

Mst. Jairan
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Custodian Eva-
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and others

courts, I would return the appeal (Regular Second Appeal No. 1819 of 1959) to the learned Single Judge for disposal on the merits. The costs incurred before us will be costs in the appeal.

Dulat, J.
Dua, J.

INDER DEV DUA, J.—I agree.

Mahajan, J.

D. K. MAHAJAN, J.—I agree.

B.R.T.

CRIMINAL MISCELLANEOUS

Before S. B. Capoor and R. P. Khosla, JJ.

TARLOCHAN SINGH.—*Petitioner*

versus

THE STATE,—*Respondent*

Criminal Miscellaneous No. 599 of 1961

1962
September, 17th

Code of Criminal Procedure (Act V of 1898)—S. 107(1)—*Action under—Whether can be taken in respect of activity per se lawful.*

Held, that an activity *per se* lawful does not come within the mischief of the provisions of sub-section (1) of section 107 of the Code of Criminal Procedure, 1898, merely on the ground that other persons with a view to stop such activity threaten to commit a breach of the peace.

Case referred by the Hon'ble Mr. Justice Gurdev Singh on 7th February, 1962, to a larger Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice Capoor and Hon'ble Mr. Justice R. P. Khosla returned the case to the Single Judge for disposal of the case on merits after deciding the law point referred to it. The case was finally decided by Hon'ble Mr. Justice Dua on 1st November, 1962.

Petition for quashing the proceedings pending against the petitioner under sections 107/151, Criminal Procedure

Code, in the Court of Sub-Divisional Magistrate, Nawanshahr and for reducing the amount of interim bail demanded from the petitioner or in the alternative to transfer the case to the High Court or to the Court of some Senior Sessions Judge in the State.

H. S. GUJRAL, ADVOCATE, for the Petitioner.

LACHMAN DAS KAUSHAL, DEPUTY ADVOCATE-GENERAL, for the Respondent.

ORDER

CAPOOR, J.—The question referred to this Bench for decision by a learned Single Judge of this Court is as follows:—

Capoor, J.

“Whether a person who engages in propaganda for the formation of a linguistic State can be proceeded against under section 107 of the Criminal Procedure Code on the plea that some other individual or a section of the public, who do not subscribe to his views, object to his activities and threaten to commit breach of peace?”

The question arose in a petition by Tarlochan Singh under section 561-A of the Code of Criminal Procedure (hereinafter to be referred to as the Code) praying that proceedings against him under section 107/151 of the Code pending in the Court of the Sub-Divisional Magistrate, Nawanshahr, be quashed or transferred to some other Court.

Sub-section (1) of section 107 of the Code is in the following terms:—

“Whenever a Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate or Magistrate of the first class is

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informed that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquillity, the Magistrate, if in his opinion there is sufficient ground for proceeding, may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix."

According to the referring order the gravamen of the police report against the petitioner was that he was engaging in propaganda for the formation of a linguistic State. The sum and substance of the arguments advanced by Mr. H. S. Gujral, learned counsel for the petitioner, before us is as follows: Under sub-clause (a) of clause (1) of Article 19 of the Constitution of India, all citizens have been guaranteed freedom of speech and expression as one of the fundamental rights. Engaging in propaganda for the formation of the linguistic State is in pursuance of the citizens' fundamental right and is not an unlawful activity and does not involve any wrongful act. The person who engages in such propaganda is not out to commit a breach of the peace himself or to disturb the public tranquillity. If his activities offend the susceptibilities or cause annoyance to some other persons who threaten to commit a breach of the peace unless he refrains from his propaganda, it is those other persons who propose to take the law into their own hands and that should be proceeded against under section 107 of the Code. It is

the duty of the guardians of the law to allow unhampered exercise of lawful rights and not to hamper it. The person exercising a lawful right and the wrong-doer, who aims to interfere with that exercise, are not to be placed on the same level. Mr. Gujral, therefore, submitted that the question referred should be answered in the negative.

The matter, however, is not so simple as Mr. Gujral would make it out to be. The fundamental right of freedom of speech and expression guaranteed to the citizens of India is itself qualified by clause (2) of Article 19, which lays down that nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence. Mr. Gujral has not attempted to canvass that section 107 of the Code is *ultra vires* of the Constitution. We have, therefore, to see what is the exact scope of this provision.

Secondly, Mr. Gujral has assumed that the propaganda for the formation of the linguistic State was at the relevant time a lawful activity. This may not be so if, for instance, there was a prohibitory order under section 144 of the Code and the manner, in which the propaganda was to be conducted, was against the terms of that prohibitory order. It would, therefore, be advantageous if instead of the words "propaganda for the formation of the linguistic State" we may for the time being substitute "an activity *per se* lawful", and so incidentally avoid sentimental or political overtones and confine ourselves to the purely academic question of law.

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The submission by Mr. Gujral in essence is that a person, who engages in an activity *per se* lawful, cannot be proceeded against under section 107 of the Code on the ground that certain other persons objected to his activity and threatened to commit a breach of the peace. Mr. Gujral in support of his submission cited several cases of various High Courts. In *Khazan Chand and another v. Emperor* (1), the persons proceeded against under section 107 of the Code were Rahtia Sikhs, that is to say, Chamars, who claimed a right to draw water from a certain public well but certain other persons disapproved of this, and anticipating that these persons would commit a breach of the peace the petitioners were placed on security. It was observed that the petitioners were doing a lawful act and there would be no reason for putting them on security, and it would be more reasonable to take proceedings against those who are expected to commit the breach of the peace and offer violence to law-abiding citizens. In *Thakar Singh v. The Crown* (2), the act of the petitioner was that he wanted to exercise his lawful rights in improving the joint property to which his co-sharers objected. In *Babu Ram v. Emperor* (3), it was held that the fact that a person does a lawful act in a lawful manner and even if by so doing he has injured the susceptibilities of persons of different faith would not in itself be sufficient to warrant proceedings against him under section 107. The conduct of the petitioner, which was supposed to cause a breach of the peace, was presentation of a petition to the officials. *H. Mohammad Abdul Qayum and others v. Emperor* (4), followed *Khazan Chand and another v. Emperor* (1), and

(1) A.I.R. 1926 Lah. 683 (2).
 (2) A.I.R. 1926 Lah. 695.
 (3) A.I.R. 1932 Lah. 101.
 (4) A.I.R. 1939 Lah. 363.

Thakar Singh v. The Crown (2). In *Smt. Josoda Lekhraj and others v. Emperor* (5), it was held that the collection or the acquiescing of collection of women for the purpose of religious instruction, discourse or songs, the meeting together of men and women for a joint *satsang* or meeting is no offence under the law, nor is the education of children; and the Magistrate cannot take action to prevent such lawful act even though it would result in a breach of peace because of the wrongful acts of others.

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Madho Singh and others v. Emperor (6), was a case in which it was held that acts committed in the lawful exercise of the right of private defence cannot support proceedings under section 107 of the Code, and there can be no dispute with this proposition of law. In the next case cited by Mr. Gujral *Govinda Amrita and others v. Emperor* (7), Vivian Bose, J. (as he then was), while holding that in the case before him there was no ground for proceedings under section 107 of the Code, added the necessary qualification that he was not casting any doubt upon the right and powers of the authorities responsible for the maintenance of law and order to resort to emergency measures to prevent an immediate and imminent breach of the peace and that the rights of the individual have to give way in such emergencies to the paramount necessity for preserving the King's peace.

Mr. Lachhman Dass Kaushal on behalf of the State, on the other hand, contended that the proposition put forward by Mr. Gujral and supported by the above authorities is not correct in an unqualified form. He maintained that a

(5) A.I.R. 1939 Sind 167.
(6) A.I.R. 1942 Patna 331.
(7) A.I.R. 1942 Nagpur 45.

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person, who engages in an activity *per se* lawful, can be proceeded against under section 107 of the Code, if there is evidence that the activities were conducted or likely to be conducted in an unlawful manner or if the intention or the natural consequence of his acts is to produce an unlawful act by other persons. In support of his submission he cited *Emperor v. Murli Singh* (8), which was followed in another case from the same High Court *Chuni Lal and others v. Emperor* (9), and an English case from the King's Bench Division *Wise v. Dunning* (10). I do not consider it necessary to discuss these authorities because on the terms of the reference it may be assumed that the sole and the only ground of proceedings under section 107 of the Code was that some other persons were opposed to the petitioner's activities and threatened to commit a breach of the peace.

In the circumstances and on the basis of the authorities cited by Mr. Gujral, the answer to the reference would be as follows:—

“An activity *per se* lawful does not come within the mischief of the provisions of sub-section (1) of section 107 of the Code merely on the ground that other persons with a view to stop such activity threaten to commit a breach of the peace.”

The case will now be returned to the learned Single Judge for decision on its particular facts in the light of the above decision.

R. P. KHOSLA, J.—I agree.

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(8) I.L.R. 33 All. 775.

(9) 17 Cr. L.J. 301.

(10) (1902) I.K.B. 167.