

Respondent No. 2 with Naupada Nagar Police Station.

2. Brief facts which are relevant and germane for the purpose of deciding this petition are that the Petitioner is a businessman and proprietor of a business, known as “Moxx Footwear and Marketing”. He is wholesaler of footwear articles and purchases the goods for manufacture from the market and sells the said footwear articles all over Mumbai, Thane districts and metropolitan region. The Petitioner sells the footwears to the retailer, who in turn sell it directly to the consumers.

3. The Petitioner sold Chappals and Sandals at the relevant time, which were admittedly not manufactured by him. The sole of the footwears contained alphabets A to P which were written in English and in capital letter. One Muslim, who purchased those footwears, perceived that the alphabet “M” which was printed on the sole resembled the word which represents “Allah”. He, therefore, felt that his religious sentiments were deliberately hurt by the Petitioner, and he filed a complaint with Naupada Thane Police Station. The officer who recorded a complaint registered the offences punishable under Section 295-A read with 34 IPC. Thereafter police came at the

house of the Petitioner at about 5.30 a.m. in the morning alongwith 11 officers in a police van and took him to the police station and kept him there for about ten hours. The entire stock of those sandals, worth Rs. 1.5 lakhs were confiscated. The Petitioner, being aggrieved by the said action, has approached this Court by filing writ petition under Article 226 of the Constitution of India and S. 482 Cr. P. C.

4. It is necessary to briefly point out the circumstances under which this Court while exercising its writ jurisdiction can entertain an application for quashing the FIR or process which is issued by a Magistrate. It is not necessary to go through the ratio of the judgments which begins from the judgment of the Apex Court in the case of - ***R. P. Kapur, Appellant Vs. State of Punjab, Respondent [AIR 1960 SC 866]*** to the latest judgment of the Apex Court in the case of - ***Narinder Singh & Ors., Appellants Vs. State of Punjab & Anr., Respondents [(2014) 6 SCC 466]***. There was some controversy whether the restrictions imposed by the Cr. P. C. on a Magistrate under Section 320 Cr. P. C. would cast a similar restriction on the High Court for quashing the FIR, particularly one in which allegations of cognizable offence is made out. The Apex Court, in the case of - ***Gian***

Singh, Appellant Vs. State of Punjab & Anr., Respondents [(2012) 10 SCC 303] considered the said issue and in terms held that the power of the High Court under Article 226 of the Constitution of India and under S. 482 Cr. P. C. is not restricted by the restrictions imposed on a magistrate.

5. The Code of Criminal Procedure also gives inherent powers to the High Court in respect of cases which are not specifically mentioned in the other provisions of the Code, and therefore, in order to prevent abuse of the process of the Court, the High Court can exercise its inherent jurisdiction and quash a complaint, including an FIR. The Apex Court in the case of – ***M/s. Pepsi Foods Ltd. & Anr., Appellants Vs. Special Judicial Magistrate & Ors., Respondents, [1998 Supreme Court 128]*** has observed that once an FIR is registered and the criminal law is set in motion, it has several adverse consequences which entails arrest, detention, interrogation and hanging sword over the head of the accused till case is finally concluded one way or the other. The Apex Court has observed that the investigating officer or the police officer before whom a complaint is filed is not expected to automatically register an FIR. When a

complaint is filed, he is expected to make a preliminary investigation and find out whether the ingredients of the offences, which are alleged to have taken place, are there in the said complaint. It is observed by the Apex Court in paragraph 28 as under:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

6. Having seen scope, ambit and power of the police officer of registration of the FIR, and considered the power of the High Court in entertaining application for quashing of FIR, it will be necessary to see as to whether in the present case, offence under Section 295-A of IPC has been made out, even if averments made in the complaint are accepted at its face value.

7. The learned APP appearing for the State has now informed us that prosecution has consulted several Urdu and Arabic scholars to find out whether the letter or alphabet “M” if observed from different angle represents the sacred word “Allah”, and all the Urdu scholars have unanimously given opinion that viewed from any angle, it would not reveal the sacred word “Allah”. They therefore decided to file “C” summary report. However, she fairly informed us after taking instructions from the investigating officer that this fact is not communicated to the Petitioner nor any order is obtained from the Magistrate.

8. Though application for “C” summary is filed and the case eventually would be closed, we would still like to examine whether the complaint constitutes an offence under Section 295-A I. P. C. It

would be relevant to refer to the said section, which reads as under:

“295A. Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizen of India, by words, either spoken or written, or by signs or by visible representations, or otherwise insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

Perusal of the section clearly indicates that there has to be a deliberate intention on the part of an author to insult or attempt to insult the religion or religious beliefs of any class of citizens which are perpetrated with a deliberate and malicious intention of outraging religious feelings of that class. It is further evident that insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention of outraging the religious feelings of that class do not come within the ambit of the said section.

9. The Apex Court in the case of – ***Ramji Lal Modi, Petitioner Vs. State of U. P., Respondent [A.I.R. 1967 SC 620]*** had an occasion to consider the said provision and the Apex Court while interpreting the said section had observed in paragraph 8 as under:

“8. It is pointed out that s. 295A has been included in chapter XV of the Indian Penal Code which deals with offences relating to religion and not in chapter VIII which deals with offences against the public tranquillity and from this circumstance it is faintly sought to be urged, therefore, that offences relating to religion have no bearing on the maintenance of public order or tranquillity and, consequently, a law creating an offence relating to religion and imposing restrictions on the right to freedom of speech and expression cannot claim the protection of clause (2) of Art. 19. A reference to Arts. 25 and 26 of the Constitution, which guarantee the right to freedom of religion, will show that the argument is utterly untenable. The right to freedom of religion assured by those Articles is expressly made subject to public order, morality and health. Therefore, 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. These two Articles in terms contemplate that restrictions may be imposed on the rights guaranteed by them in the interests of public order.”

10. The Full Bench of the Calcutta High Court, in the case of
 – *Sujato Bhadra, Appellant Vs. State of West Bengal [2005 Cri.L.J.*

368] has considered the scope, ambit, impact and effect of the said provision and stressed the origin of this section after taking into consideration the report submitted by the Law Commission, and also the Select Committee report and has made the following observations :

- (i) insult or attempt to insult must be made with an intention, which must be deliberate or malicious;
- (ii) while gathering the legislative intention it has to be seen whether the letter and spirit of the section has been examined;
- (iii) section 295 A does not penalise any and every act of insult but has made only aggravated form of insult punishable, as can be seen in paragraph 15 of the said judgment;
- (iv) it is enough for the prosecution to show that language of any writing is of a nature calculated to promote feelings of enmity or hatred and it has to be presumed that the person know about the natural consequences of his act;
- (v) the complaint in order to come within the mischief of Section 153A must be read as a whole and reliance should not be placed on stray, isolated passages.

The Full Bench of Calcutta High Court considered the judgments of

the Supreme Court, and thereafter considering the fact of the said case has come to a conclusion that the book written by the author was not intended to insult the religion or religious beliefs.

11. In our view, ratio of the said judgment clearly apply to the facts of the present case and we concur with the view taken by the Calcutta High Court. In the present case, no article has been written by the Petitioner, nor has he published it. He has merely after purchasing the footwears, manufactured by a third party, sold to his retailers, who in turn sold it to the complainant who, incidentally, is a Muslim. The Petitioner, therefore, did not have intention or knowledge that by doing this act, he would be insulting religious beliefs of a community. The police themselves have now come to a conclusion that the alphabet “M” on the sole of the Chappal / sandal does not represent the sacred word “Allah”.

12. We have, therefore, no hesitation while exercising our writ jurisdiction under Article 226 of the Constitution of India, as also inherent jurisdiction under Section 482 Cr. P. C., in quashing the frivolous complaint which has been filed by the complainant.

13. We must, however, before parting with the judgment and

order, mention here that Article 51-A inserted in our Constitution imposes duties and obligations on a citizen. The said article comes under the Chapter “Fundamental Duties”. Article 51(e) states that it is a duty of every citizen of India to promote harmony and spirit of common brotherhood amongst all people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women. Article 51(f) states that it is the duty to value and preserve the rich heritage of our composite culture.

14. It is, therefore, duty of all the citizens of India to ensure that there is religious, linguistic harmony amongst all citizens and citizens are expected to exercise due care and restrain themselves before making any allegation of such nature. The police officers who are registering the offence under Section 295-A IPC also should be equally cautious, and only if they are satisfied that ingredients of the offence are made out, then only offence should be registered. It is the duty of the investigating officer not to register offence, just to appease a section of the community or a political party, or leader or corporator, and he is expected to independently assess the situation and ensure

that all the ingredients of the offence are made out. We are aware that the responsibility is cast on the police officer who, on many occasions, are blamed if they take any action, and even in case if they do not take action. This is a clear case of total non application of mind, which has resulted in false prosecution of an honest businessman who is carrying on lawful business, and who is not the author of the sole of the footwear since he had purchased it from open market.

15. We hope and trust that in future the police officers before taking any such steps should consult with their senior officers and make proper and preliminary investigation, as laid down by the Apex Court in the case of - ***Lalita Kumari Vs. State of U. P. [(2014) 2 SCC 1]***. As a result of this action, the Petitioner has suffered loss of around Rs. 1,50,000/- as also the mental agony, apart from humiliation at the hands of the police. However, taking into consideration the facts and circumstances of the case, we do not propose to impose costs on the State. Writ petition is therefore allowed in terms of prayer clause (b), and is accordingly disposed of in the aforesaid terms.

Sd/-

[Ms. NUTAN D. SARDESSAI, J.]

Sd/-

[V. M. KANADE, J.]