CASE COMMENT: S.G. VOMBATKERE VS UNION OF INDIA

Ritu Agarwal*

INTRODUCTION

In our constitution, sedition was inserted in the IPC in 1870 by the Britishers to curb political dissent. Before the independence, the law was used to suppress voices of criticism and discontent in Indian society, and several freedom fighters such as Bal Gangadhar Tilak and Mahatma Gandhi were tried under this provision. The major intent behind the sedition law in the post-independence period was to restrict the idea of hatred and contempt against the government and thereby maintain public peace and order. In the case of Kedar Nath vs the state of Bihar [1]it upheld the constitutionality of the S.124 of IPC, on the basis that power was required by the state to protect itself, the court held that every citizen has the right to freedom of speech and expression guaranteed under article 19(1)(a) [2]of our constitution as long it does not incite people to violence with an intention to cause public disorder.

However, in the present scenario, there has been an abuse of sedition law in our country there has been an increasing number of sedition cases filed. For instance, three Kashmiri students were charged with sedition in Agra for allegedly "posting celebratory messages" on social media after Pakistan's victory over India in a T20 cricket match. The current case[3] involving S.G Vombatkere bears some resemblance. The supreme court in this judgment has tried to re-valuate the constitutionality of S.124A of IPC and address the most serious issue in the case of the right to freedom of speech and expression.

FACTS OF THE CASE

On February 17th, 2021, Two journalists, Kishore Wangkhemcha and Kanhaiya Lal Shukla, were charged with sedition as Mr. Wangkhemcha was censuring the Manipur government and calling the chief minister a puppet of Hindutva on social media and Mr. Shukla, for posting cartoons on social media which presented the fake hassles allegedly conducted by the Gujarat police between 2002 and 2006. Along with Mr. Wangkhemcha and Mr. Shukla, nine other

*BBA LLB, THIRD YEAR, KARNAVATI UNIVERSITY, UNITED WORLD SCHOOL OF LAW.
[1] Kedar Nath v Union of India 1962
[2] Constitution of India,1950, art 19
[3] S.G. Vombatkere vs Union Of India,2021

petitions challenging the law on sedition have been tagged one of them is filled by S.G Vombatkere a retired army general in the public interest which challenges the constitutional validity of Section.124 of the Indian penal code,1860 as being ultra vires article 19(1)(a) of the constitution read with article 14 and 21. In his plea, Vombatkere has challenged the constitutional validity of the sedition law on the grounds that it has a "chilling effect" on speech and poses an unreasonable restriction on the fundamental right of free expression.

LEGAL ISSUES

- Does the criminalization of sedition abuse the Right to Freedom of Speech and Expression?
- Is the criminalization of sedition a 'reasonable limitation' on the Right to Freedom of Speech and Expression?
- Does the criminalization of sedition violate the Right to Equity?
- Does the criminalization of sedition violate the Right to Life and Individual freedom?

CONTENTIONS

Arguments of petitioner:

- Petitioner contends that the criminalization of statute abuses Art 19(1)(a) because of the vague definition used in the statute 'disaffection towards government' etc., it causes an unreasonable restriction on the right to freedom of speech and expression and causes a chilling effect on the speech.
- Petitioner contends that the reading of Articles 14, 19, and 21in the *Maneka Gandhi v. Union of India 1978*[4] has advanced the statute of testing legislation curbing fundamental rights on the basis of reasonableness, necessity, and proportionality.
- He contends that India is ratified and is thus bound by the International Covenant on Civil and Political Rights (ICCPR), the requirement of necessity comes from this part, in which article 19 requires speech-limiting state action to be backed by a law and to be necessary on the grounds of respect for rights and reputations of others, national security, etc. The court in 1962 was not and could not have been thought to the consideration of international law and international conventions in interpreting India's fundamental rights.

[4] Maneka Gandhi v. Union of India 1978 SCR (2) 621

- Petitioner contends that reasonable restriction under Article 19 is on the basis of whether the state action is proportionate or not. The state must show that statute that imposes restriction is the least restrictive of all the available alternatives, S124A of IPC fails to make a balance between reasonable restriction and the right to freedom of speech and expression.
- Lastly, he contends that the hon'ble court must consider the question as to the constitutional vires of the Impugned Provision, unconstrained by the upholding of it in Kedar Nath.

Arguments of Respondent:

- The respondent contends that Kedar Nath Singh's judgment is a binging judgment and needs no reconsideration, it clearly states that S.124A of IPC is in conformity with articles 19, 14 and 21.
- Respondent contends that only a larger bench could pose any doubts on the Kedar Nath judgment, a bench of three judges cannot reconsider the ratio of the said judgment.
- Respondent contends that increasing occurrences of abuse of the said provision cannot be the reason to reconsider the said judgment, preventive measures can be taken on a case-to-case basis.
- The solicitor general of India contends that in the Kedar Nath Judgement, it held that mere criticism on political matters is not itself seditious. Citizen has the right to freedom of speech and expression but till time such right does not hamper the interest of the security of the state, public order or incite any offence against the state.
- Lastly, the respondent contends that if the arguments are not acceptable by the hon'ble court it may refer it to a larger bench.

DECISION

The Supreme Court, in this case, has stayed the operation of S.124-A of IPC, as a consequence of increasing petitions challenging the constitutionality of the law the court has suspended all the proceedings, and trials with regard to S.124-A, the court had put a restriction on registration of any fresh FIR under the said law. The court is of the opinion that the rigors of Section 124A of the IPC are not in tune with the current social milieu and permitted reconsideration of the provision. The court held that those who are already booked under sedition and are behind

JLRJS Journal of Legal Research and Juridical Sciences

bars can approach the court for bail. The court passed an interim order on 11th May 2022 and has given directions with regard to S.124-A.

Directions issued by the supreme court of India with regard to Section 124A of the Indian Penal Code:

- The initial directive states that the temporary order must be followed until additional orders are made.
- The Central and State Governments have been ordered by the Supreme Court to cease filing fresh FIRs, carrying out investigations, and applying coercive measures under Section 124A while the case is being reconsidered.
- The harmed party may proceed to court and request redress if a fresh case is filed for the offense of sedition.
- It has instructed the lower courts to consider the requested relief in light of the recently issued ruling as well as the Union of India's decision.
- Any ongoing trials, appeals, and other actions involving Section 124A must be suspended.
- To avoid its abuse and improper use, the Court has ordered the Central Government to advise the state governments and the union territories to forgo filing any new cases under Section 124A.
- These instructions will be in effect until this situation develops further.
- The then-CJI of India stated that people who had already been detained under Section 124A could seek relief through the appropriate courts while dictating the decision.

The aftermath of the supreme court's decision

The Rajasthan High Court ordered the state police to halt looking into allegations brought against Aman Chopra under Section 124A of the IPC in *Aman Chopra vs. the State of Rajasthan (2022)*[5]. On the same day that the SC passed an interim order suspending the aforementioned clause, the Court issued these instructions.

[5] Aman Chopra vs. the State of Rajasthan (2022)

CRITICAL ANALYSIS

Mahatma Gandhi called Section 124A *"The prince among the political sections of the IPC designed to suppress the liberty of the citizen".* [6]

In the present scenario there has been an increase in the number of registration of seditions cases out of which most of them are frivolous, according to the report from the National Crime Records Bureau (NCRB), 2014 there were up to 47 sedition cases reported in 2014 alone, many of which lacked the necessary elements of violence or instigation to violence, which are required for the filing of a sedition complaint. Every citizen is entitled to freedom of speech and expression but with certain reasonable restrictions, Section 124A of IPC does not fall within the ambit of reasonable restriction. The definition used in the statute is vague and causes a chilling effect on the speech.

In practice the law continues to be used as a weapon of oppression against all voices raised against all dissenting politicians with power, police authorities have always ignored the nicety that the scope of the sedition law is severely limited. For them, the penalty consists of the ordeal of being taken to court. Hence, even if a person accused of sedition is ultimately found not guilty, he still must endure a lengthy judicial process as a punishment for having uttered an "anti-government attitude." There has been an ongoing assault on press freedom in India, fair criticism of the government is every journalist's right and it is not sedition.

Advocate. Rohan J. Alva has written a book 'A Constitution To Keep: Sedition And Free Speech In Modern India'', [7] the book tries to explain the importance of freedom of speech and its role in preserving Indian democracy. The book aims to make a compelling case for constitutional protection of political speech and shows how it can be done while ensuring the purity of national discourse. In the 21st century Section 124A of IPC has outlived its use in modern democratic India, the court did uphold the constitutionality of the statute in 1962 however in the 21st century the situation has been changed. There is subsequent legislation present to protect state security and public order with less restrictive means. India calls itself a 'democracy', and throughout the democratic world; in the United Kingdom, Ireland, Australia,

[6] "Https://Timesofindia.indiatimes.com/India/What-Is-Sedition-Law-All-You-Want-to-Know-about-the-Law/Articleshow/84436977.Cms"

[7] ALVA, R.O.H.A.N.J. (2023) Constitution to keep: Sedition and free speech in Modern India. S.l.: HARPERCOLLINS INDIA.

Canada, Ghana, Nigeria, and Uganda, the offense of sedition has been condemned as undemocratic, undesirable, and unnecessary.

Sedition was introduced by the British to tackle dissent against colonial rule, India's intention behind sedition law was to protect state integrity and maintain public order however this has been misused in current times for instance in the case of *Zanskar Marathe vs The State Of Maharashtra And Amr,(2015[8])*Azeem Trivedi, a noted political cartoonist was arrested on charges of sedition based on a political activist's complaint that his cartoons insulted the country. The court shall purposively interpret the statute and see whether the remedy is been sought for which it was introduced and accordingly shall make an amendment to the statute that can satisfy the restriction and complement the provision of Article 19(2).

[8] Sanskar Marathe vs The State Of Maharashtra And Anr , 2015