

(1972) 03 DEL CK 0026

In the Delhi High Court

Case No : Criminal Miscellaneous (Main) Appeal No. 2 of 1972

Madan Gopal

APPELLANT

Vs

Lieutenant Governor of Delhi and Another

RESPONDENT

Date of Decision : 31-03-1972

Acts Referred:

Citation : (1972) 8 DLT 402 : (1985) 2 ILR Delhi 487 : (1972) 2 ILR Delhi 171

Hon'ble Judges : Hardayal Hardy, C.J.; S.N. Shankar, J.; Prakash Narain, J

Bench : Full Bench

Advocate : Hari Chand and Y. Dayal, for the Appellant;

Judgement

Hardayal Hardy, C.J.

(1) This petition u/s 99-B and Section 561-A of the Code of Criminal Procedure has been placed before a Special Bench of three Judges pursuant to Section 99-C of the Code. The petitioner's case is that the Lieutenant Governor Union Territory of Delhi, issued a notification bearing No. F. 2 (16-2)/70 Chg on 16th June, 1970 which was published in the Delhi Gazette No. 25, Vol. IV, dated 9th July, 1970 at page 662. This notification was issued in purported exercise of power conferred by Section 99-A of the Code of Criminal Procedure, hereafter referred to as the Code, on the Lieutenant Governor of Delhi, whereby an issue of the book "Liberation" a monthly organ of All-India Co-ordination Committee of Communist Revolutionaries for the month of December 1969 (Vol. 3) which was printed at Pragati Printers, 59-A Bechu Chatterjee Street, Calcutta-9, edited and published by Shri Nirnai Ghose from 60-A Keshab Chander Sen Street, Calcutta-9, containing certain passages which are mentioned in the statement annexed to the said notification, and the said portions and every copy of the said portions and every document containing the said portions were declared to have been forfeited to the Government on the ground that it attempted to excite disaffection to the Government established by law in India.

(2) The petitioner submits that his house was raided on 6-12-1970 when 76

books were taken away as a result of seizure and search by the police. The petitioner was also arrested on that day and was released on bail on 11-12-1970. No copy of the grounds on which his house was searched and he was arrested was supplied to him.

(3) On 21-9-1971 he was sent up before a magistrate on a charge-sheet submitted against him wherein it was alleged that he was found in possession of the above mentioned book. The petitioner claims that he was not in possession of any such book but since he is a highly educated man and his hobby is reading books on various subjects and he is fond of purchasing books from booksellers in the market he was not aware of any such notification forfeiting the book. It was only on 29-1-1971 that a copy of the charge-sheet along with the copy of the notification mentioned above with the portions declared seditious was supplied to him that he became aware of any such notification. Thereupon he made an application to the trial Court that the full copy of the book "Liberation" containing the paras in the statement annexed to the notification should be supplied to him so that he might ascertain whether they contained seditious matter; but the book was not supplied to him.

(4) It is only after going through the notification and the statement annexed thereto that the petitioner felt that the notification was mala fide unconstitutional, null and void on various grounds mentioned in the petition.

(5) On 19-11-1971 the petitioner filed the present petition in this Court. It however seems that the registry of this Court raised certain objections and it was on 3-1-1972 when the objections were removed that the petition was placed before a learned Single Judge of this Court who by order dated 25-1-1972 directed that u/s 99-C of the Code the petition had to be heard by a Special Bench of three Judges and ultimately the petition was placed before the present Bench.

(6) As the petitioner was not the printer, publisher or editor of the book, he was also not the book-seller from whom the book had been seized, nor did he claim that he was found in possession of the book, one of the questions that arose for consideration related to the locus standi of the petitioner to maintain this petition u/s 99-B of the Code. At the preliminary hearing of the petition, the counsel for the petitioner cited a judgment of Gujarat High Court in Manubhai Tribhovandas Pate! State of Gujarat and another (1971 Gujarat Law Reporter 968). That was however a case relating to the publisher of a book. But since the question was of some importance we directed on 11th February 1972 to issue a notice to the respondents for February 25, 1972. On that date the copy of the book not being available before us and it was stated by the counsel for the petitioner that the book was to be found on the record of the trial court, we called for that record and adjourned the hearing of the case to March 10, 1972. Meanwhile we called upon the respondents to file an affidavit in opposition to the petition. The affidavit has since been filed and one of the preliminary objections relates to the plea of limitation. It is urged that the petition is barred by time as required by

Section 99-B of the Code. The State Government notification was issued on 16th June 1970 and was published in the Delhi Gazette on 9th July 1970, but the the present petition was not filed in this Court till 19-11-1971. Section 99-B reads

"Any person having any interest in any newspaper, book or other document, in respect of which an order of forfeiture has been made u/s 99A, may, within two months from that date of such order ,apply to the High Court to set aside such order on the ground that the issue of the newspaper, or the book or other document, in respect of which the order was made, did not contain any seditious or other matter of such a nature as is referred in sub-section (1) of Section 99A."

(7) In other words, any person having interest in any book or document etc. has to apply to the High Court to set aside an order of forfeiture made under 99A of the Code within two months from the date of such order. The present petition has been filed after a delay of over 16 months and is Therefore Prima fade barred by time.

(8) Counsel for the petitioner, however, submits that Section 5 of the Limitation Act is applicable and Therefore the delay is to be condoned for the petitioner had no knowledge of any such notification till 21-9-1971 when the charge-sheet was submitted by the police; the present petition was filed by him within two months from the said date.

(9) In support of his submission the petitioner relied upon a Special Bench decision of Allahabad High Court in Lalai Singh Yadav and another v. State of Uttar Pradesh 1971 C L J 1773 which according to the counsel is on all fours with the present case. The petitioner had stated in that case that he was not in possession of the book which formed the subject-matter of those proceedings. But the delay was condoned because of the provisions of Section 5 of the Limitation Act. A perusal of the judgment however shows that the petitioner in that case was the publisher of the forfeited book along with one Shri Lalai Singh Yadav, President of Dr. Bhim Rao Ambedkar Literature Committee an"j in any case had interest in that book u/s 99-B. The notification was issued in that case on 26th, August, 1970 and was published in the U.P. Gazette on 12th September, 1970. The petitioner had no copy of the forfeited book in his possession and it was not until 15-11-1971 that he was able to contact the publisher (the second petitioner Shri R. N. Shastri) who had gone on tour in south India. Thereafter the petitioner went to Lucknow and made inquiries in the Secretariat and eventually on 2-12-1970 obtained the correct particulars of the notification. The petition was filed in the High Court two days later.

(10) It was in these circumstances that it was held that the provisions of Section 5 of the Limitation Act applied to the case in view of the provisions of Section 29(2) of the Act and the court was satisfied that the petitioners had sufficient cause for not filing their petition within the prescribed period of two months.

(11) In the present case even on the assumption that the petitioner had no knowledge of the forfeited book being one of the 76 copies that were seized and

taken away by the police from his house, he certainly had information about the notification and the book on 21-9-1971 when not only copies of the notification but also the relevant passages from the book were supplied to him. If Therefore he wanted to claim the benefit of Section 5 of the Limitation Act it was for him to mention the circumstances why the present petition was filed by him on 19-11-1971. It was incumbent on him to explain each day's delay, but neither in the application u/s 5 of the Limitation Act nor in the supporting affidavit any attempt has been made to make out a sufficient cause for condoning the delay. In the affidavit it is clearly stated that "the applicant came to know only of the existence of the said book from the alleged paras mentioned therein and the notification annexed in Annexure 'A' only on 21-9-1971 and hence the application is filed now."

(12) There is no averment to explain the delay between 21-9-1971 and 19-11-1971 although section 99-B in terms provides that an application has to be made to the High Court within two months from the date of such order. Knowledge of the petitioner is not one of the requirements of the Section but since Section 5 of the Limitation Act applies, it is up to the petitioner to make out a case why delay should be condoned. It seems to us that the petitioner has failed to do so.

(13) Counsel for the petitioner next submitted that he had made an application to the trial Court u/s 432 of the Code to refer the case to the High Court. The counsel concedes that neither in the petition u/s 99-B nor in the application u/s 5 of the Limitation Act and the supporting affidavit there is any reference to any such application, but he adds that no order has been made by the trial court on that application. Assuming the counsel is right in his assertion, the power to make a reference under that section cannot be used as a device to avoid the decision of an important question of law arising before the court during the trial. If at a trial an important question of law or question of validity of a rule arises the proper thing for the magistrate would be to state a case setting out his opinion and the reasons Therefore and then refer the same for the decision of the High Court.

(14) In this view of the matter, we accept the preliminary objection and dismiss the petition.