

# **Mohammad Khalid vs The Chief Commissioner, Delhi on 2 March, 1967**

**Author: Chief Justice**

**Bench: Chief Justice**

## **JUDGMENT**

K.S. Hedge, C.J., H.R. Khanna and Tatachari, JJ.

(1) The brief facts, giving rise to this application under Section 99-B, of the Code of Criminal Procedure (hereinafter referred to as the Code) by Mohammad Khalid petitioner, are as under : - On 27th November 1959, the Chief Commissioner of Delhi issued the following notification under Section 99 A of the Code. "No. F, 110/59-C, Whereas the Chief Commissioner, Delhi is satisfied that the book entitled 'Khilafat i Meawia wa Yazid' in Urdu by Mohammad Ahmed Abbasi and published by Ruhani Kutub Khan Pul Bangash, Delhi, contains matter which is deliberately and maliciously intended to promote feelings of enmity or hatred between different classes of citizens of India and the publication of which is punishable under-Section 153A of the Indian Penal Code (Act Xlv of 1860) Now, therefore, on the above-stated grounds and in exercise of the powers conferred by Section 99A of the Code of Criminal Procedure (Act V of 1898), the Chief Commissioner Delhi, hereby declares to be forfeited to Government every copy of the said book and all other documents containing copies, reprints and translations of or extracts from the said book. By Order A. B. Pande, Chief Secretary, Delhi Administration. The Petitioner, who claimed to be the printer of the book ' 'Khilafat- i- Meawia wa Yazid" mentioned in the order, filed the present application for quashing the above order of the Chief Commissioner. A number of grounds were mentioned by the petitioner, but we are not concerned with all of them. One of the grounds on which the petitioner challenged the order, was that it was vague inasmuch as it did not specify the parts of the book which were claimed to be objectionable.

(2) The application was resisted by the Chief Commissioner, Delhi, and the affidavit of Shri Anang Pal, Under Secretary of the Delhi Administration was filed. It was not admitted that the petitioner had locus standi to file the application. Plea was taken that the book in dispute contained matters which deliberately and maliciously promoted feelings of enmity and hatred between Shias and Sunnis, and were highly provocative to Shias, and were intended to injure their religious susceptibilities. The application came up for hearing before a Special Bench of the Punjab High Court on 10th December 1962 and the learned Judges held that the petitioner had an interest in the book in question and as such had locus standi to file the application.

(3) Before dealing with the respective contentions of the parties, it would be appropriate to reproduce the different provisions of law having bearing on the point of controversy. Section 99A of the Code gives power to the State Government to declare certain publications forfeited and to issue search warrants for the same, and reads as under "(1) Where- ia.) any newspaper, or book as defined

in the Press and Registration of Books Act 1867 (25 of 1867), (b) any document, Wherever printed, appears to the State Government to contain any seditious matter or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of the citizens of India or which is deliberately and maliciously intended to outrage the religious feelings of any such class by insulting the religion or the religious beliefs of that class, that is to say, any matter the publication of which is punishable under Section 124A or Section 153A or section 295A of the Indian Penal Code (45 of 1860), the State Government may, by notification in the Official Gazette, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to Government, and thereupon any police officer may seize the same, wherever found in India, and any Magistrate may by warrant authorise any police-officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be. (2) In sub-section (1) 'document' includes also any painting, drawing or photograph, or other visible representation."

Section 99-B, provides for application to the High Court to set aside the order of forfeiture and is as under!- "Any person having any interest in any newspaper, book or other document, in respect of which an order of forfeiture has been made under Section 99-A, within two months from the date of such Order, apply to the High Court to set aside such order on the ground that the issue of the newspaper, or the book or other document, in respect of which the order was made, did not contain any seditious or other matter of such a nature as is referred to in sub-section (1) of section 99-- A."

According to Section 99-C every such application made to the High Court shall be heard and determined by a Special Bench of the High Court composed of three Judges. Section 99-D, provides that on receipt of the application, the Special Bench shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained seditious or other matter of such a nature, contained as is referred to in sub-section (i) of Section 99-A, set aside the order of forfeiture. Mr. Bishambar Dayal, on behalf of the Chief Commissioner, has raised an objection that the order of the Special Bench of the Punjab High Court, made on 10th December 1962 by which the petitioner was held to possess an interest in the book in question and as such locus standi to file the application, is not binding on this Court. It is urged that this question should be determined afresh. There is, in our opinion, no merit in this contention. At the time the above order was made the Special Bench of the Punjab High Court was seized of the matter and had admittedly Jurisdiction to decide the question of petitioner's interest and locus standi to file the application. The learned Judges, on consideration of the material placed before them, came to the conclusion that the petitioner possessed an interest in the book in question and had a locus standi to file the application. A decision having been given with respect to a part of the matter in controversy between the parties by a Court of competent jurisdiction, it would be binding in the subsequent stage of the same proceedings and cannot now be reopened.

(4) On the merits of the case M., Anand On behalf Of the Petitioner has argued that the impugned notification is not in conformity with law as it is vague and does not give the grounds on account of which the Chief Commissioner formed the opinion that the book in question contained matter which was deliberately and maliciously intended to promote feelings of enmity or hatred between different

classes of citizens of India. In our opinion, there is force in this contention. Perusal of Section 99-A, reproduced above goes to show that the Government while issuing a notification under that Section has to State the grounds of its opinion on the basis of which it comes to the conclusion that the news paper, book or document contains any seditious matter or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of citizens of India or which is deliberately and maliciously intended to outrage the religious feelings of any class by insulting the religion or the religious beliefs of that class, that is to say, any matter the publication of which is punishable under Section ' 124A, or Section 153A or Section 295A of the Indian Penal Code. The grounds of opinion are a vital and essential part of the notification because it is those grounds which would reveal the justification for the issuance of the notification. The requirement about stating the grounds of opinion of the State Government, being an imperative and integral part of the Section, it would follow that a notification in order to be legal and effective must comply with and fulfil that requirement. Such a compliance is a sine qua non of the validity of the notification which does not incorporate the grounds of the opinion would be not in conformity with law. The law in this respect has to be substantially complied with and it is not enough to merely reproduce the language of Sections 124A, 153A or 295A without specifying as to how or in what manner there has been contravention of the provisions of those Sections.

(5) In the present case all that the Chief Commissioner has stated in the impugned notification is that in his opinion the book in question is intended to promote feelings of enmity or hatred between different classes of citizens of India. Neither the passage in the book, on which that opinion was based, has been referred to, nor is there indication of the different classes of citizens between whom the book alleged to promote feelings of enmity or hatred. The ground, "on which the opinion is based is not given and the whole thing is left in the realm of vagueness. A similar question came up before their Lordship of the Supreme Court in the case of Harnam Dass v. State of Uttar Pradesh. In the aforesaid. case the validity of an order under Section 99-A of the Code was availed. The order in that case read as under :- "In exercise of its powers conferred by Section 99A. of the Code of Criminal Procedure.....the Government is pleased to declare the books.....forfeited to Government on the "ground that the said books contain matter, the publication of which is punishable under Sections 153A and 295A of the Indian Penal Code."

Sarkar, J. (as he then was), who spoke for the majority after referring to Section 99A of the Code dealt with the notification and observed as under:- "The other thing that appears from the section is that the Government has to state the grounds of its opinion. The order made in this case, no doubt, stated that in the Government's opinion the books contained matters the publication of which was punishable under Sections 153A and 295A of the Penal Code It did not, however, state, as it should have, the grounds of that opinion S.) it is not known which communities were alienated from each other or whose religious beliefs had been wounded according to the Government, nor why the Government thought that such alienation or offence to religion had been causes."

The Allahabad High Court in that case had taken the view that its duty under Section 99D of the Code was only to see whether in fact the document came within the mischief of the offence charged. The High Court had thought that a document would be within the mischief of the offence charged if, in its own opinion, it contained matters the publication of which would be punishable under either

Sections 124A, 153A or 295A of the Penal Code as mentioned in the order of forfeiture, irrespective of the Government's opinion on the matter. Their Lordships of the Sup. reme Court did not accept as correct the above view of the Allahabad High Court and observed :- "New Section 99D is concerned with setting aside an order. That order is one made under Section 99A. An order under that section can be made only when certain things have appeared to the Government and the Government has formed a certain opinion. The section further requires the Government to state the grounds of its opinion. It is this order, that is, the order based on the grounds stated, which the party affected has been given by Section 99B the right to move the High Court to set aside. It would follow that all that Section 99B can require the party to do is to show that that order was improper. Whether that order was proper or not would, of course, depend only on the merits of the grounds on which it was based ; whether another order to the same effect could have been made on other grounds is irrelevant, for that would not show the validity of the order actually made ; that order would be had if the grounds on which it is made do not support it."

It was further observed as under :- "What then is to happen when the Government did not state the grounds of its opinion ? In such a case if the High Court upheld the order, it may be that it would have done so for reasons which the Government did not have in contemplation at all. If the High Court did that, it would really have made an order of forfeiture it- self and not upheld such an order made by the Government. This, as already stated, the High Court has no power to do under Section 99B. It seems clear to us, therefore, that in such case the High Court must set aside the order under Section 99D, for it cannot then be satisfied that the grounds given by the Government Justified the order. You cannot be satisfied about a thing which you do not know."

The order of forfeiture made by the State Government in that case was accordingly set aside. The dictum laid down in the above case, in our opinion, fully applies to the facts of the present case and it would follow from it that if the notification issued by the Chief Commissioner is not in conformity with law because of his having not stated the grounds of his opinion, this Court would not itself go into the matter and find out by referring to the different passages in the book as to whether they contravene Section 153A of the Penal Code.

(6) We may observe that the Under Secretary to the Delhi Administration in the course of his affidavit has stated, as mentioned earlier, that the book in question contained matter which was calculated to promote feelings of enmity and hatred between different classes of Muslims in India, that is, Shias and Sunnis, and were highly provoking to Shias. These avernments are no doubt contained in the affidavit but they find no mention in the notification issued by the Chief Commissioner. What is impugned here is the validity of the notification issued by Chief Commissioner, and if the above-mentioned notification suffered from an infirmity, inasmuch as it did not contain ground on which the opinion of the Chief Commissioner was based the same cannot be cured by the filing of the affidavit of the Under Secretary during these proceedings.

(7) It may also be mentioned that the book in question was proscribed and forfeited under Section 99A of the Code in Pakistan but a Special Bench of West Pakistan High Court set aside the order of the Government in Mahmood Ahmed Abbasi v. The Administrator of Karachi, Criminal Miscellaneous Application No. 483 of 1959, decided on 19th December, 1960 The main reason

which weighed with the learned Judges in deciding in favour of the petitioner in that case, was precisely the same which has weighed with us in disposing of this petition.

(8) We, therefore accept the petition and set aside the impugned notification. The books, which were seized in pursuance of the impugned notification, should be returned to the persons from whom they were. seized. The petitioner shall be entitled to the costs of these proceedings which we assess at Rs, 250.00.