
(1956) 08 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 715 of 1956

Virendra, Editor, Printer and Publisher, The Daily, Pratap,
Jullundur

APPELLANT

Vs

Punjab State

RESPONDENT

Date of Decision : 27-08-1956

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 19(2)
Criminal Procedure Code, 1898 (CrPC) — Section 144, 439

Citation : AIR 1957 P&H 1 : (1957) CriLJ 88

Hon'ble Judges : Bhandari, C.J.;Falshaw, J

Bench : Division Bench

Advocate : D.D. Khanna, for the Appellant; D.K. Kapur, for A.G., for the Respondent

Judgement

Bhandari, C.J.—This petition u/s 439,, Criminal P. C. raised the question whether, certain orders issued u/s 144 of the said Code violate the essential attributes of the liberty of the press guaranteed by Article 19 of the Constitution of India.

2. On 24-6-1956 the District Magistrate of Jullundur issued two orders u/s 144, Criminal P. C. directing the editors of two vernacular newspapers known as the Pratap and The Hind saraa-char 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.

3. 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 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 & the other consisting predominantly of Hindus advocating the amalgamation of Punjab, Pepsu & 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 13-6-1956, 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 & as many as 27 constables 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.

4. The Scene 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.

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 & 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 16-6-1956, the oppositionists were the aggressive party.
2. In the lathi charge of 17-6-1956 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 spare women and children.....
5. Apart from receivinginjuries 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 implicating 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 over-zealous and misguided members of the police force abused them."

5. The District Magistrate of Jullundur passed the order of precensorship on 24-6-1956 when the tempers were high and recrudescence- of the trouble was more than likely.

6. 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 and inflammatory articles, that there is no" causal connection between the 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 later charges at Hoshiarpur the paper did no more than to watch the feelings of the public or to repeat a demand 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.

7. 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 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.

8. 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. Even since the dawn of civilization political reformers have -been struggling for freedom of speech, for it has long been recognised that the maintenance of 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 hindrance.

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 1644 John Milton protested against censorship or previous restraint. In 1769 Blackstone expressed the view that liberty of the press "consists in laying no previous restraining on publication and not in freedom from censure for criminal matters when published". Paterson considers that "the liberty of the press 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, observes Holmes, J. In *Patterson v. Colorado* (1907) 205 US 454 (A) "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 Murphy J, 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".

9. The first point for consideration in the present case is whether the provisions of Section 144, Criminal P. C., which empowers the District Magistrate to impose prior censorship on newspapers, are inconsistent with the provisions of Article 19(1) (a) which guarantee 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 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 Thappar Vs. The State of Madras*, and *Brij Bhushan and Another Vs. The State of Delhi*. 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 the 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.

10. 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 Thappar Vs. The State of Madras*, where Patanjali Sastri C. J., stated as follows:

"We are therefore of opinion that unless a law restricting a freedom of speech and" expression is directed" solely against the undermining of the security of the State or the overthrowing of it, such law cannot fall 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, Criminal P. C. has not been enacted solely in the interests of public order, and consequently that it cannot fall within the ambit of Clause (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* AIR 1951 Pat 12 (D), but it left the third Judge cold and unconvinced. -"I have read and re-read the judgments of the Supreme Court" observed Shearer J. "and I can find nothing in them myself which bear 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 *The State of Bihar Vs. Shailabala Devi*, . 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.

11. 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 Vs. V.G. Row*, 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 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 aggrieved, but if an aggrieved person applies for the cancellation of the 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.

12. 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 Vs. The State of Delhi*, 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 *In Re: Ardeshir Phirozshaw Murzban, Editor, Tribune v. Emperor* AIR 1942 Lah 171 (I); in *In Re: Bandi Butchaiah*,

13. 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 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,

14. 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 *In Re: Ardeshir Phirozshaw Murzban*, and that there must be emergency in the Matter *Chandra Nath v. East Indian Ry.* 23 CWN 145 : AIR 1919 Cal 584 (K); *Satyanarayana Ghoudhari v. Emperor* AIR 1931 Mad 236 (L) and *R.E. Blong Vs. The King-Emperor*, 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* (1919) 249 US 47 (N), Holmes J. delivering the Judgment of a unanimous Court expressed the view that the question in every case of the alleged infringement of the constitutional freedom of speech and press is

"whether the words used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the sub-tantive 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 u/s 144, Criminal P. C. 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 via---

(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.

15. The restrictive orders the validity and propriety of which has been challenged in the present cases Came into being on 24-6-195G and died a natural death on 23-8-1956. 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 u/s 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.

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

Palshaw, J.

17.I agree.