

(1976) 12 BOM CK 0015

In the Bombay High Court

Case No : Criminal Revision Application No. 1445 of 1976

Dattu Rama Kadam

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 23-12-1976

Acts Referred:

Citation : (1977) 79 BOMLR 432

Hon'ble Judges : Sawant, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sawant, J.—This is a revision application filed by the original accused No. 3 against the order of the Additional Sessions Judge, Thana, in Criminal Appeal No. 34 of 1976, confirming his conviction for the offence under Rule 46(5) read with Rule 36(7) of the Defence of India Rules, 1971, (hereinafter referred to as the said Rules), and sentencing him to rigorous imprisonment for five months and to pay a fine of Rs. 1,000 and in default to undergo simple imprisonment for two months.

2. The revision-petitioner was at the relevant time working as Director, Physical Education in Sonopant Dandekar College of Arts at Satpati, taluka Palghar, District Thana. He was residing at Satpati which is about five miles from the Palghar Railway Station. At about 11-30 p.m. on December 7, 1975, police Head Constable Ramchandra Jadhav (P.W. No. 2) attached to the Palghar police station received information from his constable that some anti-Government posters were freshly pasted on the platform of the Palghar Railway Station. Head Constable Jadhav who was then in charge of the police station, therefore, rushed to the spot with members of his staff including constable Jadhav (P.W. No. 3). They saw three boys i.e. the original accused Nos. 1, 2 and 4 doing something near the side of the bridge on platform No. 2 of the station. They approached the boys stealthily and saw that the boys were actually busy in sticking gum to the posters and pasting the posters on the platform. When the policemen went to

catch these boys, two boys were caught unawares while they were sitting, while the third boy who was standing, ran away. He was later on arrested. It appears that when the police accosted the two boys who were arrested, the police learnt that the petitioner-accused was the person who supplied them the said anti-Government posters. Hence the policemen caught the petitioner-accused who was also standing on the platform itself. Soon thereafter, two panch witnesses including Kher (P.W. No. 1), were called at the police station and in their presence the accused No. 3 i.e. the petitioner was searched. It is alleged that one cloth bag known as Shabnam bag was hanging over the shoulders of the accused No. 3 and during the search of the bag, two posters which have been described in the panchanama as slips, bearing hand-written words "Anibani Muradabad" were found. They were seized under the panchanama exh. 12. There were other posters or slips found with others with which we are not concerned in the present revision application. Head Constable. Ramchandra Jadhav (P.W. No. 2) immediately lodged a complaint exh. 14 against the accused alleging that the posters were a prejudicial report. After investigation, all the four accused were charge-sheeted and tried before the learned Judicial Magistrate, First Class (Railways) Virar, for offences under Rules 36(7), 43(1), 46(1) read with 43(5) and 46(5) of the said Rules. At the trial, original accused Nos. 1, 2 and 4 pleaded guilty and they were convicted for the offences under Rule 36(7), 43(1) and 46(1) read with 43(5) and 46(5) of the said Rules, and sentenced. However, only accused No. 3 i.e. the present revision-petitioner denied the offence with which he was charged and claimed to be tried. The prosecution led evidence among others, of the panch Kher (P.W. No. 1), P.H.C. Ramchandra Jadhav (P.W. No. 2), P.C. Prabhakar Jadhav (P.W. No. 3) and R.P.F. Rakshak Chaudhari (P.W. No. 4), and on their evidence the learned Magistrate came to the conclusion that the prosecution had proved that the posters in question amounted to "prejudicial report" and the said report was an incitement to the commission of the prejudicial act within the meaning of Rule 36(7) of the said Rules. He therefore convicted accused No. 3 for the offences under Rules 36(7), 43(1), 46(1) read with 43(5) and 46(5) of the said Rules and sentenced him to suffer R.I. for two months and to pay a fine of Rs. 1,000 and in default to suffer R.I. for two months, on all counts. Aggrieved by the said decision of the learned Magistrate, the accused No. 3 preferred an appeal to the Additional Sessions Judge, Thana. The learned appellate Judge held that the only offence which was proved against accused No. 3 was that under Rule 36(7) read with Rule 46(5) of the said Rules and therefore convicted him of the said offence and sentenced him to undergo R.I. for five months and to pay a fine of Rs. 1,000 and in default to undergo S.I. for two months. He set aside the conviction of the accused for the other offences. It is this order dated May 11, 1976 which is challenged by the petitioner-accused No. 3 in this revision application.

3. Mr. Kamerkar, the learned Counsel appearing for the petitioner-accused No. 3, made three-fold submissions. His first contention was that the two posters or slips which were alleged to have been found in the possession of the petitioner-

accused No. 3 were not on record and therefore it should be held that he was in fact not in possession of the same. His second submission was that assuming that the petitioner-accused No. 3 was found in possession of the said posters, the only words which according to the panchanama were written on the same were "Anibani Muradabad". These words did not constitute "prejudicial report" within the meaning of Rule 36(7) of the said Rules and therefore the accused was not guilty of the offence alleged against him, His last submission was that even assuming that the said posters contained the said words, the mere possession of the said posters would not constitute "prejudicial report" within the meaning of the said Rule. He therefore submitted that for all these reasons the accused was entitled to be acquitted of the offence with which he was charged. As against this, Mr. Kamat the learned public prosecutor contended that there was evidence on record which showed that the said two posters or slips were in fact shown to panch Kher (P.W. No. 1) while he was in the witness box and he had admitted that they were the same which were seized under the panchanama. For some reason, they remained to be marked as exhibits and unfortunately they were also not found in the record of the Court papers. However, that does not mean that there was no evidence to show that in fact the accused was not found in possession of the said two posters. With regard to the second submission, he contended that the words "Anibani Muradabad" were not the only words written on the said two posters, but as deposed to by the panch, there were further words "Anibani Radda Kara". Taken together, both these sets of words constituted "prejudicial report" within the meaning of Rule 36(7) of the said Rules and therefore, the accused was guilty of the offence. As regards the third submission advanced on behalf of the defence, he submitted that under Rule 46(1)(b) of the said Rules, a person in possession of any document containing any prejudicial report was guilty of the offence under Rule 46(5) and therefore the accused was rightly convicted for being in possession of the said two posters.

4. As regards the first submission advanced on behalf of the defence that there is no evidence to show that the accused was in possession of the said two posters, I find that the said submission is not well founded. The panchanama exh. 12 which is on record mentions that two posters which the panch in his deposition has described as slips, were seized from the cloth bag called Shabnam bag which was on the person of the accused. Panch Kher (P.W. No. 1) has admitted the contents of the said panchanama as true. It also further appears from the notes of evidence on record that these two posters which were Articles 2 and 3, were shown to panch Kher while he was in the box and he admitted that those were the posters which were so seized from the cloth bag carried by the accused. It is true that there is no mention in the record that thereafter these two posters were given any exhibit numbers. Unfortunately it is noticed that the said two posters are also not on record. However these two circumstances viz. the absence of record to show that these two posters were given any exhibit numbers and further the absence of the posters themselves from the record will

not go to show that in fact the same were not seized from the petitioner-accused as alleged by the prosecution. The evidence of the panch, the panchanama exh. 12 as well as the evidence of the other prosecution witnesses in that behalf has not been shaken and it will have therefore to be held, as has been held concurrently by both the Courts below, that the two posters were in fact seized from the cloth bag carried by the petitioner-accused. I am therefore unable to agree with the said contention advanced on behalf of the accused that in fact the accused was not in possession of the two posters.

5. Coming to the second submission viz. whether the hand-written words on the said two posters constituted "prejudicial report" within the meaning of Rule 36(7) of the said Rules or not, it must be noted that the panchanama mentions that the only words which were hand-written on the said two posters were "Anibani Muradabad". The panchanama does not mention that the said two posters which are in fact described in the panchanama as slips (pattya) also bore the handwriting "Anibani Radda Kara". This admission has been made by the panch from the witness box. In view of the contents of the panchanama and in the absence of the said posters on record it will have to be held that the only words which the said two posters or slips bore were "Anibani Muradabad". The question that falls for consideration is whether these words viz. "Anibani Muradabad" constituted "prejudicial report" within the meaning of the said Rule 36(7). Rule 36(7) defines prejudicial report as follows:

36. (7) "Prejudicial report" means any report, statement or visible representation, whether true or false, which, or the publishing of which, is, or is an incitement to the commission of, a prejudicial act;

In other words the report, statement or visible representation must by itself be a prejudicial act or must be an incitement to the commission of a prejudicial act. So also its publication must be a prejudicial act or must be an incitement to the commission of a prejudicial act. What constitutes "prejudicial act" has been defined in Sub-clauses (a) to (s) of Rule 36(6) of the said Rules. It will be apparent from Sub-clauses (a) to (s) that there are various species of prejudicial act mentioned in the said Rule 36(5). There is no dispute that the species of prejudicial act complained of against the petitioner-accused are those mentioned in Sub-clauses (a), (e) and (h) of the said Rule 36(6), which are as follows:

36. Definitions. In this Part, unless the context otherwise requires,...

(6) "prejudicial act" means any act which is intended or is likely-

(a) to prejudice India's relations with any foreign power, or the maintenance of peaceful conditions in any area;...

(e) to bring into hatred or contempt, or to excite disaffection towards the Government established by law in India;...

(h) to cause fear or alarm to the public or to any section of the public;

6. In order to show therefore that the accused comes within the tentacles of the offence with which he is charged, it is necessary for the prosecution to prove that the said words "Anibani Muradabad" or their publication constituted acts mentioned in the said Sub-clauses (a), (e) and (h) of the said Rule 36(6) or an incitement to do the said acts. Taking first, Sub-clause (a) of the said Rule 36(6), it is not the case of the prosecution that the said words were intended or were likely, to prejudice India's relation with any foreign power. It is however urged that the said words were intended or were likely, to prejudice the maintenance of the peaceful conditions in the area where they were found in the possession of the accused. Therefore the question is, can it be said that the said words by themselves were intended or were likely to prejudice the maintenance of the peaceful conditions in the said area. I am of the view that the said contention cannot be accepted without straining one's imagination. The meaning of the said words as understood commonly, and interpreted liberally in favour of the prosecution is "Down with Emergency." Can it be said that this slogan "Down with Emergency" by itself, even assuming that it is published by way of posters on the wall, will lead to prejudice the maintenance of the peaceful conditions in the area in which it is so exhibited. What constitutes prejudicial act has now been laid down authoritatively by a number of decisions and the latest decision of the division Bench of this Court in Chintaman Shridhar Joglekar v. The State of Maharashtra (1976) Criminal Application No. 1445 of 1976, has summarised the earlier decisions on the point. It is held that acts or words complained of as prejudicial acts must either incite the public to disorder or must be such as to satisfy a reasonable person that this is the intention or tendency. The mere publication of such words even by wall posters cannot by any stretch of imagination be held to be an act which would lead to disorder or incite others to disorder. It cannot therefore be said that the said words were intended or were likely, to prejudice the maintenance of the peaceful conditions in the area.

7. Coming now to Sub-clause (e) of the said Rule 36(6), the contention of the prosecution is that the said words or the publication thereof were intended or were likely to bring into hatred or contempt, or to excite disaffection towards the Government established by law in India. I am unable to appreciate this contention. It is difficult to understand how the words "Down with Emergency" or their publication would have created any hatred or contempt or would have excited disaffection towards the Government. If anything, the said words only condemned one of the policies followed by the Government viz. the continuance of the Emergency which was declared by the Government. The words "Down with Emergency" constitute nothing but a mere wordy criticism of the said policy and it cannot be said that by such criticism there was any disaffection created against the Government or that the Government was brought into hatred or contempt in the eyes of the people. Such slogans are not unknown to the people, and such slogans are given by people usually in respect of all policies or programmes which are not liked by them. The people who come across such slogans take them in that spirit. It is one of the essentials of democracy that the people

should be allowed peacefully to express their resentment against a policy or a programme of Government which is not to their liking. When such resentment is sought to be expressed, as in the present case by slogans such as "Down with Emergency" peacefully given, it stands hardly to reason to hold that such expression of resentment is tantamount to an attempt to bring into hatred or contempt the Government or to excite disaffection towards it. I have therefore no hesitation in holding that the contention advanced to the contrary, on behalf of the prosecution is completely unwarranted.

8. As regards Sub-clause (h) of the said Rule 36(6), Mr. Kamat only half-heartedly attempted to argue that the said words and the publication thereof would be covered by the prejudicial act mentioned in the said sub-clause. I do not think that the said contention merits any serious consideration at all. It is difficult to appreciate that the said words were intended or were likely to cause fear or alarm to the public or to any section of the public. Mr. Kamat could not point out as to what was the fear and the alarm which was intended to be caused to the public or to any section of the public by the said words or the publication thereof. Thus, I am of the view that the said words or the publication thereof would not be covered by either of the said Sub-clauses (a), (e) and (h) of Rule 36(6) of the said Rules and therefore they did not constitute prejudicial act within the meaning of the said Rule 36(6). Since the said words or the publication thereof did not amount to a prejudicial act, it follows that they will not constitute prejudicial report within the meaning of Rule 36(6) of the said Rules. The defence is therefore entitled to succeed on this point alone viz. that the accused was not in possession of any "prejudicial report".

9. Coming now to the last contention viz. that assuming that what was found in the possession of the accused constituted "prejudicial report" within the meaning of Rule 36(7) of the said Rules, the further question is whether the mere possession of the prejudicial report will constitute an offence within the meaning of Rule 46(5) of the said Rules for which admittedly the accused has been convicted. Rule 46 states as follows:

46. Illegal possession of certain information and publication.-

(1) No person shall, without lawful authority or excuse, have in his possession-

(a) any information likely to assist the enemy or any confidential information; or

(b) any document containing any prejudicial report; or

(c) any unauthorised cinematograph film of the nature described in Sub-rule (3) of Rule 43.

(2) Any person who, without lawful authority or excuse, has on any premises in his occupation or under his control any document containing any information likely to assist the enemy, any confidential information or any prejudicial report shall, unless he proves that he did not know, and had no reason to suspect, that the said document contained any such information or report as aforesaid, or that

the said document was on such premises without his knowledge or against his consent, be deemed to have contravened this rule.

(3) The licensee of any building or other premises licensed under Part III of the Cinematograph Act, 1952 (37 of 1952), or under any law in force in a State regulating exhibitions by means of a cinematograph and the occupier, or, if there is no occupier, the owner, of any other building or other premises, in or on which any unauthorised film as aforesaid is found, shall, unless he proves that the said unauthorised film was in or on such building or other premises without his knowledge or against his consent, be deemed to have contravened this rule.

(4) In any proceedings arising out of a contravention of this rule in respect of the possession of any document or information it shall be a defence for the accused to prove that the said document or information-

(a) was in his possession with the permission or under the authority of Government or

(b) was a proof prepared by or for him for submission to Government or to a person or authority designated by Government in this behalf with a view to the obtaining of permission for its publication; or

(c) was published before the Act came into force.

(5) If any person contravenes any of the provisions of this rule, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

10. We are concerned here only with Rule 46(1)(b), since admittedly the charge against the accused is that he was in possession of the said two posters containing "prejudicial report." It is clear from the provisions of Rule 46 that what is made an offence is the possession of "prejudicial report" without lawful authority or excuse. As has been pointed out earlier, the "prejudicial report" as defined in Rule 36(7) has reference to "prejudicial act" which is defined in Rule 36(6) of the said Rules. Unless therefore the so-called "prejudicial report" amounted to a "prejudicial act" which necessarily means the communication, publication or distribution of such prejudicial report, it would not constitute an offence as contemplated by the said Rule. Admittedly, in the present case, the only facts alleged against the petitioner-accused are that he was found in possession of the said two posters or slips. There is no further act alleged against him. Can it therefore be said that merely because the accused had in his cloth bag the said two posters or slips, he was guilty of the offence under Rule 46(5) of the said Rules? To hold that mere possession of a prejudicial report, without anything more, will constitute an offence within the meaning of the said Rule 46(5), will lead to unreasonable consequences, which it is legitimate to hold, were certainly not intended by the Legislature. Persons may come in innocent possession of "prejudicial report" in various ways, such as for example when the distributor of such reports hands them a copy thereof or thrusts it into their

hands or sends it to their address by post or hand delivery etc. Unless therefore it is shown that such possession was for the purpose of communication, publication or distribution, no offence can be spelt out against the possessor. I am therefore of the view that even assuming that the accused was in possession of the so-called prejudicial report, the mere possession would not bring him within the clutches of the said Rule 46(5). In that view of the matter, it cannot be held that the accused was guilty of the offence under the said Rule 46(5).

11. I therefore hold that in the first instance, the said posters did not constitute a prejudicial report within the meaning of Rule 36(7) of the said Rules. I am also further of the view that mere possession of the said posters and nothing more, did not constitute an offence under Rule 46(5) of the said Rules. Since the accused has been convicted by the lower Court for the offence under Rule 46(5) read with Rule 36(7) of the said Rules, his conviction is liable to be quashed. I am informed that the accused has already undergone the imprisonment for five months, and he has also paid fine of Rs. 1,000. I therefore quash the conviction and sentence of the petitioner-accused and acquit him, and direct that the fine, if any, paid by the accused be refunded to him. Rule is made absolute accordingly.