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SAINT VINCENT & THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 7 of 1990

BETWEEN:

EDGERTON M. RICHARDS

and

THE REVEREND DUFF WALKER -JAMES - Appellants

and

THE ATTORNEY-GENERAL - Respondent

Before: The Honourable Sir Lascelles Robotham - Chief Justice
The Honourable Mr. Justice Moe
The Honourable Mr. Justice Byron

Appearances: Dr. R. Gonsalves and A. Williams for the Appellants
K. Hudson-Phillips, O.C. and H. Bruce-Lyle for the
Respondent

1991; March 26,
July 15.

JUDGMENT

MOE, J.A.

This is an appeal from the judgment of Mr. Justice Singh upon a motion by the appellants wherein they sought in so far as this appeal is concerned the following declarations:-

(1) A Declaration that section 64 of the Criminal Code Act Number 23 of 1988, is, in its entirety, unconstitutional in that it hinders the enjoyment of freedom of expression which is a constitutionally entrenched fundamental right and freedom under section 10 of the Saint Vincent Constitution Order, 1979.

(2) A Declaration that section 64 of the Criminal Code Act Number 23 of 1988, is in its entirety, unconstitutional in that it unreasonably restricts, subverts, undermines and derogates from section 10 of the Saint Vincent Constitution Order, 1979.

/(3) A Declaration....

(3) A Declaration that section 64 of the Criminal Code Act Number 23 of 1988, is in its entirety, unconstitutional in that it is not reasonably required to protect any of the constitutional conditions or stipulations laid down in sections 10(2)(a), 10(2)(b) and 10(2)(c) of the Saint Vincent Constitution Order 1979.

(4) A Declaration that section 64 of the Criminal Code Act Number 23 of 1988, is, in its entirety, unconstitutional in that it is not reasonably justifiable in a democratic society and is thus contrary to the provisions of section 10 of Saint Vincent Constitution Order, 1979.

Section 64 of the Criminal Code Act Number 23 of 1988 herein-after called the Act provides as follows:-

- "64(1) Any person who publishes any false statement, false rumour or false report which is likely to cause fear or alarm in or to the public or to disturb the public peace, is guilty of an offence and liable to imprisonment for one year.
- (2) It shall be a defence to a charge under subsection (1) if the accused person proves that, prior to the publication, he took such measures to verify the accuracy of such statement, rumour or report as to lead him reasonably to believe that it was true."

Section 10 of the Constitution provides:-

- "(1) Except with his own consent, a person shall not be hindered in the enjoyment of his freedom of expression, including freedom to hold opinions without interference, freedom to receive ideas and information without interference, freedom to communicate ideas and information without interference (whether the communication be to the public generally or to any person or class of persons) and freedom from interference with his correspondence.
- (2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision -
 - (a) that is reasonably required in the interests of defence, public safety, public order, public morality or public health.
 - (b) that is reasonably required for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons

/concerned.....

concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the Courts or regulating the technical administration or the technical operation of telephony, telegraphs, posts, wireless broadcasting or television; or

- (c) that imposes restrictions upon public officers that are reasonably required for the proper performance of their function,

and except so far as that provision or, as the case may be, the thing done under the authority thereof is shown not to be reasonably justifiable in a democratic society."

The learned Judge in his judgment found no ambiguity in section 64 of the Act and that by that section

- "1. It is an offence for any person to publish any false statement, rumour or report which is likely to disturb the public peace (whether or not such publication is likely to cause fear or alarm).
- 2. It is an offence for any person to publish any false statement, rumour or report which is likely to cause fear or alarm in anyone whether it be an individual or the public (even if such publication is not likely to disturb the public peace)."

To his mind a guarantee to the fundamental right for a person's security and similarly to the public in the interest of public safety and public order necessitates the protection afforded by section 64 and he found the purpose of section 64 to be to protect the individual and the public in the enjoyment of their fundamental right to the security of their person and also for the purpose of preserving public order in the State.

He held that wide though the section may be in protecting the individual person as well as the public it does not suffer from the defect of over-breadth. That the protection it offers does not go outside of the permitted restrictions afforded by the Constitution. That it does not restrain unreasonably, does not subvert, undermine or derogate from a citizen's rights and cannot be used for any purpose not sanctioned by the Constitution.

He found the section to be reasonably required for the interests referred to in section 10(2) of the Constitution, that the words "likely to cause fear or alarm" or "to disturb the public peace" are sufficiently proximate and direct to those interests set out in section 10(2) and the section is reasonably justifiable in a democratic society. He accordingly refused the declarations sought.

/The grounds.....

The grounds of appeal filed challenged as errors in law all the above findings of the learned Judge. Before this Court, Counsel for the appellant conceded that he was not challenging the constitutionality of the section to the extent that it provided for the offence of publishing false statements, rumour or report likely to disturb the public peace. His complaint remained against the provision for the second type of offence as found by the learned Judge namely:- to publish a false statement, rumour or report which is likely to cause fear or alarm.

In the light of Counsel's concession a declaration as sought that the section in its entirety is unconstitutional could hardly be granted. There was really no motion for striking down a part of the section and severance thereof. My view is that the application should fail.

With deference to the submissions of Counsel consideration is given to the question whether the section is unconstitutional to the extent that it provides for it to be a criminal offence to publish a false statement, rumour, or report which is likely to cause fear or alarm.

Counsel's submission was that in the provision the terms "fear and alarm" are too imprecise to ground a criminal offence and the word "likely" makes it doubly difficult to ground a criminal offence. Further the offence established is one of strict liability and this makes the portion impugned even more reprehensible. He submitted also that the net cast by the proscription in the portion impugned is so wide that it may include permissible and impermissible speech. Thus the provision goes beyond established boundaries in penalizing publication of false statements. Finally the provision was not reasonably required for any of the reasons provided for in section 10(2) of the Constitution nor was it reasonably required in a democratic society.

Counsel for the respondent submitted that "fear" and "alarm" are not elusive and intangible terms but are recognized as states of mind as deleterious to health as is physical harm. That statements can have consequences as damaging as a blow. It was not outlandish or unreasonable for the State to criminalize false statements which cause fear or alarm.

The terms "fear" and "alarm" are commonly used in criminal jurisprudence and will be found in various statutes. Their presence are elements to be proved in order to establish ~~obtain~~ offences.

/There is.....

There is no reason why the words in the section employed should not be given the meaning in which they are commonly used. A person of reasonable intelligence would understand "fear" to mean "apprehension, anxiety, alarm, consternation or dread" and "alarm" to mean "fright, terror, consternation, apprehension, dread, fear or panic". I also comprehend that any juror would understand what is meant by causing fear or alarm or likely to cause fear or alarm to someone or to the public. However, ascribing a meaning to these terms do not take us very far in the determination of the real issue. Nor does providing an answer to the question whether the offence created by the impugned section is one of strict liability affect the constitutionality of that section.

The crucial issue raised is whether the impugned portion of the section fails to satisfy the criteria laid down in section 10(?) of the Constitution as contended for by the appellant. The question as to the width or over-breadth of the prescription in the section impugned is bound up with that as to whether it is reasonably required for any of the relevant interests set out in section 10. Legislation which arbitrarily or excessively invades a fundamental right or freedom cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the right or freedom guaranteed and the social control permitted it must be held to be wanting in that quality. See Chintamani Rao v. State of Madhya Pradesh, A.I.R. 1951 S.C. 118. Counsel's submissions on this issue were no more than sweeping assertions. We were not treated to any permissible speech which the language of the impugned portion of the section was wide enough to cover nor were we assisted in any way as to how it may be applied to a purpose not provided for by the Constitution.

Implicit in the learned Judge's judgment is the thesis that a restriction on the enjoyment of any of the fundamental freedoms imposed by a law in the interests of public order must have a rational or proximate relationship to public order. There is no challenge to this proposition. For these purposes I adopt the definition given to the phrase "Public Order" by Sastri J. in RAMESH THAPPAR V THE STATE OF MADRAS (1950) S.C.R. of INDIA at page 598 where he says "Public Order" is an expression of wide connotation and signifies that state of tranquility which prevails among the members of the political society as a result of the internal regulations enforced by the Government which they have established". An enactment would therefore be within the recognized or acceptable restrictions on the relevant freedom if it imposes restriction on activity which has a

/tendency.....

tendency to disturb the state of tranquility.

To cause fear or alarm (i.e. anxiety, consternation,.....) in the minds of people has a real and proximate tendency to disturb the tranquility prevailing among the general public. A law which makes it an offence to do such a thing must be held to be a law imposing a reasonable restriction in the interests of public order. It was said in *Ramjulal v State of Upper Pradesh* (1957) A.I.R. 620 "If certain activities have a tendency to cause public disorder, a law penalizing such activities as an offence cannot but be held to be a law imposing unreasonable restriction in the interests of public order although in some cases those activities may not actually lead to a breach of public order". Using this approach the impugned portion of section 64 must be held to be a reasonable restriction on the freedom of expression in the interests of public order.

A question remaining to be answered is whether the restriction, as imposed by the impugned words, has been shown not to be reasonably justifiable in a democratic society. A burden of proof lay on the appellants on this issue, but nothing was urged which discharged the onus placed on them. They must therefore fail in their challenge of the constitutionality of the relevant portion of section 64. Failure in the challenge would also be the result if the approach used had been to presume the constitutionality of the impugned portion of the section and see whether the presumption was successfully displaced by the appellants.

In *HECTOR V ATTORNEY-GENERAL OF ANTIGUA & BARBUDA* 37 W.I.R. 216, the Privy Council gave consideration to section 33B of the Public Order Act 1972 of Antigua and Barbuda which in part makes provision in terms similar to the section impugned. So far as is relevant section 33B of the Antigua Act provides:-

"Notwithstanding the provisions of any other law any person who -

- (a) in any public place or at any public meeting makes any false statement; or
- (b) prints or distributes any false statement which is likely to cause fear or alarm in or to the public, or to disturb the public peace, or to undermine public confidence in the conduct of public affairs, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five hundred dollars or to a term of imprisonment not exceeding six months."

/In consideration.....

In consideration of the question whether the section, to the extent that it contained the words "or to undermine public confidence in the conduct of public affairs", made provision that is reasonably required in the interests of public order the Board had this to say - "The statements against which section 33B is directed may fall foul of the section on any one of the three grounds: (1) that they are likely to cause fear, alarm in or to the public; (2) that they are likely to disturb the public peace; or (3) that they are likely to undermine public confidence in the conduct of public affairs. It appears to their Lordships that, insofar as it is necessary to make provision in the criminal law in the interests of public order against the dissemination of false statements likely to disrupt or disturb public order, the whole field is covered by condemnation of statements which offend against the section on grounds (1) and (2)....." That is a clear stamp of approval of the section where it condemns false statements likely to cause fear or alarm to the public. Section 64 of the Act similarly condemns.

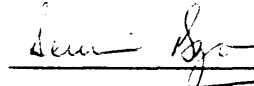
The decision of the learned trial Judge was correct and his dismissal of the appellant's motion is upheld. This appeal is dismissed with costs to the respondent fit for two Counsel.



G.C.R. MOE,
Justice of Appeal



L.L. ROBOTHAM,
Chief Justice



C.M.D. BYRON,
Justice of Appeal