

M.P. Menon Vs. State

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Court : Kerala

Decided On : Jun-17-1953

Reported in : 1953CriLJ1786

Judge : Govinda Pillai, J.

Appellant : M.P. Menon

Respondent : State

Judgement :

ORDER

Govinda Pillai, J.

1. The Ernakulam South Police Station had filed a charge against Shri M.P. Menon for the offence said to have been committed by contravening the provision of Section 31(1)(b) of the Public Safety Measures Act 5 of 1950 (Travancore-Cochin) which prohibited the spreading of a prejudicial report. He is said to have delivered a speech on 14.10.1950 so as to undermine the security of the State and spread false reports about the Government and the Police Force. Such contravention was punishable as an offence under Section 31(5) of the same Act, That case had been registered as C.C. 193 of 1950 on the file of the Special First Class Magistrate's Court, Ernakulam.

While that case was pending, the accused filed an original petition No. 69 of 1950 before the High Court with two prayers. One was to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution to direct the State to withdraw the case against him on the ground that the provision of law under which he is prosecuted is void. The other was an alternative prayer to withdraw the case to the file of this Court under Article 228 of the Constitution and dispose of it as envisaged therein, Since there were two courses to resolve a controversy, this Court considered it proper to follow the course which conforms to the normal procedure of trial and disposal in preference to the one involving the exercise of the extraordinary jurisdiction conferred by Article 226. The case was accordingly withdrawn under Article 228 read with Section 20(b) of the Travancore-Cochin High Court Act for necessary action and numbered here as C.C. No. 1 of 1953.

2. Article 228 of the Constitution provides that if the High Court is satisfied that a case pending in a Court subordinate to it involves a substantial question of law as to the interpretation of the constitution, the determination of which is necessary for the disposal of the case it shall withdraw the case and may either dispose of the case itself or determine the said question of law and return the case to the Court from which it has been withdrawn together with a copy of its judgment on such question, and the said Court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.

3. The case registered is for contravening the provision under Section 31(1)(b) resulting in an offence punishable under Section 31(5) of Act 5 of 1950. The stand taken by the accused is that Section 31 of the Public Safety Measures Act 1950 is ultra vires of Article 19(1)(a) and (2) of the Constitution and infringes upon the fundamental rights guaranteed by that Article. It was also argued that the State Legislature was incompetent to make laws regarding matters affecting 'Public Safety' for that is not a subject entered in Schedule 7 to the Constitution either in the State List or the Concurrent List, such -a subject is also not mentioned in the Union List so that it was contended that the Parliament alone had under Article 248 of the Constitution exclusive power to make law with respect to that subject.

4. I shall now deal with the second ground. The first entry in the State List is 'Public Order' (but not including the use of naval, military or air forces or any other armed forces of the Union in aid of the Civil Power). The State Legislature could therefore make law for the maintenance of Public Order. The expression 'public order' must, as pointed out in - *Nek Mohammad v. Province of Bihar* AIR 1949 Pat 1 (PB) (A), be taken in a comprehensive sense so as to include public safety in its relation to the maintenance of public order. The public safety mainly depends on public order. The maintenance of public order would result in public safety so that the two subjects are interdependent.

In interpreting the Constitution a wide meaning should be given to words which confer upon any Legislature the power to legislate on certain topics and within the ambit of the words so as to give the most sovereign powers to the Legislature. As laid down in, '*In the matter of the C.P. & Berar Sales of Motor Spririts & Lubricants Taxation Act, (1938)*', AIR 1939 FC 1 (B), the entries in the Constitution should be given a large and liberal interpretation, the reason being that the allocation of subjects in the three lists is not by way of scientific definition but by way of a mere simple enumeration of broad categories. Though this decision was made in interpreting a provision of the Government of India Act (1935) the reasoning applies with equal force in trying to understand the provisions of the Constitution. The Act in question though styled '*The Public Safety Measures Act*' was intended as seen from the preamble to provide for maintenance of public order as well. Thus the State Legislature was competent to make laws relating to public order subject however to the limitation laid down in the Constitution.

5. I shall now take up for consideration the first objection. The case here is that the accused made a speech spreading prejudicial report so as to undermine the security of the State. Prejudicial act is defined in Clause xvii of Section 2 of the Act and Clause (c) of that will read thus:

Prejudicial act means any act which is intended or is likely to undermine the security of or to overthrow Government of India or the Government of Travancore-Cochin.

Article 19(1)(a) of the Constitution guarantees all citizens the right to freedom of speech and expression; but Clause (2) of the same article laid down that nothing in Clause (1)(a) 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 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. Thus in the interest of the security of the State, and public order restrictions could be imposed. Such an imposition alone is laid in the provisions in Act 5 of 1950 relating to the case in hand. I am not here examining all the sections in the Act to see to what extent they are intra vires. From what has been mentioned above the provisions for consideration in relation to this case are seen to be not ultra vires to Constitution and I hold accordingly.

6. The questions whether the accused delivered a speech and whether that speech, if delivered was calculated to spread a prejudicial report to undermine the security of the State or public order are to be decided on evidence. Now I have only decided that the provision of law under which the accused is to be prosecuted is not void, with this finding, the case will be sent back to the Court below, and that Court shall on receipt of the records and a copy of this judgment proceed to dispose of the case in conformity with this judgment.