

Balroop Sharma Vs State of Uttar Pradesh and Another

Court: Allahabad High Court

Date of Decision: Sept. 30, 1955

Acts Referred: Constitution of India, 1950 " Article 13, 19(1)
Criminal Procedure Code, 1898 (CrPC) " Section 108, 496, 499, 500, 68
Penal Code, 1860 (IPC) " Section 124A

Citation: AIR 1956 All 270 : (1956) 26 AWR 98 : (1956) CriLJ 473

Hon'ble Judges: V.D. Bhargava, J; Desai, J

Bench: Division Bench

Advocate: M.H. Beg, for the Appellant; Govt. Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Desai, J.

This is an application for a writ of habeas corpus by a person against whom proceedings u/s 108, Criminal P. C., are pending at

present in the Court of the Additional District Magistrate, Kanpur.

2. The applicant in response to a summons or notice issued by the Court appeared before it on 21-6-54. On that date he was ordered to be

released on bail; he furnished bail and was released from the custody of the Court. Proceedings dragged on for a long time and on 9-4-55 he

appeared again before the Court when an order u/s 112 was read over to him. On 21-6-54 he had not filed any personal bond; he had only filed a

bond of a surety. Consequently on 9-4-55, he removed the defect by filing a personal bond.

He continued to be on bail still 26-5-55 when he filed an application written in his own handwriting stating that he did not want to remain on bail

and that the bond filed by him should be cancelled. On this the Court cancelled not only the personal bond but also the bond executed by his

surety, and took him into custody. He could not possibly remain on bail without filing a personal bond and the Court acted rightly in cancelling the

bond of his surety when it cancelled, on his own request, his personal bond. When the bail bonds were cancelled the Court was obliged to take

him in custody.

3. Then on 4-8-55 he prayed for being released on bail; he filed a personal bond and prayed that the bond executed by his surety previously

should be treated as still in operation. The Court ordered him to be released on bail on his furnishing two sureties for Rs. 500/- each and a

personal bond for the same amount. It made it clear that fresh surely bonds must be furnished because the old bonds were cancelled on 26-5-55.

The applicant has not yet complied with that order and has, therefore, not been released from detention.

So far he has filed only a personal bond. He had also filed one surety bond executed by Ram Autar on 18-8-55 but Ram Autar has got it

cancelled on 25-8-55. In the absence of surety bonds the applicant could not be released.

4. The applicant questions the validity of his detention on the grounds that Section 108, Criminal P. C., is unconstitutional, and that the charges

framed against him are invalid, incomplete and vague. We find that there is absolutely no substance in either of the grounds and that the applicant's

detention is not illegal.

5. u/s 108 a person who

disseminates, or attempts to disseminate, or in anywise abets the dissemination of (a) any seditious matter, that is to say, any matter the publication

of which is punishable u/s 124A, Penal Code.

may be required to show cause why he should not be ordered to execute a bond for his good behaviour. It was contended that Section 124A,

Penal Code is inconsistent with the Constitution inasmuch as it infringes the fundamental right conferred upon the applicant under Article 19(1)(a)

of the Constitution and that Section 108 of the Code also is unconstitutional because it refers to Section 124A, Penal Code. We do not decide

whether Section 124A, Penal Code is unconstitutional or not because even if we hold that it is unconstitutional, it would not render Section 108 of

the Code unconstitutional.

A person is proceeded against u/s 108 for disseminating any seditious matter, and no person has a fundamental right to disseminate seditious

matter. The fundamental right guaranteed under Article 19(1)(a) is subject to any law imposing reasonable restrictions on the exercise of the right in

the interests of the security of the State or public order.

Therefore, demanding security from a person who disseminates or attempts to disseminate or abets the dissemination of, any seditious matter is

imposing reasonable restrictions on the right conferred by Article 19(1)(a) in the interests of the security of the State and public order. Section 108

as it stands does not, therefore, contravene Article 19(1)(a).

6. The mere reference to Section 124A, Penal Code would not render Section 108(a) unconstitutional, even if Section 124A were

unconstitutional. The reference is made to Section 124A only for the purpose of interpreting the words "any seditious matter". Any matter, the

publication of which is punishable u/s 124A, Penal Code, is seditious within the meaning of Section 108. The constitutionality or unconstitutionality

of Section 124A, Penal Code is wholly immaterial. What the Court has to ascertain by referring to it is publication of which matter is factually

made punishable by it.

It does not matter if on account of the unconstitutionality or any other defect in the provisions of the section, they cannot be enforced and the

publication of the matter cannot be legally punished. The Court is concerned only with the existence of the provisions making the publication of a

certain matter punishable. The section is presumed to exist in fact even if it cannot be enforced; otherwise it could not be referred to in Section

108.

If the section were unconstitutional it would cease to exist by virtue of Article 13 and there would arise no question of referring to it for the purpose

of seeing publication of which matter is made punishable by it. But u/s 108 the Court is required to refer to Section 124A to find out publication of

which matter is made punishable by it. It follows that it is only concerned with the fact that the publication is made punishable and not with the

question whether it is duly or legally made punishable.

In other words, Section 124A only supplies the definition of the phrase "seditious matter", and any -illegality or unconstitutionality of an enactment

defining a phrase used in another enactment does not affect the legality or unconstitutionality of the other enactment.

7. The applicant has been read over the order u/s 112 of the Code and he knows why he is being called upon to show cause u/s 108. Even if there

was something vague or indefinite in the order it would not render his detention invalid.

8. It was also contended before us that there is no specific provision authorising the Court to take a person against whom proceedings u/s 108 of

the Code are proceeding into custody and detain him in jail. Section 496 of the Code lays down that when a person other than a person accused

of a non-bailable offence appears before a Court and he is prepared at any stage of the proceedings before the Court to give bail, he shall be

released on bail, though in a fit case the Court may discharge him on his personal bond.

The applicant did appear before the Court; he is not a person accused of a non-bailable offence. Therefore, u/s 496 the Court was bound to

release him on bail and has actually passed an order releasing him on bail. u/s 499 before any person is released on bail, a bond must be executed

by him and by his sureties. Therefore, before the applicant could be released on bail he had to furnish a bond executed by himself and two sureties

as required by the Court.

Since the bond executed by him has not been signed by two sureties, he cannot be released. It is said in Section 500 that as soon as the bond has

been executed, the person shall be released. The applicant would be entitled to be released only after the bond has been executed. These

provisions fully justify the applicant's detention. There was no necessity of any specific provision authorising the Court to take or keep the

applicant in custody.

As soon as he appeared before the Court in response to a summons in the criminal case he is deemed to have come in the custody of the Court. It

is inherently implied in a summons issued by a criminal Court that the person must not only appear in the Court on the date and at the time fixed in

the summons but also not leave the Court without its permission unless the case is finished.

When a summons was issued to the applicant to appear before the Court on a certain date at a certain time, he was bound not only to appear in

the Court on that date at that time but also to remain in Court until the case was over or he was discharged or allowed to leave the Court, The case

against him is not over and he has not been discharged or allowed by the Court to go. He, therefore, can-not leave the Court, i.e., he remains in

the custody of the Court. The Court has acted strictly in accordance with the provisions of Sections 496 &c of the Code.

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9. There is, therefore, nothing illegal in the detention of the applicant. His application is dismissed.