

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL PUBLIC INTEREST LITIGATION NO. 3 OF 2015

Sanskar Marathe

.. Petitioner

versus

1. The State of Maharashtra
through Commissioner of Police, Mumbai.
2. The Senior Police Inspector,
Bandra Kurla Complex Police Station,
BKC, Mumbai.
3. Assem Trivedi,
1/458-A, Rishinagar, Shuklaganj, Unnao,
Uttar Pradesh-209861. .. Respondents

Mr. Sanskar Marathe, petitioner in person.

Mr. Sunil V. Manohar, Advocate General with Mr. S.K. Shinde,
Government Pleader for respondent nos.1 and 2.

Mr. Mihir Desai with Mr. Vijay Hiremath for respondent no.3.

**CORAM : MOHIT S. SHAH, C.J. AND
N.M.JAMDAR, J.**

Date of Reserving the judgment : 19 January 2015

Date of pronouncing the judgment : 17 March 2015

JUDGMENT (Per - Chief Justice) :

1. Arrest of one Assem Trivedi on 8 September 2012 on the basis of registration of First Information Report ('FIR') on 30 January 2012 alleging, inter alia, commission of offence of sedition punishable under Section 124A of the Indian Penal Code, 1860, led to filing of the present Public Interest Litigation which is now registered as Criminal PIL.

2. The allegation in the FIR is to the effect that Assem Trivedi, who is a political cartoonist and social activist, through his cartoons, not only defamed Parliament, the Constitution of India and the Ashok Emblem but also tried to spread hatred and disrespect against the Government and published the said cartoons on 'India Against Corruption' website, which not only amounts to insult under the National Emblems Act but also amounts to serious act of sedition. After the arrest of Assem Trivedi on 9 September 2012, he was produced before the learned Metropolitan Magistrate. The petitioner alleged that Assem Trivedi refused to make an application for bail till the charges of sedition were dropped. Contending that publication and/or posting such political cartoons on website can by no stretch of imagination attract a serious charge of sedition and that Assem Trivedi was languishing in jail on account of the charge of sedition being included in the FIR, the petitioner, a practicing advocate in this Court, moved the present PIL on 11

September 2012. The matter was mentioned for circulation and this Court passed the following ad-interim order :

" In the facts and circumstances of the case, by this ad-interim order we direct that Mr.Assem Trivedi be released on bail on executing a personal bond in the sum of Rs.5,000/-.

Registry to communicate this order to the Superintendent, Arthur Road Jail."

Accordingly, Mr. Assem Trivedi executed a personal bond and was released on bail.

Thereafter, on the returnable date, leave was granted to implead Mr. Assem Trivedi as respondent no.3.

3. The third respondent claimed to have exercised his fundamental right to the freedom of speech and expression as a cartoonist and claimed that his arrest and detention seriously encroached upon the freedom guaranteed to every citizen by Article 19(1)(g) of the Constitution of India.

4. Affidavit-in-reply dated 12 October 2012 came to be filed by Assistant Commissioner of Police, Kherwadi Division, Mumbai stating that the third respondent had displayed several cartoons at a public meeting held on 27 November 2011 at the MMRDA ground in Mumbai. The said meeting was held in connection with the movement launched by Anna Hazare

against corruption in India. Apart from displaying the cartoons, he had also uploaded some of his cartoons on a website called "Cartoons against Corruption". Pursuant to the above display of cartoons, several complaints came to be filed against Aseem Trivedi.

On 10 January 2012, Bandra-Kurla Complex Police Station received a written complaint from Amit Katarnavare asking the Police to register an FIR, inter alia, under Sections 124A, 153-A, 120-B, 167 and 109 of Indian Penal Code. When the said complaints were forwarded to the Directorate of Prosecutions, Maharashtra State for opinion, the Assistant Director, Public Prosecution, Brihanmumbai vide his opinion dated 10 January 2012 advised to invoke Section 124A of the IPC and provisions of State Emblem of India (Prohibition of Improper Use) Act, 2005. On 30 January 2012, Bandra-Kurla Complex Police Station registered an FIR vide CR No.14 of 2012 under Section 124A of IPC, under Section 2 of National Honour Act and under Section 66-A of Information Technology Act based on statement of Amit Katarnavare, which was recorded on 30 December 2011.

5. In view of the above complaint, a non bailable warrant came to be issued by Additional Metropolitan Magistrate, 9th Court, Bandra, Mumbai on 2 August 2012 against the third respondent. However, he could not be found and when he learnt of issuance of a non-bailable warrant

against him, he surrendered before Bandra-Kurla Complex Police Station on 8 September 2012. On 9 September 2012 the Metropolitan Magistrate granted police custody of the third respondent for seven days. However, on 10 September 2012, Police produced him before the Metropolitan Magistrate as he had admitted to have drawn the cartoons. However, the third respondent did not apply for bail. Thereafter, as aforesaid, this Court passed an order dated 11 September 2012 directing the Police to release the third respondent on bail on his executing personal bond.

6. Thereafter, Bandra-Kurla Police obtained opinion of the then Advocate General with regard to invocation of Section 124A of IPC to the facts of present case, amongst other queries. Pursuant to the legal opinion of the then learned Advocate General, it was decided to drop invocation of Section 124A of IPC. The Police Department, however, took a view that as far as application of Section 2 of Prevention of Insult to National Honour Act, 1971 and Section 66(A) of Information Technology Act is concerned, the same will apply only to three out of seven cartoons, which will be dealt with in accordance with law.

7. In view of the above developments, the controversy about invocation of Section 124A of IPC would not survive any longer in the facts of the present case. However, learned counsel for petitioner submitted that since the Police had

arbitrarily invoked the serious charge of sedition under Section 124A of IPC in a matter where the cartoonist was entitled to exercise his fundamental right to the freedom of speech and expression under Article 19(1)(a) of the Constitution of India, this Court may examine the legal position so that such invocation is not resorted to, in future, in an arbitrary and irresponsible manner. We, therefore, heard the learned counsel for PIL petitioner, learned Advocate General for the State and learned counsel for third respondent Mr. Aseem Trivedi.

8. At the outset, we may reproduce Section 124A of IPC for ready reference :

"124A Sedition: *Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India, shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.*

Explanation 1 - The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2 - Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3 - Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Classification of offence: *Punishment-Imprisonment for life and fine, or imprisonment for 3 years and fine, or fine- Cognizable - Non bailable- Triable by Court of Session- Non compoundable."*

9. Article 19(1)(a) conferring the fundamental right to freedom of speech and expression and Article 19(2) read as under :

"19. (1) All citizens shall have the right -

(a) to freedom of speech and expression..."

This guaranteed right is subject to the right of the legislature to impose reasonable restrictions, the ambit of which is indicated by clause (2), which, in its amended form, reads as follows :

"19 (2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

10. In the leading case of **Kedar Nath Singh Vs. State of Bihar**¹, a Constitution Bench of the Supreme Court examined the question “how far the offence, as defined in Section 124A of IPC, is consistent with the fundamental right guaranteed by Article 19(1)(a) of the Constitution”, and observed, inter alia, as under :

"24. It has not been questioned before us that the fundamental right guaranteed by Art. 19(1)(a) of the freedom of speech and expression is not an absolute right. It is common ground that the right is subject to such reasonable restrictions as would come within the purview of clause (2), which comprises (a) security of the State, (b) friendly relations with foreign States, (c) public order, (d) decency or morality, etc., etc. With reference to the constitutionality of s. 124A or s. 505 of the Indian Penal Code, as to how far they are consistent with the requirements of clause (2) of Art. 19 with particular reference to security of the State and public order, the section, it must be noted, penalises any spoken or written words or signs or visible representations, etc., which have the effect of bringing, or which attempt to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law. Now, **the expression "the Government established by law" has to be distinguished from the persons for the time being engaged in carrying on the administration. "Government established by law" is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted. Hence the continued existence of the Government established by law is an essential condition of the**

¹ AIR-1962-SC-955

stability of the State. That is why 'sedition', as the offence in s. 124A has been characterised, comes under Chapter VI relating to offences against the State. Hence any acts within the meaning of s. 124A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence. In other words, any written or spoken words, etc., which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term 'revolution', have been made penal by the section in question. But the section has taken care to indicate clearly that **strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal.** In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence.

25. It has not been contended before us that if a speech or a writing excites people to violence or have the tendency to create public disorder, it would not come within the definition of 'sedition'. What has been contended is that a person who makes a very

strong speech or uses very vigorous words in a writing directed to a very strong criticism of measures of Government or acts of public officials, might also come within the ambit of the penal section. But, in our opinion, such words written or spoke would be outside the scope of the section. In this connection, it is pertinent to observe that the security of the State, which depends upon the maintenance of law and order is the very basic consideration upon which legislation, with view to punishing offences against the State, is undertaken. Such a legislation has, on the one hand, fully to protect and guarantee the freedom of speech and expression, which is the sine quo non of a democratic form of Government that our Constitution has established. This Court, as the custodian and guarantor of the fundamental rights of the citizens, has the duty cast upon it of striking down any law which unduly restricts the freedom of speech and expression with which we are concerned in this case. But the freedom has to be guarded against becoming a licence for vilification and condemnation of the Government established by law, in words, which incite violence or have the tendency to create public disorder. **A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder.** The Court, has, therefore, the duty cast upon it of drawing a clear line of demarcation between the ambit of a citizen's fundamental right guaranteed under Art. 19(1)(a) of the Constitution and the power of the legislature to impose reasonable restrictions on that guaranteed right in the interest of, inter alia, security of the State and public order.

26. There can be no doubt that apart from the provisions of clause (2) of Art. 19, Sections 124A and 505 are clearly violative of Art. 19(1)(a) of the

Constitution. But then we have to see how far the saving clause, namely, clause (2) of Art. 19 protects the sections aforesaid. Now, as already pointed out, in terms of the amended clause (2), quoted above, the expression "in the interest of... public order" are words of great amplitude and are much more comprehensive than the expression "for the maintenance of", as observed by this Court in the case of *Virendra v. The State of Punjab* : 1958-SCR-308 at P317 : [(S) AIR-1957-SC-896 at P899] . Any law which is enacted in the interest of public order may be saved from the vice of constitutional invalidity. If, on the other hand, we were to hold that even without any tendency to disorder or intention to create disturbance of law and order, by the use of words written or spoke which merely create disaffection or feelings of enmity against the Government, the offence of sedition is complete, then such an interpretation of the sections would make them unconstitutional in view of Art. 19(1)(a) read with clause (2). 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. The provisions of the sections read as a whole, along with the explanations, make it reasonably clear that **the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence.** As already pointed out, the explanations appended to the main body of the section 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, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order. "

(emphasis supplied)

11. Thereafter, Supreme Court examined this question again in **Balwant Singh and another Vs. State of Punjab**². On the date of assassination of former Prime Minister Smt. Indira Gandhi, considerable tension had been generated in the State of Punjab. The appellants raised three slogans and they were charged with the offences punishable under Sections 124A and 153B of IPC. In that context, the Supreme Court made the following observations :

"A plain reading of the above Section would show that its application would be attracted only when the accused brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law in India, by words either written or spoken or visible signs or representations etc. Keeping in view the prosecution evidence that the slogans as noticed above were raised a couple of times only by the appellant and that neither the slogans evoked a response from any other person of the Sikh community or reaction from people of other communities, we find it difficult to hold that upon the raising of such casual slogans, a couple of times without any other act whatsoever, the charge of sedition can be founded. It is not the prosecution case that the appellants were either leading a procession or were otherwise raising the slogans with the intention to incite people to create disorder or that

² AIR-1995-SC-1785

the slogans in fact created any law and order problem. It does not appear to us that the police should have attached much significance to the casual slogans raised by two appellants, a couple of times and read too much into them. The prosecution has admitted that no disturbance, whatsoever, was caused by the raising of the slogans by the appellants and that in spite of the fact that the appellants raised the slogans a couple of times, the people, in general, were unaffected and carried on with their normal activities. The casual raising of the slogans, once or twice by two individuals alone cannot be said to be aimed at exciting or attempt to excite hatred or disaffection towards the Government as established by law in India. Section 124A IPC, would in the facts and circumstances of the case have no application whatsoever and would not be attracted to the facts and circumstances of the case."

12. In **Nazir Khan vs. State of Delhi**³, the Supreme Court explained "sedition" as defined in section 124A IPC in the following words:

"37. Section 124A deals with 'Sedition'. Sedition is a crime against society nearly allied to that of treason, and it frequently precedes treason by a short interval. Sedition in itself is a comprehensive term, and it embraces all those practices, whether by word, deed, or writing, which are calculated to disturb the tranquility of the State, and lead ignorant persons to endeavour to subvert the Government and laws of the country. The objects of sedition generally are to induce discontent and insurrection, and stir up opposition to the Government, and bring the administration of justice into contempt; and the very tendency of sedition is to incite the people to insurrection and rebellion. "Sedition

³ (2003) 8 SCC 461

has been described as disloyalty in action, and the law considers as sedition all those practices which have for their object to excite discontent or dissatisfaction, to create public disturbance, or to lead to civil war; to bring into hatred or contempt the Sovereign or the Government, the laws or constitutions of the realm, and generally all endeavours to promote public disorder.”

13. In **S. Rangarajan Vs. P. Jagjivan Ram and others**⁴ the Supreme Court considered the fundamental right to freedom of speech and expression in the context of censorship under the Cinematograph Act. A Tamil film criticised the Government policy of reservation in Government service. After examining the judgments of the Supreme Court of USA, the Apex Court observed as under:-

“7. The First Amendment to the U.S. Constitution provides: "Congress shall make no law ... abridging the freedom of speech, or of the press." This Amendment is absolute in terms and it contains no exception for the exercise of the right. Heavy burden lies on the State to justify the interference. The judicial decisions, however, limited the scope of restriction which the State could impose in any given circumstances. The danger rule was born in Schenck v. United States, 249 U.S. 47. Justice Holmes for a unanimous court, evolved the test of "clear and present danger". He used the danger test to determine where discussion ends and incitement or attempt begins. The core of his position was that the First Amendment protects only utterances that seeks acceptance via the democratic process of discussion and agreement. But "Words that may have all the effect of force" calculated to achieve its goal by

⁴ (1989) 2 SCC 574

circumventing the democratic process are however, not so protected.”

8. The framework of our Constitution differs from the First Amendment to the U.S. Constitution. Article 19(1)(a) of our Constitution guarantees to all citizens the right to freedom of speech and expression. The freedom of expression means the right to express one's opinion by words of mouth, writing, printing, picture or in any other manner. It would thus include the freedom of communication and the right to propagate or publish opinion. The communication of ideas could be made through any medium, newspaper, magazine or movie. But this right is subject to reasonable restrictions on grounds set out under Article 13(2) of the Constitution. The reasonable limitations can be put in the interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. The Framers deemed it essential to permit imposition of reasonable restrictions in the larger interests of the community and country. They intended to strike a proper balance between the liberty guaranteed and the social interest specified under Article 19(2).

11. Here again we find the difference between the First Amendment to the U.S. Constitution and Article 19(1)(a) of our Constitution. The First Amendment does not permit any prior restraint, since the guaranty of free speech is in unqualified terms.

17. It will be thus seen that censorship is permitted mainly on social interest specified under Article 19(2) of the Constitution with emphasis on maintenance of values and standards of society. Therefore, the censorship by prior restraint must necessarily be reasonable that could be saved by the well accepted principles of judicial review.”

As regards the reasonableness of restriction on the ground of social interests under Article 19(2) on the freedom of speech and expression, the Apex Court laid down the following principles:

“45. The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19(2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and social interests. But we cannot simply balance the two interests, as if they are of equal weight. Our commitment to freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interests. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a "spark in a powder keg".

53. We end here as we began on this topic. Freedom of expression which is legitimate and constitutionally protected, cannot be held to ransom by an intolerant group of people. The fundamental freedom under Article 19(1)(a) can be reasonably restricted for the purposes mentioned in Article 19(2) and the restriction must be justified on the anvil of necessity and not the quicksand of convenience of expediency. Open criticism of Government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself.”

14. In **Sakal Vs. Union of India**⁵ the Supreme Court observed that Courts must be ever vigilant in guarding the most precious of all the freedoms guaranteed by the Constitution i.e. freedom of expression and speech. In **Manubhai Patel Vs. State of Gujarat and another**⁶ the Gujarat High Court observed that there can indeed be no real freedom unless thought is free and unchecked, not free thought for those who agree with us but freedom for the thought we hate. However, the constitution does not permit the Legislature to make laws imposing reasonable restrictions on such freedom on the grounds set out in clause (2) of Article 19, including in the interests of sovereignty and integrity of India and the security of the State.

15. On a perusal of the aforesaid judgments, it is clear that the provisions of section 124A of IPC cannot be invoked to penalize criticism of the persons for the time being engaged in carrying on administration or strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means. Similarly, comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. A citizen has a right to say or

5 (1962)3-SCR-842

6 1972-Cri.L.J.-388

write whatever he likes about the Government, or its measures, by way of criticism or comments, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder. The section aims at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence.

16. Cartoons or caricatures are visual representations, words or signs which are supposed to have an element of wit, humour or sarcasm. Having seen the seven cartoons in question drawn by the third respondent, it is difficult to find any element of wit or humour or sarcasm. The cartoons displayed at a meeting held on 27 November 2011 in Mumbai, as a part of movement launched by Anna Hazare against corruption in India, were full of anger and disgust against corruption prevailing in the political system and had no element of wit or humour or sarcasm. But for that reason, the freedom of speech and expression available to the third respondent to express his indignation against corruption in the political system in strong terms or visual representations could not have been encroached upon when there is no allegation of incitement to violence or the tendency or the intention to create public disorder.

17. We do not find it necessary to dwell on the subject any further, as the learned Advocate General submitted that the

State Government in Home Department will issue the following guidelines in the form of a Circular to all the Police personnel :

(1) In view of the felt need to issue certain guidelines to be followed by Police while invoking Section 124A IPC, the following pre-conditions must be kept in mind whilst applying the same:

- (i) The words, signs or representations must bring the Government (Central or State) into hatred or contempt or must cause or attempt to cause disaffection, enmity or disloyalty to the Government and the words/signs/representation must also be an incitement to violence or must be intended or tend to create public disorder or a reasonable apprehension of public disorder;
- (ii) Words, signs or representations against politicians or public servants by themselves do not fall in this category unless the words/signs/representations show them as representative of the Government;
- (iii) Comments expressing disapproval or criticism of the Government with a view to obtaining a change of government by lawful

means without any of the above are not seditious under Section 124A;

(iv) Obscenity or vulgarity by itself should not be taken into account as a factor or consideration for deciding whether a case falls within the purview of Section 124A of IPC, for they are covered under other sections of law;

(v) A legal opinion in writing which gives reasons addressing the aforesaid must be obtained from Law Officer of the District followed within two weeks by a legal opinion in writing from Public Prosecutor of the State.

2.(i) All Unit Commanders are directed to follow above instructions scrupulously.

(ii) It must also be kept in mind that the instructions mentioned above are not exhaustive and other relevant factors depending from case to case may also be kept in mind while applying Section 124A of the IPC.

18. We clarify that this matter was heard only on the limited question of invocation of Section 124A of IPC and the permissible lawful restriction on the freedom of speech and expression in the interests of public order and not in any other respect nor in respect of any other offence alleged to have been committed by the third respondent.

19. The PIL accordingly stands disposed of.

20. We would like to place on record our appreciation for the valuable assistance rendered by Mr. Darius Khambata, the then learned Advocate General, as well as Mr. Sunil Manohar, learned Advocate General, Mr. Mihir Desai, learned counsel for the third respondent and Mr. Marathe, the party in person.

(CHIEF JUSTICE)

(N.M. JAMDAR, J.)

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