
(1991) 07 P&H CK 0080
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 4829 of 1991

Sadhu Singh Hamdard Trust

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 30-07-1991

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226
Criminal Procedure Code, 1973 (CrPC) — Section 93, 95, 96, 99A
Penal Code, 1860 (IPC) — Section 124A, 153A, 153B, 292, 293

Citation : (1992) CriLJ 1002 : (1992) 2 ILR (P&H) 188 : (1992) 1 RCR(Criminal) 281

Hon'ble Judges : G.C. Mital, Acting C.J.; H.S. Bedi, J

Bench : Division Bench

Advocate : Sr. Navdip and G.S. Grewal, for the Appellant; G. Ramaswamy, Attorney General and O.P. Goyal, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Harjit Singh Bedi, J.—The petitioner trust is the publisher of the Punjab Daily "Ajit". It has been stated in the petition that the aforesaid paper has followed a fully independent policy and has made serious efforts to act as a watch-dog of the rights and interests of the citizens and in that process has often asked inconvenient question of the administration. It has also been stated that the situation in the State being extremely volatile and tense, newspapers such as the Ajit, that have to reflect the view points of various sections of the society, are working under extreme pressures. It has further been averred that the opinion of the administration is also divided on the question of the policy that is to be followed towards finding a solution of the Punjab problem. It has been stated that one part of the administration is lobbying for taking a very hard line on this problem and with this background, the vernacular press, particularly the Ajit, is being singled out for specially harsh treatment as a theory has been propounded that it is the vernacular press which is largely responsible for the deteriorating situation in the State. It has also been stated in the writ petition that being

unable to face or tackle the independent line pursued by the AJIT, the Government has issued instructions, dated 20th February, 1991, Annexure P-2 to the writ petition, u/s 95 of the Code of Criminal Procedure, 1973, (hereinafter called the Code), with the specified object to muzzle the free press and to toe the official line. It has further been stated that subsequent to the issuance of the instructions, Annexure P-2, the State Government in order to pressurise the AJIT has forfeited and seized the copies of the newspaper published on various dates, the details whereof are given in the body of the petition. The instructions Annexure P-2 have been challenged by the petitioner as being violative of Arts. 14, 16, 19(1-A) and 19(1-G) of the Constitution of India, and on the ground that the State Government was not authorised to issue such instructions. It may, however, be mentioned here that the challenge to that constitutional validity of the instructions, Annexure P-2, that have been issued for the guidance of the District Magistrates, who are exercising the powers of the State Government as its delegates, has been given up at the stage of arguments.

2. In the reply to the petition, a preliminary objection has been taken that as the notification Annexure P-2 has been issued in view of the power conferred by Section 95 of the Code, an alternative remedy was available to the petitioner u/s 96 of the Code to challenge any action taken under the former section. It has also been stated that a reading of paragraph 4 of Annexure P-2 would reveal that the aforesaid instructions are merely guidelines with the discretion having been left with the District Magistrates concerned to apply their minds independently de hors the aforesaid instructions. It has been emphatically denied that any special or harsh measure has been ordered against the AJIT and on the contrary, it has been asserted that the policy perceived by Annexure P-2 has been uniformly followed with regard to all the newspapers published in the State. It has also been pleaded that the guidelines were issued after careful deliberation and after no consensus would be reached with the representatives of the press with regard to the policy that they ought to follow. It has been highlighted that the State Government has, in fact, exercised utmost restraint in taking action only u/s 95 of the Code against the newspapers, as extreme steps could have been taken under the Punjab Special Powers (Press) Act, 1956 and other relevant Acts.

3. During the course of arguments, the learned Attorney-General, appearing for the respondent-State of Punjab, has reiterated the preliminary objection raised in the written statement. Additionally, he has argued that the guidelines Annexure P-2 flow from the terminology of Section 95 of the Code and, as such, they cannot be said to be without jurisdiction or unauthorised. He has candidly stated that the District Magistrates concerned, while exercising the powers of the State Government u/s 95 of the Code (which have been delegated to them and are quasi-judicial in nature) are not bound to follow the instructions mechanically but have to apply their independent minds while deciding on the action that has to be taken.

4. Mr. Grewal, learned Sr. Advocate, appearing for the petitioner, has

controverted the arguments pressed by the learned Attorney-General and has drawn our attention to each individual item mentioned in paragraph 4 of Annexure P-2 in order to contend that no offence under the various sections of the Indian Penal Code mentioned in Section 95 of the Code is made out and, as such, the instructions being beyond the scope of the aforesaid section, have no legal basis. He has also urged that the power conferred by Section 95 of the Code being concededly quasi-judicial no guidelines can be issued by the State Government on the administrative side in order to interfere with the quasi-judicial functioning of those entrusted with a the authority to take action under them. He has drawn our attention to paras 1 and 4 of Annexure P-2 in order to contend that the aforesaid instructions being beyond the scope of Section 93 of the Code, are invalid. The relevant portion of paragraph 4 is reproduced below:--

Although in exercise of these powers you will have to use your judgment as Joint Secretary to Government Punjab, Department of Home Affairs and Justice, indicated below by way of guidelines, are certain classes of items which may be held to attract the provisions of Section 95 of the Criminal Procedure Code:--

- (i) All items directly attributed to terrorists and terrorist related organisations considered to be subversive;
- (ii) Obituary notices for bhog ceremonies that the dead person is a martyr in the struggle for Khalistan or for an independent Sikh State and which contain names of known terrorists and terrorist related organisations as sponsors of the advertisement.
- (iii) Publication of threats of any sort by terrorist organizations to any person or class of persons.
- (iv) Publication of any code of behaviour or social practice decreed by terrorists or terrorist related organisation.
- (v) Publication of any justification of killings made by terrorists.
- (vi) Publication of clarification"s by individuals or institutions. In addition to the above, _____ for _____ the _____ purpose of ...,x....x....x....x...X....X....X....X....X....X....X....X....X....

Section 95 is reproduced hereunder :

"95. Power to declare certain publications forfeited and to issue search warrants for the same.-- (1) Where--

- (a) any newspaper, or book, or,
- (b) any document,

wherever printed, appears to the State Government to contain any matter the publication of which is punishable u/s 124A or Section 153A or Section 153B or Section 292 or Section 293 or Section 295A of the Indian Penal Code (45 of 1860), the State Government, may, by notification, stating the grounds of its

opinion, declare every copy of the issue of the newspaper containing such matter and every copy of such book or other document to be forfeited to Government, and thereupon any police officer may seize the same wherever found in India and any Magistrate may, by warrant, authorise any police officer not below the rank of Sub-Inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

(2)X.....X.....X.....X.....X.....X.....

5. The arguments of the parties are to be examined in the light of the impugned instructions and Sections 95 and 96 of the Code. Section 96 of the Code postulates that in case a forfeiture and seizure had been made u/s 95 of the Code, such action is to be challenged before the High Court in the manner provided by Section 96 thereof. It will be seen from a reading of the aforesaid section that the application envisaged before the High Court under it would be only with respect to a specific forfeiture/seizure made u/s 95 of the Code. Mr. Grewal has pointedly stressed his argument that he is not challenging any specific forfeiture and seizure made by the State Government (although details of such incidents have been given in the body of the petition) but is confining his challenge only to the validity of the instructions, Annexure P-2. We are of the view that the validity of Annexure P-2 cannot be gone into by the Judges of the High Court while hearing an application u/s 96 of the Code and this exercise can be made only by the High Court in exercise of its jurisdiction under Article 226 of the Constitution. The first preliminary objection raised by the respondent with regard to the alternative remedy is, therefore, misconceived and accordingly rejected.

6. Mr. Grewal's additional argument that the Items (i) to (vi) of paragraph 4 of Annexure P-2 are beyond the scope of the various sections of the Penal Code mentioned in Section 95 and the said Annexure expands the scope of that section of the Code is also to be rejected. We have minutely examined Annexure P-2 in the light of the arguments of the counsel for the parties. It has been stated by the learned Attorney-General that Item No. (vi) of para 4 of Annexure P-2 is redundant and vague and can be ignored, but he has argued that the other Items (i) to (v) are fully covered and find their genesis in various sections of the Indian Penal Code mentioned in Section 95 of the Code. He has pointedly stressed that Items (i) to (iii) and (v) are covered by Sections 124A and 153A of the Penal Code, whereas, Item (iv) is covered by section 153A thereof, Mr. Grewal, learned counsel for the petitioner, has countered by arguing that one of the essential ingredients for the applicability of these two sections is that the ending action must have the effect of inciting or instigating violence and in the absence of such instigation, no offence under these sections is made out. He has relied upon a decision of the Supreme Court reported as Kedar Nath Singh Vs. State of Bihar, . Further illustrating his argument Mr. Grewal stated that news items extolling the virtues of Khalistan or of those who are said to have been

martyred in its cause, obituary notices of such individuals and the directives of terrorists and terrorist related organizations pertaining to the observance of specified social mores regarding dress, food and drink do not incite violence and therefore, do not come within the ambit of Section 124A or 153A of the Penal Code. We are not impressed by this argument. Terrorism implies an organized system of intimidation for attaining political ends through violent means. The sanction behind the acceptance or observance of the diktat of the terrorist is the fear of retribution through violence. We are of the view that Items (i) to (v) of the impugned instructions take care of a situation where the incitement or instigation to violence is not only implied but also explicit.

7. We have also examined the arguments raised by the counsel for the petitioner that the powers u/s 95 of the Code being quasi judicial in nature, could not be interfered or tampered with by the issuance of instructions, Annexure P-2. He has argued that Annexure P-2 although stated to be a guideline is, in fact, a mandate to the various District Magistrates to take action in terms of Section 95 of the Code in the situations set out in Items (i) to (v) of that Annexure. We are not impressed by this argument. While it is true that no outside agency is entitled to interfere with the functioning of a quasi judicial authority, yet we find that Annexure P-2 itself leaves the ultimate discretion to the officer concerned and no mandate to act in a particular way can be spelled out from it. Para 4 of Annexure P-2 specifically mentions that in exercise of powers u/s 95 of the Code, the District Magistrate concerned would have to use his judgment as Joint Secretary to Government Punjab and it has further been indicated by way of illustrations Items (i) to (vi) as to what may attract the provisions of Section 95 of the Code. The aforesaid direction being, therefore, in the nature of a guideline does not constitute a mandate to the District Magistrate to decide the matter in any particular way. We are of the view that the aforesaid guidelines have not been issued by the State Government with the motive of muzzling the press as alleged by the petitioner, but to nudge a somnolent and reluctant administration into taking action against offensive publications. As a matter of fact, the said instructions would pave the way for uniform action by the various District Magistrates and to that extent they could be said to be serving a laudable object. It may further be pointed out that it was after deep thought and deliberation that the impugned guidelines were issued. Frequent meetings between the representatives of the Press and senior government officials could not result in a consensus on a Code of conduct to be observed by the Press and ultimately the Government had to take a decision on its own.

8. Having held as above, a word of caution must be struck. The right to publish, is itself a facet of the right to the freedom of speech guaranteed to all citizens under Article 19(1)(a) of the Constitution. The power u/s 95 of the Code, therefore, being in the nature of an extraordinary power, must be used with care and circumspection, as it constitutes an inroad into the enjoyment of the right guaranteed under Article 19(1)(a) and, as such, the conditions for exercising this power must be rigidly adhered to. Section 95 of the Code requires that the State

Govt. while taking action under that section, must specifically set out not only the opinion but the grounds of its opinion as well to forfeit and seize the documents. This has been so held and explained by the Supreme Court in State Vs. Dungaria Mahala, while dealing with Section 99A of the Code of Criminal Procedure, 1898 (which corresponds to Section 95 of the Code). We are, therefore, of the opinion that this procedure must be strictly followed by the State Government or its delegates while taking action u/s 95 of the Code.

9. For the reasons recorded above but subject to the observations made in the above paragraph, the present writ petition is dismissed, but with no order as to costs.