

was dealt with by the trial Court, which found that it was the defendant's father, who owned the house and that this did not bring the matter within the scope of section 13(1) (h) which provides that the tenant has, whether before or after the commencement of the Act, built, acquired vacant possession of, or been allotted a suitable residence. It may be mentioned that these words remain unchanged in the new Act, and in my opinion it was rightly held by the trial Court that the tenant could not be evicted from the premises in suit merely because his father had another house. If a situation has now arisen which gives rise to a ground of this nature for ejection, in my opinion, a fresh suit must be brought on that basis.

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The net result is that I accept the revision petition and dismiss the plaintiff's suit but in view of the nature of the point on which the decision has turned I order that the parties should bear their own costs throughout.

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LETTERS PATENT APPEAL

Before G. D. Khosla, C.J., and S. D. Dulat, J.

PUNJAB STATE AND ANOTHER,—Appellant.

versus

HARNAM SINGH,—Respondent.

Letters Patent Appeal No. 47 of 1958

Dramatic Performances Act (XIX of 1876)—Section 3(b)—Whether valid—Constitution of India (1950)—Article 19(2)—Whether saves Section 3(b) of Act XIX of 1876.

Held, that section 3(b) of the Dramatic Performances Act, 1876 was intended to prevent the propagation of disaffection to the Government as it was then established, and

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since the Constitution of India now permits free criticism of any Government that may be in office for the moment and guarantees free expression of opinion on such matters, this provision of section 3 is no longer valid and the District Magistrate is not competent to proceed on its basis and to call upon any person to produce the details of the dramas before him that are proposed to be staged. This provision is not saved by Article 19(2) of the Constitution as the expression "public order" does not cover "disaffection to the Government established by law". Any thing which is merely likely to excite feelings of disaffection to the Government need have no connection with public order, although in certain eventualities it may lead to some kind of disorder. Section 3(b) of the Dramatic Performances Act permits action to be taken where it is apprehended that the proposed drama is likely to excite feelings of disaffection to the Government. This is obviously a restriction on the freedom of speech and since it is not possible to say that this restriction has been placed for any of the purposes mentioned in the Constitution, the restriction becomes invalid.

Appeal under Clause 10 of the Letters Patent against the order of Hon'ble Mr. Justice Bishan Narain, passed in Civil Writ No. 686 of 1957 on 21st January, 1958.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for the appellants.

ANAND SWAROOP, ADVOCATE, for the respondent.

JUDGMENT

Dulat, J.

DULAT, J.—This appeal by the Punjab State under clause 10 of the Letters Patent is against an order made by Bishan Narain J. under Article 226 of the Constitution by which he quashed a notice issued to the petitioner by the District Magistrate of Karnal. The notice was issued under section 7 of the Dramatic Performances Act, 1876, and it said—

"It has been brought to my notice that the Communist Party and District Kisan

Sabha propose to organise party conferences and to stage at some places in the district, dramas which are likely to excite feelings of disaffection to the Government”.

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and it then called upon Harnam Singh, petitioner to produce the details of the dramas proposed to be staged and in the meanwhile to refrain from performing them. The petition under Article 226 of the Constitution was thereupon filed in this Court and the argument in support of it was that the Dramatic Performances Act, 1876, was unconstitutional to the extent that it restricted free expression of opinion and speech guaranteed by Article 19 of the Constitution and the restriction was not placed in the interest of the security of the State or other matters mentioned in Article 19 permitting such restrictions. This view was accepted by the learned Single Judge, who held that section 7 of the Dramatic Performances Act, 1876, was contrary to the Constitution in so far as it permitted action to be taken by the District Magistrate on the ground that any drama proposed to be performed was likely to excite feelings of disaffection to the Government, as was the case here.

Mr. Doabia in support of the present appeal agrees that a Division Bench of this Court, having had occasion to consider the meaning of similar words, namely, “likely to excite feelings of disaffection to the Government” in connection with section 124-A of the Indian Penal Code as it previously was, came to the conclusion in *Tara Singh Gopi Chand v. The State* (1), that a restriction on freedom of speech, in order to prevent the excitement of feelings of disaffection, against Government established by law was not permissible in

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view of Article 19 of the Constitution. He points out, however, that there has since been a change in Article 19 of the Constitution. It appears, however, that the change is not on any matter material to the present case. Article 19(2) as it now stands runs—

“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”.

Previously, i.e., before the first amendment to the Constitution, the words “public order” did not appear in this clause and instead of the words “security of the State” the expression used was “undermines the security of, or tends to overthrow, the State”. The contention is that the expression “public order” should cover “disaffection to the Government established by law”. It is, however, difficult to agree, because anything which is merely likely to excite feelings of disaffection to the Government need have no connection with public order, although in certain eventualities it may lead to some kind of disorder. The real point here is that the Dramatic Performances Act, 1876, as it stands, permits by section 3(b) for action to be taken where it is apprehended that the proposed drama is likely to excite feelings of disaffection to the Government. This is obviously a restriction on the freedom of speech and since it is not possible to say that this restriction has been placed

for any of the purposes mentioned in the Constitution, the restriction becomes invalid. This was the view adopted in a recent case by the Allahabad High Court in *The State v. Baboo Lal and others* (1), and it was held that sub-clause (b) of section 3 of the Dramatic Performances Act had been rendered totally invalid by our Constitution. It is quite clear to me that this particular provision in the Dramatic Performances Act was intended to prevent the propagation of disaffection to the Government as it was then established, and since our Constitution now permits free criticism of any Government that may be in office for the moment and guarantees free expression of opinion on such matters, it is not possible to maintain that this particular provision in the Act of 1876 can now stand. In my opinion, therefore, the learned Single Judge was right in holding that this provision of section 3 of the Dramatic Performances Act was no longer valid and the District Magistrate was not competent to proceed on its basis and to call upon Harnam Singh respondent to produce the details of the dramas before him.

Mr. Doabia sought to suggest that apart from section 3(b) of the Dramatic Performances Act, there are other grounds on which the District Magistrate could have taken action and since no final decision was made in this connection by the District Magistrate, this Court need not have interfered with the proceedings taken, the suggestion being that this Court should have waited till the final decision of the District Magistrate which would have indicated the ground on which he finally intended to prohibit the performance of any particular drama. There is no force in this contention. It is obvious that a citizen was called upon to do something under a particular Act and the order of the District Magistrate left no doubt

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that he was proceeding on the ground that the dramas intended to be staged were likely to excite feelings of disaffection to the Government, and since such a course was not competent and was not open to the District Magistrate in law, this Court was bound to interfere and prevent further harassment of the citizen.

No other question arises in the case. The order made by Bishan Narain J. quashing the notice issued by the District Magistrate is, in my opinion, perfectly sound and this appeal is without force and I would, therefore, dismiss it with costs.

G. D. Khosla, C.J. G. D. KHOSLA, C.J.—I agree.
B.R.T.

SUPREME COURT

Before P. B. Gajendragadkar, K. N. Wanchoo and K. C. Das Gupta, JJ.

R. P. KAPUR,—Appellant

versus

THE STATE OF PUNJAB,—Respondent.

Criminal Appeal No. 217 of 1959.

Code of Criminal Procedure (V of 1898)—Section 561-A—Inherent power of the High Court under—Nature and scope of—Cases in which the High Court will or will not interfere indicated.

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Held, that section 561-A of the Code of Criminal Procedure, 1898, saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. This inherent power, however, cannot be exercised in regard to matters specifically covered by the other provisions of the Code. Ordinarily criminal proceedings instituted against an accused person must be tried under