Bilal Ahmed Kaloo vs State Of Andhra Pradesh on 6 August, 1997

Equivalent citations: AIR 1997 SUPREME COURT 3483, 1997 (7) SCC 431, 1997 AIR SCW 3574, 1997 (5) SCALE 399, 1997 CRIAPPR(SC) 377, 1997 SCC(CRI) 1094, (1997) 7 JT 272 (SC), 1997 CRILR(SC&MP) 706, 1997 (7) JT 272, (1997) 3 ALLCRILR 831, (1997) 2 EASTCRIC 793, (1997) 3 CURCRIR 76, (1997) 5 SCALE 399, (1997) 35 ALLCRIC 375, (1997) 13 OCR 573, (1997) 2 MADLW(CRI) 708, (1997) 3 CRIMES 130, (1997) 3 RECCRIR 812, (1997) 3 SCJ 205, (1997) 7 SUPREME 122, (1998) SC CR R 83

Author: K. T. Thomas

Bench: K. T. Thomas

PETITIONER:
BILAL AHMED KALOO

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT: 06/08/1997

BENCH:
A. S. ANAND, K. T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

THE 6TH DAY OF AUGUST, 1997 Present:

Hon'ble Dr. Justice A. S. Anand Hon'ble Mr. Justice K. T. Thomas S. k. Bhattacharya, Adv for the appellant Guntur Prabhakar, Adv. for the Respondent and Appellant in Crl. A. No, 81/97 J U D G M E N T / O R D E R The following Judgment/Order of the

Court was delivered:

J U D G M E N T THOMAS. J Bilal Ahmed Kaloo, a Kashmiri youth had a sojourn in the city of Hyderabad and was involved in a prosecution under Terrorist and Disruptive Activities (Prevention) Act, 1987, (for short 'TADA'). Though the Designated Court under TADA he was convicted of Sedition under Section 124-A of Indian Penal Code and was sentenced to imprisonment for life, besides being convicted of certain other lesser offences for which a sentence of rigorous imprisonment for three years was awarded under each count. This appeal has been preferred by the said convicted person under Section 19 of the TADA.

The case against the appellant in short is the following. Appellant was an active member of a militant outfit called Al-Jehad which was formed with the ultimate object of liberating Kashmir from Indian Union. With this in mind appellant spread communal hatred among the Muslim youth in the old city of Hyderabad and exhorted them to undergo training in armed militancy and offered them arms and ammunitions. He himself was in possession of lethal weapons like country-made revolver and live cartridges. He was propagating among the Muslims that in Kashmir Muslims were being were being subjected to attrocities by the Indian Army personnel.

During the period when series of bomb-blasting occurred in the city of Hyderabad the police kept a close watch on the activities of the appellant who was then staying in a room adjacent to Masjid-e-Niyameth Kha-e-ali at Mir-ka-Daira at Haribowli in Hyderabad. He was arrested on 19-1-1994 and after recording his confessional statement the police seized a revolver and two cartridges which were produced by him. After investigation was completed he was challaned before the Designated Court at Hyderabad for offences under Sections 124-A, 153-A and 505(2) IPC, and under Sections 3(3), 4(3) and 5 of the TADA, and also under Section 25 of the Indian Arms Act.

As mentioned above the Designated Court acquitted him of the offences under TADA but convicted him of the offences under the Indian Penal Code and also under Section 25 of the Indian Arms Act and was sentenced as aforesaid.

While dealing with the offences of which appellant was convicted there is no question of looking into the confessional statement attributed to him, much less relying on it since he was acquitted of all offences under TADA. Any confession made to a police officer is inadmissible in evidence as for these offences and hence it is fairly conceded that the said ban would not wane off in respect of offences under the Penal Code merely because the trial was held by the Designated Court for offences under TADA as well. Hence the case against him would stand or fall depending on the other evidence.

The decisive ingredient for establishing the offence of Sedition under Section 124-A IPC is the doing of certain acts which would bring the Government established by law in Indian into hatred or contempt etc. In this case, there is not even a suggestion that appellant did anything as against the Government of India or any other Government of the State. The charger framed against the appellant contains no averment that appellant did anything as against the Government.

A Constitution Bench of this Court has stated the law in Kedar Nath Singh vs. State of Bihar(AIR 1962 SC 955 at page 967) as under:

"Now the expression 'the Government established by law' has to be distinguished by law' has to be distinguished from the persons for the time being engaged in carrying on the administration. 'Government established by law' is the visible symbol of the State. The very existence of the State will be in jeopardy if the Government established by law is subverted.

Hence, the continued existence of the Government established by law is an essential condition of the stability of the State. That is why 'section', as the offence in S.124A has been characterised, comes, under Chapter VI relating to offences against the State. Hence any acts within the meaning of S.124A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence."

As the charge framed against the appellant is totally bereft of the crucial allegation that appellant did anything with reference to the Government it is not possible to sustain the conviction of the appellant under Section 124A IPC.

Evidence of the prosecution relating to offences under Section 153A and 505(2) IPC consists of oral testimony of certain witnesses who claimed that appellant was telling others that the Army personnel have been committing atrocities on Muslims in Kashmir. Among those witnesses PW- 7, PW-7 and PW-13 were not cross-examined at all. Accepting their evidence, it can be held without any difficulty that prosecution has established beyond doubt that appellant was spreading the news that members of the Indian Army were indulging in commission of attrocities against Kashmiri Muslims. So it is not necessary to advert to the other evidence which only repeats what those witnesses said. Hence the question to be decided now is whether those acts of the appellant would attract the penal consequences envisaged in Section 153A or 505(2) of IPC.

Section 153A was amended by the Criminal and Election Laws (Amendment) Act 1969 - Act No.XXXV of 1996. It consists of three clauses of which clauses (a) and (b) alone are material now. By the same amending Act sub-section (2) was added to

Section 505 of the Indian Penal Code. Clauses (a) &

(b) of Section 153A and Section 505(2) are extracted below:

"153-A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.- (1) Whoever

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or commuity or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or .....

shall be punished with imprisonment which may extend to three years, or with fine, or with both."

"505(2) Statements creating or promoting enmity, hatred or ill- will between classes.- Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both."

The common ingredient in both the offences is promoting feeling of enmity, hatred or ill-will between different religious or racial or linguistic or regional groups or castes or communities. Section 153A covers a case where a person by "words, either spoken or written, or by signs or by visible representations" promtes or attempts to promote such feeling. Under Section 505(2), promotion of such feeling should have been done by making and publishing or circulating any statement or report congaining rumour or alarming news.

This Court has held in Balwant Singh and another vs. State of Punjab (1995 3 SCC 214) that mens rea is a necessary ingredient for the offence under Section 153A. Mens rea is an equally necessary postulate for the offence under Section 505(2) also as could be discerned from the words "with intent to create or promote or which is likely to create or promote" as used in that sub-section.

The main distinction between the two offences is that publication of the word or representation is not necessary under the former, such publication is sine qua non under Section 505. The words "whoever makes, publishes or circulates" used in the setting of Section 505(2) cannot be interpreted

disjunctively but only as supplementary to each other. If it is construed disjunctively, any one who makes a statement falling within the meaning of Section 505 would, without publication or circulation, be liable to conviction. But the same is the effect with Section 153A also and then that Section would have been bad for redundancy. The intention of the legislature in providing two different sections on the same subject would have been to cover two different fields of similar colour. The fact that both sections were included as a package in the same amending enactment lends further support to the said construction.

Yet another support to the above interpretation can be gathered from almost similar words used in Section 199 of the Penal Code as "whoever by words.....makes or publishes any imputation....."

In Sunilakhya Chowdhury vs. H.M. Jadwet and another (AIR 1968 Calcutta 266) it has been held that the words "makes or publishes any imputation" should be interpreted as words supplementing to each other. A maker of imputation without publication is not liable to be punished under that section. We are of the view that the same interpretation is warranted in respect of the words "makes, publishes or circulates" in Section 505 IPC also.

The common feature in both sections being promotion of feeling of enmity, hatred or ill-will "between different"

> religious or racial or language or regional groups or castes and communities it is necessary that atleast two such groups or communities should be involved. Merely inciting the felling of one community or group without any reference to any other community or group cannot attract either of the two sections.
>
> The result of the said discussion is that appellant who has not done anything as against any religious, racial or linguistic or regional group or community cannot be held guilty of either the offence under Section 153A or under Section 505(2) of IPC.
>
> What remains is the offence under Section 25(1B) of the Indian Arms Act. PW-1 was the Superintendent of Police of Hyderabad City Zone (CID) during the relevant time. He deposed to the fact that he made close watch on certain organizations in the wake of series of bomb blasts which rocked that city for a while and on receipt of some vital information about the activities of the appellant he proceeded to the place where he was staying, accompanied by two Revenue officials(PW-22 and PW-23). He found out appellant in Room No.2 of the building annexed to Masjid-e- Niyameth Kha-e-Ali at Mir-ka-Daira at Haribowli. PW-1 said that on being interrogated appellant produced one revolver (MO1) and two cartridges (MO2 & MO3). Those articles were seized and later they were subjected to tests in the Forensic Science Laboratory. PW-16, the Assistant Director of that Laboratory has stated in court that the said revolver and cartridges were found to be in perfect working condition and he issued a certificate to that effect.

PW-14 who was incharge of management of the rooms in the building attached to the aforesaid mosque said that appellant was staying in Room No. 2 of the building during the relevant time. Trial court found that evidence acceptable and we have no reason to dissent from it.

Learned counsel for the appellant, however, assailed the prosecution case relating to the said revolver and cartridges, on the ground that those articles were not sealed after seizure and were left at the Police Station for a number of days before they were sent to the Forensic Science Laboratory.

We are not impressed by the said contention and we may point out that appellant made no allegation at any stage of the case that the revolver and the cartridges were tampered with by the police. Not even a suggestion was made to any witness in that direction. According to the counsel, since those articles were not sealed there was the possibility of their being tampered with. Such and academic possibility need not be consonance by us in this case because even the accused has no case that they were tampered with. That apart, the particulars of the weapon were given in the seizure memo and the same tallied with the weapon on examination by the ballistic expert. There is no challenge to the seizure memo admittedly prepared at the time of recovery of arms and amunition. The identity of the weapon thus stands, established beyond any reasonable doubt.

Assistant Director of Forensic Science Laboratory conducted scientific test on the articles and found them to be in working condition.

We are, therefore, in agreement with the finding recorded by the trial court that appellant was in possession of arms and amunition in violation of law and he is thus liable to be convicted under Section 25(1B)(a) of the Arms Act. The sentence awarded by the trial court (rigorous imprisonment for three years) in the circumstances of the case needs no interference.

In the result, we partly allow this appeal and set aside the conviction and sentence passed on the appellant for offences under Section 124A, 153A and 505(2) of the Indian Penal Code. We confirm the conviction and sentence passed on him under Section 25(1B)(a) of the Arms Act. The appellant shall be released from custody fothwith if he has undergone the sentence passed on him under section 25 (1B)(a) of the Arms Act and is not wanted in any other case.

Before parting with this judgment, we wish to observe that the manner in which convictions have been recorded for offences under Section 153A, 124A and 505(2), has exhibited a very casual approach of the trial court. Let alone the absence of any evidence which may attract the provisions of the sections, as already observed, even the charges framed against the appellant for these offences did not contain the essential ingredients of the offences under the three sections. The appellant strictly speaking should not have been put to trial for those offences. Mechanical order convicting a citizen for offences of such serious nature like sedition and to promote enmity and hatred etc. does harm to the cause. It is expected that graver the offence, greater should be the care taken so that the liberty of a citizen is not lightly interfered with.