



विषय: भारतीय दण्ड संहिता की धारा 124ए (Sedition) 'राजद्रोह' के अपराध के सम्बन्ध में रिट पिटीशन (सिविल) संख्या-683/2016 कॉमन काज व अन्य बनाम भारत संघ में मा० सर्वोच्च न्यायालय द्वारा पारित निर्देशों के अनुपालन के सम्बन्ध में।

प्रिय महोदय,

भारतीय दण्ड संहिता की धारा 124ए के दुरुपयोग की रोकथाम के लिये परमादेश जारी करने हेतु कॉमन काज नामक संस्था द्वारा एक जनहित याचिका (सिविल) संख्या-683/2016 मा० सर्वोच्च न्यायालय के समक्ष योजित की गयी, जिसे मा० सर्वोच्च न्यायालय द्वारा निस्तारित करते हुये निम्न आदेश पारित किया गया है:-

"Having heard Mr. Prashant Bhushan, learned counsel for the petitioners, we are of the considered opinion that the authorities while dealing with the offences under Section 124A of the Indian Penal Code shall be guided by the principles laid down by the Constitution Bench in Kedar Nath Singh vs. State of Bihar [1962 (Suppl.) 3 SCR 769]."

2. उल्लेखनीय है कि मा० सर्वोच्च न्यायालय की संवैधानिक पीठ द्वारा सन्दर्भित निर्णय केदार नाथ सिंह बनाम बिहार राज्य [1962 (Suppl.) 3 SCR 769] में धारा 124ए, धारा 505 भा०द०वि० तथा भारतीय संविधान के अनुच्छेद 19(2) के प्राविधानों पर विस्तृत विमर्श करते हुये दिनांक 20.01.1962 को विस्तृत आदेश पारित किये गये हैं, इस आदेश में प्रतिपादित सिद्धांत सारांश में निम्नवत् हैं :-

"The provisions of Ss. 124-A and 505 Penal Code are not unconstitutional as being violative of the fundamental right of freedom of speech and expression under Art. 19(1)(a) of the Constitution. The restrictions imposed by the impugned provisions cannot but be said to be in the interest of public order and within the ambit of permissible legislative interference with that fundamental right. (Para 28)

It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction. (Para 26)

The explanations appended to the main body of S. 124A make it clear that criticism of public measures or comment on Government action, however strongly worded would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the section.

strikes the correct balance between individual fundamental rights and the interest of public order.' It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress. Viewed in that light, the provision of the sections should be so construed as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order, or inclement to violence. (Para 26)

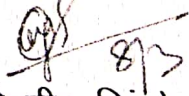
The gravamen of the offence under S. 505 I.P.C. is making, publishing or circulating any Statement, rumour or report (a) with intent to cause or which is likely to cause any member of the Army, Navy or Air Force to mutiny or otherwise disregard or fail in his duty as such; or (b) to cause fear or alarm to the public or a section of the public which may induce the commission of an offence against the State or against public tranquillity; or (c) to incite or which is likely to incite one class or community of persons to commit an offence against any other class or community. Each one of the constituent element of the offence under S. 505 has reference to, and a direct effect on, the security of the State or public order. Hence, these provisions would not exceed the bounds of reasonable restrictions on the right of freedom of speech and expression. Clause (2) of Art. 19 clearly saves the section from the vice of unconstitutionality. (Para 29)

(AIR 1962 Supreme Court 955)

3. मैं चाहूँगा कि मा० सर्वोच्च न्यायालय द्वारा सन्दर्भित रिट याचिका केदार नाथ सिंह बनाम बिहार राज्य [1962 (Suppl.) 3 SCR] में पारित निर्णय का आप सभी भली-भाँति अध्ययन एवं परीशीलन कर लें तथा उक्त निर्णय में निर्गत दिशा निर्देशों का भा०द०वि० की धारा 124ए तथा 505 के अपराधों के सम्बन्ध में कार्यवाही करते समय अक्षरशः अनुपालन सुनिश्चित करें।

संलग्नक: यथोपरि।

भवदीय,


(ओ०पी० सिंह)

समस्त वरिष्ठ पुलिस अधीक्षक/पुलिस अधीक्षक,
प्रभारी जनपद,
उत्तर प्रदेश।

प्रतिलिपि: निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित—

1. समस्त अपर पुलिस महानिदेशक, उ०प्र० ई०ओ०डब्लू०/रेलवे/अभिसूचना/एस०आई०टी०/उ०प्र० पुलिस मुख्यालय/सी०बी०सी०आई०डी०/विशेष अनुसंधान शाखा, उ०प्र०।
2. समस्त जोनल अपर पुलिस महानिदेशक, उ०प्र०।
3. समस्त परिक्षेत्रीय पुलिस महानिरीक्षक/उपमहानिरीक्षक, उ०प्र०।

AIR 1962 SUPREME COURT 955
SUPREME COURT
 (From (1) Patna)* ((2) Allahabad : AIR 1959 All 101)

B. P. SINHA, C.J.I. and S. K. DAS, J. and AJIT KUMAR SARKAR, J. and N. RAJAGOPALA AYYANGAR, J. and J. R. MUDHOLKAR, J.

Criminal Appeal No. 169 of 1957 and Criminal Appeals Nos. 124 to 126 of 1958, D/-24-1-1962

Kedar Nath Singh Appellant v. **State of Bihar** Respondent. Criminal Appeal No. 169 of 1957
State of U. P. Appellant v. **Mohd. Ishq Ilmi** Criminal Appeals Nos. 124 to 126 of 1956
State of U. P. Appellant v. **Ram Nandan** (In Cr. A. No. 125 of 58)
State of U. P. Appellant v. **Paras Nath Tripathi** Respondents. (In Cr. A. No. 126 of 58),
 The Attorney-General for India (on Notice by the Court)

Penal Code (45 of 1860), S. 124A, S. 505- Constitutionality - Gist of the offences Freedom of speech and expression - Restrictions on, imposed by impugned provisions come within permissible limits under Art. 19(2) of the Constitution.

Interpretation of Statutes.

Constitution of India, Art. 19(1)(a), Art. 19(2)-

The provisions of Ss. 124-A and 505 Penal Code are not unconstitutional as being violative of the fundamental right of freedom of speech and expression under Art. 19 (1) (a) of the Constitution. The restrictions imposed by the impugned provisions cannot but be said to be in the interest of public order and within the ambit of permissible legislative interference with that fundamental right.

(Para 28)

It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction.

(Para 26)

The explanations appended to the main body of S. 124A make it clear that criticism of public measures or comment on Government action, however strongly worded would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So construed, the section strikes the correct balance between individual fundamental rights and the interest of public order. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress. Viewed in that light, the provision of the sections should be so

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construed as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order, or inclement to violence.

AIR 1955 SC 661 and (S) AIR 1957 SC 628, Foll.

(Para 26)

The gravamen of the offence under S. 505 I.P.C. is making, publishing or circulating any Statement, rumour or report (a) with intent to cause or which is likely to cause any member of the Army, Navy or Air Force to mutiny or otherwise disregard or fail in his duty as such; or (b) to cause fear or alarm to the public or a section of the public which may induce the commission of an offence

against the State or against public tranquillity; or (c) to incite or which is likely to incite one class or community of persons to commit an offence against any other class or community. Each one of the constituent elements of the offence under S. 505 has reference to, and a direct effect on, the security of the State or public order. Hence, these provisions would not exceed the bounds of reasonable restrictions on the right of freedom of speech and expression. Clause (2) of Art. 19 clearly saves the section from the vice of unconstitutionality. (Para29)

Cases Referred**Chronological Paras**

AIR 1950 SC 124:1950 SCR 594:51 Cri LJ 1514, Romesh Thappar v. State of Madras	21
AIR 1950 SC 129:1950 SCR 605:51 Cri LJ 1525, Brij Bhushan v. State of Delhi	21
AIR 1955 SC 661:1955-2 SCR 603, Bengal Immunity Co., Ltd. v. State of Bihar	26
AIR 1957 SC 620:1957 SCR 860:1957 Cri LJ 1006, Ramji Lal Modi v. State of U. P.	23
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AIR 1957 SC 896:1958 SCR 308, Virendra v. State, of Punjab	26
25 Ind App 1:ILR 22 Bom 528 (PC) Bal Gangadhar Tilak v. Queen Empress	12
AIR 1919 PC 31 (V 6):46 Ind App 176:20 Cri LJ 593, Anne Besant v. Advocate General of Madras	18
AIR 1947 PC 82 (V 34):74 Ind App 89 ; 48 Cri LJ 791, Emperor v. Sadashiv Narayan	18,21
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AIR 1959 All 101 (V 46):ILR (1958) 2 All 84:1959 Cri LJ 128 (FB), Ram Nandan v. State	9
ILR 22 Bom 152 (FB), Queen Empress v. Ramchandra Narayan	13
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AIR 1954 Pat 254 (V 41):1954 Cri LJ 758, Debi Saran v. State of Bihar	23
(1867-71) 11 Cox C. C. 44, Reg v. Alexander Martin Sullivan	16
(1911-13) 22 Cox CC 1, Rex v. Aldred	17
(1930) 283 U. S. 697:75 Law Ed 1357, Near v. Minnesota	21
(1940) 1940 AC 231:1940-1 All ER 241, Wallace Johnson v. The King	19

In Cr. Appeal No. 169 of 1957.

Mr. Janardan Sharma, Advocate, for Appellant; Mr. R. G. Prasad, Advocate, for Respondent.

In Cr. Appeals Nos. 124 to 126 of 1958.

Mr. C. B. Agarwala, Senior Advocate (M/s. G. C. Mathur and C. P. Lal, Advocates, with him), for Appellant (In All the Appeals); Mr. S. P. Sinha, Senior-Advocates (M/s. Gopal Behari and S. Shaukat Hussain, Advocates, with him), for Respondent.

In Cr. A. No. 124 of 58.

other work - Thus it can be inferred that long pendency of history sheet has virtually curtailed liberty of petitioner - He is deprived of his rights under Art. 19(1)(d) and Art. 19(1)(g) of Constitution - Such obtrusive surveillance on petitioner would be arbitrary and violative of human rights as well as right to life under Art. 21 of Constitution. (Paras878890)

(E) Andhra Pradesh Gaming Act (27 of 1974), S.9-

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POLICE OFFICERS - GAMING - Offences under Act - Cannot be ground for opening and retention of history sheet.

Andhra Pradesh Police Code, Standing Order 733, Standing Order 734, Standing Order 735, Standing Order 736, Standing Order 737, Standing Order 738, Standing Order 739, Standing Order 740, Standing Order 741- (Para88)

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A. P. Pollution Control Board ¹ v. Prof. M. V. Naidu: AIR 1999 SC 812:1999 AIR SCW 434:1999 (2) SCC 718	51
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