

B. Iswarudu Vs. Emperor

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Court : Chennai

Decided On : Jul-21-1932

Reported in : AIR1933Mad369

Appellant : B. Iswarudu

Respondent : Emperor

Judgement :

ORDER

Ramesam, J.

1. In this case one B. Iswarudu of Narsapur has been convicted by the Stationary Sub-Magistrate of Narsapur for an offence under Section 17(2), Criminal Law Amendment Act of 1908, and is sentenced to rigorous imprisonment for six months and to pay a fine of Rs. 200. On appeal to the Joint Magistrate of Narasapur the fine was reduced to Rs. 100; otherwise the conviction was confirmed. The present revision petition is filed against the appellate judgment of the Joint Magistrate.

2. It will be convenient now to set forth the facts of the case which gave rise to this revision petition. By notification dated 4th January 1932 the association known as the Working Committee of the All India Congress Committee was declared an unlawful association under Sub-Section 1, Section 8, Ordinance 4 of 1932. This was published in the Fort Saint George Gazette dated 12th January 1932. On 13th

March 1932 the accused in this case at about 6 p.m. is said to have taken part in a demonstration accompanied by a national flag and the singing of political songs. In the course of the demonstration he is said to have visited the streets of Narsapur wherein foreign cloths and British goods are sold, advocated the boycott of British goods and foreign cloth; thereby he was charged with having acted in furtherance of the resolution of the All India Congress Working. Committee which was declared an unlawful association and having therefore committed an offence under Section 17(1), Criminal Law Amendment Act of 1908. Two witnesses were examined for the prosecution, a Police Inspector and a constable. The Police Inspector is the same person who sent the confidential report of the occurrence on the same day, and this report is filed as Ex. A. Fourteen witnesses were examined for the defence. Both the Magistrates have dealt with the de-fence evidence at great length. It is unnecessary to refer to it in detail. Most of it relates to the beating of the accused by the police, a matter which is now irrelevant to the present revision petition.

3. The Joint Magistrate in dealing with the case divided the activities of the accused into two parts, namely, what he did up to the arrival of the police and what happened after the arrival of the police. So far as the first part is concerned, the Joint Magistrate refers to the evidence of D. Ws 1, 3, 4 and 13. D.W. 1 is the Government Pleader of Narsapur. D. Ws 3 and 4 are also pleaders. According to their evidence the accused was only carrying placards and was not saying anything at all. The learned Joint Magistrate accepts their evidence and points out that though up to that stage the accused was not guilty of anything objectionable this does not prevent later developments which are unlawful. The second part of the accused's activities relates to what happened after the arrival of the police, which is not touched by the defence witnesses already mentioned. P.W. 1, the Sub Inspector, says that he was carrying a national flag and singing political songs. He also says:

1 saw the accused and five or six non-co-operators holding a demonstration near the house of Ponnappalli Veeraraghavaya Somayajulu advocating the boycott of British goods and foreign cloths.... The accused did all this to assist the operations of the All India Congress Working Committee.

4. The witness then proceeds to say that the All India Congress Working Committee advocated the boycott of foreign cloth, manufacture of salt, etc. In cross-examination he says:

I do not know if the accused is a member of the All India Congress Committee.... I do not know if the accused was authorized by the All India Congress Committee.

5. The witness also refers in chief examination to some non-co-operation meetings attended by the accused, but in cross-examination he says he cannot give the dates of those meetings. There is also some reference to the Narasapur Taluk Congress Committee. I refer to these two matters merely to eliminate them from further discussion. The charge actually made against the accused has nothing to do either with the non-co-operation meetings held in Narasapur itself or the working of the Narasapur Taluk Congress Committee. We have only to see what he did to bring himself within Section 17(1) of the Act, in connexion with the Working Committee of the All India Congress Committee. It is clear from the evidence which I set forth above that the accused is not a member of that unlawful association, nor has he contributed or received or solicited any subscriptions for the purpose of that association. The only question that remains is, has he in any way assisted the operations of that association. In Ex. A the Police Inspector reported that he noticed volunteers carrying a national flag and some card boards containing seditious matter. The card boards and the national flag were seized from these people and the national flag is a material object before me. (After discussing the) value of the evidence afforded by the flag and placards, the judgment proceeded). Neither do the placards refer to the Working Committee of the All India Congress Committee or any of its operations.

6. Then on what does the conviction of the accused rest? On this matter I find some difficulty in following the appellate judgment. In para. 2 it refers to the evidence of P. Ws. 1 and 2 and the particular portion of the evidence mentioned is:

They were advocating boycott of British goods and foreign cloth. P.W. 2 also says they started advocating boycott.

7. Paragraphs 3, 4 and 5 deal with the defence evidence. Para. 6 deals with the discrepancies of the defence evidence. So far as these paragraphs are concerned, it is unnecessary for me to say anything about them nor have I anything to say about para. 7 subject to one remark. In this paragraph the learned Joint Magistrate says:

There are also some other discrepancies as regards what was written on the placards and as to the direction from which the police came.

8. One refers to the discrepancies in dealing with evidence relating to the events that happened but not when the evidence relates to the contents of a document. The placards are before the Court. What purpose do the discrepancies in the oral evidence relating to their contents serve It can only show that the witnesses are so very loose and inaccurate in describing the simple contents of a cardboard just as the Police Inspector is very inaccurate in describing the contents of the same cardboard. However, as I have already said, I have nothing to say about these paragraphs. Then in para. 8 the Magistrate says:

The prosecution case is that the appellant and others were advocating boycott, shouting out slogans and carrying a congress flag. The defence denies this and says appellant was saying nothing.

9. The learned Joint Magistrate says:

These assertions and counter-assertions can-not be to any extent tested by cross-examination. It is only by the evidence as to surrounding circumstances that it can be decided which side is telling the truth. From the numerous discrepancies and the exaggerations of the defence consider the lower Court was right in disbelieving their evidence.

10. The Joint Magistrate then explains the delay of the police in putting up the case, I take it that this paragraph is intended to express the conclusion of the Magistrate that the prosecution case, namely, that the appellant and others were advocating boycott, shouting out slogans and carrying the congress flag, is true, and the defence case denying this is false. I accept the finding of the Joint

Magistrate. But is this finding enough to convict the appellant of an offence under Section 17(1), Criminal Law Amendment Act, to which the Joint Magistrate's judgment makes no reference. As the judgment stands, the impression is created in me that the Magistrate thinks that his finding that the (prosecution case that the appellant was 'advocating boycott, shouting out slogans and carrying the congress flag is true, is enough to dispose of the case. Unfortunately it is not This finding does not bring the accused within the clutches of Section 17(1). That section does not make the advocating of boycott, the shouting out of slogans and the carrying of congress flags an offence. Incidentally we may observe that no reasons are given for describing the flag as the congress flag. As I said, it contains nothing on it. One may call it a national flag or any other flag as his fancy dictates. Earlier in the judgment in para. 2 it was described as a national flag. Why it was referred to as congress flag, I do not know. No details are mentioned about the slogans. If they also referred to boycott they do not add to the previous phrase advocating boycott. I accept the finding of the learned Joint Magistrate that the accused was advocating boycott, hut that does not necessarily amount to assisting the operations of any unlawful association. A man may individually advocate boycott without even knowing the existence of any unlawful association and without thinking of helping the operations of any unlawful association.

11. Simply because the object of an association and the object of some individual person in his own individual activities are identical it cannot be said that the individual is helping the operations of the association. Identity of objects with no other connexion does not amount to assisting the operations of associations. Of course I do not mean to say that only if a man is secretary or a member or a salaried servant that he can be said to assist. He may be guilty of assisting in other ways than these. It may be he is an honorary worker on behalf of that association in which case he may be guilty. He may get leaflets or placards from that association,for distribution, in which case he will be guilty. But when there is no kind of connexion proved between a person and an unlawful association, it cannot be said that the person is assisting the operations of that association simply because there is the identity of objects. The words 'assisting the operations of an association' would become meaning-less unless the operations of the association are in the person's mind and an intention to assist them is also there and such

intention to assist the operations of that association can be inferred by an unambiguous overt act. A different construction of the words of the act will lead to startling results.

12. First, as I have already said, a person may be convicted under this section even if he has never heard of the existence of such an unlawful association and knows nothing of its operations. I can mention other anomalies, but they would not be relevant to this case and it is unnecessary to advert to them. The Bombay High Court has held to the same effect, namely, that it cannot be said that a person is assisting an association unless he has its operations in his mind and has an intention to help them or they are within his intention as evidenced by the Act: vide *Gangubai v. Emperor* A.I.R. 1931 Bom. 200. In this case accepting the whole of the prosecution story there is no act of the accused on which one's fingers can be laid to say that the accused had the operations of the All India Congress Committee in his mind and he intended to assist the operations of that Committee by his activities in my opinion no case has been made out under Section 17(1). The conviction is set aside and the accused is directed to be set at liberty. The fine, if paid, will be refunded.

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