

In Re: S.S. Batliwala

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Court : Chennai

Decided On : Mar-14-1938

Reported in : AIR1938Mad758; (1938)2MLJ416

Appellant : In Re: S.S. Batliwala

Judgement :

Horwell, J.

1. The appellant, a member of the All-India Congress Socialist Party, has been convicted by the Sessions Judge of Nellore of the offence of having delivered a seditious speech punishable under Section 124-A, Indian Penal Code. The accused had toured throughout the Andhra Desa doing pro-paganda work on behalf of his party; and the speech in question was delivered at Venkatagiri at the end of his tour.

2. Two preliminary objections have been raised with regard to the validity of the prosecution. The first point taken is that there was no proper sanction, in that His Excellency the Governor did not consult his Ministers as he was bound to do before sanctioning the prosecution and, secondly, that the prosecution was not filed in accordance with the order sanctioning the prosecution, in that the Circle Inspector who filed the complaint was not deputed by the Deputy Inspector-General of Police, C.I.D., as required by the sanction order, but by the Superintendent, Special Branch, C.I.D. The second point can be briefly disposed

of. The second paragraph of the order of the Government is:

The Deputy Inspector-General of Police, Railways and C.I.D., is requested to depute an officer of the Special Branch, C.I.D., of the rank not lower than that of Inspector of Police, to prefer a complaint in the Court of the District Magistrate of Nellore.

3. The letter issued in consequence of this order, Ex. A, is from A.F. Bulkley, Esq., Deputy Inspector-General of Police, Railways and C.I.D., Madras, to M.R.Ry. V. Ayyasami Naidu Avergal, Inspector of Police, Special Branch, C.I.D., Madras. The letter authorises 'the officer to whom the letter was addressed to prefer a complaint in the Court of the District Magistrate, Nellore, against the accused in respect of the speech delivered by him at Venkatagiri on the 3rd September, 1937. The letter was signed by Mr. Colebrook, the Superintendent, Special Branch, C.I.D., not as such but 'for Deputy Inspector-General of Police, Railways and C.I.D.' The body of the letter and the words at the bottom, 'Deputy Inspector-General of Police, Railways and C.I.D. 'were typed. The signature of Mr. Colebrook and the word 'for' were in ink, which is clear proof that Mr. Colebrook signed not on his own account but as one authorised to sign on behalf of the Deputy Inspector-General of Police, Railways and C.I.D. Mr. Bulkley, Deputy Inspector-General of Police, is a touring officer and Mr. Colebrook was the senior officer working in his office. There is therefore no reason to doubt that Mr. Colebrook was authorised to sign such orders.

4. Even if it was Mr. Colebrook and not Mr. Bulkley who deputed Mr. Ayyasami Naidu to file the complaint, I should still be of opinion that the complaint was properly filed. The order of the Government contained merely a request to depute a certain officer of the Special Branch, C.I.D., not below the rank of Inspector, to file the complaint. It is clear from the order that the Government had no intention that only an Inspector of Mr. Bulkley's choice should file the complaint. He was ordered to depute the Inspector because he was the head of the C.I.D. Mr. Colebrook was in charge of the Special Branch of the C.I.D., of which Mr. Ayyasami Naidu was an Inspector. Mr. Jagannadha Das has placed reliance on Reg. v. Vinayak Divakar (1871) 8 Bom. H.C.R. 32 (Crown Cases), in which an

order sanctioning prosecution of a highly placed Magistrate directed that the complaint should be filed by a responsible I.C.S. Magistrate specifically named; and it was held in that case that it was clear that the Government intended that that particular I.C.S. gentleman should file the complaint and no other, that the Government clearly thought it advisable that this particular gentleman should consider the case against the accused and select such acts of his as he deemed suitable and proper for the subject of a charge, and that it was not the intention of the Government that this power of discrimination should be delegated to some other person of a lower rank. As already pointed out, the Government clearly had no intention in the present case that any particular officer should file the complaint.

5. The order sanctioning the prosecution, Ex. B, purports to be the order of the Provincial Government and to have been issued by the order of His Excellency the Governor who, under Section 49(1) of the Government of India Act, 1935, exercises the executive authority of the Provincial Government. The order was authenticated by Mr. Brackenbury, the Chief Secretary, in accordance with certain rules framed by His Excellency the Governor in consultation with the then Ministers. The sanction therefore seems to be in order and there is nothing in it which would prevent the Court from applying the principle enunciated in Section 114, illustration (e) of the Indian Evidence Act that public acts are regularly done. However, Mr. Jagannadha Das states that a speech delivered by the Hon'ble Minister for Courts and Prisons, reported in a local paper, contained a statement that he (the Honourable Minister for Courts and Prisons) had not been consulted with regard to the prosecution. This statement raised some doubt in the minds of the counsel for the accused whether His Excellency the Governor had consulted his Ministers; and in order to ascertain whether that was done, the Court was requested to summon the Hon'ble the Prime Minister and the Hon'ble Minister for Courts and Prisons. Had these Ministers pleaded privilege, the Court would undoubtedly have upheld their claim and the trial would have proceeded on the assumption that the sanction was properly accorded. Probably, it could also have been successfully contended that, the Court was not at liberty to probe into the acts and conversations of the Governor and his Ministers which had led up to the passing of the order and that the Court was bound to assume that the order was regularly passed. The learned Public Prosecutor, in order to avoid any

unpleasantness that might arise with regard to the summoning of Ministers as defence witnesses, was prepared to assume, although he had no reason to believe that such was the case, that His Excellency the Governor had acted without consulting his Ministers. The learned Sessions Judge was therefore bound to consider whether the failure of His Excellency the Governor to consult his Ministers invalidated the sanction : and a very learned and lengthy argument has been addressed to me by Mr. Jagannadha Das on this question. The Government of India Act of 1935, in so far as it relates to the administration of Provincial affairs, contemplates that in certain cases the Governor should act in his discretion, and so do what he thinks to be right independently of any opinions that may be held by his Ministers. In certain cases, too, he has to exercise his own independent judgment; in other cases, it is clearly presumed that he will consult his Ministers; and the Instrument of Instructions issued to the Governor requires him to be guided by his Ministers in those matters in which he is not required to act in his discretion or to exercise his individual judgment. Admittedly, by virtue of Section 53(2) of the Act, the Courts cannot question any act done by the Governor on the ground that he has not followed the Instrument of Instructions; but it is contended by Mr. Jagannadha Das that the Governor is legally bound to consult his Ministers even though his acts cannot be called in question on the ground that he was not guided by the advice tendered. Except in Section 59(5), however, I find no reference in the Government of India Act to any legal duty cast upon the Governor to consult his Ministers. Section 59, Clauses (2) and (3), relate to the drawing up of certain rules and the making of certain orders and instruments and their authentication; and Section 59(5) requires the Governor to consult his Ministers with regard to the discharge of his functions under these sub-rules. There is no provision in the Act which requires the Governor to consult his Ministers before performing executive acts. The Instrument of Instructions implies that he should consult his Ministers; for without consulting them he would not be able to be guided by their advice; but he is not legally required to do so. The remedy for any unconstitutional act on the part of the Governor is not legal action but constitutional action--the resignation of the Ministers if they consider that the unconstitutional act of the Governor is of sufficient importance to warrant their resignation, and a request that the Governor be recalled. Section 50(3) is to the

effect that the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion or ought or ought not to have exercised his individual judgment; but it is argued that these words cannot be severed from the first part of Sub-section (3) of Section 50 and relate only to cases in which the question arises whether any matter is or is not a matter, as respects which the Governor is required to act in his discretion or to exercise his individual judgment. But if the latter part of this sub-section had this very limited meaning, all these words set out above would be unnecessary and all that would be required would be to add after the words 'the decision of the Governor in his discretion shall be final' the words 'and shall not be called in question.'

6. It has been pointed out that Section 271 (2-b) requires that with respect to the sanctioning of prosecutions of public servants, which would be under Section 197 of the Criminal Procedure Code, the Governor shall exercise his individual judgment. It is therefore argued that as nothing is said about Section 196, it must be assumed, by implication, that the Governor is bound to consult his Ministers before sanctioning a prosecution. Section 271 was drawn up for the protection of public servants, who are under the special protection of the Governor, and it is in order that public servants should not be victimised that the Governor is required to exercise his own individual judgment in sanctioning or withholding sanction to prosecute them. In the case of a sanction to prosecute under Section 195 of the Criminal Procedure Code the Governor is certainly not required to exercise his individual judgment; but that does not mean that in exercising his individual judgment he is acting unlawfully and that his Act can be called in question in a Court of law. It is pointed out that in matters where the Governor is required to exercise his individual judgment or to act in his discretion, his acts are subject to supervision by the Governor-General but in matters where he should be guided by his Ministers there is no such right of interference by the Governor-General. It is therefore argued that the Government of India Act could not be so anomalous as to permit the Governor to act autocratically in a matter in which he should be guided by his Ministers and yet should be under the control of the Governor-General in matters in which he is required to exercise his individual judgment or to act in his discretion. This argument ignores the constitutional remedy of the

Ministers and the people, to which reference has already been made. Very much the same criticism might be made of the argument that as the Government of India Act is meant to give more power into the hands of the elected representatives of the people and contains many provisions which are almost identical with provisions in the constitution of the great self-governing dominions, it could not be meant to give the governor such autocratic powers. This argument moreover is based on the fallacy that the more advanced the constitution the less the powers of the Governor. The contrary is true. The Governor of a small colony inhabited by primitive and backward people has very much less power than the Governor-General of a self-governing dominion, the reason being that in the former the Government is carried out personally by the Governor and the officials subordinate to him; but in the case of a self-governing dominion where the Government is, in practice, in the hands of the people, the Governor needs extraordinary powers to interfere when a grave crisis arises; but these extraordinary powers he rarely uses. Even in the self-governing dominions the Governor-General has not infrequently resisted the legislature and the Ministers by withholding and reserving bills. I am therefore satisfied that there is nothing in the Government of India Act which imposed a legal obligation upon His Excellency the Governor to consult his Ministers before sanctioning the prosecution of the accused. It would perhaps be as well before leaving this question to again point out that the learned Public Prosecutor does not admit that there was no consultation.

7. On the question whether the accused was actually guilty of sedition, a further preliminary objection has been taken that it is not safe to rely on the reported speech which was recorded by a shorthand writer and later transcribed. No doubt every shorthand writer is fallible and undoubtedly a few mistakes were made both in the recording of the subject-matter of the speech and in transcribing the shorthand notes; but it cannot be doubted, upon a reading of the whole of the reported speech, that the shorthand writer has neither missed nor misunderstood very much. Emphasis was laid on certain grammatical mistakes in the speech and it was pointed out that one sentence contained no predicate; but it cannot be doubted for a moment that even the best and the most renowned speakers make frequent grammatical mistakes and - where the sentence is involved sometimes forget how the sentence began - with the result that a sentence which may have

conveyed a clear meaning to the hearers is not, grammatically speaking, complete and correct (in reading through the judgment after the stenographer had transcribed it, I found one such unfinished sentence of my own). While therefore it would be unsafe to rely on any chance word or to attach undue significance to any particular sentence, there can be no doubt that what the shorthand writer has sent to the Government and which has been filed in this case does very accurately reproduce in substance and in word what the accused actually said in the speech delivered by him at Venkatagiri on the 3rd September last. It may be noted that no objection to the correctness of the report was taken in the Magistrate's Court; and it was only in the Sessions Court that this point was thought of. The interpreter of the accused, who was examined as a defence witness, said that it was only after getting into the witness-box that he read it carefully and noted the incorrect portions.

8. Mr. Jagannadha Das has further tried to divert attention from the actual speech made by pointing out that the accused made many other speeches in Andhra Desa which were delivered during a propaganda tour on behalf of his party; and that with respect to none of those other speeches has a similar charge been made against him. From this I have been asked to conclude that the accused could not have had a seditious intention when he delivered this particular speech at Venkatagiri. I am unable to accept this argument; for a man may make ninety-nine non-seditious speeches and yet his hundredth speech might be full of sedition. Moreover, we know very little about the speeches made by the accused in other places. Only one witness speaks on this subject and he heard only one speech. He was a highly educated gentleman, of 58 years of age, and not likely to be roused to violence against his better judgment by a young man like the accused. Another reason why I have been asked not to attach too much importance to the spoken word is that the opinions expressed in the speech were in accordance with the principles of the Congress party, whose members now govern in the majority of the provinces of India; but clearly a Court cannot take account of the principles of a political party and declare that an offence which is punishable under the Penal Code, is not an offence because it does not contravene the principles of that party. Moreover, it is not the advocacy of certain principles - however extreme they may be - that the law punishes; but the adoption of methods and modes of address

intended to cause disaffection towards the Government established by law or to bring that Government into hatred or contempt. It is quite possible to express dissatisfaction with the Government without exciting disaffection; and this speech will have to be judged not by the political views of the accused or his party; but by the purpose of the accused in expressing those opinions in the way he did. Fair criticism of the Government is no offence; but the question the Court had to decide was whether the speech of the accused indicated an intention to promote hostility and ill-will towards the Government. If a person attempts to bring the Government into hatred or contempt or to excite disaffection towards it, force and violence is encouraged which may lead to a conflict with the authorities, with the certainty that there will be grievous loss of life. Section 124-A is intended as much to protect the people against agitators as it is to maintain the stability of the Government.

9. Mr. Jagannadha Das has stated that it was part of the instructions of persons going on propaganda tours that they should exploit local grievances and that it was in accordance with this principle that when the accused went to Venkatagiri he began his speech by 'a slanderous diatribe against the Zamindar of Venkatagiri. One of the local grievances appears to have been that certain persons who had been in the habit of cutting fuel in the local forests were not allowed to do so; and the accused dilates on the poverty of the people and the way they were being ground down by the Zamindar and says:

Do you know what happens if there is a terrific tyranny and there is nobody to succour the poor? Do you remember a man called Alluri Sitha-ramaraju (a man who similarly exploited local grievances and brought about a rebellion)? Have you heard about his history? And do you know what he did?

10. He then expatiates on the wretched state of the people in Venkatagiri and refers to a certain criminal case against a man for killing a boar, and this gave the accused an opportunity to attack the Magistracy. He says:

He brought him (the boar) down to earth and this British Government, whose Magistrates are supposed to be doyens of justice and equity and are the most corrupt officials I have ever seen in the world, these people.

11. Then he says:

The peasantry is being ground down in poverty and even a dog will turn if you go on beating too much. I ask you once again, do you remember the history of Alluri Sitharamaraju?

12. The accused does not however give the story of Sitharamaraju at once but returns to another attack on the Zamindar. He then gives what purports to be a history of the British occupation of India and compares the British to a guest with a snake in his heart and the Zamindar's ancestor to a traitorous brother who helped to impoverish his brethren. This guest with a snake's heart is referred to in the first person and we find these words:

There is poverty. Will you allow me to have a small corner of your house? I shall sit down and sell a small little thing like tobacco and send the money to my country. Will you allow it? You with a magnanimous heart said 'alright'. Get this corner and then I got some persons in your family supposing your blood brother, to come with me and conspire with me so that I can make everybody quarrel and take charge of the whole house. Your wife will not be your wife. She will be my wife. Your brothers and sisters shall be slaving away for me and with what aim? That I may carry the whole wealth of your household to my own land.

13. Then, after a few more remarks in the same vein-chiefly directed towards the Zamindar's ancestor, he says with respect to that ancestor:

He has turned everybody in the family to a slave to this foreigner. He has gone and sold his country to me. What are your feelings for the man, though he is your brother, flesh of your flesh and blood of your blood? I ask you what are your feelings first towards your brother and then towards the marauder, the dacoit, the man with the serpent's heart who came as a guest to your house? What are your feelings towards these two? I want to talk to you about Alluri Sitharamaraju.

14. Then begins a highly coloured story of Sitharamaraju, in which he is painted as a hero who enabled the people to rise against oppression, the story containing contemptuous references to the police. He says of Sitharamaraju:

He is a man who came from Andhra Desa and when there was terrific repression of this British Government, its police, guns, and arms, he said, 'I do not care for my future or what happens to me. I shall make a band of followers and I shall see that in this land of West Godavari or East Godavari or Kistna these Britishers shall lead a life as brothers and did it. Do you know how he did it? He was not like the British officials who came with lathies and bullets and shoot on innocent people who are not ready or who have no guns. No, No. He used to give notice if you care to be present, be present and hand over the keys (of the Treasury) ; but if you want to test me, remember I shall shoot you down like a dog and what used to happen. The Police Officers are certainly very brave when you have not got arms in your hand and these officers and these militaries and these police officers who are very brave in shooting down the people and tyrannising over them, they used to throw down their guns and run for their lives.

15. The speech continues in much the same strain, with an accusation that the police officers are paid to shoot down the people. Then he says:

But to-day in this country there are thousands of people like Alluri who have come out and said they will not rest until all the exploiters in the land shall be thrown out, until this foreign marauder, dacoit, who has got in under false pretences is thrown out of this land with the poison that is sitting in his heart, with the snake that is sitting in his heart... these Alluris in this country have determined that not only will they drive out the Britisher, hand over the wealth, take charge of treasuries in this country; but also have determined that the poisonous snake which is sitting in the heart of British Imperialism shall be killed and not allowed to poison our life breath every minute and allow our Harijans to die of starvation, our poor peasants to go in poverty and misery and have no hopes of civilisation at any time, no future for their children, no education, no cloths.

16. He then goes on to discuss the present political situation and says that the present Prime Minister has gone to jail in order that this British Governor and this British Government shall pack out of this country; and he points out that now the Congress are in power, that even the soldiers and police and Government servants want to be free from British Imperialism, and that they also know that this

country is a slave country because British Imperialism is here. He exhorts the people either to force the Zamindar to give them fuel or to march out and take the fuel themselves and concludes:

All India is organising. Everybody is organising so that when the final fight comes we shall kick these Britishers out.

17. There can be no doubt from a reading of the whole of this speech, of which extracts have been given above, that it is a direct incitement of the people to violence against the Government as now established, which the accused has described as the British Government. That by the 'British Government' he means the Government as now established is particularly clear where he compares the kist payable on Government lands with the rates payable on Zamindari lands, where he describes the charge on Government lands as being levied by the 'British Government'. It is of course true that any speaker is entitled to abuse the British and nobody has ever said that such abuse amounts to sedition. On the contrary, it is commonly counted as patriotism. But the accused is not here concerned with ancient history and with individuals of British nationality; but with the Government as now established, which in his speech he has identified with the Government that was established in the early stages of the British occupation and which is responsible, jointly with the Zamindar, for the poverty and distress now existing. Alluri, the hero, relieved distress by looting the treasuries; and there are thousands of Alluris to-day. The accused clearly did not, as his learned advocate would have me believe, identify the existing Government with the Congress Ministry. The Government means much more than the Ministers; and includes the machinery with which the Ministers have to work. The accused was always aware of this distinction between the Government and the Ministry; and it was against the Government that the accused intended to cause disaffection. Even if this distinction was not present in his mind, the speech would still be seditious; for the Harijans and others to whom the accused addressed his remarks were clearly exhorted to resist the tyrannous authority then existing - the authority which in practice was being exercised by the Ministers then in power and the officials who were carrying out their policy.

18. The sedition does not end with the denunciation of the Government and an exhortation to the people to follow the thousands of Alluris of to-day; but includes the bringing into hatred and contempt the magistracy and the police. Attacks of this kind on Government employees scandalise the Government by casting a reflection on those who are entrusted with the administration of public affairs and naturally tend to endanger the public peace; and this, undoubtedly, as can be seen from the passages extracted above, is what the accused intended.

19. The learned Counsel for the accused has pointed out a few (for there are only very few) passages which read more peacefully, as where, after inviting the people to shout with him 'long live revolution' he described revolution as meaning that:

We (the people of India) shall change the structure of society so that man will not exploit man, one man shall not be rich and thousands poor.

20. And so on, which the Public Prosecutor has aptly compared with the interjections of Mark Antony in his funeral oration over Julius Caesar when, in a clever speech urging the people to rebellion, he added at frequent intervals, 'For Brutus is an honourable man'.

21. The conviction is therefore right. The sentence is a moderate one. The conviction and sentence are therefore confirmed and the appeal dismissed.

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