
(2014) 10 SC CK 0001
In the Supreme Court Of India
Case No : W.P.(Crl.) No. 184 of 2014

Subramanian Swamy

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Constitution of India, 1950 — Article 19(1), 19(2), 32
Criminal Procedure Code, 1973 (CrPC) — Section 199(2)
Penal Code, 1860 (IPC) — Section 499, 500

Citation : 2015 (13) SCC 353 = 2014 (12) SCALE 479

Hon'ble Judges : Uday Umesh Lalit, J;Dipak Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Dr. Subramanian Swamy, in person. By this writ petition, preferred Under Article 32 of the Constitution of India, the Petitioner has prayed for declaring Sections 499 and 500 of the Indian Penal Code (IPC) and Section 199(2) of the Code of Criminal Procedure (Cr.P.C.) as unconstitutional.

2. It is submitted by Dr. Swamy that on two earlier occasions this Court regard being had to the circumstances, had kept the issue open. He has drawn our attention to the decision in R. Rajagopal alias R.R. Gopal and Another Vs. State of Tamil Nadu and Others, . In paragraph 28 of the said decision, it has been observed as follows:

"28. In all this discussion, we may clarify, we have not gone into the impact of Article 19(1)(a) read with Clause (2) thereof on Sections 499 and 500 of the Indian Penal Code. That may have to await a proper case."

3. Dr. Swamy has also drawn our attention to the decision in N. Ravi and Ors. v. Union of India and Ors. (2007) 15 SCC 631, wherein it has been observed as follows:

"Strictly speaking on withdrawal of the complaints, the prayer about the validity

of Section 499 has also become academic but having regard to the importance of the question, we are of the view, in agreement with the learned Counsel for the Petitioners, that the validity aspect deserves to be examined. In this view, we issue rule, insofar as prayer (a) is concerned."

4. While submitting that the issue requires to be examined. Dr. Swamy has raised certain contentions based on the pleadings put forth in the writ petition. For the sake of clarity and regard had being to what is being pleaded in the writ petition, we would like to summaries the points that are likely to arise in this case. As submitted by Dr. Swamy, the issues that may crop up are:

(a) The provisions contained in Sections 499 and 500 IPC, travel beyond the restriction clause enshrined Under Article 19(2) of the Constitution of India, for that really constricts the freedom of speech beyond reasonable limit.

(b) The very purpose of Article 19(2), as would be evident from the debate in the provisional Parliament, was not meant to put such restrictions and, therefore, such an enormous restriction cannot be thought of Under Article 19(2) to support the constitutionality of the said provisions and further it will violate the concept of rule of law.

(c) In a democratic body polity, public opinion, public perception and public criticism, are the three fundamental pillars to guide and control the executive action and, if they are scuttled or fettered or bound by launching criminal prosecution, it would affect the growth of a healthy and matured democracy.

(d) The individual interest in the guise of reputation cannot have supremacy over the larger public interest, for the dominant interest in a democracy is the collective interest and not the perspective individualism.

(e) Liberty and free speech have their pedestal, though they are not absolute and controlled, but in the name of control, the freedom of speech that pertains to the realm of criticism of certain governmental actions, cannot be gagged.

(f) The Executive does not permit expression of public opinion by instituting cases of defamation through the public prosecutors by spending the sum from the State exchequer which is inconceivable.

(g) The concept of sanction, which is enshrined Under Section 199(2) of the Code of Criminal Procedure, is a conferment of unfettered power by which the citizenry right to criticize, is gradually allowed to be comatosed.

5. Issue notice, returnable within six weeks.

6. There shall be stay of further proceedings in defamation complaints/cases, being CC No. 39 of 2014, CC No. 40 of 2014 and CC No. 44 of 2014, pending in the Court of Principal District and Sessions Judge at Chennai, Tamil Nadu.

7. At this juncture, Dr. Swamy submitted that he has also received two summons in CC No. 45 of 2014 and CC No. 46 of 2014 and unless they are stayed, the

entire challenge would be frustrated. We accept the oral prayer and, accordingly, direct stay of further proceedings in these cases also, which are pending before the Principal District and Sessions Judge at Chennai, Tamil Nadu. List the writ petition after six weeks.