Emperor Vs Tribhovandas Purshottam Das Mangrole Walla

Court: Bombay High Court

Date of Decision: Aug. 17, 1908

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€" Section 253

Citation: 1 Ind. Cas. 641

Hon'ble Judges: Heaton, J; Chandavarkar, J

Bench: Division Bench

Judgement

Chandavarkar, J.
This is an appeal from the judgment of the Chief Presidency Magistrate of Bombay, convicting the appellant of two

offences, one u/s 124A and the other u/s 153A of the Indian Penal Code, arising out of each of two articles, published in a Gujarati newspaper

called the Hind Swarajya. Several points of law have been urged by the appellant"s Counsel, Mr. Baptista. The first of them is that the learned

Chief Presidency Magistrate had no jurisdiction to try the case. This objection to jurisdiction is based upon the ground that there is upon the record

no evidence of the publication of the newspaper in Bombay. But three witnesses examined for the Crown state that they received the newspaper in

Bombay; and there is the declaration made by the appellant himself under the Press Act. The mere fact that two of the witnesses are servants of

Government, who received the newspaper as its agents, cannot in law render their evidence inadmissible on the question of publication.

2. The second and the third point urged by Mr. Baptista have hardly any substance. It is contended that the trial is rendered illegal because the

learned Magistrate did not frame a separate charge for every distinct offence, as required by the first part of Section 233 of the Code of Criminal

Procedure. It is true that the Magistrate framed two charges--one in respect of the article of the 4th April and the other in respect of the article of

the 11th of April, 1908. But in each charge the offences are mentioned as being those punishable under Sections 124A and 153A, so that the

appellant had distinct notice of the charges he had to answer, and he could hardly have been prejudiced by the some what informal mode in which

the charges were drawn up. The defect, if any, was no more than a mere irregularity, cured by the provisions of Section 225 of the Code of

Criminal Procedure. It is further contended that the trial is illegal because the particulars in respect of each of the charges were not given by the

Magistrate by the specification in the charge sheet of the passages in each of the articles, which, according to the case for the Crown, brought

those articles within Sections 124A. and 153A of the Penal Code. But the case for the Crown was in the Court below, as it is hero, that each of

the two articles taken as a whole brought, the act of the appellant within each of these sections. Under those circumstances no specification of any

particular passages was called for.

3. I pass on now to Mr. Baptista''s arguments that the trial is illegal on the ground of misjoinder of charges. The misjoinder complained of is that the

offence charged u/s 124A of the Indian Penal Code, arising out of the article of the 4th of April, being distinct from, and not an offence of the same

kind as, the offence charged u/s 153A of the same Code, arising out of the article of the 11th of April, and that the offence charged u/s 153A as

arising out of the former article being distinct from and not an offence of the same kind as the offence charged u/s 124A as arising out of the latter

article, the learned Magistrate ought not to have tried these charges together at one trial. It is admitted by Mr. Baptista that the charge for the

offence u/s 124A. of the Penal Code in respect of one of the two articles in question, could be legally joined to the charge for the offence under the

same section in respect of the other article. And in such a case it is equally clear from Sections 236 and 237 of the Code of Criminal Procedure

that, if in respect of each of the articles the evidence recorded substantiated the offence u/s 153A, instead of the offence u/s 124A, the accused

could be legally convicted of the former offence, even though it did not form the subject-matter of the charge. That being the case, the addition of

the offences under that section in the charge sheet cannot be held to be illegal. On the other hand, it was an advantage to the appellant in that he

had notice of the additional offence charged, of which he could have been under the Code convicted without any notice in the charge sheet. It is

true that, as urged by Mr. Baptista, the offence u/s 124A of the Penal Code is not an offence of the same kind as an offence u/s 153A of the

Code. And the Criminal Procedure Code no doubt provides that those two offences cannot be tried together. But there is nothing in the Code

which directs that where an accused person is alleged to have done two or more acts, each of which may fall within the definition of an offence

under one or another section of the Penal Code, the section or sections in either case being the same, the joinder of the charges under those

sections is illegal. Substantially the acts amount in such a case to offences punishable under the same sections of the Indian Penal Code and,

therefore, they are offences of the same kind.

4. Mr. Baptista has not denied the seditious character of the article of the 4th of April. On the other hand, he has candidly admitted before us that

he cannot defend the article in question so far as the offence u/s 124A of the Penal Code is concerned. The other article, that of the 11th of April,

he contends, is a mere republication of what came into the appellant''s hands from outside, and was published by the appellant with remarks

showing that he did not approve of the sentiments in the article. It is clear, however, from the evidence of surrounding circumstances that the so-

called disapproval was feigned and ironical and that the appellant published the article in question because it gave him an opportunity of bringing

the established Government of the land into hatred and contempt.

5. Under these circumstances it is unnecessary to consider whether either of the articles can rightly come u/s 153A of the Penal Code.

6. We affirm the conviction u/s 124A., and as to the sentences we decline to interfere on the ground that they cannot be considered too severe.

Heaton, J.

7. Mr. Baptista''s first argument was that publication in Bombay was not proved. There is no substance in that.

8. His main arguments were directed to the charge and were to the effect that as the charge was contrary to law the trial was illegal: a general

proposition which he sought to make good by the authority of Privy Council judgment in Subrahmania Ayyar''s case 25 M, 61.

9. In order to understand the argument it is necessary to set out the charge. It reads as follows:

I, A.H.S. Aston, Esquire, Chief Presidency Magistrate, Bombay, hereby charge you, Tribhovandas Purshottamdas Mangrolewalla, as follows:That

you on or about the 4th day of April 1908 at Bombay by words intended to be read, namely, an article in the Gujarati which is headed when

translated Englishmen afraid of the pen published in the Hind (sic) newspaper of which you wore the editor, printer and proprietor brought or

attempted to bring into hatred or contempt or excited or attempted to excite feelings of dissatisfaction towards the Government established by law

in British India and promoted or attempted to promote feelings of enmity or hatred between different classes of His Majesty''s subjects, namely,

between Native Indian or European subjects and thereby committed an offence punishable under Sections 124A. and 153A, Indian Penal Code.

2ndly: That you on or about the 11th day of April 1908 at Bombay by words intended to be read, namely, an article printed in the English and

Gujarati languages which is headed when corrected and translated A grave warning"" published in the Hind (sic) newspaper of which you were the

editor, printer and proprietor brought or attempted to bring into hatred or contempt or excited or attempted to excite feelings of disaffection

towards the Government established by law in British India and promoted or attempted to promote feelings of enmity or hatred between different

classes of His Majesty''s subjects, namely, between Native Indian and European subjects and thereby committed an offence punishable under

Sections 124A. and 153A of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried on the said charges.

10. First, it is said that this charge is unlawful because it does not follow the form given in Schedule V to the Criminal Procedure Code for charges

with two or more heads, but instead of doing so combines in one whole in each case the charges under Sections 124A and 153A. The defect is a

very formal one, and is cured by Section 225 of the Code which says: No error in stating either the offence or the particulars required to be stated

in the charge, and no omission to state the offence or those particulars shall be regarded at any stage of the case as material, unless the accused

was in fact misled by such error or omission, and it has occasioned a failure of justice."" The Privy Council case referred to is not an authority for

saying that such an error in the charge is an illegality vitiating the trial. It is only necessary to read the judgment in that case to see that their

Lordships of the Privy Council were dealing with a grossly illegal trial: and there is apparent throughout that judgment as strict an adherence as

possible to the facts of that particular case; and as little generalization as is compatible with a true presentment of their reasons''.

11. Mr. Baptista''s next objection was that though it was not illegal to charge the appellant on the articles as a whole, yet when charged in respect

of each article under Sections 124A. and 153A, he was prejudiced as he did not have notice of the particular passages in each article on which the

prosecution relied to bring it first u/s 124A and secondly u/s 153A. To this the answer is that as regards these charges the prosecution did not

proceed on separate passages but on the articles as a whole. But Mr. Baptista argues in effect that his client ought to have had notice, before he

was required to enter on his defence, of the process of reasoning by which the prosecution brought each article u/s 124A and also u/s 153A of the

Penal Code. Whatever application such an argument may have to cases in general, it fails in its application to this case, because the process of

reasoning which the prosecution followed, was to deal with the articles as a whole and not with particular passage and the accused had notice that

he was charged u/s 124A and u/s 153A in respect of each article as a whole.

12. The last of Mr. Baptista a technical arguments was that the joinder of the charge relating to the two publications or the 4th and 11th April, was

illegal and vitiated the trial. He assumes for the purpose of this argument that there were four charges, two relating to each article; and he urges that

as each of the four charges did not relate to an offence of the same kind, they could not be tried together. He bases his argument mainly on

Sections 233 and 234, of the Code of Criminal Procedure which run as follows:

233. For every distinct offence of which any person is accused there Khali be a separate charge, and every such charge shall be tried separately,

except in the cases mentioned in Sections 234, 235, 236 and 239.

234. (1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the

last of such offences, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they arc punishable with the same amount of punishment under the same section of the Indian Penal Code

or of any special or local law.

13. Section 234 does not say that at most a trial must be limited to three charges: it says it must be limited to three offences and that the offences

must be of the same kind. The offence"", as defined by the Code itself, is the act or omission made punishable. The offences in this case were two in

number, namely, the publication of the 4th April and the publication of the 11th April. These two offences were, as charged, punishable under the

same sections of the Indian Penal Code and were, therefore, it seems to me, offences of the same kind. If the word section ""in the second clause of

Section 234 be read as incapable of meaning sections,"" that is, if it be read as invariably singular, then Mr. Baptista"s argument is good, not

otherwise. But I do not think it is the intention of the Code, either expressed or implied, to exclude from the operation of Section 234 an offence

because it is made the subject of more than one charge.

14. Charging one act or series of acts under more than one section of the Indian Penal Code is a proceeding provided for in Section 235 (Clause

2) and in Section 233 of the Criminal Procedure Code and is also provided for in Section 71 of the Indian Penal Code which says: ""where

anything is an offence falling within two or more separate definitions the offender shall not be punished with a more severe punishment than the

Court which tries him could award for any one of such offences."" You may charge an offence twice over under two different sections but by so

doing you can not increase the sentence which may be imposed. That principle is not offended by trying together separate offences for each of

which there is more than one charge. Therefore, I do not think the joinder of charges in this case was contrary either to the express words or the

principle of the law.

15. On the merits there is little to be said. A careful perusal of the article of the 4th April shows a deliberate design to excite feelings of disaffection

towards the Government established by law in British India, or to bring that Government into hatred and contempt. The nature and tone of the

article or letter of the 11th; the general character of Hind Swarajya as evidenced by its own publications; the circumstance that the letter said to be

received from outside was translated into Gujarati; and the introductory words printed before the translation, taken together, convince me that the

publication of the 11th also was deliberately designed to do the same. It is not very material to consider whether the offences also fell u/s 153A of

the Indian Penal Code. The convictions are, in my opinion, good u/s 124A; and the sentences, I consider, are not too severe. So I concur in the

order confirming the conviction and sentences.