

## CASE COMMENTARY: ROMESH THAPPAR VS STATE OF MADRAS

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**Devansh Bansal\***

Court- Supreme Court of India

Petitioner- Romesh Thappar

Respondent - State of Madras

Citation- 1950 SCC 436

Decided on - 26th May 1950

### INTRODUCTION

Freedom of speech and expression was at the centre of the historic 1950 Indian court case Romesh Thappar v. State of Madras. A journalist named Romesh Thappar filed a challenge under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949, against the Madras government for banning his publication, Cross Roads.

The question in the case was whether the prohibition went against his basic rights. The Supreme Court of India ruled that Section 9(1-A) was unconstitutional and maintained Thappar's privilege to petition the Supreme Court directly under Article 32 without first going via the High Court. A significant precedent for India's free speech rights was established by this case.

### FACTS AND BACKGROUND OF THE CASE

Romesh Thappar the petitioner, was the editor, publisher, and printer of the Cross Roads periodical, which was published and distributed in Bombay. In compliance with the Madras Maintenance of Public Order Act, 1949[2], section 9 (1-A). The prior Madras state banned the journal's transit, distribution, and dissemination. The order, which claimed that the state's "public safety" defence of the prohibition was overly expansive, was published in the Fort St. Georgenewspaper.

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The petitioner filed a writ appeal with the Supreme Court in response to the ban, stating that the Act's powers were an undue limitation on the right to free speech as guaranteed by Article 19 of the Indian Constitution. Thus, it was determined that the respondent State would benefit from the ultimate objective of the limit was to uphold public order and safety. This is equivalent to the security of the State, which is seen under Article 19(2) as a reasonable restriction on the right to free speech.

### **LEGAL PROVISIONS REFERRED ARE:**

Romesh Thappar v. State of Madras deals with the Indian Constitution, specifically Article 19, clauses (1)(a) and (2), and Article 32. The petitioner has submitted an application under Article 32 to resolve preliminary objections. The basic right under consideration is freedom of speech and expression. The dispute focuses on a statute that restricts this basic right to maintain public order and safety. The primary question is whether this law is legitimate.

Additionally, the issue of severability of the Madras Maintenance of Public Order Act (XXIII of 1949), notably Section 9(1-A), is being scrutinized. The court is considering whether some sections of the Act may be isolated from the remainder and proclaimed lawful.

### **ISSUES BEFORE THE COURT**

The Court had to decide whether the order issued under Section 9(1-A) of the Madras Maintenance of Public Order Act violated Article 19(1) (a) of the Constitution or fell within the constraints outlined in Article 19(2). The Court also had to decide whether the challenged provision was unconstitutional under Article 13(1) of the Constitution since it violated the basic right to free speech and expression.

The Advocate General, who testified on behalf of the State of Madras, also raised an additional objection, arguing that the petitioner must first approach the High Court under Article 226 and only after he has exhausted that option, he may present his concerns before the Supreme Court.

## **CONTENTION OF THE PETITIONER**

The petitioner in *Romesh Thappar v State of Madras* presented two arguments:

- 1) The Governor of Madras issued an order prohibiting the entrance, publishing, and distribution of *Cross Roads* in the State of Madras, which violated the basic right to free speech and expression granted by Article 19(1)(a) of the Indian Constitution.
- 2) Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949, was contradictory to Section 13(1) of the Constitution since it infringed the petitioner's fundamental right to free speech and expression.

## **CONTENTIONS OF THE RESPONDENT**

In the present matter, the Advocate General made a preliminary objection to the petitioner's plea for under-claiming relief under Article 32 of the Constitution in the first instance, on behalf of the State of Madras. He said that the petitioner should have exhausted his relief under Article 226 of the Constitution by relying on the High Court of Madras from the outset. Before proceeding to the High Court, a party should seek remedy from the previous court. He cited *Emperor v. Bisheswar Prasad Sinha*, where such a standard of practice was affirmed in a criminal revision case, and brought our attention to several American decisions, *Urquhart v. Brown and Hooney v. Kolohan*, as indicating that because the Supreme Court of the United States has traditionally required that any legal remedies available to the petitioner in federal and state courts be exhausted before the remedy in the Supreme Court — whether habeas corpus or certiorari — might be granted. Second, the respondents relied on *Rex v. Wormwood Scrubbs Prison*, pointing to Section 9(1-A) and the phrases "securing public safety" and "the maintenance of public order" as having distinct intents. And argued that "public safety" meant the protection of the province, which was covered by Article 19(2), which includes the basis of "security of the state" as a permissible restriction.

## **OBSERVATION OF THE COURT**

The Court applied the literal rule of construction to the article, saying that the article empowers the Supreme Court to issue writs in cases when citizens' basic rights have been violated. The textualists believe that whatever the legislature's aim was when drafting the legislation has simply been consolidated in the rule, therefore there is no need to go beyond the text. The

Federal Court ruled that there is nothing in the Constitution that suggests that a citizen should be denied their right under Article 226 of the Constitution.

The Federal Court ruled that sedition and maintenance of public order are different legislative topics under Entry 3, List III, Seventh Schedule of the Indian Constitution. The court then invoked the Doctrine of Severability established that the majority of the Court found Section 9(1-A) of the condemned Act to be unconstitutional under Article 13(1) of the Constitution and extra vires since it contradicted the provisions of Part III of the Constitution. In his dissenting judgment, Justice Fazal Ali used the case of *Brij Bhushan v. Anr. V. The State of Delhi* to conclude that preserving peace and tranquillity was an essential component of sustaining state security. He contended that while sedition may threaten the security of the state, so can public disorder and disruption in public safety, and thus the Assailed Act imposed.

Finally, the Court applied the literal rule of interpretation to the article, concluding that the purpose of the terminology employed in legislation should be completely trusted. However, Justice Fazal Ali contended that the challenged Act was not designed to evaluate minor matters, but rather those that undermine the region's peace and serenity.

## **JUDGEMENT**

The petition was granted in the 4:1 ratio, with Fazal Ali, J. dismissing it. Justice M Patanjali Sastri wrote the majority decision, while Justice S Fazl Ali argued against it. The Court ruled that unless a statute restricting freedom of speech and expression is purely intended to undermine the security of the state or overturning the state, it cannot be considered under Article 19(2) of the Indian Constitution. The Court ruled that Section 9 (1-A) of the Madras Maintenance of Public Order Act, 1949, was unconstitutional and invalid.

## **ANALYSIS OF THE CASE**

The Supreme Court's decision on press freedom and the scope of reasonable limitations on fundamental rights in Part III of the Constitution, issued during the early stages of post-sacred India, established a solid foundation for ensuring press opportunity and characterizing the scope of reasonable limitations on the rights guaranteed in Part III of the Constitution. As a guarantee and guardian of basic rights, the court cannot consistently refuse to hear applications seeking insurance against infringement of such rights. The court's decision to limit the State's capacity to interfere with individual rights set the way for further rulings that championed the

rights of the people against the State, resulting in increasing trust in the integrity of the judicial arm of the government.

Freedom of speech and expression is critical to a functioning democracy, and the media is seen as the fourth pillar of democracy. The Supreme Court found the appropriate balance by not blindly conforming to foreign legislation, notwithstanding the disparities in financial and sociopolitical circles between the two countries. The First Constitutional Amendment Act of 1951 included 'Public Order' as a reasonable constraint under 19(2) on Freedom of Speech and Expression, underlining the significance of open political discourse in a democracy-based government.

## **CONCLUSION**

The main issue in *Romesh Thappar v. State of Madras* concerned whether the State of Madras's prohibition on the magazine *Cross Roads* infringed the petitioner's right to freedom of speech and expression as stated in Article 19(1)(a). The petitioner's ability to approach the Supreme Court directly under Article 32, without first requesting relief from the High Court under Article 226, was upheld by the court. The Madras Maintenance of Public Order Act's Section 9(1-A), which permitted limitations in the name of public safety and order, was likewise found to be unconstitutional since it went beyond what was acceptable in terms of limiting the right to free speech and expression. In India, this case set a major precedent for defending the right to free expression.

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