The Custodian-General of Evacuee Property and others v. S. Harnam Singh

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dian of Evacuee Property (1), or to determine whether a debt is barred by time or not, *F. Sahib Dayal-Bakshi Ram* v. *The Assistant Custodian of Evacuee Property, Amritsar* (2), or to recover any debt under section 48 when the debtor declares that the debt is barred by time (*Firm Pariteshah-Sadashiv* v. *The Assistant Custodian of Evacuee Property, Amritsar* (3).

As the amount which is being demanded from the petitioner has not been admitted or proved to be due from him and as the amount is not due under the provisions of the Act, I am of the opinion that it was not within the power of the Custodian to direct the Assistant Collector, Ambala, to issue a writ of demand. I would accordingly uphold the order of the learned Single Judge and dismiss the appeal with costs.

Bishan Narain, J.

Bishan Narain, J.—I agree.

REVISIONAL CRIMINAL

Before Bhandari, C.J. and Falshaw, J.

SHRI VIRENDRA, EDITOR, PRINTER AND PUBLISHER,

THE DAILY PRATAP, JULLUNDUR,—*Petitioner*

versus

THE PUNJAB STATE,—*Respondent*

Criminal Revision No. 715 of 1956.

1956

Aug., 27th

Code of Criminal Procedure (Act V of 1898)—Section 144—Scope and extent of—Orders of precensorship—Whether can be passed under section 144—Such provisions, whether inconsistent with the rights guaranteed by

(1) (1951) 2 M.L.J. 1
(2) (1952) 54 P.L.R. 318
(3) (1952) 54 P.L.R. 468

Article 19 of the Constitution of India—Power under section 144—Exercise of—Principles stated—Propriety of the order—Principles for determining of, stated—Freedom of Press and speech—Meaning and importance of.

Held, that section 144 of the Code of Criminal Procedure provides for the issue of temporary orders in urgent cases of nuisance or apprehended danger. It confers full power on certain Magistrates to take prompt action in cases of emergency when immediate prevention or speedy remedy is desirable. Except in cases of emergency an order under this section can be passed only after service of a notice upon the person against whom the order is directed.

Held, that section 144 has been designed to impose restrictions on the exercise of the right of freedom of speech and expression in the interest of public order and the District Magistrate has the power to make temporary orders restricting the liberty of the press in urgent cases of apprehended danger. The authority to decide whether a particular order should or should not be passed has been vested in him and the vesting of such authority in him is not unreasonable. The provisions of section 144 of the Code, which empower the District Magistrate to impose precensorship on newspapers, are, therefore, not inconsistent with the provisions of Article 19 (1) (a) of the Constitution which guarantee freedom of speech and expression to all citizens of India.

Held, that the wide powers conferred upon a Magistrate under section 144 should be exercised with discretion and discrimination, that the power to interfere with the liberty of the press should be used sparingly and for good cause shown, that restrictions should be imposed on that liberty only if the facts clearly make such restrictions necessary in the public interest, that no restriction should be imposed which goes beyond the requirements of the case, that there must be a causal connection between the articles to be published and the alleged danger of disturbances of public tranquility and that there must be emergency in the matter.

Held, that a Court which is required to pronounce upon the propriety of an order passed under section 144 of the

Code of Criminal Procedure should enquire whether the " words used are used in such circumstances and are of such a nature " that a reasonable man would anticipate the evil result. This enquiry should be made in the light of the following principles, viz :—

(1) that the Constitution has given an honoured place to the great democratic freedoms secured by Article 19 ;

(2) that the power of the State to abridge freedom of speech is the exception rather than the rule ;

(3) that the character of the right, not of the limitation, determines the propriety of the restrictions ; and

(4) that however complete may be the right of the press to state public things and discuss them, that right, as every other right enjoyed by human society, is subject to the restraints which separate right from wrong doing.

Held, that the freedom of the press means principally the right to publish without any previous licence or censorship. It is such an important element of liberty and is so essential for the preservation of the other freedoms that any restriction on the exercise of this right is viewed with concern in all civilised societies.

Held, that the maintenance and welfare of democracy depends upon a market place in which freedom of speech is allowed and where ideas can be bought, sold or exchanged without let or hinderance. Freedom of speech does not mean that a person is at liberty to say what he pleases at all times and under all circumstances, for the right of freedom of speech cannot have been and obviously was not intended to give immunity for every possible use of language. This right may sometimes become a wrong if, for example, a person were to indulge in the use of language which is so defamatory, insulting, inciting or provocative as to be reasonably likely to cause disorder and violence.

Petition under sections 435/439, 561-A of Criminal Procedure Code for revision of the order of Shri R. S. Talwar, District Magistrate, Jullundur, dated the 24th June, 1956, abstaining the petitioner from publishing without prior scrutiny, etc.

I. D. DUA, and D. D. KHANNA, for Petitioner.

A. N. GROVER and D. K. KAPUR, for Respondent.

JUDGMENT

Bhandari, C.J.

BHANDARI, C.J.—This petition under section 439 of the Code of Criminal Procedure raises the question whether certain orders issued under section 144 of the said Code violate the essential attributes of the liberty of the press guaranteed by Article 19 of the Constitution of India.

On the 24th June, 1956, the District Magistrate of Jullundur issued two orders under section 144 of the Code of Criminal Procedure directing the editors of two vernacular newspapers known as The Pratap and The Hind Samachar to abstain from publishing without his previous scrutiny any articles, comments, news etc., relating to disturbances or agitation in connection with the Regional Formula, the language controversy and matters calculated to cause communal disharmony in the State for a period of two months from the date of the order. This order was followed by a communication requiring the editors to submit the articles etc., to the office of the Press and Radio Liaison Officer, Jullundur, for scrutiny before publication.

The circumstances in which these orders were passed are a matter of contemporary history. The sequence of events has been admirably summarised in the report of the Shriman Narayan

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Committee which was constituted by the Parliamentary Board of the All-India Congress Committee and on which both the parties to this litigation strongly rely. The appointment of the States Reorganisation Committee appears to have heralded the emergence of two political parties in the Punjab, one consisting mostly of the Sikhs demanding the creation of a Punjabi Suba and the other consisting predominantly of Hindus advocating the amalgamation of Punjab, Pepsu and Himachal and the creation of a Maha Punjab. These two demands could not possibly be reconciled and the Government of India in their endeavour to find a *via media* evolved a solution which is popularly known as the Regional Formula. This solution was accepted by one party and rejected by the other. The supporters of the Regional Formula tried to hold public meetings at different places in the State with the object of educating the public mind in regard to its implications but the oppositionists are said to have indulged in scenes of hooliganism, to have disturbed the meetings by shouting slogans and by interfering with the loud-speaker arrangements and to have effectively prevented Ministers and Deputy Ministers from addressing the public. A Deputy Minister was anxious to address a public meeting at Hoshiarpur on the 13th June, 1956, but he was unable to do so although the meeting was guarded by a police force consisting of 132 officers and men and although all conceivable precautions were taken to prevent the disturbing elements entering the premises. The oppositionists shouted their provocative slogans from outside the police cordon and when the Deputy Minister rose to speak stones began to be thrown at the meeting so much so that there was a 'virtual rain of stones and brickbats'. Two motor vehicles were damaged by the oppositionists and as many as 27 cons-

tables received injuries of varying severity. One of the injured policemen succumbed to his injuries during the course of the night. Seventeen persons were arrested on the following day, but the oppositionists demanded their release and paraded through the streets in large numbers and took out large processions on the 14th, 15th and 16th June, using objectionable language and provocative slogans. In the evening one of the leaders of the oppositionists was arrested. This arrest provided fresh fuel for the fire and early on the morning of the 17th June the oppositionists started assembling at the trysting place.

The scence was now set for a trial of strength. The Committee state :—

> "We pause here for a while to take stock of the situation created by these events and to gauge the frame of mind of the parties concerned. In our opinion, there is no doubt that the district authorities felt that the oppositionists had been taking "too much liberty and that the time had arrived when they should be dealt with sternly. It was being talked about freely in the town that law and order had come to an end. The authorities were anxious to disabuse the public mind of this feeling and to restore public confidence in law and order. By adopting a stiff attitude they wanted to appease the police sentiment which had been rudely shaken by the death of one of the constables and by the injuries caused to 26 others. Some of the members of this force as subsequent events disclosed, were in a revengeful spirit.

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We have no doubt in our minds that the role of the oppositionists till the evening of the 16th of June had been very aggressive and vulgar in the extreme. They however felt aggrieved that not only their demands had not been met but fresh arrests had been made on the previous evening and again just before the procession started, the atmosphere was highly surcharged and the slightest spark was sufficient to set it ablaze."

When the large procession consisting of men, women and children were passing through a narrow street in the heart of the town a few stones are alleged to have been thrown. The Senior Magistrate declared the assembly unlawful and the members of the police force delivered a lathi-charge. The Committee sum up their conclusions as follows:—

(1) Till the evening of the 16th of June, 1956, the oppositionists were the aggressive party.

(2) In the lathi charge of the 17th June, 1956, more force was used than necessary. The lathi charge continued even after the processionists had taken to their heels.

(3) Some of the overzealous and misguided members of the police force were in a revengeful spirit and pursued and attacked some of the processionists in neighbouring houses where they had taken shelter.

(4) In their lathi charge on the crowd, the members of the police force did not

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spare women and children. * * * * *

(5) Apart from receiving injuries as above, women were roughly handled inasmuch as they were pulled by the hair and by their garments resulting in the tearing of their clothes and removal of their dopattas from their persons. * * * * We are convinced that there was no sex implication and these actions were prompted by a feeling of anger and disgust at the behaviour of the women processionists on the previous day. Some of the overzealous and misguided members of the police force abused them."

The District Magistrate of Jullundur passed the order of precensorship on the 24th June, 1956, when the tempers were high and recrudescence of the trouble was more than likely.

Mr. Dua, who appears for the Pratap contends that the impugned orders have been passed merely to harass and victimize the papers who hold political views opposed to that of the ruling party, that it is discriminatory, that it has not published any inflammatory articles, that there is no causal connection between the articles, and the news published in the paper and the alleged situation; that it published correct news of the various incidents of public importance as they happened and made its own comments on those incidents; that it is discriminatory, for although almost all the news published in this paper was published in other papers in the State against which no prohibitory order has been passed, that in asking for a judicial enquiry into the lathi charges at Hoshiarpur the paper did no more than to voice the feelings of the public or to repeat a demand

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which had been made by most of the other newspapers in the State, that all items mentioned in the impugned order are either factual news or are legitimate and bona fide criticisms of the actions of the executive authorities; that the impugned order is intended to coerce and suppress the political opponents of the ruling party and is not the legitimate use of the provisions of section 144, that there was no emergency, that the *ex parte* order was wholly unjustified; that the District Magistrate had no power to delegate his functions to the Press and Radio Liaison Officer, that the obstruction and delay that has been occasioned in the carrying out of the impugned order is in direct violation of the fundamental rights guaranteed by Article 19 (1) (g) and is calculated and designed to cripple the petitioner's business, that the demand for a public enquiry made by the petitioner and denied by the State authorities was upheld by the Congress High Command and that the public and Government co-operated with the Committee and have not challenged its findings.

Mr. Grover, on the other hand, contends that this order was fully justified as the District Magistrate who was responsible for the maintenance of law and order had a strong reason to feel that a situation was developing which could easily result in a serious disorder. It would be a mistake, he thinks, if we were to divorce ourselves from the conditions which were prevailing at the time and to exercise our authority over the decisions of the District Magistrate in an abstract manner by disregarding local conditions. The District Magistrate imposed precensorship not because Government disagreed with the views of the papers but because in his capacity as custodian of law and order he was himself concerned with preventing

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a breach of the peace. The District Magistrate was satisfied that these two papers had indulged in communal propaganda of a virulent nature, that they had fanned the flame of communal hatred between Hindus and Sikhs, that they had played up the sex element by magnifying petty incidents into serious cases of molestation of women and that they had created an immediate danger of obvious magnitude to the well-being of large sections of our population. It was in these circumstances, it is argued, that the impugned restrictive order was passed.

Article 19 of the Constitution which guarantees the seven freedoms to the citizens of India was not intended to lay down any new or novel rules of Government but simply embodies the principles which have crystallised themselves into fundamental law by the lapse of time. Ever since the dawn of civilization political reformers have been struggling for freedom of speech, for it has long been recognised that the maintenance and welfare of democracy depends upon a market place in which freedom of speech is allowed and where ideas can be bought, sold or exchanged without let or hinderance. Freedom of the press is such an important element of liberty and is so essential for the preservation of the other freedoms that any restriction on the exercise of this right is viewed with concern in all civilised societies. Freedom of the press means principally the right to publish without any previous licence or censorship. As long ago as the year 1,644 John Milton protested against censorship or previous restraint. In 1,769 Blackstone expressed the view that liberty of the press "consists in laying no previous restraint on publication and not in freedom from censure for criminal matters when published. Paterson considers that " the liberty of the Press

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means the liberty of publishing whatever any member of the public thinks fit on any subject without any preliminary licence or qualification whatsoever". "Freedom from preliminary restraint", observed Mr. Justice Holmes in *Patterson v. Colorado* (1) "extends as well to the false as to the true; the subsequent punishment may extend as well to the true as to the false." Freedom of speech does not mean that a person is at liberty to say what he pleases at all times and under all circumstances, for it has been held repeatedly that the right of freedom of speech cannot have been and obviously was not intended to give immunity for every possible use of language. This right may sometimes become a wrong if, for example, a person were to indulge in the use of language which is so defamatory, insulting, inciting or provocative as to be reasonably likely to cause disorder and violence. "There are certain well-defined and narrowly limited classes of speech" observed Mr. Justice Murphy in an American case "the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and obscene, the profane, the libellous, and the insulting or fighting words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace."

The first point for consideration in the present case is whether the provisions of section 144 of the Code of Criminal Procedure, which empowers the District Magistrate to impose precensorship on newspapers, are inconsistent with the provisions of Article 19(1)(a) which guarantee

(1) 205 U.S. 454

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freedom of speech and expression to all citizens of India. Mr. Dua, who appears for the petitioner, has placed three submissions before us in support of the contention that the provisions of this section are inconsistent with the provisions of the Constitution. It is contended in the first place that a law imposing restrictions on the liberty of speech or expression is *ultra vires* of the Constitution even though the restrictions have been imposed in the interest of public order. Two decisions of the Supreme Court have been cited in support of this contention, *Romesh Thapar* v. *State of Madras* (1), and *Brij Bhushan* v. *State of Delhi* (2). It is true that the Supreme Court has taken the view that a law restricting the freedom of speech would be *ultra vires* even though it related to public order or incitement to an offence provided there was no question of the security of State being jeopardised, but it must be remembered that this contention, however, substantial it might have been before the enactment of the Constitution First Amendment Act, 1951, when public order was not one of the purposes for which freedom of the press could be restricted, is at the present moment wholly devoid of force.

Secondly, it is argued that section 144 cannot fall within the ambit of Article 19(2) inasmuch as the restrictions imposed by it have not been imposed solely in the interest of public order. This contention is sought to be supported by certain observations appearing in the concluding portion of *Romesh Thapar's case* (1), at page 602, where Patanjali Sastri, C.J., stated as follows:—

> "We are therefore of opinion that unless a law restricting a freedom of speech and

(1) 1950 S.C.R. 594
(2) 1950 S.C.R. 605

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expression is directed solely against the undermining of the security of the State or the overthrowing of it, such law cannot fall in within the reservation under clause (2) of Article 19, although the restrictions which it seems to impose may have been conceived generally in the interests of public order."

Mr. Dua contends that section 144 of the Code of Criminal Procedure has not been enacted solely in the interests of public order, and consequently that it cannot fall within the ambit of caluse (2) of Article 19. A similar argument appears to have found favour with two Judges of the Special Bench in *the matter of Bharati Press* (1), but it left the third Judge cold and unconvinced. "I have read and re-read the judgments of the Supreme Court" observed Mr. Justice Shearer "and I can find nothing in them myself which bears directly on the point at issue and leads me to think that, in their opinion, a restriction of this kind is no longer permissible". This observation was cited with approval by Mahajan, J., in *State of Bihar* v. *Shailabala Devi* (2). I entertain no doubt in my mind that section 144 has been designed to impose restrictions on the exercise of the right of freedom of speech and expression in the interests of public order.

The third submission was that section 144 is not covered by the provisions of clause (2) of Article 19, for if the impugned restrictive law is examined in its substantive and procedural aspects (*State of Madras* v. *V. J. Row*) (3), it would be found to be wanting in the attribute of reasonableness. I regret I am unable to concur in this contention. Section 144 provides for the issue of

(1) A.I.R. 1951 Pat. 12
(2) 1952 S.C.R. 654, 660
(3) 1952 S.C.R. 597, 606

temporary orders in urgent cases of nuisance or apprehended danger. It confers full power on certain Magistrates to take prompt action in cases of emergency when immediate prevention or speedy remedy is desirable. Except in cases of emergency an order under this section can be passed only after service of a notice upon the person against whom the order is directed. A Magistrate is at liberty to alter or rescind any order made by him either *suo motu* or on the application of any person aggreived, but if an aggrieved person applies for the cancellation of order, he is entitled to be afforded an opportunity of appearing before the Magistrate either in person or by pleader and showing cause against the order. If the Magistrate rejects the application wholly or in part, he is required to record in writing his reasons for doing so. No order under this section can remain in force for more than two months, unless the State Government by notification in the official gazette otherwise directs.

It is true that the authority to decide whether a particular order should or should not be passed has been vested in the District Magistrate, but as pointed out in *Dr. N. B. Khare v. The State of Delhi* (1), the vesting of authority in a particular officer to take prompt action under emergent circumstances entirely on his own responsibility or personal satisfaction is not necessarily unreasonable. The power of a District Magistrate to make temporary orders restricting the liberty of the press in urgent cases of apprehended danger has been upheld both before and after the inauguration of the new constitution [*In re. Ardeshir Phirzshaw* (2), *P. T. Chandra* v. *The Crown* (3), *In re. Bandi Butchaiah* (4)].

Section 144 is a powerful weapon in the armoury of the State and can be employed effectively in defence of public order in times of stress and

(1) 1950 S.C.R. 519 at p. 533
(2) A.I.R. 1940 Bom. 42
(3) A.I.R. 1942 Lah. 171
(4) A.I.R. 1952 Mad. 61

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strain. It is true that like all other instruments it is capable of being misused, but that fact alone would not justify us in allowing this weapon to be so rusted and blunted with constitutional construction as to be rendered practically useless.

But a question at once arises what are the tests for determining whether a particular restriction goes too far, for all restrictions are not unconstitutional. The authorities in India are unanimous in holding that the wide powers conferred upon a Magistrate under section 144 should be exercised with discretion and discrimination, that the power to interfere with the liberty of the press should be used sparingly and for good cause shown, that restrictions should be imposed on that liberty only if the facts clearly make such restrictions necessary in the public interest, that no restriction should be imposed which goes beyond the requirements of the case, that there must be a causal connection between the articles to be published and the alleged danger of disturbances of public tranquillity [*In re. Ardeshir Phirozshaw* (1); *P. T. Chandra* v. *The Crown* (2)], and that there must be emergency in the matter [*Chandra Nath Mukherjee* v. *Emperor* (3); *Satyanarayana Chaudhari* v *Emperor* (4), and *R. E. Blong* v. *King Emperor* (5)]. But they have not laid down any conclusive test for determining whether a particular order curtailing the freedom of the press is or is not justified. The American Courts appear to have propounded a more satisfactory test. In *Scheneck* v. *United States* (6), Mr. Justice Holmes delivering the judgment of a unanimous Court expressed the view that the question in every case of the alleged infringement

(1) A.I.R. 1940 Bom. 42
(2) A.I.R. 1942 Lah. 171
(3) 23 C.W.N. 145
(4) A.I.R. 1931 Mad. 236
(5) A.I.R. 1924 Pat. 767
(6) 249 U.S. 47

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of the constitutional freedom of speech and press is "whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree." I am of the opinion that a Court which is required to pronounce upon the propriety of an order passed under section 144 of the Code of Criminal Procedure should enquire whether the "words used are used in such circumstances and are of such a nature" that a reasonable man would anticipate the evil result. This enquiry should be made in the light of the following principles viz.,—

(1) that the Constitution has given an honoured place to the great democratic freedoms secured by Article 19;
(2) that the power of the State to abridge freedom of speech is the exception rather than the rule;
(3) that the character of the right, not of the limitation, determines the propriety of the restrictions; and
(4) that however complete may be the right of the press to state public things and discuss them, that right, as every other right enjoyed by human society, is subject to the restraints which separate right from wrong doing.

The restrictive orders the validity and propriety of which has been challenged in the present cases came into being on the 24th June, 1956, and died a natural death on the 23rd August, 1956. We have been given an assurance that these orders will not be revived or resurrected. It is the settled practice of the Patna High Court to decline to interfere in revision with an order un-

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der section 144 when the order has already expired or is likely to expire in a few days time. Following this practice I would decline to pronounce upon the validity or propriety of these orders or to interfere with the decision which has already been given.

As these petitions raise substantial questions of law, I certify that this case is a fit one for appeal to the Supreme Court.

Falshaw, J.

Falshaw, J.—I agree.

APPELLATE CIVIL

Before Kapur, J.

BACHAN SINGH AND OTHERS,—*Appellants*

versus

FIRM ARHAT RAM SINGH-BAKHTAWAR SINGH,—*Respondents*

Execution Second Appeal No. 601 of 1955.

1956
———
Aug., 31st

Execution of decree—Objections by Judgment-debtor—Objections partly allowed—Appeal by decree-holder against the order allowing objections—Death of decree-holder during appeal—Application by legal representatives to be substituted in place of decree-holder in the appeal—Whether necessary to obtain succession certificate in order to continue the appeal. Indian Succession Act (XXXIX of 1925)—Section 214. Code of Civil Procedure (V of 1908)—Sections 47 and 146.

K. S. a decree-holder applied for execution of his decree and attached some land belonging to the Judgment-debtor who filed objections to the attachment which were partly allowed. K. S. appealed to the District Judge against the order allowing the objections. During the pendency of the