

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

Cr1.MC.No. 4381 of 2010 ()

AGAINST THE ORDER IN CP 37/2010 of J.M.F.C.-III, THIRUVANANDAPURAM

PETITIONER:

JOY CHERIAN, S/O.CHERIAN,
AGED 50 YEARS, T.C.13/368, MOOLAVILAKOM,
MUNDAIKKAL, KANNAMMOOLA, VANCHIYOOR VILLAGE,
THIRUVANANTHAPURAM.

BY ADVS.SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.P.M.SANEER

RESPONDENT:

SUB INSPECTOR OF POLICE,
THAMPANOOR POLICE STATION,
THIRUVANANTHAPURAM REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

ADDITIONAL R2 TO R7 IMPEADED:

ADDL.R2 DR.P. FAZAL GAFOOR,
PRESIDENT, MUSLIM EDUCATIONAL SOCIETY,
MANAPAT, NADAKAVU, CALICUT.

ADDL.R3 THE SECRETARY IN CHARGE,
ALL INDIA MUSLIM PERSONAL LAW BOARD,
ALIGARH, UTTAR PRADESH (* DELTED)

ADDL.R4 SHAHJEHAN, S/O. ISMAIL,
ANALIMUKKU MUBIN MANZIL,
7TH WARD, NELLANADU PANCHAYAT,
NEDUMANGAD, THIRUVANANTHAPURAM.

ADDL.R5 JAMAL UD DIN MANKADA IMAM,
PALAYAM, MOSQUE, PALAYAM,
THIRUVANANTHAPURAM. (* DELETED).

ADDL.R6 DR. N.A.KARIM, PRESIDENT,
VAKKOM MOULAVI FOUNDATION,
THEKUMMOODU, OPPOSITE ANADIYIL HOSPITAL,
THIRUVANANTHAPURAM.

ADDL.R7 MUJAHEDDEEN BALUSERRY, IMAM, OOTUKUZH,
THIRUVANATHAPURAM.

ARE IMPELLED AS ADDL.R2 TO R7 AS PER ORDER DATED 11.7.11 IN
CRL.M.A.NO.2006/2011 IN CRL.M.C.NO.4381/2010.

ADDL.R3 DELETED IS DELETED AT THE RISK OF PETITIONER AS PER
ORDER DATED 1.7.2014 IN CRL.M.A.NO.2455/13

ADDL.R5 IS DELETED AT THE RISK OF THE PETITIONER AS PER ORDER
DATED 11.2.15 IN CRL.M.A.NO.965/15

R1 BY PUBLIC PROSECUTOR-SMT.V.H. JASMINE
ADDL.R6 BY ADV. SRI.K.V.SOHAN
ADDL.R6 BY ADV. SRI.M.R.RAJESH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON
24.02.2015, THE COURT ON 26-03-2015 PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE-A: TRUE COPY OF PAGES 234 & 235 OF THE TEXT STEPPING STONES.

ANNEXURE-B: CERTIFIED COPY OF C.P.NO.37/10 PENDING ON THE FILE OF
JFMC-III, THIRUVANANTHAPURAM.

/TRUE COPY/

P.S TO JUDGE

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K. RAMAKRISHNAN, J.

.....
Crl.M.C.No.4381 of 2010
.....

Dated this the 26th day of March, 2015.

“CR”

O R D E R

The accused in C.P.No.37/2010 on the file of the Judicial First Class Magistrate Court-III, is the petitioner herein. Petitioner is the Managing Director of a publication firm by name New Jyothi Publications. He was given contract for the publication work of the text book for Class-2 for CBSE English Medium for the academic year 2010-11. Accordingly, he published a syllabus book “Stepping Stones Part-II”. This book was divided into four parts namely English, Mathematics, Information Studies and General Knowledge. In the General Knowledge section, in Unit 18, towards the chapter Religious Leaders, the pictures of world famous religious leaders such as Buddha, Sankaracharya, Jesus Christ, Guru Nanak, Prophet Mohammed and Vardhamana Mahaveer were given. On the left side is a short description of the religious leaders and on the right side of their pictures. Item No.5 in the religious leaders, the picture of Prophet Mohammed was given with a description that he is the founder of Islam and Koran is the holy book

of Islam. That portion of the book containing the picture is produced as Annexure-A.

2. On seeing the publication, certain fundamentalists belonging to the organization by name popular democratic front, styled themselves as protectors of Islam and Prophet Mohammed, barged into the office of the petitioner on 24.5.2010 and destroyed the office properties and committed mischief. According to them, there is an Islamic injunction restraining any person from publishing the images of Prophet Mohammed in any manner whatsoever and any such publication is blasphemous and against the sentiments of Moslems and Islam. On the basis of the statement given by the petitioner, a crime was registered as Crime No.391/2010 of Thambanoor Police Station against the persons who attacked the institution of the petitioner alleging offences under sections 143, 147, 148, 149, 452, 427 and 436 of the Indian Penal Code. On the basis of the statement given by the additional 4th respondent, another crime was registered as Crime No.390/2010 against the petitioner of the same police station under Section 153A(a) of the Indian Penal Code alleging that by causing publication of the picture of Prophet

Mohammed in Anneuxre-A, he had committed blasphemous and wounded the sentiments of Islam community and thereby he had committed the above said offence. After investigation, Annexure-B final report was filed and it was taken on file as C.P.No.37/2010. Even assuming that the entire allegations are accepted, there is no offence under Section 153 A(a) of the Indian Penal Code was committed. There is no injunction in the Koran that photographs of Prophet Mohammed should not be published. What is prohibited in the Koran and Prophet Mohammed is only against worshiping of human being and there is only one God, no other person can be projected as God and he should not be worshiped. There is no intention on the part of the petitioner to instigate or create hatredness by making the publication. When somebody objected the same, the same were withdrawn and the photo was removed from the publication. So no offence under section 153 A(a) of the Indian Penal Code was committed and proceeding with the case will only amount to abuse of process of court. So he has no other remedy except to approach this Court seeking the following relief:

“Hence it is prayed that the final report Annexure B

may be quashed.”

3. Heard the counsel for the petitioner Sri. Sasthamangalam S. Ajithkumar, Sri.K.V.Sohan., learned counsel appearing for additional 6th respondent and Smt.V.H.Jasmine, the learned Public Prosecutor and perused the case diary file.

4. The learned counsel for the petitioner submitted that no sanction under section 196 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') has been obtained before filing the final report and the court should not have taken cognizance of the case in view of the bar under section 196 of the Code. Further, the syllabus was approved by the concerned department and they have only published the book and the petitioner had no intention to humiliate or create hatredness among any religious group and when it was brought to the notice that there were oppositions, he had immediately made arrangements to withdraw those books and tendered his apology. He had relied on the decision reported in **Manzar Sayeed Khan v. State of Maharashtra and another** (2007 KHC 3326) in support of his case.

5. On the other hand, the learned Public Prosecutor

submitted that Prophet Mohammed had declared that he should not be worshiped as a God and people should only believe in God and not project any human being as God make him more than the God. Further, there is a prohibition in Koran that picture of Prophet Mohammed should not be published and if such a photograph is published, there is a possibility of people violating the injunction of Koran and start worshiping Prophet Mohammed, which was restrained by Prophet Mohammed himself and it is likely to create wound in the minds of persons, who are professing Islam and thereby the act of the petitioner will amount to offence under section 153 A (a) of the Indian Penal Code and it is not a case to be quashed invoking the power under Section 482 of the Code considering the public interest. Sri.K.V.Sohan also supported the view of the Public Prosecutor.

6. It is an admitted fact that petitioner is the Managing Director of a publishing firm by name New Jyothi Publications and he was given the contract for publication work of the text book for Class-2 for CBSE English Medium for the academic year 2010-11 and accordingly he had published a syllabus book with name "Stepping Stones Part-II", which was divided into four parts

namely English, Mathematic, Information Studies and General Knowledge. In General Knowledge Section, in Unit 18, towards the Chapter Religious Leaders, publication of world famous leaders such as Buddha, Sankaracharya, Jesus Christ, Guru Nanak, Prophet Mohammed and Vardhamana Mahaveer were printed with descriptions of them was given on the side of the picture. Item No.5 in the Religious Leaders is the picture of Prophet Mohammed with a halo shown on the right side with a description that he is the founder of Islam and Koran is the holy book. The particular page containing the impugned picture is produced and marked as Annexure-A. It is also an admitted fact that, on knowing about the publication, some persons claiming to be the protectors of Islam and Prophet Mohammed, attacked the institution of the petitioner and caused damage on the allegation that there is Islamic injunction restraining any person from publishing the images of Prophet Mohammed and such publication will amount to blasphemous and wound the sentiments of Moslems and persons following Islam and caused damage to the institution of the petitioner and on the basis of the complaint given by him, a case was registered as Crime No.391/2010

of Thambanoor police station under Sections 143, 147, 148, 149, 452, 427 and 436 of the Indian Penal Code and investigation in that case is continuing. It is also an admitted fact that on the basis of the statement given by the additional 4th respondent, a case was registered as Crime No.390/2010 against the petitioner of the same police station alleging the offence under section 153 A(a) of the Indian Penal Code by making the publication of the picture of Prophet Mohammed he had committed blaspheme and wounded the sentiments of Islam Community as he belongs to Christian Community and that was done with a malafide intention. After investigation, Annexure-B final report was filed against the petitioner before the Judicial First Class Magistrate Court-III, Thrivananthapuram and the learned Magistrate had taken cognizance of the case as C.P.No.37/2010 and it is pending before that court.

7. Originally, the petitioner had impleaded the Sub Inspector of Police, Thampanoor Police Station alone as respondent and subsequently additional respondents 2 to 7 were impleaded as per order in Crl.M.A.No.2006/2011 and subsequently additional respondents 3 and 5 were deleted as per order in Crl.M.A.No.2455/2013 and Crl.M.A.965/2015

respectively. Though the defacto complainant was served thorough his wife, he did not appear. Except the additional sixth respondent, none appeared to represent the party respondents.

8. Section 153 A of the Indian Penal Code reads as follows:

“153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc.,and doing acts prejudicial to maintenance of harmony:-(1) whoever-

(a) by words, either spoken or written, or by sign or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility, [or]

[(c) organizes any exercise, movement, drill or other

similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial language or regional group or caste or community,]

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship, etc:-(2)

whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]”

9. In order to attract the offence under Section 153 A of the Indian Penal Code, the act of the accused must be made

with an intention to promote enmity between two groups on the grounds of religion, race, place of birth, residence, language etc and doing acts prejudicially to maintenance of harmony and it must instigate the feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities and it must be prejudicially to maintenance of harmony between different religious, racial, language or regional groups or castes or community and likely to disturb public tranquility.

10. In the decision reported in **Bilal Ahmed Kaloo v. State of A.P** (1997(7) SCC 431) the Hon'ble Supreme Court has held that in order to attract the offence under section 153 A of the Indian Penal Code, mens rea is the necessary ingredient. If there is no intention to cause any ill will or hatred feeling of persons mentioned in the section, merely because some publication is made, is not sufficient to attract the offence under Section 153 A of the Indian Penal Code. This was followed in the decision reported in **Manzar Sayeed Khan v. State of Maharashtra and Another** (2007 KHC 3326). The Constitution Validity of Section 153 A of the Indian Penal Code was upheld by the Allahabad High Court in **Sheikh**

Wajih Uddin v. The State (AIR 1963 Allahabad 335).

11. In the decision reported in **R.V.Lemon R.V Gay News Ltd**(1979 (1) All E.R.898) it has been held that:

“In order to secure a conviction for the offence of publishing a blasphemous libel it was sufficient, for the purpose of establishing mens rea, for the prosecution to prove an intention to publish material which was in fact blasphemous and it was not necessary for them to prove further that the defendants intended to blaspheme”.

12. In the decision reported in **Joseph Bain D'Souza and another v. State of Maharashtra and others** (1995Crl.L.J.1316), the Bombay High Court has held that:

“In order to see as to whether the said articles come within the ambit or purview of Ss. 153A and 153B of the Code, Court will have to read the articles as a whole and not out of the context. Court also cannot go into the motive of writing those articles. Motive is irrelevant. The articles when read as a whole must fall within the mischief of Ss.153A and 153 B of the Code. If, after reading the articles, Court comes to the conclusion that the same are likely to promote ill will, spite and hatred amongst the communities, then the said articles or editorials will come

within the mischief of S.153A and 153B of the Code”.

In the same decision it has been observed that:

“It is true that in some of these articles due to the emotional outburst high-flown and caustic language was used but this per se will not fall within the mischief of Section 153A and 153B of the Code”.

It is also observed in the same decision that:

“These articles do not criticise Muslims as a whole but criticise Muslims who were traitors to India. This attitude of the Government, according to these articles, provided Pakistan an opportunity to create explosive situation like atom bomb in India. The main thrust of these articles was against anti-national Muslims and attitude of police and the Government. In these articles reference was also made to respect holy Koran which, according to the editor, not only belongs to the Muslims but to the whole humanity. In the said editorials appeal was also made to the Muslims to forget the past and to join the mainstream of public life in India.”

13. So under the circumstances, it was observed in the decision that even if some of the persons are likely to be agitated on account of the observations made in the article, that alone is not sufficient to bring that article under the

mischievous of sections 153A and 153B of the Indian Penal Code.

14. In the decision reported in **Balwant Singh and another v. State of Punjab** (AIR 1995 SC 1785), it has been observed that:

“Mere casual raising of some slogans, a couple of times by accused persons without intention to incite people to create disorder neither constitute any threat to Govt. of India nor it give rise to feeling of enmity of hatred among different communities or religious or other groups so as to attract the offence under section either 124A or 153 A of the Indian Penal Code”.

15. In the decision reported in **The State of Bihar v. Ghulam Sarwar and another** (AIR 1965 Patna 393), the Patna High Court has held that:

“The mens rea of the authors is the main ingredient of the offence under section 153A. In order to ascertain the intention of the accused, the offending article or the pamphlet must be read as a whole and that the circumstances attending the publication must also be taken into account”.

16. In the decision reported in **Debi Soren and others v. The State** (AIR 1954 Patna 254), the Patna High Court has held that:

“In a democratic country criticisms of Governmental measures and administrative action are to some extent unavoidable; they are made for the purpose of enlisting popular support, and in considering the effect of such criticisms no serious notice ought to be taken of crude, blundering attempts or of rhetorical exaggerations by which nobody is likely to be impressed. With the change of times, the effect of criticisms also changes; what was damaging contempt or hatred of a bureaucratic Government is not so of a popular Government - a Government which can neither afford to be hyper-sensitive, nor impervious, to criticism”.

17. In the decision reported in **A.M.A. Zoman v. Emperor** (AIR 1933 Calcutta 139), it has been observed that :

“While there was criticisms in an article of British Imperialism and the Rulers of India accusing them of exploiting and crushing the “workers” and the proletariat, the article could not be said to be calculated to promote feelings of enmity or hatred between the Europeans as Europeans and the Indians as Indians and in such circumstances the charge under section 153 A cannot be sustained “.

18. The same view has been reiterated in the decision reported in **Satya Ranjan Bakshi v. Emperor** (AIR 1929

Calcutta 309). It is further observed therein that”

“Real intention to incite one community against another is absolutely essential and mere probability of such result is insufficient”.

19. The same view has been reiterated in the decision reported in **Devi Sharanand another v. Emperor** (AIR 1927 Lahore 594). In the decision reported in **Gopal Vinayak Godse v. The Union of India and others** (AIR 1971 Bombay 56) the Special Bench of the Bombay High Court has considered the scope of section 153A of the Indian Penal Code and the matters to be considered which reads as follows:

“While determining sustainability of a charge under Section 153 A that offending passages in a book read in the context of the book as a whole, promote feeling of enmity or hatred between classes of citizens in India, it is important to remember that: (1) Under Section 153A, it is not necessary to prove that as a result of the objectionable matter, enmity or hatred was in fact caused between the different classes. (2) Intention to promote enmity or hatred, apart from what appears from the writing itself, is not a necessary ingredient of the offence. It is enough to show that the language of the writing is of a nature calculated to promote feelings of enmity or hatred for, a person must be

presumed to intend the natural consequences of his act. (3) The matter charged as being within the mischief of Section 153 A must be read as a whole. One cannot rely on stray, isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning. (4) For judging what are the natural or probable consequences of the writing, it is permissible to take into consideration the class of readers for whom the book is primarily meant as also the state of feelings between the different classes or communities at the relevant time. (5) If the writing is calculated to promote feelings of enmity or hatred, it is no defence to a charge under S.153A that the writing contains a truthful account of past events or is otherwise supported by good authority. If a writer is disloyal to history, it might be easier to prove that history was distorted in order to achieve a particular end e.g. To promote feelings of enmity or hatred between different classes or communities. But adherence to the strict path of history is not by itself a complete defence to a charge under Section 153A. In fact, greater the truth, greater the impact of the writing on the minds of its readers, if the writing is otherwise calculated to produce mischief".

20. From the above discussions, it is clear that merely because some publications have been made without the

intention to create any enmity between the two groups or sentiments which is likely to affect the public disorder is not sufficient to attract the offence under section 153 A of the Indian Penal Code. In this case, even going by the statement of the witnesses narrated, it is seen that there was a feeling among Muslims that there is an injunction in Koran that the picture of Prophet Mohammed should not be published. But it will be seen that what is intended by Prophet Mohammed is that people are expected to worship only one God and human beings are not expected to be projected as God and they should not be treated above God and he had only prohibited idol worshiping or worshiping Prophet Mohammed as a God. What is intended by the Prophet is only against worship of human being as a God and not otherwise. Further it is also seen from the evidence collected that when some objections were raised, the petitioner had tendered apology and withdrew all the publications and that will go to show that he had no intention to create hatred among the community people or insult the feelings of the community people so as to cause public disorder. If, such an intention is not there, then it cannot be said that offence under section 153A of the

Indian Penal Code has been committed by the petitioner and as such, no charge under section 153 A can be attracted against the petitioner and proceeding with the case as against him for that offence is nothing but an abuse of process of court and it is liable to be quashed on that ground.

21. Further Section 196 of the Code reads as follows:

“196. Prosecution for offences against the State and for criminal conspiracy to commit such offence:- (1)
No Court shall take cognizance of:-

(a) any offence punishable under Chapter VI or under section 153 A, [section 295 A or sub-section (1) of section 505] of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, or

(c) any such abetment, as is described in section 108 A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government.

[(1A) No Court shall take cognizance of-

(a) any offence punishable under section 153 B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the

District Magistrate].

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal Code (45 of 1860), other than a criminal conspiracy to commit[an offence] punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings;

Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction [under sub-section (1) or sub-section(1A) and the District Magistrate may, before according sanction under sub-section (1A)] and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 155".

22. The section creates a bar for taking cognizance of the case for the offence under sections 153 and 153A without

sanction from the Central Government or the State Government or of the District Magistrate. This is clear from the observations made in the decision reported in **State of Karnataka and another v. Pastor P.Raju** (2006(6) SCC 728) wherein it has been observed that section 196 is only for taking cognizance of the case and not for filing the first information report or conducting investigation. Such an observation has been made by this Court in **Sudhish K and others v. State of Kerala and another** (2009(4) KHC 333) as well. In this case, no sanction has been obtained either from the Central Government or from the State Government or from the District Magistrate as provided under section 196 of the Code for prosecuting the petitioner for the offence under section 153A of the Indian Penal Code and without such sanction, taking cognizance of the case against the petitioner by the learned Magistrate is also bad in law as it is barred under section 196 of the Code and on that ground also the case against the petitioner is not maintainable and the same is liable to be quashed.

In the result, the petitioner is entitled to get the relief of quashing the proceedings invoking the power under section 482 of the Code as ingredients of section 153 A of the Indian

Penal Code have not been made out and also for want of sanction for prosecuting the petitioner for the offence under section 153 A of the Indian Penal Code as contemplated under section 196 of the Code, the cognizance is bad. So the petition is allowed and further proceedings as against the petitioner in C.P.No.37/2010 of the Judicial First Class Magistrate Court-III, Thiruvananthapuram (Crime No.391/2010 of Thambanoor police Station) is quashed.

Office is directed to communicate a copy of this order to the concerned court immediately.

Sd/-
K. RAMAKRISHNAN, JUDGE.

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/true copy/

P.S to Judge

