

In Re: A.K. Gopalan

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Court : Chennai

Decided On : Sep-23-1947

Reported in : 1949CriLJ258; (1948)2MLJ383

Judge : Govinda Menon, J.

Appellant : In Re: A.K. Gopalan

Judgement :

ORDER

Govind Menon J.

1. For a speech delivered on 14th July .1946, presiding over a meeting held at a cinema shed and situated in Kottaparamba in Badagara,. the petitioner has been convicted under 8, 606, Penal Code and sentenced to rigorous imprisonment for six months which conviction and sentence were upheld on appeal by the Sessions-Judge of North Malabar, who, in addition, directed the petitioner to execute a security bond for Rs. 200 with two sureties for a like amount-each to keep the peace for a period of 15 months-under Section 106, Criminal P. C.

2. Whether the speech in question comes-within the mischief of Section 503, Penal Code, is the only question argued before me. The petitioner's case is that the speech was a criticism of the police force in general in the interests of the-public and not that he threatened with injury any person or class of persons with regard to their person, reputation or property. Portions of the speech extracted by

the learned Sessions Judge show that the speech was very vehement in character and vulgar in tune. The Collector and the District Superintendent of Police have been dubbed as arch-rats and other police officers as mice. But whatever that may be, unless the speech threatens injury to the person, reputation-and/or property of an individual or a group of individuals, the provisions of Section 503, Penal Code,, are not applicable. In Or. R. C. No, 10 of 1947, Rajamannar J. observed a3 follows:

I am inclined to hold that Section 503 would have no application to a case in which an accused is charged with having threatened the police in general.

The learned Judge also held that the charge in that case was therefore defective. In the present case also the charge is in similar terms and the observations of the learned Judge apply with equal force to this charge.

3. But the learned Judge held that in that case, the threat was held out by the accused not to the police force in general, but to the members of the police force stationed in Cannanore and to such members of the force who would attempt to interfere with the railway strikers and on that ground, in spite of the defect in the charge, it was held that Section 503, Penal Code, was applicable. Having read the entire speech evidenced by Ex. p-1, I am of opinion that even here the speech is directed not against the entire police force in the whole province or in India, but to the particular police force stationed at Badagara, if not in the whole of the Malabar district. Such force is a compact body of individuals, under the direction of a District Superintendent of Police and a District Magistrate and the speech is addressed to that defined and ascertained body of individuals and not to any undefined or unascertained group. Portions of the speech extracted by the learned Sessions Judge are sufficient to indicate that what the petitioner intended was to frighten the members of that force with injury to their person, reputation or property. Whether as a matter of fact any one was actually frightened or not, cannot affect the question of the liability under Section 50.3, Penal Code. It is the intention of the speaker that has to be considered in deciding as to whether what he stated comes within the mischief of Section 50;), Penal Code, P. W. 1, the police officer present at the speech, deposed that he felt, on hearing the speech,

the assembled crowd would assault him. He also felt that even the freedom for the ordinary citizen was not available for the police and therefore he thought that it was advisable even to resign his post. He was frightened that he might be injured seriously. Though in cross-examination he has made certain other statements in some respects conflicting, it seems to me that the general effect of the evidence was that he was frightened. P, W. 2, another police officer, present at the meeting was greatly frightened that he would be assaulted. The intention of the speaker can only be gathered from his words and the purport of the speech was to cause fear in the minds of the group of police officials stationed either in the Malabar District or in Badagara town.

4. Mr. N, Rajagopalan for the petitioner argued very strenuously that the meeting was organised and convened by the members of the Communists party and that the speech was addressed, to the Communists, their supporters and sympathisers present at the meeting and not to the public or to the police in Badagara or in Malabar. It was urged that the speaker did not know that police men were present at the meeting. I do not think that it is necessary for the speaker to know that any member or the group of persons who are intended to be frightened by the speech need be present among the audience. If the threat is held out to several persons to get them injured either in person, reputation or property, the person making the threat has been held to be guilty of this offence: vide *Empress v. Ate Hussain* 1836 6 A W. N. 42.

5. That there are passages in the speech which would cause fear and were intended to threaten the group of police officers cannot be denied.

6. Mr. Rajagopalan further contended that the speech as noted down by the police officer is not a correct report of what the accused spoke. I do not find that in either of the lower Courts the correctness of the speech has been questioned and that being so, it is too late for him to dispute the correctness of what was then and there recorded. Taking the view as I do that the intention of the speaker was to threaten the ascertained group of people, viz., the members of the police force in Malabar and particularly in Badagara, I do not think that the criticisms levelled against the judgment of the lower appellate Court can be sustained. The

conviction of the accused is therefore right.

7. In the circumstances of the case, the sentence is excessive, especially since the petitioner has been directed to execute a security bond under Section 10G, Criminal P. C. In the case mentioned above, Rajamannar J. reduced the sentence of six months rigorous imprisonment to a term of rigorous imprisonment for two months, for having delivered a speech which in many respects was similar to that delivered by the petitioner. I would, therefore, reduce the sentence passed on the petitioner to a period of two months rigorous imprisonment. The order directing the petitioner to execute a security bond under 9. 106, Criminal P. C. will remain.

8. With this modification the petition is dismissed.

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