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## ROMESH THAPPAR V. STATE OF PUNJAB<sup>1</sup>

*Chandanika Jain*

### INTRODUCTION

The leading intellect JS Mill has quoted, “The peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it.” To give one’s opinion is recognised as a fundamental right under most of the democracies of the world. India has given to its citizen right to speech and expression under article 19 (1) (a). This right not only allows the citizens to express their opinions through word but also through writing, circulation and any other means which also includes press. Therefore, freedom of press also comes within the Sof Punjab. This case is thus cited as the chief judgement that paved the way forward for right to publication.

### DETAILS OF THE CASE

**Case Name-** Romesh Thappar v. State of Punjab<sup>2</sup>

**Court-** Supreme Court of India

**Bench-** Chief Justice Harilal Kania, Justice Fazl Ali, Justice Patanjali Sastri, Justice Mehr Chand Mahajan, Justice B.K. Mukherjee and Justice Sudhi Ranjan Das.

**Petitioner-** Romesh Thappar

**Respondent-** State of Madras

**Date of Judgement-** 26/05/1950

### BRIEF FACTS OF THE CASE

The petitioner in this case, Romesh Thappar was a journalist and an editor of a weekly journal ‘Cross Roads’ that was published in Bombay. Through Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949, The State of Madras prohibited the petitioner from circulating, selling or distributing the journal in Madras on the grounds of maintaining public safety and order. This was challenged by Romesh Thappar in the Supreme Court on the grounds of blatant miscarriage of Fundamental right under Article 32.

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<sup>1</sup> Romesh Thappar v. The State of Madras, (1950) A.I.R 124

## ISSUES

- Whether it is valid to approach the Supreme Court directly under Article 32 instead of approaching High Court under Article 226?
- Whether the order issued by the State of Madras violated petitioner's fundamental right to Speech and expression under Article 19 of Indian Constitution?
- Whether Section 9(1-A) of the Madras Maintenance of Public Order act, violated Article 13 (1) of Indian Constitution?

## ARGUMENTS OF THE PARTY

### PETITIONER:

The petitioner in this case put forward two main arguments:-

- The order issued by the governor of Madras banning the publication, circulation and sale of the journal, was inconsistent with the the right to freedom of speech and expression given under Article 19 (1)(a) of Indian constitution.
- He also claimed that the section 9(1-A) of the Madras Maintenance of Public Order is in contrast to Article 13(1) as it hampers petitioner' fundamental right to speech and expression.

### RESPONDENT

The respondent put forward the following arguments:-

- The respondent primarily submitted that the petitioner has not exhausted the other available remedies under article 226 and has directly jumped on to the writ jurisdiction under article 32 of Supreme court. According to the respondent, the petitioner should have followed the standard procedure wherein he should have firstly approached the high court under article 226.
- To bolster his argument, the advocate general representing the state of madras cited the examples from criminal law like criminal revision petition under section 435 of CrPC and transfer application under section 24 of CrPC and argued that if a concurrent jurisdiction is provided for then the petitioner should use it first rather than moving to the apex court.
- He cited *Emperor v. Bisheswar Prasad Sinha*<sup>3</sup>, where such a practice was employed in a criminal revision case. Further he also cited foreign case law like *Urquhart v. Brown*<sup>4</sup>, where the SCOTUS requires that all available remedies should be exhausted first in order to approach supreme court.

## KEY PROVISIONS INVOLVED

Article 19 (1)(a)- provides the fundamental right to free speech and expression.

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<sup>3</sup> Emperor v. Bisheswar Prasad Sinha, (1933) 56 A.L.L. 158 (India)

<sup>4</sup> Urquhart v. Brown, 205 U.S. 179 (1907)

Article 32 – Writ Jurisdiction of Supreme Court empowers the citizens of the country to approach the apex court if they feel that their fundamental rights enshrined under Part III are encroached upon and the court in that matter may issue writs like habeas corpus, mandamus, certiorari, quo warranto or prohibition as the court deems fit.

Article 226- Writ Jurisdiction of High court is wider than the jurisdiction of the supreme court. In addition to the violation of the fundamental rights it may also issue writs for the violation of constitutional right violation.

Section 9(1-A) Madras Maintenance of Public Order Act, 1949- the section empowers the state to restrict public gatherings for the purpose of public safety and order.

## **JUDGEMENT**

The first issue at hand was whether the petitioner could directly approach the Supreme Court without approaching the respective High Court. In this, court held that since the nature of the remedy was similar in both the cases (article 32 and 226), it is upon the petitioner that he has to file a writ petition in which court.

Second issue at hand speaks about whether or not Section 9(1-A) violates article 13(1). The court here, firstly opined that there should be a clear distinction between overthrowing the government and spreading disaffection against it. The court while adjudicating this matter said that such a harsh provision should only be used when there is a tangible need for the same like in the case of disruptions at national level and not at the time of minor disruptions. Thus, the impugned section is violative of article 13(1) and hence declared null and void.

Third issue was about whether the impugned order was in contravention of article 19 (1)(a) or not. It was observed that the order does not come within the ambit of Article 19(2) as an exception since restriction of speech should be done in exceptional cases only and not for any reckless driving or affray. Therefore, it was held that the impugned order was violative of the article 19 (1)(a).

## **CONCLUSION**

The press, media and newspaper is regarded as the pillar of any democracy. In such backdrop if they are strangled by the state by not permitting them to publish what they want under the guise of maintaining public order is like making a mockery of the constitution itself. In such a scenario, Romesh Thappar v state of madras remains a bedrock in espousing the freedom of speech, expression and opinion. This judgement has reiterated that citizens of the country are born with this right and this right cannot be discounted for any minor disruptions.

