

## KARTAR SINGH &amp; OTHERS

v.

## THE STATE OF PUNJAB.

[BHAGWATI and CHANDRASEKHARA AIYAR, JJ.]

*Punjab Security of the State Act, 1953 (Punjab Act XII of 1953), s. 9—Members of procession shouting defamatory slogans against Ministers of State Government—Prosecution under s. 9—Whether justified.*

The appellants were members of a procession taken out to protest against the policy of the Punjab Government to nationalise motor transport and raised the slogans "Jaggu mama hai hai (Jaggu, maternal uncle be dead)" and "Khachar Khota hai hai (mule-cum-donkey be dead)". The words were directed against the Transport Minister and the Chief Minister respectively and were defamatory. The appellants were prosecuted and convicted under s. 9 of the Punjab Security of the State Act, 1953.

*Held* that the statements could not be said to undermine the security of the State or friendly relations with foreign States nor did they amount to contempt of Court or defamation prejudicial to the security of the State nor did they tend to overthrow the State and that the prosecution had failed to establish that the act of the appellants undermined public order, decency or morality or was tantamount to an incitement to an offence prejudicial to the maintenance of public order and consequently the prosecution under s. 9 was not justified.

Public men may as well think it worth their while to ignore such vulgar criticisms and abuses hurled against them, rather than give importance to the same by prosecuting the person responsible for the same.

*Seymour v. Butterworth* ([1862] 3 F. & F. 372, 376, 377), *R. v. Sir R. Carden* ([1879] 5 Q.B.D. 1), *Kelly v. Sherlock* ([1866] L.R. 1 Q.B. 686, 689; 35 L.J. Q.B. 209) referred to.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 49 of 1955.

Appeal by special leave from the order dated the 9th July, 1954 of the Punjab High Court at Simla in Criminal Revision No. 778 of 1954 arising out of the judgment and order dated the 30th June 1954 of the Court of Additional Sessions Judge, Amritsar in Criminal Appeal No. 409 of 1954.

*Ram Das and Raghu Nath Pandit*, for the appellants.

*Jindralal and P. G. Gokhale*, for the respondent.

1956. April 26. The Judgment of the Court was delivered by

BHAGWATI J.—This appeal with special leave involves the interpretation of section 9 of the Punjab Security of the State Act, 1953 (Punjab Act XII of 1953), hereinafter called “the Act”.

The appellants were members of the Amritsar District Motor Union which took out a procession on 23rd March, 1954 to protest against the policy of the Punjab Government to nationalise motor transport. The procession started from Gul Park and was taken on lorries and jeeps. It stopped near Chitra Talkies and then started on foot. When it reached near Prabhat Studio, the appellants raised slogans “Jaggu mama hai hai (Jaggu, maternal uncle be dead)” and “Khachar Khota hai hai (mule-cum-donkey be dead)”. The first slogan was alleged to have been directed against the Hon’ble Shri Jagat Narain, Transport Minister, Punjab State and the second slogan against the Hon’ble Shri Bhim Sen Sachar, Chief Minister, Punjab State. The uttering of these slogans was considered objectionable and the appellants were charged in the Court of the Magistrate, First-Class, Amritsar:—“that you, on or about the 23rd day of March 1954 at Amritsar, while being members of a procession, raised slogans “Jaggu mama hai hai” “Khachar Khota hai hai” which besides being indecent amounted to defamation and was prejudicial to the security of the State and the maintenance of public order and thereby committed an offence punishable under section 9 of the Security of the State Act”.

The appellants pleaded not guilty and claimed to be tried. They also led evidence in defence. The learned Magistrate, however, disbelieved the defence and, accepting the prosecution evidence, found that the appellants did raise these slogans. In the opinion

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of the learned Magistrate, the slogans were in fact abuses hurled at the Transport Minister and the Chief Minister of the Punjab Government which besides being indecent amounted to defamation and were prejudicial to the maintenance of public order.

The appeal taken by the appellants before the Court of Additional Sessions Judge, Amritsar, was unsuccessful. The learned Additional Sessions Judge also found against the appellants and observed that the slogans were highly objectionable and they fell within the ambit of section 9 of the said Act, that by raising those slogans the appellants undermined the public order as well as decency and they also amounted to defamation. He, therefore, maintained the conviction of the appellants and the sentences of 3 months' rigorous imprisonment which had been imposed by the learned Magistrate upon them.

The appellants filed a Revision Application before the High Court of Judicature for the State of Punjab at Simla but the same was summarily dismissed by the learned Chief Justice. The appellants thereafter applied for and obtained from this Court Special Leave to appeal and the appeal has accordingly come on for hearing and final disposal before us.

On the evidence on record, there is no doubt that the appellants were members of the procession and did utter those slogans against the Transport Minister and the Chief Minister of the Punjab Government. The question, however, remains whether, in uttering these slogans, they committed an offence under section 9 of the Act. Section 9 of the Act reads as follows:—

“9. 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, defama-

tion or incitement to an offence prejudicial to the security of the State or the maintenance of public order, or tends to overthrow the State, be punishable with imprisonment which may extend to three years or with fine or with both”.

It cannot be denied that the appellants by words spoken published statements in relation to the Transport Minister and the Chief Minister of the Punjab Government. A futile argument was advanced before us by the advocate of the appellants that this condition was not satisfied but we need not pause to consider the same. The sole question for our determination is whether such statements (1) undermined the security of the State, friendly relations with foreign States, public order, decency or morality or (2) amounted to contempt of Court, defamation or incitement to an offence prejudicial to the security of the State or maintenance of public order, or (3) tended to overthrow the State.

The appellants were no doubt affected by the policy of the Punjab Government to nationalise motor transport and the Transport Minister and the Chief Minister were really responsible for sponsoring that policy. Their tirade, therefore, was against both these individuals and, in the demonstration which the appellants held against that policy, they gave vent to violent expressions of opinion against them and, in the slogans which they uttered, used expressions which were certainly objectionable. The slogan “Jaggu mama hai hai” could be translated as “Jaggu, whose sister is my father’s wife is dead, woe betide him” and was in that sense a vulgar abuse hurled against the Transport Minister. The slogan “Khachar khota hai hai” could be translated as “mulecum-donkey is dead, woe betide him” and it was directed against the Hon’ble Shri Bhim Sen Sachar, Chief Minister, Punjab Government, whose name Sachar was caricatured into khachar being mule and was also combined with khota, a donkey. This was again a vulgar abuse hurled against the Chief Minister, Punjab Government.

The appellants’ conduct in this behalf could not at

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all be justified. Whatever their grievances against the Transport Minister and the Chief Minister of the Punjab Government were, they were entitled to ventilate them in a decent and dignified manner and they were certainly not justified in hurling such vulgar abuses against these individuals howsoever prejudicial to the interest of the appellants the policy of nationalised motor transport sponsored by them might have been. No decent citizen should have uttered such slogans and the State authorities were well within their rights in proceeding against the appellants.

The difficulty, however, in the way of the State authorities is that they misconceived their remedy. Howsoever provocative and indecent or unbecoming a responsible citizen of the State the conduct of the appellants was, the charge which was levelled against the appellants was one under section 9 of the Act and before the prosecution could succeed they had not only to prove that what the appellants did was against decency and was defamatory of these individuals but also was such that it undermined public order, decency or morality or was tantamount to an incitement to an offence prejudicial to the maintenance of public order. The learned counsel for the State very rightly conceded that the statements could not be said to undermine the security of the State or friendly relations with foreign States nor did they amount to contempt of Court or defamation prejudicial to the security of the State nor did they tend to overthrow the State. Howsoever reprehensible these slogans were, they certainly would not have that effect. The only way in which he sought to bring these slogans uttered by the appellants within the mischief of section 9 of the Act was by urging before us that the statements undermined public order, decency or morality and that they were tantamount to an incitement to an offence prejudicial to the maintenance of public order. In support of this contention he referred us to the evidence of Ram Rakha, P.W. 2, Sub-Inspector, C.I.D., who had accompanied the procession:—

“There was a sufficient number of public men

there and they felt annoyed over these slogans. The police had sufficient arrangements and had there been no arrangement there might have been a dispute". There was also the evidence of Gurdit Singh, P.W. 3:—

"There were many other persons of the public with the procession. People took these slogans ill" and Sunder Singh, P.W. 4:—

"There were many other persons of the public. The slogans had a bad effect on the public".

It is significant to observe that, in the initial report made by the Sub-Inspector Ram Rakha as also the Diary Report prepared by him, no mention had been made by him of the members of the public having felt annoyed over these slogans. The two other witnesses Gurdit Singh, P.W. 3 and Sunder Singh, P.W. 4, were shown in their cross-examination to have been the associates of the police in the investigations which they used to carry on and were not at all worthy of credence. These statements, therefore, in regard to the members of the public having felt annoyed over these slogans uttered by the appellants, were liable to be discredited. Even assuming that some members of the public who had congregated near the Prabhat Studio felt annoyed at these slogans and took them ill it is a far cry from that annoyance to undermining of the public order, decency or morality or incitement to an offence prejudicial to the maintenance of public order. The only offence prejudicial to the maintenance of public order which could be thought of in this context was that of rioting and there is not the slightest evidence on record to justify an inference that the effect of the utterance of these slogans by the appellants against the Transport Minister and the Chief Minister would, but for the police arrangements, have led to the undermining of the public order or would have led to rioting which would be certainly prejudicial to the maintenance of public order. Indecent and vulgar though these slogans were as directed against the Transport Minister and the Chief Minister of the Punjab Government, the utterance thereof by the appellants who were the members of the procession protesting against

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the scheme of nationalised motor transport was hardly calculated to undermine decency or morality the strata of society from which the appellants came being habituated to indulge freely in such vulgar abuses without any the slightest effect on the persons hearing the same.

These slogans were certainly defamatory of the Transport Minister and the Chief Minister of the Punjab Government but the redress of that grievance was personal to these individuals and the State authorities could not take the cudgels on their behalf by having recourse to section 9 of the Act unless and until the defamation of these individuals was prejudicial to the security of the State or the maintenance of public order. So far as these individuals were concerned, they did not take any notice of these vulgar abuses and appeared to have considered the whole thing as beneath their notice. Their conduct in this behalf was consistent with the best traditions of democracy. "Those who fill a public position must not be too thin skinned in reference to comments made upon them. It would often happen that observations would be made upon public men which they know from the bottom of their hearts were undeserved and unjust; yet they must bear with them and submit to be misunderstood for a time" (Per Cockburn, C.J. in *Seymour v. Butterworth*<sup>(1)</sup>) and see the dicta of the Judges in *R. v. Sir R. Carden*<sup>(2)</sup>). "Whoever fills a public position renders himself open thereto. He must accept an attack as a necessary, though unpleasant, appendage to his office" (Per Bramwell, B., in *Kelley v. Sherlock*<sup>(3)</sup>). Public men in such positions may as well think it worth their while to ignore such vulgar criticisms and abuses hurled against them rather than give importance to the same by prosecuting the persons responsible for the same.

While commending thus the conduct of the Transport Minister and the Chief Minister of the Punjab Government, we cannot help observing that the step

(1) [1862] 3 F. &amp; F. 372, 376, 377; 176 E.R. 166, 168, 169.

(2) [1879] 5 Q.B.D. 1.

(3) [1866] L.R. 1 Q.B. 686, 689.

which the State authorities took against the appellants in prosecuting them under section 9 of the Act was unjustified as the slogans uttered by the appellants did not under the circumstances set out above fall within the mischief of that section.

Deprecating as we do the conduct of the appellants in uttering these slogans, we cannot help feeling that the prosecution has failed to establish that the appellants were guilty of the offence with which they had been charged with the result that the appeal of the appellants will be allowed, their convictions and sentences passed upon them will be set aside and they will be set at liberty forthwith. We only hope that the observations made by us here will be an eye-opener to the appellants and they will behave themselves better in the future.

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[VIVIAN BOSE, JAGANNADHADAS and B. P. SINHA JJ.]

*Criminal breach of trust—Conviction of a banker, Validity of—Government Promissory Notes pledged with a bank to cover overdraft—No overdraft by the pledgor—Managing Director acting on behalf of all the Directors pledging the Notes to borrow money for the use of the bank—Legality—Sale of the Notes by the creditors to realise their dues and consequent inability of the bank to return them—Mens rea—Sanction to prosecute by the Company Judge, if required—Framing of charge, if defective—Indian Penal Code (Act XLV of 1860), ss. 409, 79—Indian Contract Act (IX of 1872), s. 179—Indian Companies Act (VII of 1913), s. 179—Code of Criminal Procedure (Act V of 1898), ss. 221, 222, 223.*

The appellant was the Managing Director of a bank and held a power of attorney to act on behalf of its Directors and authorising him to borrow money on behalf of the bank. Certain Government Promissory Notes were pledged with the bank by another bank to cover an overdraft account up to a specified amount. There was, however, no overdraft by the pledgor. The pledgee bank was in a precarious financial condition. The appellant pledged the securities with a third party to get a loan for the bank's use and on its failure