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Case Comment: Kanhaiya Kumar v State of NCT of Delhi

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INTRODUCTION

Section 124A¹ of the IPC states, “Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the government established by law in shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.” It can be used to fight anti-national, separatist, and terrorist groups. Opposition and criticism of the government, on the other hand, are necessary components of a functioning democracy's strong public discourse. They really shouldn't be designed to cause sedition. A petition was submitted to the Supreme Court in July 2021, asking for a re-examination of the Sedition Law. The court concluded that "a legislation criminalizing expression based on unconstitutionally imprecise categories of 'disaffection towards Government,' etc., is an unfair limitation on the basic right to free

¹ Indian Penal Code, 1860, s 124A

expression provided by Article 19 (1)(a)² and has a constitutionally prohibited 'Chilling Effect' on speech."³ The current case involving Kanhaiya Kumar talks about the same.

FACTS OF THE CASE

On February 9, 2016, a program titled "Poetry Reading - The Country without Post Office" was suggested to be held at Sabarmati Dhaba, Jawaharlal Nehru University. The University was permitted to run the show from 5:00 PM to 07:30 PM since there was nothing improper. Later, when the posters for the event were issued, explicitly stating "Against the Judicial Killings of Maqbool Bhatt and Afzal Guru," the JNU administration became aware of the anti-national acts that were to take place, and the authorization for the event was revoked, which was communicated to both organizers and security personnel. The program was carried out against the university's disapproval, and tensions grew between the two groups of students. As shown in several recordings, the petitioner Kanhaiya Kumar, the President of JNUSU at the time, was also said to have participated in the event. On February 10, 2016, Zee News aired a video clip from the show, in which a lot of anti-national sentiments could be heard. The footage was retrieved by the Delhi Police, and the petitioner was charged under sections 124-A/ 34⁴ of the Indian Penal Code in FIR No. 110/ 2016 (Police Station - Vasant Kunj North). The petitioner was later accused under Indian Penal Code sections 124-A/120-B⁵/34/147⁶/149⁷. On February 18, 2016, the petitioner filed a Writ Plea (Criminal) No. 29/ 2016 with the Supreme Court, which, in a judgment dated February 19, 2019, dismissed the current petition and remanded the case to the Delhi High Court for determination of the accused's bail petition.

² Constitution of India, 1950, art.19(1) (a)

³ *Shreya Singhal v Union of India* (2015) Writ Petition (Criminal) No. 167/2012

⁴ Indian Penal Code, 1860, s 34

⁵ Indian Penal Code, 1860, s 120B

⁶ Indian Penal Code, 1860, s 147

⁷ Indian Penal Code, 1860, s 149

LEGAL ISSUES

- Should the petitioner be freed on bond because of the severe charges levied against him?
- Whether the petitioner is liable for sedition?
- Is the accused's speech protected by Article 19(1)(a), which guarantees freedom of speech and expression?

ARGUMENTS MADE

ON THE SIDE OF THE PETITIONER:

- The petitioner had had no part in the entire situation. His name was not on the posters, and he was not spotted shouting anti-national chants.
- The FIR was registered following the broadcast of Zee News, and the phrase 'Pakistan Jindabad' was included, however, it was not listed among the chants in a report filed by the State.
- When the petitioner, as President of JNUSU, learned about the tension between the two groups of students, he took action to bring the situation under control.
- There is no need for further inquiry because the petitioner has been placed in police custody three times.

ON THE SIDE OF THE RESPONDENT:

- The petitioner's participation may be seen in the statements of various witnesses recorded under section 161⁸ of the Code of Criminal Procedure. According to the comments, the petitioner expressed his unhappiness with the revocation of the event's authorization and spoke with officials about it.
- Because the petitioner's signature was missing from the application form for obtaining authorization to hold the event in issue, it cannot be assumed that the petitioner had no involvement in the event.

⁸ Code of Criminal Procedure, 1973, s, 161

JUDGEMENT

The Supreme Court's decision in **Kalyan Chandra Sarkar v Rajesh Ranjan@ Pappu Yadav &Anr.**⁹ was cited by the Court, supporting the notion of giving bail in the case of non-bailable offences. It was decided that before granting bail, the court should conduct a thorough investigation of witnesses and include a justification for granting release in the decision. In the current instance, the petitioner was granted interim release for six months after posting a bail fee of Rs. 10,000. The rationale for this was to provide him with a conservative treatment option that would allow him to live in society. He was also made to sign a statement stating that he will not participate in any action that may be considered anti-national and that as President of JNUSU, he will make every effort to prevent anti-national activities from occurring. The Court based its decision on **Hardik Bharatbhai Patel v State of Gujrat and Ors.**,¹⁰ which stated that any remark encouraging listeners to resort to violence might be deemed sedition under section 124-A of the Indian Penal Code based on the first impression.

The court kept mute for the time being, stating that the issue is the outcome of an inquiry that will determine whether or not the petitioner is guilty of sedition. The Court analyzed **Shreya Singhal v Union of India**¹¹ when debating the issue of freedom of speech and expression. According to this, there are three important principles in comprehending the scope of this most fundamental of human rights. The first is debate, followed by advocacy, and the last is incitement. Article 19(1)¹² is concerned with the mere debate or even endorsement of a certain cause, no matter how unpopular it may be (a). Article 19(2)¹³ comes in only when the conversation or advocacy reaches the point of incitement. 3 At this point, a law may be enacted restricting speech or expression that inexorably leads to or is likely to produce public disturbance, or that tends to cause or

⁹ *Kalyan Chandra Sarkar v Rajesh Ranjan @ Pappu Yadav & Anr.*, (2004) Appeal (Criminal) No. 1129/2004

¹⁰ *Hardik Bharatbhai Patel v State of Gujrat and Ors.*, (2020) R/Criminal Misc. Application No. 2607/2020

¹¹ *Shreya Singhal v Union of India* (2015) Writ Petition (Criminal) No. 167/2012

¹² Constitution of India, 1950, art.19(1)

¹³ Constitution of India, 1950, art.19(2)

tends to undermine India's sovereignty and integrity, security, cordial relations with foreign states, and so on."

CRITICISM

WAS SUPPORTING AFZAL GURU AN ACT OF SEDITION?

Afzal Guru, the brain behind the terrorist assault on the Indian Parliament, was the major focus of the student agitation at JNU. According to the literature on Afzal Guru, the man who was hanged in 2013 for his claimed participation in the 2001 attack on the Indian Parliament, there is tremendous support for him. For example, according to Bajpai, the Supreme Court's ruling on Afzal Guru is fundamentally incorrect. According to Haksar: "Afzal Guru has been labelled a terrorist by the law and the media. The people of Kashmir have dubbed him a martyr despite this ruling." The execution of Afzal, according to Vij, has only fueled terrorist activity. "Would the Congress and the BJP want to ponder on the politics of death punishment? Now that the terrorists in Pathankot and Mazari-i-Sharif have made it obvious that they desired vengeance, particularly for the execution of Afzal Guru? Will they consider if it is in the best interests of the country to hang terrorists?" How can there be so much sympathy for a person who was regarded as a danger to Indian society and politics? Was Afzal guilty of the charges levelled against him, or was he just a victim of mistreatment?

MULTIPLE ASSUMPTIONS

After recounting the case's background and recording the prosecution's admission that there is presently no video proof of Kanhaiya Kumar uttering offensive shouts, the court goes over the slogans allegedly uttered by several demonstrators in great detail. It also includes photos of students and demonstrators brandishing anti-national placards. The court has made various assumptions as it reads through the paragraphs. To begin with, the protests were "anti-national," which is a political judgment rather than a legal one. In Indian law, there is no such thing as an "anti-national" offence or punishment.

Secondly, it places the task of controlling and suppressing "anti-national" behaviour on the elected president of the JNU students' union. Thirdly, it creates a false dichotomy between the military protecting the country's border and citizens' fundamental rights. It cannot be the case of the court that troops exclusively defend civilians who remain silent. Soldiers on the border and scholarship students are both descended from the same poor peasants that are the country's backbone, as has been said elsewhere.

CONCLUSION

Every person has the right to free speech and expression under Article 19(1)(a), but only if it is not harmful to the nation or its sovereignty. The event at Jawahar Lal Nehru University was completely out of the ordinary and undesirable. All those students who were screaming chants against the government and in favor of those who were a threat to the country as well as the people who lived there. The slogans and banners created by students would only incite students to resort to violence, and it may be termed sedition under section 124-A of the Indian penal code at first glance. Unfortunately, such individuals have the opportunity to scream such slogans in the security of a university campus without realizing that they are in this protected environment because of our soldiers, who are on the battleground and experiencing adversity away from their families. They are true heroes who have given their lives for the protection of the people of the country, as opposed to the immature JNU students who were screaming anti-national chants and supporting terrorists who posed a threat to such students as well. Even more difficult to hear were the slogans they were chanting.

- AFZAL GURU MAQBOOL BHATT ZINDABAD.
- BHARAT KI BARBADI TAK JUNG RAHEGI JUNG RAHEGI
- GO INDIA GO BACK
- INDIAN ARMY MURDABAD
- BHARAT TERE TUKKDE HONGE- INSHAALLAHA INSHAALLAHA
- AFZAL KI HATYA NAHI SAHENGE NAHI SAHENGE

- BANDOOK KI DUM PE LENGE AAZADI.¹⁴

The idea expressed in the slogans raised by some Jawahar Lal Nehru University students who planned and participated in the event cannot be claimed to be protected under the basic right of freedom of speech and expression. There is a code of conduct that everyone in the country must adhere to.

¹⁴ *Kanhaiya Kumar v State of NCT of Delhi* (2016) Writ Petition (Criminal) No. 558/2016