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2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

ZAKIR HUSSAIN VS UNION TERRITORY OF LADAKH

By: Harshita Purohit

Question raised by the case law

Does mere slogans or objectionable words lead to sedition or not?

The recent supreme court judgement in case of Zakir Hussain vs union territory of Ladakh and others regarding the use of derogatory or objectionable words does not constitute sedition. For instance, to come under the jurisdiction of section 124A of IPC, your statements or word and expression should lead to some public disorder which was not in the instant case. So the question it raises is that even if you are using objectionable words does it lead to sedition or not. To understand this situation let's read out the facts of the given case and relevant case law to understand it.

Provision related to the case law

So what elements are necessary to make an act come under sedition?

For this we have to understand and have to know the basic elements of sedition which are given under section 124A of IPC

Section 124A of IPC reads as

Whoever by words or actions or gestures or otherwise brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the government established by law.

Essential of sedition

So, not every action of a person constitutes sedition until and unless that speech or gesture leads to some sort of public disorder in this context, here are some necessary points which conclude to sedition.

First of all, there should be active participation of individual or group of people as a gesture or oral or written words. The first thing you have to prove before checking that an act is seditious in nature or not is that you have to check, there must be an active participation of people towards spreading hatred against government.

Second of all, the essence of sedition primarily lies in the intention of the person who is being accused. Such a person would have mens

rea an intention to create hatred or disaffection towards government in the mindset of the people.

Mere attempt to spread hatred or evoke disaffection also come under the vicinity of the sedition and apparently it is not essential to check that such act achieved its purpose or not. In other words, if somebody is exciting others or spreading hatred but there is no public disorder but as you are attempting or trying to attempt disaffection towards government, you will be charged under sedition.

Zakir Hussain vs UT of Ladakh

Facts – the police authority of Jammu and Kashmir received an audio clip of accused Zakir Hussain and co-accused Nissar Ahmed Khan of 6.3 minutes which contain objectionable words

relating to the clashes that had happened in galwan valley between India and china armed force. On the basis of given information, the police authority registered FIR and after that investigation was set on motion after which it was found that the audio clip was having extremely derogatory words and expression used by the accused against the country, its armed force and leadership. But to file a case under the vicinity of 124A or of sedition can only be registered when some sort of offense, speech and remarks has taken place which lead to some sort of public disturbance or disorder which was absolutely not in the instant case. Though some audio clip containing objectionable regards has been uploaded on the social media but the offense cannot be make under section 124A and 153 of IPC.

JUDGEMENT

The court here referred to the landmark judgment by the supreme court of Balwant Singh v. State of Punjab 1995, court held that a mere expression of objectionable words may not be enough grounds for imposing the provisions of sedition. Moreover, the court clears out that the provision of sedition can be invoked when there is a public disorder created by written or oral words or gestures. Thus the court pointed out that it would be premature of the court to give an opinion on the question raised whether the conversation made and uploaded by the petitioner on the social media platforms would have the tendency of creating disorder or disturbance of public peace by resort to violence. Before reaching the verdict, the court emphasized the fact that the petitioner was not alleged to have committed an offense that carried capital punishment under the rigor of Section 437(1)(i) of the Code of Criminal Procedure.

Related case law

Balwant Singh v State of Punjab

Facts of the case – Balwant Singh and Bhupendra Singh were arrested near the Neelan cinema while they were raising the slogans such as “Khalistan zindabad” and “Raj Krega Khalsa” etc. at that moment the police which was patrolling in the area Chandigarh, the found out that both the appellant were raising slogans which are mention above. They witnessed that when they were raising slogans people, in general, were doing their jobs rather than gathering but some people ran out of the market as a ‘fear’ after a thorough investigation on the grounds of committing offenses under section 124(A) of IPC.

Contentions Raised

By Appellant

It was submitted that the prosecution was not able to file a case against the appellant beyond a reasonable doubt. It was noticed that even though the incident occurred in the main market area, the prosecution was not able to present any personal testimony in their favour. It was pointed out, that even if the incident burst out in a crowded area there was no public disturbance occurred so it wouldn't be successful to file a case under section 124(A) of IPC as there was no mens rea to excite public disorder.

By Respondent

It was referred that the circumstances when the incident occurred were the date of Indra Gandhi's assassination, slogans raised by the appellant satisfy the grounds of section 124(A) of IPC. Even though the prosecution was not able to associate with persons, it can't deny the reliable evidence which is submitted by Constable Som Nath and ASI Labh Singh.

Judgment

Court held that the mere raising of slogans without any procession which doesn't lead to any public disturbance and no mens rea established to cause violence would be unsuccessful to invoke the provision of sedition under the case. There was no harm or disorder in the normal life of people of any community so by interpreting, the literal meaning of a section court pointed out that it can be

invoked only when the accused brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law in India, by oral or written words or visible signs or gesture, etc. Hence, there was no offense committed under Section 124-A of IPC

Conclusion

By reading the facts and judgment of the case we can come to the conclusion that mere slogans do not lead to sedition until and unless it creates public disorder or hinders the normal activities of the people. The case also helps us in constructing the view that the court also must take up the golden or progressive rule of interpretation while interpreting such public cause and not curb the free speech and as well as to maintain law and order.

Harshita Purohit (2022) 'Zakir Hussain vs Union Territory of Ladakh'