Section 124 of IPC was held to be void.

[CASE BRIEF]: Ram Nandan vs State

Case Name: Ram Nandan vs State

Case Number: AIR 1959 All 101, 1959 CriLJ 1

Court: Allahabad High Court

Bench: M Desai, R Gurtu, N Beg

Decided On: 16May, 1958

Relevant act/ sections: Section 124-A, I. P. C.

- **BRIEF FACTS AND PROCEDURAL HISTORY:**

1. On 29-5-1954, the appellate delivered a speech to an audience of about 200 persons, mostly villagers. The gist of his speech was this:

Mothers and sisters were obliged to sell their honour in order to support themselves. Labourers were obliged to beg. Thousands of cultivators and labourers were famishing for want of food. School fees and railway fares were increased two-times and four-times so that cultivators may not remain happy, In the Congress regime thousands of Sitas were being abducted and women were turning into prostitutes for the sake of food and clothing. Taxes were being imposed on deaths and births. Cultivators' and labourer's blood was being sucked through foreign capitalists. Labourers of U. P. had now organized themselves. Now they will not beg for pity but will take up cudgels and surround the ministry and warn it that if it did not concede their demands it would be overthrown. If it was thought desirable that cultivators and labourers should rule the country, every young person must learn the use of swords, guns, pistols, batons

and spirit bottles, because without a fight the present Government would not surrender. Governments have not been overthrown without the use of batons. Cultivators and labourers should form associations and raise an army. If they wanted a Government like the Chinese Government, they should raise an army of volunteers and train them in the use of guns and pistols. Taimurlung, Aurangzeb, Sher Shah and other tyrants did not divide the country but Jawaharlal Nehru turned out to be such a big traitor that he divided the country into two parts.

2. The appellant admitted having made the speech but denied some of the words. He also challenged the constitutionality **of Section 124-A, I. P. C**., pleading that its provisions have become void **under Article 13 of the Constitution**. The learned Sessions Judge found that the speech was made by the appellant and that **Section 124-A imposes reasonable restrictions on the freedom of speech in the interests of public order and security of the State. Accordingly he convicted the appellant.**

3. Appeal was connected to the said case, by the State from an order of an Additional Sessions Judge acquitting the respondent, Ishaq Ilmi, of the offence of Section 153(A), I. P. C.

➢ ISSUES BEFORE THE COURT

1. Whether Section 124-A of the Indian penal Code is ultra vires the Constitution of India?

➢ RATIO OF THE COURT:

1. The court observed that any reasonable restriction can be imposed on the right to freedom of speech and expression in the interests of public order i.e., for the **purpose of maintaining public order**, or in order that public order may be maintained, or in order to prevent disorder or an apprehension of disorder. Any restriction that helps to maintain public order or prevents an apprehension of public disorder is **in the interests of public order**. A restriction that has nothing to do with the maintenance of public order, i.e one that does not help the maintenance of public order or **does not avert**, threat to public order cannot be said to be in the interests of public order.
2. If a speech has a tendency to cause public disorder, a restriction on it by removing the threat of public disorder can be said to be a restriction for maintenance of public order. It is not correct to

say that the exercise of the right to freedom of speech which can be restricted under **Sub-article (2)** is only that which must lead to public disorder if not restricted.

3. The court further observed that a **restriction on the right to freedom of speech in the interests of public order** does not mean a restriction on the right to only a speech advocating public disorder or disturbance of public peace; a restriction on the right to any other speech, which does not advocate public disorder or disturbance of public peace but may impel or induce a hearer to commit public disorder, would also be a restriction in the interests of public order.
4. A **prosecution for seditious libel**, through exciting or attempting to excite a feeling of hatred, contempt or disaffection, is **somewhat of a rarity in England** and no prosecution is undertaken unless the seditious libel is uttered with an intention to incite to violence. Incitement to violence, though not an ingredient of the offence of seditious libel consisting of exciting, or attempting to excite, a feeling of hatred, contempt or disaffection towards the Government, is a requirement for the successful prosecution.
5. The court held that the offence made punishable under **Section 124-A does not require an intention to incite** to violence or public disorder. Not only this but it also docs not require any outbreak of violence or an apprehension of it as a consequence of the speech.No publicity is required and even an intimate conversation, or a conversation with a person who is not at all likely to disturb public order, is punishable**. Whether a speech will cause disorder or not depends not only upon its nature but also upon the nature of the hearer, his opportunities and the state of the country at the time.**
6. If a speech contains a threat to public order, **it is the duty of the State to impose a restriction upon at in order to avert the threat**. It cannot be expected to accept the risk of its resulting in public disorder & to remain inactive in the hope that it will not result in public disorder. Therefore, **any reasonable restriction** on such a speech will be in the interests of public order.
7. The **provisions of Section 124-A are severable but only to a limited extent**. The provision imposing a penalty on exciting a feeling of hatred is severable (from the provision imposing a penalty on exciting a feeling of contempt, or from the provision imposing a penalty on exciting a feeling of disaffection. The provision imposing a penalty on attempting to excite a feeling of hatred is severable from that imposing a penalty on exciting a feeling of hatred. Any of these provisions can stand or fall without affecting the validity of the others.

8. The **provision imposing a penalty on exciting a feeling of hatred may be constitutional** though that on exciting a feeling of disaffection, or that on attempting to excite a feeling of hatred, not be. The provision of attempting to excite a feeling of disaffection towards the Government may be held to be unconstitutional though the other provisions are held to be constitutional. Only to this extent **the provisions are severable.** The Severability does not go any further and the provision inflicting punishment upon a speech **containing a danger to public order cannot be severed** from the provision inflicting punishment upon a speech containing no threat to public order.
9. The language used in the Section **does not permit any separation of speeches** exciting hatred and containing a threat to public order from other speeches exciting hatred but not containing such a threat. Consequently, imposing restrictions upon a speech exciting a feeling of hatred may or may not be said to be in the interests of public order; if it may or may not be in the interests of public order, it is not covered by the saving clause of Sub-article (2) Article 19, **which requires that it "must" be.**
10. Even if it be said that it is in the interests of public order or the security of the State to impose a restriction on a speech exciting a feeling of hatred etc., towards the Government, **it is certainly not reasonable to impose a restriction on every such speech** just because some of it may involve a threat to public order or to the security of the State. In order to be reasonable, the restriction should have been only on a speech likely to, or having, a tendency to, disturb the public order or undermine the security of the State. The court here makes it clear here that the tendency to disturb the public order or undermine the security of the State may exist in a **speech notwithstanding a final exhortation not to disturb the public order** or to do any act against the security of the State.
11. If a speech contains the germs of incitement to violence**, they may not be completely destroyed by a final exhortation to eschew violence.** If a speech has a tendency to incite to violence and also contains an exhortation not to resort to violence, it is nothing but a speech containing two contradictory tendencies, either of which may materialise and a restriction on such a speech does not become unconstitutional merely because of the exhortation.
12. **If any form of bad feeling to the Government is expressed then Section 124-A, Indian Penal Code would be attracted** irrespective of the fact whether the expression of that bad feeling incites to disorder or whether reasonable men can be satisfied that the expression of that feeling

has the intention or tendency to disorder or whether there is a likelihood oi public disorder or a reasonable anticipation thereof. It is enough that there is excitation of a feeling; of disaffection and there need not be any exciting to disorder.

13. In view of the fact that it is not considered that a tendency to disorder, much less a calculated tendency, inheres in all utterances creating a disaffection against the Government and in view of the fact that even the mildest form of disaffection could be caught by **Section 124-A of the Indian Penal Code**, it would appear that the restrictions which that Section imposes are far too wide and cannot be justified as being solely "in the interest of public order".

14. Disorder or a tendency to disorder is not to be proved in order to secure a conviction under Section 124-A. Therefore, these are not the ingredients of the offence, nor does Section **124-A deal mainly with an aggravated form of disaffection**, for even the mildest variety of hatred, contempt or disaffection would be caught by that Section. In view of the analysis of the Section by high authority it cannot be said that in all disaffection there is a tendency to disorder.

15. Inasmuch as Section 124-A could cover both kinds of disaffection it is clear that the Section imposes restrictions which are not justified by Article 19(2) of the Constitution. No doubt the words now are "**interest of public order**", and it may be taken that the **amendment made in Article 19(2)** of the Constitution intended' to give ample powers and this is also evident by the fact that the words "maintenance of public order" are not used but even so what is in the interest of public order necessarily tends to the maintenance of it and, in my view, although the words "**maintenance of public order**" are not there, there must still be some real likelihood of public disorder taking place either immediately or in the remote future.

16. If there is no such possibility surely the interest of public order cannot be said to be affected. The restriction must not be given more prominence than the fundamental liberty assured. In my view, the words "interest of public order" should not be so amplified us to enable the fundamental right guaranteed by **Article 19(l)(a) to be swallowed up by the application of Article 19(2).** One has to bear in mind that the Constitution of India is democratic, that it is based on the principle of election and that the Constitution **itself provides machinery for the Constitution** being altered.

17. The act which results in the creation of bad feelings against the Government and which is made an offence under Section 124-A, I. P. C., is not an act which has an inherent tendency to excite public disorder or to create a reasonable anticipation or likelihood of public disorder.

18. On the other hand, in view of the present democratic set up of the country ushered in by the Constitution, such an act far from, being against the. **interests of public order might be in the interests of public order.**

19. At the most, what can be said is that there might be some cases in which an act which is an offence under Section 124-A, I. P. C., might possess such, a tendency. On the other hand, there might be other cases in which such an act might not possess any such tendency. The question whether it does or does not possess such a tendency would depend upon the circumstances of each particular case.

20. The impugned Section, however, **catches both kinds of acts viz., acts which have, as well as acts, which do not have a tendency to excite disorder**.

21. Public order in the State depends upon the respect and regard in general for the rule of law, and such respect and regard need not, under a democratic system of government, necessarily be identical with respect and regard for a particular government or even a particular form of Government.

22. Further, the expression used in **Article 19(2) is in the interests of public order' and not 'in the interests of the government**. The two need not necessarily be always identical. They might be different. There might even be instances of a conflict between the two, A history of the origin and development of the law of sedition shows that the impugned law might have been in the interests of public order at one time, when the country was under foreign rule. It has, however, ceased to be so after the emergence of the country as our Independent Sovereign Nation.

23. A history of the proceedings relating to the framing of original Article 19 of the Constitution, and a comparison of the same with the original draft and the bill based thereon, as well as the history of the events leading to and proceedings relating to the amendment of **Article 19(2) by the Amendment Act of 1951 also fortify** the conclusion that sedition was not meant to be a heading which was sought to be covered by the Amending Act. 8. A perusal of the Amending Act indicates that while, on the one hand, the intention of the Legislature was to enlarge the area of legislation, on the other hand, it was also its intention to restrict the manner and quality of legislation relating to the particular items, which were sought to be introduced or which already existed in the clause in, question within the strictest possible limits.

24. Section 124-A, might not only cover acts which fall outside the limits prescribed by Article 19(2), but may also cover even act which a person might, while exercising his civic rights to vote

as a voter and to participate in elections as a candidate -- rights conferred on him by the Constitution -- consider himself duty bound to perform. Such a right is the very foundation of that scheme of universal adult suffrage on which the entire structure of democratic system of government built up by the Constitution is founded. **The act made penal under Sectionn 124-A is inseparably bound up** with these rights. Thus the ban under Section 124-A might have the result of interfering not only with the right of an individual granted to him by the Constitution but also with the working of the entire scheme promulgated by the Constitution. The above Supreme Court case which deals **with Section 295-A is, therefore, clearly distinguishable, and can have no application to the present case.**

25. As already observed above, there are indications in the amended Article 19(2) to show that, although the legislature wanted to widen the area of legislation, it has, as a result of the amendment, **considerably narrowed down the concept of the nature and quality of such legislation.**

26. **"The phrase 'reasonable restriction'** connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an **excessive nature, beyond what is required in the interests of the public**. The word "reasonable' implies intelligent care and deliberation, that is the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by **Clause (6) of Article 19, it must be held to be wanting in that quality.**

27. Section 124-A, Indian Penal Code, is ultra vires of Article 19(1) of the Constitution, both because it is not in the interests of public order as well as because the restrictions imposed thereby are not reasonable restrictions. **This Section is, therefore, not saved by the reservations contained in Article 19(2) of the Constitution, and should be declared to be void.**

- **<u>DECISION HELD BY THE COURT</u>**

1. Section 124-A, I. P. C. have become void with the enforcement of the Constitution