

## CRIMINAL MISCELLANEOUS

Before A. D. Koshal and S. S. Sidhu, JJ.

RAN SINGH,—Petitioner.

versus

STATE OF HARYANA and another,—Respondents.

Criminal Misc. No. 221-M of 1975.

August 6, 1975.

*Punjab Security of State Act (12 of 1953)—Section 9—Procession in support of the demands of State employees—To exhort such employees to join the procession in large numbers so as to create law and order problem—Whether an offence under section 9.*

Held, that section 9 of the Punjab Security of State Act, 1953 does not come into play unless the act said to be culpable has something to do with the disturbance of public order. Where a procession is held in support of the demands of the State employees and such employees are exhorted to join the procession in large numbers so as to create law and order problem for the authorities, the exhortation amounts to nothing more than the exercise of the rights guaranteed under clauses (a) and (b) of clause (1) of Article 19 of the Constitution of India 1950. It is true that these rights of freedom of speech and expression and to assemble peaceably and without arms may be made subject to reasonable restrictions imposed thereon by law in the interest of public order, but no such restriction as would stand in the way of organising the said type of procession, has been imposed by any legislation so far. If there is nothing to indicate that the procession is to indulge in any unlawful activity whatsoever or is otherwise calculated to cause a breach of the public peace, public order therefore, cannot be said to be threatened by the procession in any manner. The provisions of section 9 of the Act are wholly inapplicable and therefore to exhort employees to join the procession in large numbers so as to create law and order problem for the authorities, is not an offence thereunder. (Para 7).

*Case referred by Hon'ble Mr. Justice S. S. Sidhu on April 15, 1975 to a Division Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice A. D. Koshal and Hon'ble Mr. Justice S. S. Sidhu finally decided the case on August 6, 1975.*

*Petition under Section 482 of Criminal Procedure Code, 1973, praying that the First Information Report No. 157, dated April 14, 1974 registered in Police Station City Bhiwani and the prosecution proceedings on the basis of and subsequent thereto be quashed and further praying that the proceedings in the trial Court before whom*

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*the challan papers have been presented for prosecution of the petitioner be stayed till the disposal of the petition.*

Gian Singh, Advocate, for the petitioner.

V. M. Jain, Advocate for Advocate-General, Haryana.

**Judgment of Division Bench dated 6th August, 1975.**

Koshal, J.—(1) The prayer made in this petition under section 482 of the Code of Criminal Procedure, 1973, is that First Information Report No. 157 (hereinafter referred to as the Report) registered at Police Station City Bhiwani on the 14th of April, 1974, in respect of an offence under section 9 of the Punjab Security of State Act, 1953 (hereinafter called the Act) alleged to have been committed by the petitioner Ran Singh, and the proceedings taken in pursuance thereof, be quashed.

(2) The basis of the Report is the confidential D.O. letter No. Steno-74-150, dated 19th of February, 1974 (hereinafter referred to as the letter) addressed by Shri O. P. Gupta, District Education Officer, Bhiwani to the Deputy Commissioner, Bhiwani, which may be set out *in extenso* :—

“One Shri Ran Singh, Science Master, Government High School, Sohansra, came to my office to distribute posters (copy enclosed) and to compel this office staff to participate in the rally of employees on 21st February, 1974 at 5 P.M. at Bhiwani. My office Superintendent/Steno did not allow this master to distribute such posters and to instigate the employees unnecessarily. He, however, threw some posters on the office tables. I had already recommended to the D.P.I. for the transfer of this undisciplined master, who takes keen interest in instigating the teachers against the Government; and orders to that effect are still awaited. This is just for your kind information and action which you may deem fit. With kind regards.”

The letter was accompanied by a copy of the poster in question (hereinafter described as the poster) which, when freely translated, reads thus :—

“We have nursed this garden with our hearts' blood. This is inscribed on every leaf. The gardener is ill-intentioned; otherwise the right over the garden is ours. Long

live unity of the workers and students. Reach Bhiwani, respected comrades and sisters. As is known to everybody, you people have demonstrated your unity by reaching the Loharu and Dadri Tehsils of Bhiwani on 14th February, 1974 in great strength. Now will be organised a big procession at district level on Thursday, the 21st February, 1974, after 5 P.M. in Kirori Mal Park. Therefore you employees and students of District Bhiwani are requested to reach Bhiwani in great number and make the procession a success. The procession will be led by Shri S. D. Kapur, Senior Vice-President, H.S.E.B. and Shri Jagvir Singh, President, H.P.W.D. who, while holding the demonstration, will present a memorandum of demands to the Deputy Commissioner. The District Co-ordination Committee, Bhiwani, in the face of every exercise of power and cruelty our slogan is 'struggle'."

(3) The letter and the poster were forwarded by the Deputy Commissioner to the Superintendent of Police, Bhiwani for necessary action, which turned out to be the registration of the case against the petitioner and his consequent prosecution for an offence under section 9 of the Act in the Court of a Judicial Magistrate.

(4) The case of the petitioner is that on the allegations made by the prosecution against him no offence under section 9 of the Act is made out and that for that reason the Report and the proceedings before the trial Court are liable to be quashed.

(5) Section 9 of the Act runs thus :—

"9. Dissemination of rumours, etc.—Whoever—

(a) makes any speech, or

(b) by words, whether spoken or written, or by signs or by visible or audible representations or otherwise publishes any statement, rumour or report,

shall, if such speech, statement, rumour or report, undermines the security of the State, friendly relations with foreign states, public order, decency or morality, or amounts to contempt of Court, defamation or incitement to an offence prejudicial to the security of the State or the maintenance of public order, or tends to overthrow the

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State, be punishable with imprisonment which may extend to three years or with fine or with both."

The case of the State is that the conduct of the petitioner in throwing copies of the poster in the office of Shri Gupta was calculated to undermine public order and also amounted to incitement to an offence prejudicial to the maintenance of public order inasmuch as the poster exhorted workers and students of Bhiwani to assemble in the Kirori Mal Park, Bhiwani on the 21st of February, 1974, in large numbers and to take out a procession in support of their demands which were to be presented to the Deputy Commissioner, Bhiwani in the form of a memorandum. Reference is also made to portions of the statement made by Shri B. S. Sharma, Superintendent of the office of the District Education Officer, Bhiwani and Shri O. P. Sharma, Steno to the District Education Officer, Bhiwani, under section 161 of the Code of Criminal Procedure. Shri B. S. Sharma stated :—

"On 19th February, 1974, at about 12.15 P.M. ....  
 Shri Ran Singh .... entered the office ...  
 and started inciting the clerks ..... that on 21st  
 February, 1974 should participate in large numbers in the  
 procession that is being taken out in Bhiwani against  
 Haryana Government and raise slogans against the  
 Government. Then it will become difficult for Haryana  
 Government to maintain law and order and this way the  
 Government will concede all the demands of the  
 employees..... On my asking him as to why he  
 had entered the office without permission and was hinder-  
 ing the work of the office, he gave no reply and scattered  
 posters which he had in his hands on the tables and the  
 room and went away saying that the office hands should  
 participate in the procession in large numbers."

To a similar effect is the relevant portion of the statement made by Shri O. P. Sharma.

(6) It would be seen that at best the case of the State consists of the following allegations against the petitioner :—

- (a) The petitioner entered the office of Shri Gupta and exhorted the office hands to join the 21st February procession in large numbers.

(b) The procession was to be taken out in support of the demands of State employees and students and was to culminate with the presentation of a charter of demands to the Deputy Commissioner.

(c) The petitioner declared that the procession would create a law and order problem for the Government in consequence of which it would be forced to meet the said demands.

(7) These allegations, whether taken collectively or considered individually, do not, in our opinion, attract the relevant portion of section 9 of the Act, which does not come into play unless the said act to be culpable has something to do with the disturbance of public order. Now whatever the petitioner said or did amounted to nothing more than the exercise of the rights guaranteed to him under clauses (a) and (b) of clause (1) of Article 19 of the Constitution, the relevant part of which states :

“19. (1) All citizens shall have the right—

(a) to freedom of speech and expression;

(b) to assemble peaceably and without arms.....”

It is true that these rights of freedom of speech and expression and to assemble peaceably and without arms may be made subject to reasonable restrictions imposed thereon by law in the interests of public order, etc. as laid down in clause (2) of the Article, but then no such restrictions as would stand in the way of the petitioner organizing the procession in question have been shown to be part of any legislation so far enacted. In fact there is nothing to indicate that the procession was to indulge in any unlawful activity whatsoever or was otherwise calculated to cause a breach of the public peace. Public order, therefore, could not be said to have been threatened by the procession in any manner. The provisions of section 9 of the Act are, therefore, wholly inapplicable to the case of the petitioner. A similar view was taken by their Lordships of the Supreme Court in *Ram Bahadur Rai v. The State of Bihar and others* (1). The petitioner before their Lordships was detained under section 3(1) (a) (ii) of the Maintenance of Internal Security

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Act (26 of 1971), with a view to preventing him from acting in any manner prejudicial to the maintenance of public order. One of the grounds of detention listed by the District Magistrate was :

“Whereas a meeting of the Students Steering Committee was held on March 1, 1974 under the Presidentship of Shri Laloo Prasad Yadav where it was decided to form a Sanchalan Samiti for conducting the students agitation, and whereas in the same meeting you readily accepted to become one of the members of the Sanchalan Samiti.”

Rejecting the contention that the grounds could form a good reason for the detention of the petitioner, Chandrachud, J., who delivered the judgment of the Court, observed :—

“The formation of an Association for the ventilation of grievances in a lawful manner is a part of the constitutional right of free speech and expression, the right to assemble peaceably and without arms and the right to form associations, guaranteed by Article 19(1) (a), (b) and (c) of the Constitution. The State, under clauses (2), (3) and (4) of Article 19 has the right to make laws for imposing reasonable restrictions on the exercise of those rights in the interests, *inter alia*, of public order. That power lends legality to preventive detentions under the authority of a law. But an order of detention passed under any such law has again to answer the test that there has to be a nexus between the acts of the detenu founding the order of detention and the purpose of detention. The purpose here is to prevent the petitioner from acting in a manner prejudicial to the maintenance of public order. The mere fact that the petitioner was instrumental in forming the Sanchalan Samiti for conducting the students agitation or that he readily agreed to become a member of that Samiti cannot justify the conclusion that these acts are calculated to disturb the public order. Peaceful protests and the voicing of a contrary opinion are powerful wholesome weapons in the democratic repertoire. It is, therefore, unconstitutional to pick up a peaceful protestant and to put him behind the prison bars. The right to repine can be taken away only for a constitutionally recognised purpose as for example in the interests of public order. That nexus is lacking in this case.”

These observations apply fully to the facts of the present case which are practically on all fours with those with which their Lordships were concerned. However, it is pointed out on behalf of the State that according to the statements recorded under section 161 of the Code of Criminal Procedure and referred to above, the petitioner had declared that after the procession had been taken out the Government would find it difficult to maintain law and order and it is contended that the declaration should be taken to be one calculated to undermine public order or to amount to an incitement to an offence prejudicial to the maintenance of public order. In our opinion, this contention is wholly without substance. Apart from the fact that the declaration allegedly made by the petitioner does not form part of the First Information Report and, therefore, appears to be a clear improvement which is most probably not truthful, it cannot be interpreted as anything creating an apprehension of a breach of the public order or one calculated to cause such breach. In the circumstances in which it is said to have been made it can only mean that the petitioner thought, rightly or wrongly, that a procession of the contemplated proportions would amount to a protest of such strength that the Government would not consider it of negligible importance and would stoop to the demands of the processionists. It is noteworthy that neither according to the contents of the Report nor to those of the statements recorded under section 161 of the Code of Criminal Procedure was a single word uttered by the petitioner such as may be construed as an incitement to violence of any type. The avowed object of the procession being to make a peaceful demonstration in support of the demands of the students and State employees of Bhiwani district which was to take the form of slogans coupled with the presentation of a charter of demands to the Deputy Commissioner, no intention to break the peace or to indulge in violence or to make others do so can be imputed to the petitioner. The reliance on 'public order' by the State is, therefore, wholly misplaced.

(8) For the reasons, stated, we hold that no case under section 9 of the Act is made out in the allegations set up against the petitioner. The report and the proceedings before the trial Court are, therefore, quashed.