

## Javed Habib Vs The State (NCT of Delhi)

**Court:** Delhi High Court

**Date of Decision:** July 3, 2007

**Acts Referred:** Constitution of India, 1950 " Article 19  
Penal Code, 1860 (IPC) " Section 124A, 505B

**Citation:** (2007) 96 DRJ 693

**Hon'ble Judges:** S.N. Dhingra, J

**Bench:** Single Bench

**Advocate:** Anoop George Choudhary and June Choudhary, Taiyab Khan and Syed Ahmad Kashif, for the Appellant;  
Richa Kapoor, for the Respondent

**Final Decision:** Allowed

### Judgement

Shiv Narayan Dhingra, J.

The appellant was the Publisher and Editor of an Urdu Weekly ""Hazoom"" in the year 1983. In the Issue dated

18-24th November, 1983 an Article was published under the Title ""Arrest Muslims Fighting for their Rights Secret Government Circular"". The

Article was authored one by Qurban Ali. The article was considered by the then government as offending and the appellant was tried for offences

under Sections 124A IPC and 505B IPC charging that the Article contained objectionable matter intending to promote feelings of hatred towards

the government and was an attempt to excite dissatisfaction towards the then Government established by law in India and it intended to cause fear

or alarm in the mind of public and intended to induce a feeling of enmity between Hindus and Muslims and was against the State and public

tranquility. The appellant was charged with offences under Sections 124A IPC and 505B IPC. The learned Additional Sessions Judge vide his

judgment dated 21st April, 1999, convicted the appellant under both the above Sections and sentenced him to undergo Rigorous Imprisonment for

three years and fine of Rs. 5000/- u/s 124A and RI for two years and a fine of Rs. 2000/- u/s 505B of IPC. The appellant has challenged his

conviction on the ground that he had committed no offence because of the publication of the impugned Article in the Weekly of which he was the

Editor. The article was a fair criticism of the actions of the government and there was no intention of the appellant to create any dissatisfaction or

hatred against the government. The appellant was merely exercising his Fundamental Right of expression under Article 19 of the Constitution of

India and the article contained the opinions regarding actions of the then Prime Minister, heading the government. The appellant has been wrongly

convicted.

2. A perusal of the article would show that the author expressed his anguish over the alleged injustice being done to the Muslims and formed an

opinion that Smt. Indira Gandhi had formed an opinion that Indian Muslims did not vote for her and the principles she stood for. She had Therefore

secretly joined hands with leaders like Chaudhary Charan Singh and Atal Bihari Vajpaee in order to curb the voice of Muslims. In the article it is

also depicted that Congress (I) had total support of RSS in the previous elections and there was a conspiracy between Smt. Indira Gandhi and

Atal Bihari Vajapayee.

3. The learned Sessions Judge in his judgment observed that the very title of the article attempts to promote feelings of hatred in the minds of

Muslims and it also attempts to excite dissatisfaction in the minds of the Muslims towards the government. The contents of the article were such

that the article promoted the feelings of hatred and contempt towards government established by law and was an attempt to incite dissatisfaction

towards the government established by law. The article also promoted feelings of enmity between Hindus and Muslims. The learned Additional

Sessions Judge also observed that although there was no evidence on record that after publication of this article any revolt took place, but the

article was certainly objectionable and it attempted to promote feelings of hatred. Thus, he convicted the appellant u/s 124A. The learned Sessions

Judge was also of the view that the caption of the article and the article as a whole was likely to cause fear in the minds of public and would induce

feelings of enmity between Hindus and Muslims.

4. It is settled law that u/s 124A, the Court must not look to a single sentence or isolated expression but take into consideration the article as a

whole and gave it a full, free and generous consideration and deal with it in a fair and liberal spirit. While considering offence u/s 124A or 505B,

the court has to look to the real intention and spirit of the article. It has to see whether the general tendency of the article is such that the article is

intended to excite the feelings of a sections of the society or the article was a severe criticism of the acts of the government. Holding an opinion

against the Prime Minister or his actions or criticism of the actions of government or drawing inference from the speeches and actions of the leader

of the government that the leader was against a particular community and was in league with certain other political leaders, cannot be considered as

sedition u/s 124A of the IPC. The criticism of the government is the hallmark of democracy. As a matter of fact the essence of democracy is

criticism of the Government. The democratic system which necessarily involves an advocacy of the replacement of one government by another,

gives the right to the people to criticize the government. In our country, the parties are more known by the leaders. Some of the political parties in

fact are like personal political groups of the leader. In such parties leader is an embodiment of the party and the party is known by the leader alone.

Thus, any criticism of the party is bound to be the criticism of the leader of the party.

5. While considering offences u/s 124A and 505B of IPC, the Court has to keep in mind the distinction between criticism of the government and

the criticism by a leader of a political party. Where the leader of a political party becomes the head of the government, any criticism of the person

and his policies as head of the political party or Government can not be viewed as sedition. The leader of the political party who appeals to the

people to vote for him and his party, who reaches out to the people on the basis of his party is also open for criticism by the people for the very

policies. Such criticism may not be in polite language and the tendency of the article may be to excite people not to vote for the party or to support

such leaders or to project the leader as anti to a section of the society, such a criticism of the leader cannot be considered as offence u/s 124A or

u/s 505B IPC. Explanation 3 to Section 124A excludes such comments from preview of Section 124A, even if such comments amount to

disapprobation of the actions of the Government.

6. Learned trial court in this case relied upon the opinion of the PW-5, Press Secretary to the government, in order to hold that the article in

question promoted hatred and dissatisfaction to the government. Learned trial court did not take into account the class of newspaper in which the

article was published and the class of people among whom this weekly had circulation. Nor any evidence was led by the State on these points. The

total number of copies being printed, as revealed during the arguments, was only 5000 and out of them how many were under the actual circulation

is not known. No complaints were received from any independent person by the government that the article published in the weekly was

objectionable or had caused any ill feeling among the people. The issue of the weekly was delivered to the press office of government and in the

office of PW-5 it was examined by one of the press assistant along with other weeklies and press assistant of the government found the article

objectionable and reported to PW-5 who was working there. PW-5 then studied the article and found it objectionable and a complaint was

lodged to ensue prosecution.

7. I consider that the learned trial Court has wrongly concluded that from the caption of the article and article as a whole promoted feeling of

hatred dissatisfaction towards the government. In fact the article was against the leader of the political party and not against the government. The

leader happened to be the head of the government. I, Therefore, allow this appeal. The conviction and the sentence awarded by the learned trial

Court is set aside.