (EEG) responses and changes in neurovegetative reactions during sleep, show that disturbance of sleep becomes increasingly apparent as ambient noise levels exceed about 35 db (A) Leq. Noise produces different reactions along the hypothalamohypophyseal-adrenal axis, including an increase in adenocorticotrophic hormone (ACTH), affecting sympathetic division of the autonomic nervous system. Eye dilation, bradycardia, and increased skin conductance are proportional to the intensity of noise above 70 dB. SPL. Incidence of peptic ulcer is high among noise exposed groups. Noise causes contraction of the flexor muscles of the limbs and the spine, and is reckoned as an environmental stress that could lead to non-specific health disorders. Exposure to high noise in every day life may contribute to eventual loss of hearing (socioacusis), and this in turn can affect speech communication. Vasoconstriction or vasodilation of blood vessels also is induced by high levels of noise during acute exposures (Rose-crans et al (1966)). Complaints of nystagmus (rapid involuntary side to side movements), Vertigo (dizziness) and balance problems have also been reported due to noise exposure. 'WHO' criteria 12 and Indian Standards 1 -- S -- 4954 indicate tolerance levels. J.E. Park and K. Park Text Book of Preventive and Social Medicine', 7th Edn. page 201, also specifies tolerance limits of noise.

24. Sound levels generally caused by loud speakers transgress safe limits by a wide margin. Loud speakers have become part of political, social, religious and cultural life of this country. To allow advocates of various persuasions to commit unlimited aural aggression on unwilling listeners, would be to allow them to subjugate the right of life of unwilling listeners, to their aggressions. Protests made by sufferers like the student community or sick, generally fall on heedless ears. Very recently, the 'Malayala Manorama' (5-5-1992) came out with an editorial against noise pollution. The Indian Medical Association is reported to have protested against high noise output through loud speakers, pointing out the risks..... (Malayala Manorama 21-5-1992, Mathrubhumi dt. 21-5-1992). Compulsory exposure of unwilling persons to dangerous and disastrous levels of noise, would amount to a clear infringement of their constitutional guarantee of right to life under Article 21. Right to life, comprehends right to a safe environment, including safe air quality, safe from noise.

25. But, that is not the end of the matter. There are amenities available outside fundamental rights. The spirit often protects what the language does not. One may enjoy certain amenities or common law rights, independent of fundamental rights. These would include the amenity of using a loud speaker (without committing aural aggression), to the extent of reaching a willing audience. One may exercise that amenity in a hall or area reasonably required to accommodate a willing audience. There is no right to any amenity beyond this.

26. Besides, use of a loud speaker cannot be arbitrarily denied, only because a fundamental right is not involved. By reason of Article 14, the State and its agencies cannot act arbitrarily. They must adhere to fair play in action. For instance, even when a person may not have a fundamental right to, enter into a contract with the State, the State cannot act arbitrarily in the matter of awarding a contract. Likewise, in the matter of denying the use of a loud speaker, Police cannot act arbitrarily. All State action is amenable to Article 14. To quote Jackson, J. in *West Virginia State Board v. Barnette* (319 US 624), again:

'There are village Hampdens and village tyrants, but none who acts under colour of law, is beyond the reach of the Constitution.'

If the authority charged with the power to regulate use of loud speakers under the Kerala Police Act, acts beyond the authority law confers upon him, his action is liable to be interdicted.

27. Back to the facts. Permission was denied to petitioner to use a loud speaker on the ground that holding of meetings with loud speakers would lead to a law and order situation, on account of the displeasure that it may cause to another group. This reason appears to be an after-thought. At the time of granting permission initially, no such hazard was envisioned. Nothing suggests that there had been a change of circumstances, between the time permission was granted, and the time it was cancelled. Quite apart from that, an apprehension that one may interfere with a lawful act done by another, will be no reason to deny the exercise of that lawful right. If obstruction is offered unlawfully or unreasonably, the responsibility of Police is to remove it, instead of stopping someone from doing what he may legitimately do. For a fact, the hazards imagined by the Sub-Inspector of Police (2nd respondent), are unreal. By reason of interim orders made by this Court, petitioner held meetings, using loud speakers and admittedly, no law and order problem arose. In the absence of any valid ground, cancellation of the permission granted under Ext. F1 is arbitrary. While petitioner has no fundamental right to use a loud speaker, he will be free to avail of the amenity of using a loud speaker in a reasonable manner. Second respondent Sub-Inspector of Police, will permit petitioner to hold meetings with the use of loud speakers of a box type, for purposes of holding meetings as indicated in the writ petition. But, the output from the loud speaker, shall not exceed the range, necessary to reach a willing audience, confined in a reasonable area. If it exceeds such limits, Police will be free to stop the use of loud speakers.

The writ petition is disposed of as above. No costs.

I express appreciation of the help rendered by Shri S.V. Balakrishna Iyer as Amicus Curiae.