PETITIONER:
REV. STAINISLAUS

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH & ORS.

DATE OF JUDGMENT17/01/1977

BENCH:
RAY, A.N. (CJ)
BENCH:
RAY, A.N. (CJ)
BEG, M. HAMEEDULLAH
SARKARIA, RANJIT SINGH
SHINGAL, P.N.
SINGH, JASWANT

CITATION:
1977 AIR 908 1977 SCR (2) 611
1977 SCC (1) 677

ACT:
Constitution of India--Article 25(1)--Freedom of religion--Right to profess--Practice and propogate religion--Whether forcible and fraudulent conversion included--Public order--Meaning of--Seventh Schedule List II Entry 1--Madhya Pradesh Dharma Swatantraya Adhinivam 1968--Orissa Freedom of Religion Act 1967--Constitutional validity of.

HEADNOTE:
The constitutional validity of the Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968, was challenged in the High Court of Madhya Pradesh and the constitutional validity of the Orissa Freedom of Religion Act, 1967 was challenged in the High Court of Orissa. The two Acts prohibit forcible conversion and make the offence punishable. The Madhya Pradesh High Court upheld the validity of the Act. The Orissa High Court held that Art. 25(2) of the Constitution guarantees propogation of religion and conversion is a part Christian religion; that the State Legislature has no power to enact the impugned legislation which in pith and substance is a law relating to religion; and that entry 97 of List I would apply.
Upholding the validity of both the Acts,
HELD: (1) Article 25 guarantees to all persons right to freedom and conscience and the right freely to profess, practice and propogate religion subject to public order, morality and health. The word 'propogate' has been used in the Article as meaning to transmit or spread from person to person or from place to place. The Article does not grant right to convert other person to one's own religion but to transmit or spread one's religion by an exposition of its tenets. The freedom of religion enshrined in Art. 25 is not guaranteed in respect of one religion only but covers all religions alike which can be properly enjoyed by a person if he exercises his right in a manner commensurate with the like freedom of persons following other religion. What is freedom for one is freedom for the other in equal measure and there can, therefore, be no such thing as a fundamental

right to convert any person to one's own religion. [616 B-F, 617 A-B]

(2) The Madhya Pradesh Act prohibits conversion from one religion to another by use of force, allurement or fraudulent means and matters incidental thereto. Similarly, the Orissa Act prohibits conversion by the use of force or by inducement or by any fraudulent means. Both the statutes, therefore, clearly provide for the maintenance of public order because if forcible conversion had not been prohibited that would have created public disorder in the States. The expression "public order" has a wide connotation. [617 C-E]

Ratilal Panachand Gandhi v. The State of Bombay & Ors. [1954] S.C.R. 2055; Ramesh Thappar v. The State of Madras [1950] S.C.R. 594; Ramjilal Modi v. State of U.P. [1957] S.C.R. 860 and Arun Ghosh v. State of West Bengal [1966] 1 S.C.R. 709, followed.

(3) If an attempt is made to raise communal passions, e.g. on the ground that someone has been forcibly converted to another religion it would in all probability give rise to an apprehension of a breach of the public order affecting the community at large The impugned Acts therefore fall within the purview of Entry 1 of List II of the Seventh Schedule as they are meant to avoid

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disturbance to the public order by prohibiting conversion from one religion to another in a manner reprehensible to the conscience of the community. The two Acts do not provide for the regulation of religion and do not fall under Entry 97 of List I. [618 A-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1489. & 1511 of 1974.

(Appeals by certificate./Special Leave from the Judgment and Order dated 23-4-1974 of the Madhya Pradesh High Court in Misc. Petition No. 136/73).

Criminal Appeal No. 255 of 1974.

(From the Judgment and Order dated 23-4-1974 of the Madhya Pradesh High Court in Criminal Revision No. 159/71) and

Civil Appeal NOs. 344-346 of 1976.

(Appeals by Special Leave from the Judgment and. Order dated 24-10-1972 of the Orissa High Court in C.J.C. 185, 186 and 217 of 1969).

Frank Anthony, in CA 1489, CrI. A. 255/74 and CA 346/76 for the appellant in CAs 1489 and 1511/74 and Crl. A.. No. 255/74 and RR. 1 and 2 in CAs 346/76.

Soli J. Sorabiee in CA 1511, Crl. A. 255/74 1. B. Dadachanji, K. J. John O.C. Mathur and Ravinder Narain for the appellant in CAs 1489 and 1511/74 and Crl. A. No. 255/74 and RR. 1 and 2 in CAs 346/76.

Gobind Das (In CAs 344-346/76) B. Parthasarthi, for the appellants in CAs 344-346/76.

Soli J. Sorabjee, B.P. Maheshwari and Suresh Sethi, for R. 3 in CA 346/76.

Brijbans Kishore, B.R. Sabharwal, for RR. in CA 345/76.

Gobind Das,Raj Kumar Mehta,for the Intervener (State of Orissa) in C.A. 1489/74.

The Judgment of the Court was delivered by

RAY, C.J. These appeals were heard together because they raise common questions of law relating to the interpre-

tation of the Constitution.

Civil Appeals No. 1489 and 1511 of 1974 and Criminal Appeal No. 255 of 1974 are directed against a judgment of the Madhya Pradesh High Court dated 23 April, 1974. We shall refer to these as the Madhya Pradesh cases. Civil Appeals No. 344-346 of 1976 relate to a judgment. of the orissa High Court dated 24 October, 1972. We shall refer to these appeals as the Orissa cases.

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The controversy in the Madhya Pradesh cases relates to the Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968, hereinafter referred to as the Madhya Pradesh Act. The controversy in the Orissa cases arises out of the Orissa Freedom of Religion Act, 1967 hereinafter referred to as the Orissa Act.

The provisions of the 'two Acts in so far as they relate to. prohibition of forcible conversion and punishment therefor, are similar and the questions which have been raised before us are common to both of them. It will, therefore, be enough, for the purpose of appreciating the controversy, to make a somewhat detailed mention of the facts of the Madhya Pradesh case.

The Sub-Divisional Magistrate of Baloda-Bazar sanctioned the prosecution of Rev. Stainislaus for the commission of offences under sections 3, 4 and 5(2) of the Madhya Pradesh Act. When the case came up before Magistrate, First-Class, Baloda-Bazar, the appellant Rev. Stainislaus raised a preliminary objection that the State Legislature did not have the necessary legislative competence and the Madhya Pradesh Act was ultra vires the Constitution as it did not fall within the purview of Entry I of List II and Entry I of List III of the Seventh Schedule. The appellant's contention was that it was covered by Entry 97 of List I so that Parliament alone had the power to make the law and not the State Legislature. An objection was also raised that the provisions of sections 3, 4 and 5(2) of the Act contravened Article 25 of the Constitution and were void. The Magistrate took the view that there was no force in the. objection and did not refer the case to the High Court under section 432 of the Code of Criminal Procedure, 1898.

The appellant applied to the Additional Sessions Judge for a revision of the Magistrate's order refusing to make a reference to the High Court. The Additional Sessions Judge also took the view that no question of constitutional importance arose in the case and he did not think it necessary to make a reference to the High Court.

The appellant thereupon applied to the High Court for revision under section 439 of the Code of Criminal Procedure and he also filed a petition under Articles 226 and 227 of the Constitution.

The High Court heard both the revision and the writ petition together. The appellant raised the following three questions in the High Court :--

(i) that sections 3, 4, 5(2) and 6 of the M.P. Dharma Swatantraya Adhiniyam, 1968 are violative of the petitioner's fundamental rights guaranteed by Article 25 (1) of the Constitution of India;

(ii) that in exercise of powers conferred by Entry No.. 1 of List II, read with Entry No. 1 of List III of the Seventh Schedule the Madhya Pradesh Legislature in the name of public order could not have enacted

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the said legislation. But the matter would

fail within the scope of Entry No. 97 of List I of the Seventh Schedule, which confers residuary powers on Parliament to legislate in respect of any matters not covered by List I, List I1 or List III. Therefore, it is contended that Parliament alone had the power to legislate on this subject and the legislation enacted by the State Legislature is ultra vires the powers of the State legislature;

(iii) that section 5(1) and section 5(2) of the M.P. Dharma Swatantraya Adhiniyam, 1968 amount to testimonial compulsion and, therefore, the said provisions are violative of Article 20(3) of the Constitution of India.

The High Court examined the controversy with reference to the relevant provisions of the Madhya Pradesh Act and the Madhya Pradesh Dharma Swatantraya Rules, 1969 and held as follows :--

> "What is penalised is conversion by force, fraud or by allurement. The other element is that. every person has a right to profess his own religion and to act according to it. Any interference with that right of the other person by resorting to conversion by force, fraud or allurement cannot, in our opinion, be said to contravene Article 25(1) of the Constitution of India, as the Article g uarantees religious freedom subject to public health. As such, we do not find that the provisions of sections 3, 4 and 5 of the M.P. Dharma Swatantraya Adhiniyam, 1968 are violative of Article 25(1) of the Constitution of India. On the other hand, it guarantees that religious freedom to one and all including those who might be amenable to conversion by force, fraud or allurement. As such, the Act, in our opinion, guarantees equality of religious freedom to all, much less can it be said to encroach upon the religious freedom of any particular individual."

The High Court therefore held that there was no justification for the argument that sections 3, 4 and 5 of the Madhya Pradesh Act were violative of Article 25(1) of the Constitution. The High Court in fact went on to hold that those sections "establish the equality of religious freedom for all citizens by prohibiting conversion by objectionable activities such, as conversion by force, fraud and by allurement".

As regards the question of legislative competence, the High Court took note of some judgments of this Court and held that as "the phrase 'public order' conveys a wider connotation as laid down by their Lordships! of the Supreme Court in the different cases. We are of the opinion that the subject matter of the Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968 fails within the scope of Entry No. I of List II of the Seventh Schedule relating to the State List regarding public order".

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On the remaining point relating to testimonial compulsion with reference to Article 20(3)of the Constitution, the High Court held that section 5 of the Madhya Pradesh Act read with Form A, prescribed by the Rules, merely made provision for the giving of intimation to the District Magistrate about conversion and did not require its maker to

make a confession of any offence as to whether the conversion had been made on account of fraud, force or allurement, 'which had been penalised by the Act. The High Court thus held that mere giving of such information was not violative of Article 30(1) of 'the Constitution. But the question of testimonial compulsion within the meaning of Article 20(3) of the Constitution has not been raised for our consideration.

The Orissa cases arose out of petitions under Article 226 of the Constitution challenging the vires of the Orissa Act. The High ,Court stated its conclusions in those cases as follows:--

(1) Article 25(1) guarantees propagation of religion and conversion is a part of the Christian religion.

(2) Prohibition of conversion by 'force' or by 'fraud' as defined by the Act would be covered by the limitation subject to which the right is guaranteed under Article 25 (1).

(3) The definition of the term 'inducement' is vague and many proselytizing activities may be covered by the definition and the restriction in Article 25 (1) cannot be said to cover the wide definition.'

(4) The State LegisLature has no power to enact the impugned legislation which in pith and substance is a law relating to religion. Entry No. 1 of either List II or List III does not authorise the impugned legislation.

(5) Entry 97 of List I applies.

The High Court has therefore declared the Orissa Act to be ultra vires the Constitution and directed the issue of mandamus to the State Government not to give effect to it. The criminal cases which were pending have been quashed.

The common questions which, have been raised for our consideration are (1) whether the two Acts were violative of the fundamental right guaranteed under Article 25(1) of the Constitution, and (2) whether the State Legislatures were competent to enact them ?

Article 25(1) of the Constitution reads as follows:

"25(1) Subject to public order,' morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion."

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Counsel for the appellant has argued that the right to 'propagate' one's religion means the right to convert a person to one's own religion. On that basis, counsel has argued further that the right to convert a person to one's own religion is a fundamental right guaranteed by Article 25 (1) of the Constitution.

The expression 'propagate' has a number of meanings, including "to multiply specimens of (a plant, animal, disease etc.) by any process of natural reproduction from the parent stock", but that cannot, for obvious reasons, be the meaning for purposes of Article 25 (1) of the Constitution. The Article guarantees a right to freedom of religion, and the expression 'propagate' cannot therefore be said to have been used in a biologi-

cal sense.

The expression 'propagate' has been defined in the Shorter Oxford Dictionary to mean "to spread from person to person, or from place to place, to disseminate, diffuse (a statement, belief, practice, etc.)"

According to the Century Dictionary (which is an Encylopaedic Lexicon of the English Language) Vol. VI, 'propagate' means as follows :--

"To transmit or spread from person to person or from place to place; carry forward or onward; diffuse; extend; as propagate a report; to propagate the Christian religion".

We have no doubt that it is in this sense. that the word 'propagate' has been used in Article 25 (1), for what the Article grants is not the right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets. It has to be remembered that Article 25 (1) guarantees "freedom of conscience" to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the "freedom of conscience" guaranteed to all the citizens of the country alike.

The meaning of guarantee under Article 25 of the Constitution came up for consideration in this Court in Ratilal Panachand Gandhi v. The State of Bombay & Ors. (1) and it was held as follows :--

"Thus, subject to the restrictions which this Article imposes, every person has a fundamental right under our Constitution not merely to entertain such, religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others."

(1) [1954]S.C.R. 1055.

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This Court has given the correct meaning of the Article, and we find no justification for the view that it grants. a fundamental right to convert persons to one's own religion. It has to be appreciated that the freedom of religion enshrined in the Article is not guaranteed in respect of one religion only, but covers all religions alike, and it can be properly enjoyed by a person if he exercises his right in a manner commensurate with the like freedom of persons following the other religions. What is freedom for one, is freedom for the other, in equal measure, and there can therefore be no such thing as a fundamental right to convert any person to one's own religion.

It was next been argued by counsel that the Legislatures of Madhya Pradesh, and Orissa States did not have legislative competence to pass the Madhya Pradesh Act and the Orissa Act respectively, because their laws regulate 'religion' and fall under the Residuary Entry 97 in List 1 of the Seventh Schedule to the Constitution.

It is not in controversy that the Madhya Pradesh Act

provides for the prohibition of conversion from one religion to. another by use of force or allurement, or by fraudulent means, and matters incidental thereto. The expressions "allurement" and 'fraud' have been defined by the. Act. Section 3 of the Act prohibits conversion by use of force or by allurement or by fraudulent means and section 4 penalises such forcible conversion. Similarly, section 3 of the Orissa Act prohibits forcible conversion by the use of force or by inducement or by any. fraudulent means, and section 4 penalises such forcible conversion. The Acts therefore dearly provide for the maintenance of public order for, if forcible conversion had not been prohibited, that would have created public disorder in the States.

The expression "Public order" is of wide connotation. It must have the connotation which it is meant to provide as the very first Entry in List II. It has been held by this Court in Ramesh Thapper v. The State of Madras(1) that "public order" is an expression of wide connotation and signifies state of tranquility which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established".

Reference may also be made to the decision in Ramjilal Modi v. State of U.P. (2) where this Court has held that the right of freedom religion guaranteed by Articles 25 and 26 of the Constitution is expressly made subject to public order, morality and health, and that "it cannot be predicated that freedom of religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion cannot under any circumstances be said to have been enacted in the interests of public order". It has been held that these two Articles in terms contemplate that restrictions may be imposed on the rights guaranteed by them in the interests of public order. Reference may as well be made to the decision in Arun Ghosh v. State of WeSt Bengal(a) where it has been held that if a thing disturbs the current of the life of the community,

(1) (1950) S.C.R. 594.
(2) (1957) S.C.R. 860
(3) (1966) 1 S.C.R. 709
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and does not merely affect an individual, it would amount to disturbance of the public order. Thus if an attempt is made to raise communal passions, e.g. on the ground that some one has been "forcibly" converted to another religion, it would, in all probability, give rise to an apprehension of a breach of the public order, affecting the community at large. The impugned Acts therefore fall within: the purview of Entry I of List II of the Seventh Schedule as they are meant to avoid disturbances to the public order by prohibiting conversion from one religion to another in a manner reprehensible to the conscience of the community. The two Acts do not provide for the regulation of religion and! we do not find any justification for the argument that they fall under Entry 97 of List I of the Seventh Schedule.

In the result Civil Appeals No. 1489 and 1511 of 1974 and Criminal Appeal No. 255 of 1974 fall and are dismissed while Civil Appeals No. 344-346 of 1976 are allowed and the impugned judgment of the Orissa High Court dated 24 October, 1972 is set aside. The parties shall pay and bear their own costs, in Madhya Pradesh appeals. The State shall pay the respondent costs in the Orissa appeal according to previous direction.

P.H.P.

C.As. Nos. 1489 & 1511 of 1974 and
Cr. A. No. 255 of 1974 dismissed.
C.As. Nos. 344--346 of 1976 allowed.
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