THE

INDIAN LAW REPORT

PUNJAB SERIES

FULL BENCH

CRIMINAL MISCELLANEOUS

Before Eric Weston, C.J. and Khosla, J.

MASTER TARA SINGH,—*Petitioner,*

versus

THE STATE,—*Respondent.*

1950

Nov. 28th

Criminal Miscellaneous No. 519 of 1950.

Constitution of India—Article 19—Indian Penal Code (Act XLV of 1860), Sections 124-A and 153-A—East Punjab Public Safety Act (V of 1949), Section 24 (a)—validity thereof—after the coming into force of the Constitution.

Held that sections 124-A and 153-A of the Penal Code and Section 24(a) of the East Punjab Public Safety Act, became invalid on the coming into force of the Constitution, as they are in restriction of the Fundamental Rights set out in Article 19 of the Constitution and are not saved by the reservations made by clause (2) of Article 19.

The offence under section 124-A consists in exciting or attempting to excite in others certain bad feelings towards the Government. The further consequences which may follow the commission of the offence are immaterial.

Tilak case (1).

It is enough if one instance appears of the possible application of the section to curtailment of the freedom of speech and expression in a manner not permitted by the Constitution. The section 124-A must then be held to have become void.

Brij Bhushan v. *The State of Delhi* (2), relied upon.

(1) I. L. R. (1898) 22 Bom. 112 (135).
(2) (1950) S. C. R. 605. = 1950 S. C. J. 425.

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Section 153-A of the Indian Penal Code and section 24(a) of the East Punjab Safety Act must follow section 124-A and have become void by virtue of the provision of clause (1) of Article 19 of the Constitution of India.

Petition under Article 226 of the Constitution of India.

N. C. CHATTERJI, H. HARDY and H. S. GUJRAL, for Petitioner.

M. C. SETALWAD, Attorney-General, G. N. JOSHI and B. K. KHANNA, for Respondent.

JUDGMENT

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WESTON, C.J. These are four applications made on behalf of Master Tara Singh against whom at the time the applications were filed two prosecutions were pending in the Court of a Special Magistrate at Karnal. The prosecutions relate each to a speech delivered by Master Tara Singh, one in July 1950 at Shahabad in the Karnal District and the other in August 1950 at Ludhiana. The prosecution in each instance was under sections 124-A and 153-A of the Indian Penal Code and section 24(*a*) of the East Punjab Public Safety Act.

Two of the four applications are under Article 228 of the Constitution. While in each objection is taken to the legality of setting up a special Court to try the particular case, and to the trial being held in the jail at Karnal, the really substantial contention is this, that the provisions of law upon which each prosecution is founded, namely sections 124-A and 153-A of the Penal Code and section 24(*a*) of the East Punjab Public Safety Act, became invalid on the coming into force of the Constitution, as they are in restriction

of the Fundamental Rights set out in Article 19 of the Constitution and are not saved by the reservations made by clause (2) of Article 19.

The two other applications are in terms similar to those of the two first, but purport to be made under Article 226 of the Constitution. It is admitted before us that they have been made only by way of precaution as possibly supplementary to the first. They have not been pressed separately before us, and they have no merits independent of the first applications.

Upon notice being given these matters came before us on October 30th, when the agreement of the State was expressed to our withdrawing the cases from the Magistrate under Article 228 of the Constitution. An order of withdrawal has been made by us, and we have now to decide as to the present validity of the three provisions of law under which the prosecutions have been brought, and to consider what further order is required by our findings.

Naturally enough, the agrument has centred upon section 124-A of the Penal Code. Section 153-A may be considered a lesser section, which *prima facie* at least is less likely to have survived than section 124-A. The learned Attorney General has conceded before us that the case of section 24(*a*) of the Public Safety Act must be taken to be covered by the recent decision of the Supreme Court holding section 7(1)(*c*) of the same Act to be void. *Brij Bhushan* v. *The State of Delhi* (1).

Mr. Chatterji, for the petitioner, has taken us through the history of the interpretation of section 124-A, and some brief reference to this history is necessary. As is well known Strachey, J. in the *Tilak case* (2) gave his interpretation of the scope

(1) 1950 S. C. J. 425.
(2) I. L. R. (1898) 22 Bom 112 (135).

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of the section in words of which the most material are these :

> "The offence consists in exciting or attempting to excite in others certain bad feelings towards the Government. It is not the exciting or attempting to excite mutiny or rebellion, or any sort of actual disturbance, great or small. Whether any disturbance or outbreak was caused by these articles, is absolutely immaterial. If the accused intended by the articles to excite rebellion or disturbance, his act would doubtless fall within section 124-A, and would probably fall within other sections of the Penal Code. But even if he neither excited nor intended to excite any rebellion or outbreak or forcible resistance to the authority of the Government still if he tried to excite feelings of enmity to the Government, that is sufficient to make him guilty under the section. I am aware that some distinguished persons have thought that there can be no offence against the section unless the accused either counsels or suggests rebellion or forcible resistance to the Government. In my opinion, that view is absolutely opposed to the express words of the section itself, which as plainly as possible makes the exciting or attempting to excite certain feelings, and not the inducing or attempting to induce to any course of action such as rebellion or forcible resistance, the test of guilt."

This interpretation of section 124-A was expressly approved by the Privy Council when refusing leave to appeal.

I may pass to the decision of the Federal Court in *Niharendra's case* (1), where an endeavour was

(1) 1942 F. C. R. 38.

made to restrict the scope of section 124-A. It was held, in the words of Sir Maurice Gwyer, C.J. :

> "The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency."

The Privy Council, however, in *Sadashiv Narayan's case* (1), held that it was not possible to accept the test laid down by the Federal Court in view of the statutory definition of the offence existing in the section. It was said (page 530 of the report)—

> "It is sufficient for their Lordships to adopt the language of Strachey, J., as exactly expressing their view in the present case."

Lastly there is the recent decision of the Supreme Court, already mentioned, *Brij Bhushan* v. *The State of Delhi* (2), declaring section 7(1)(c) of the East Punjab Public Safety Act void under Article 19. At about the same time another case came before the Supreme Court relating to the validity of a section of the Madras Maintenance of Public Order Act (XXIII of 1949), whereunder an order had been made prohibiting the entry into and circulation in the State of Madras of weekly journal. The two cases appear to have been disposed of together. In the majority judgment of the Court in the Madras case there was reference to and discussion of section 124-A, and I think there can be no room for doubt that the statement of its proper interpretation, made by the Privy Council in *Sadashiv Narayan's case* (1), was accepted by the Supreme Court as being beyond question.

The learned Attorney General suggested to us that the Supreme Court referred to section 124-A only in passing, that there was no express approval given to the interpretation of the section by the Privy Council, and that the Courts in India no longer are bound by

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(1) (1947) 47 Bom. L. R. 526 (530).
(2) (1950) S. C. J. 425.

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decisions of the Privy Council. But even assuming that we are free to come to our own conclusions, I can see no escape from the logic of Strachey J. in the passage I have set out. In England where there is no statutory definition of seditious libel, the offence in a particular case may be said to mean no more and no less than what a jury of twelve think it ought to mean (see Dicey's Law of the Constitution, 9th Edition at page 246). The present validity of section 124-A must be judged in the light of what the section itself says.

There can be no dispute that section 124-A is a restriction on the freedom of speech and expression which is guaranteed to all citizens by clause (1) of Article 19 of the Constitution. The question is whether the section is saved by clause (2) of Article 19. The material parts of the two clauses are as follows :—

> "19. (1) All citizens shall have the right—
> (a) to freedom of speech and expression :
>
> * * * * * *
>
> (2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to. libel, slander, defamation, contempt of Court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State."

It is urged by the learned Attorney-General that the last eleven words of clause (2) are really very wide, and he claims that any act made punishable by section 124-A even on the interpretation given by Strachey J., is something which undermines the security of or tends to overthrow the State. I am not able to accept this contention. As pointed out in the passage from the charge of Strachey, J. which I have

set out, the offence consists in exciting or attempting to excite in others certain bad feelings towards the Government. The further consequences which may follow the commission of the offence are immaterial. India is now a sovereign democratic State. Governments may go and be caused to go without the foundations of the State being impaired. A law of sedition thought necessary during a period of foreign rule has become inappropriate by the very nature of the change which has come about. It is true that the framers of the Constitutions have not adopted the limitations which the Federal Court desired to lay down. It may be they did not consider it proper to go so far. The limitation placed by clause (2) of Article 19 upon interference with the freedom of speech, however, is real and substantial. The unsuccessful attempt to excite bad feelings is an offence within the ambit of section 124-A. In some instances at least the unsuccessful attempt will not undermine or tend to overthrow the State. It is enough if one instance appears of the possible application of the section to curtailment of the freedom of speech and expression in a manner not permitted by the Constitution. The section then must be held to have become void. As was said by the Supreme Court at page 424 of the report already cited (1) —

> "Where a law purports to authorise the imposition of restrictions on a fundamental right in language wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting such right, it is not possible to uphold it even so far as it may be applied within the constitutional limits, as it is not severable. So long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly unconstitutional and void."

A last argument has been raised by the learned Attorney-General based upon Article 372 (1) of the

(1) 1950 S. C. J. 418 (424).

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Constitution and paragraph 28 of the Adaptation of Laws Order, 1950. Article 372(1) of the Constitution provides that notwithstanding the repeal by the Constitution of the Indian of Independence Act, 1947, and the Government of India Act, 1935 and its amendments, but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority. As the continuance of law is made expressly subject to provisions of the Constitution other than Article 395, Article 372 can be of no assistance to the continuing validity of section 124-A or any other section of the Code. By the Adaptation of Laws Order and its Schedules certain acts were repealed and certain amendments to others clearly required by the Constitution were made. Most of these amendments were matters of form. Paragraph 28 of the Order is in these terms :

> "28. Any Court, Tribunal or authority required or empowered to enforce any law in force in the territory of India immediately before the appointed day shall, notwithstanding that this Order makes no provision or insufficient provision for the adaptation of the law for the purpose of bringing it into accord with the provisions of the Constitution, construe the law with all such adaptations as are necessary for the said purpose."

I cannot agree that this paragraph gives to the Courts authority to remodel the law so as to make good what otherwise would become void under the Constitution. The purpose of the paragraph appears to be that the Courts shall not refuse to apply a law after the coming into force of the Constitution by reason only that by the Schedules to the Order, expressions appearing in the statute have not been amended so as to be in conformity with the Constitution. If in any statute for the word "Province" the word "State" or some expression embodying the word

"State" has not been substituted, the Courts shall not refuse to administer that statute on that account. The paragraph cannot empower the Courts to give a construction which on the plain language of a particular statute is not justified.

I think, therefore, that the conclusion must be that section 124-A of the Penal Code has become void as contravening the right of freedom of speech and expression guaranteed by Article 19 of the Constitution.

Adverting to section 153-A it appears in Chapter VIII of the Penal Code, which Chapter is headed :

"Of offences against the Public Tranquillity".

In the English text-book definitions of sedition or seditious libel the substances both of section 124-A and of section 153-A is usually embodied ; and, as I have mentioned earlier, section 153-A may be considered of the nature of a lesser offence in relation to section 124-A. The gist of the offence under section 153-A is the promotion or attempt to promotion of feelings of enmity or hatred between different classes of citizens of India. As in the case of section 124-A, no doubt many acts falling under section 153-A will be acts undermining or tending to overthrow the State. But I think there can equally be no doubt that many acts made punishable by section 153-A will not in any way undermine the security of or tend to overthrow the State ; and here again the unsuccessful attempt may well have no result whatever. It seems to me that section 153-A must follow section 124-A and I would hold, therefore, that this section also has become void as providing an unwarranted restriction on the freedom of speech and expression.

Section 24(a) of the East Punjab Public Safety Act makes punishable the making of any speech if such speech (i) causes or is likely to cause fear or alarm to the public or to any section of the public and (ii) furthers or is likely to further any activity prejudicial to the public safety or maintenance of public

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order. As it is conceded by the learned Attorney-General that the invalidity of this provision is concluded by the decision of the Supreme Court upon section 7 of the same Act I do not think it is necessary to discuss the matter further.

In the result, therefore, all three provisions of law under which the two prosecutions were initiated and were being conducted must be held to be void and we must, therefore, quash the proceedings and direct that the accused Master Tara Singh be set at liberty forthwith.

Khosla J.

KHOSLA, J. I agree.

APPELLATE CRIMINAL

Before Bhandari and Soni, JJ.

KIRPAL SINGH, SON OF SAWAN SINGH,—*Convict-Appellant,*

versus

THE STATE,—*Respondent.*

1950

Dec. 29th

Criminal Appeal No. 477 of 1950.

Self-Defence—Plea of—Whether permissible—when person himself aggressor and wilfully brought on himself the necessity for killing.

A person cannot avail himself of the plea of self-defence in a case of homicide when he was himself the aggressor and wilfully brought on himself, without legal excuse, the necessity for the killing. A person cannot take shelter behind the plea of self-defence in justification of the blow which he struck during the encounter if he provokes an attack, brings on a combat and then slays his opponent.

Appeal from the order of Shri M. R. Bhatia, Sessions Judge, Ludhiana, dated the 7th October 1950, convicting the appellant.

J. G. SETHI and R. L. KOHLI, for Appellant.

NAND LAL SALUJA, for Advocate-General, for Respondent.