

(2007) 07 DEL CK 0262

Delhi High Court

Case No: Criminal Appeal No. 235 of 1999

Javed Habib

APPELLANT

Vs

The State (NCT of Delhi)

RESPONDENT

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.