

2022 LiveLaw (SC) 470

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
N.V. RAMANA; CJI., SURYA KANT; J., HIMA KOHLI; J.
MAY 11, 2022
S.G. VOMBATKERE Versus UNION OF INDIA

Indian Penal Code, 1860; Section 124A - Sedition - All pending trials, appeals and proceedings with respect to the charge framed under Section 124A of IPC be kept in abeyance. Adjudication with respect to other Sections, if any, could proceed if the Courts are of the opinion that no prejudice would be caused to the accused - If any fresh case is registered under Section 124A of IPC, the affected parties are at liberty to approach the concerned Courts for appropriate relief. The Courts are requested to examine the reliefs sought, taking into account the present order passed as well as the clear stand taken by the Union of India - We hope and expect that the State and Central Governments will restrain from registering any FIR, continuing any investigation or taking any coercive measures by invoking Section 124A of IPC while the aforesaid provision of law is under consideration. (Para 8)

Indian Penal Code, 1860; Section 124A - Sedition -Centre's affidavit that it has decided to re-examine and re-consider the provision - it is clear that the Union of India agrees with the prima facie opinion expressed by this Court that the rigors of Section 124A of IPC is not in tune with the current social milieu, and was intended for a time when this country was under the colonial regime. In light of the same, the Union of India may reconsider the aforesaid provision of law. (Para 5)

WRIT PETITION(C) No.682 OF 2021 WITH WRIT PETITION(C) No.552 OF 2021 WRIT PETITION(C) No.773 OF 2021 WRIT PETITION(C) No.1181 OF 2021 WRIT PETITION(Crl.) No.304 OF 2021 WRIT PETITION(C) No.1381 OF 2021 WRIT PETITION(Crl.) No.307 OF 2021 WRIT PETITION(Crl.) No.498 OF 2021 WRIT PETITION(Crl.) No.106 OF 2021

For Petitioner(s) Mr. Shyam Divan, Sr. Adv. Mr. Prashant Kumar, Adv. Mr. Anubhav Kumar, Adv. Mr. Amarjit Singh Bedi, AOR Ms. Riya Seth, Adv. Mr. Varun Chandniok, Adv. Dr. Rajiv Dhavan, Sr. Adv. Mr. Prashant Bhushan, AOR Mr. Arun Shourie, In-person Mr. Rahul Gupta, Adv. Mr. Alice Raj, Adv. Mr. Kapil Sibal, Sr. Adv. Mr. P.B. Suresh, Adv. Mr. Prasanna S., AOR Mr. Nizam Pasha, Adv. Mr. Yuvraj Singh Rathore, Adv. Mr. Agnish Aditya, Adv. Ms. Swati Arya, Adv. Ms. Aparajita Jamwal, Adv. Mr. Gopal Sankaranarayanan, Sr. Adv. Ms. Pooja Dhar, AOR Mr. Chitranshul Singh, Adv. Ms. Jhanvi Dubey, Adv. Mr. Shrutanjaya Bharadwaj, Adv. Ms. Ishita Chowdhury, Adv. Ms. Shivani Vij, Adv. Ms. Tanya Srivastava, Adv. Ms. Aditi Gupta, Adv. Mr. Pratul Pratap Singh, Adv. Mr. Salman Khurshid, Sr. Adv. Mr. Fuzail Ahmad Ayyubi, AOR Mr. Tanveer Ahmad Khan, Adv. Mr. Tauqeer Ahmad Khan, Adv. Ms. Jyoti Singh, Adv. Ms. Aadya Mishra, Adv. Ms. Kanishka Prasad, Adv. Mr. Ibad Mushtaq, Adv. Ms. Aparna Bhat, AOR Ms. Karishma Maria, Adv. Mr. Satwik Parikh, Adv. Ms. Vrinda Grover, Adv. Mr. Soutik Banerjee, Adv. Ms. Mannat Tipnis, Adv. Mr. Aakarsh Kamra, AOR Mr. Chandar Uday Singh, Sr. Adv. Mr. Rahul Narayan, AOR Ms. Vrinda Bhandari, Adv. Mr. Abhinav Sekhri, Adv. Mr. Apar Gupta, Adv. Mr. Tanmay Singh, Adv. Mr. Krishnesh Bapat, Adv. Ms. Anandita Mishra, Adv. Ms. Natasha Maheshwari, Adv. Ms. Amala Dasarath, Adv. Mr. Siddharth Seem, Adv. Mr. Satya Mitra, AOR

For Respondent(s) Mr. Tushar Mehta, SG Mr. K.M. Nataraj, ASG Mr. N. Venkatraman, ASG Mr. K.M. Nataraj, ASG Mr. Suryaprakash V.Raju, ASG Mr. Rajat Nair, Adv. Mr. Kanu Agrawal, Adv. Mr. Shantnu Sharma, Adv. Ms. Deepaabali Datta, Adv. Mr. Madhav Sinhal, Adv. Ms. Suhasini Sen, Adv. Mr. Balaji Srinivasan, Adv. Mr. Siddhant Kohli, Adv. Mr. K. Parameshwar, Adv. Mr. Arvind Kumar Sharma, AOR Mr. B.V. Balaram Das, AOR (N.P.) Mr. Kaleeswaram Raj, Adv. Mr. Mohammed Sadique T.A., AOR Mrs. Anu K. Joy, Adv. Mr. Alim Anvar, Adv. Mr. Thulasi K. Raj, Adv. Mr. Nishe Rajen Shonker, AOR Mr. P.V. Surendra Nath, Sr. Adv. Mr. Subhash Chandran K.R., Adv. Ms. Yogamaya M.G., Adv. Ms. Resmitha R. Chandran, AOR Mr. Arvind Datar, Sr. Adv. Ms. Nisha Bhambhani, Adv. Mr. Rahul Bhatia, AOR Mr. Rahul Unnikrishnan, Adv. Mr. Harshvardhan Kotla Adv. Ms. Vishakha Gupta, Adv. Mr. Rohan J. Alva, Adv. Mr. Namit Saxena, AOR Mr. Sharath Chandran, Adv. Mr. Awnish Maithani, Adv. Mr. Sudhanshu Chandra, Adv.

ORDER

1. These petitions are filed challenging the Constitutionality of Section 124 A of the Indian Penal Code 1860 (*hereinafter IPC*) relating to the offence of Sedition.

2. Having heard learned Senior counsel appearing for the parties and perusing the documents available on record, we may observe that this matter was listed for the first time on 15.07.2021. Thereinafter, this Court, after hearing the parties, issued notice on 27.04.2022. When this matter was next taken up, learned Solicitor General of India prayed for additional time of 2 to 3 days for filing of counter-affidavit. Accordingly, time was granted till the end of the week for filing counter-affidavit. Again, the matter was listed on 05.05.2022, wherein the Solicitor General again sought additional time to file a counter affidavit. On that date, this Court while granting the Solicitor General time to file counter affidavit, directed the parties to file their written submissions on the preliminary issue of the necessity of reference to a larger bench prior to the next date of hearing.

3. Accordingly, on 07.05.2022, written submissions were filed on behalf of Solicitor General of India.

4. On 09.05.2022, an affidavit was filed on behalf of Union of India, averring as under:

“3. I state and submit that so far as Section 124A is concerned, there are divergence of views expressed in public domain by various jurists, academicians, intellectuals and citizens in general. While they agree about the need for statutory provisions to deal with serious offences of divisive nature affecting the very sovereignty and integrity of the Country, acts leading to destabilizing the government established by law by means not authorised by law or prohibited by law. Requiring a penal Provision for such purposes is generally accepted by everyone in legitimate State interest. However, concerns are raised about its application and abuse for the purposes not intended by law.

4. The Hon'ble Prime Minister of India has been cognizant of various views expressed on the subject and has also periodically, in various forums, expressed his clear and unequivocal views in favour of protection of civil liberties, respect for human rights and giving meaning to the constitutionally cherished freedoms by the people of the country. He has repeatedly said that one of India's strengths is the diverse thought streams that beautifully flourish in our country.

5. The Hon'ble PM believes that at a time when our nation is marking 'Azadi Ka Amrit Mahotsav' (75 years since independence) we need to, as a nation, work even harder to shed colonial baggage that has passed its utility, which includes outdated colonial laws and practices. In that spirit, the Government of India has scrapped over 1500 outdated law since 2014-15 . It has also ended over 25,000 compliance burdens which were causing unnecessary hurdles to people of our country. Various offences which were causing mindless hindrances to people have been decriminalised. This is an ongoing process. These were laws and compliances which reeked of a colonial mind set and thus have no place in today's India.

6. The Government of India, being fully cognizant of various view being expressed on the subject of sedition and also having considered the concern of civil liberties and human rights, while committed to maintain and protect the sovereignty and integrity of this great nation, has decided to re-examine and re-consider the provision of section 124A of the Indian Penal Code which can only be done before the Competent Forum.

7. In view of the aforesaid it is this respectfully submitted that this Hon'ble Court may not invest time in examining the validity of Section 124A once again and be pleased to await the exercise of

reconsideration to be undertaken by the Government of India before an appropriate forum where such reconsideration is constitutionally.”

5. In view of the above, it is clear that the Union of India agrees with the *prima facie* opinion expressed by this Court that the rigors of Section 124A of IPC is not in tune with the current social milieu, and was intended for a time when this country was under the colonial regime. In light of the same, the Union of India may reconsider the aforesaid provision of law.

6. This Court is cognizant of security interests and integrity of the State on one hand, and the civil liberties of citizens on the other. There is a requirement to balance both sets of considerations, which is a difficult exercise. The case of the petitioners is that this provision of law dates back to 1898, and pre-dates the Constitution itself, and is being misused. The Attorney General had also, on an earlier date of hearing, given some instances of glaring misuse of this provision, like in the case of recital of the Hanuman Chalisa.

7. Therefore, we expect that, till the re-examination of the provision is complete, it will be appropriate not to continue the usage of the aforesaid provision of law by the Governments.

8. In view of the clear stand taken by the Union of India, we deem it appropriate to pass the following order in the interest of justice:

a. The interim stay granted in W.P.(Crl.)No.217/2021 along with W.P.(Crl.)No.216/2021 vide order dated 31.05.2021 shall continue to operate till further orders.

b. We hope and expect that the State and Central Governments will restrain from registering any FIR, continuing any investigation or taking any coercive measures by invoking Section 124A of IPC while the aforesaid provision of law is under consideration.

c. If any fresh case is registered under Section 124A of IPC, the affected parties are at liberty to approach the concerned Courts for appropriate relief. The Courts are requested to examine the reliefs sought, taking into account the present order passed as well as the clear stand taken by the Union of India.

d. All pending trials, appeals and proceedings with respect to the charge framed under Section 124A of IPC be kept in abeyance. Adjudication with respect to other Sections, if any, could proceed if the Courts are of the opinion that no prejudice would be caused to the accused.

e. In addition to the above, the Union of India shall be at liberty to issue the Directive as proposed and placed before us, to the State Governments/Union Territories to prevent any misuse of Section 124A of IPC.

f. The above directions may continue till further orders are passed.

9. List these petitions in the third week of July, 2022.