

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.9203 of 2013

Arising Out of PS.Case No. -2564 Year- 2011 Thana -WEST CHAMPARAN COMPLAINT
District- -

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Mrs. Taslima Nasrin, W/O Dr. Md. Rajab Ali, Permanent Resident of 4
Muninvagen, Upplands, Vesby , Sweden

.... Petitioner/s

Versus

1. The State Of Bihar
2. Md. Murad Ali, Advocate S/O Late Murtaza Ali Resident of Village- Baswaria,
Ward No.-28 Post & Police Station- Bettiah Town, District- West Champaran At
Bettiah

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Amit Shrivastava, Advocate.
Mr. Girish Pandey, Advocate.

For the Opposite Party/s: Mr. Mukeshwar Dayal, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 12-10-2017

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The petitioner has filed this quashing application,
under Section 482 of the Code of Criminal Procedure, 1973
(hereinafter referred to as the 'Code') seeking indulgence of the Court
to set aside the criminal proceeding including cognizance order dated
24.05.2012 passed by the learned Chief Judicial Magistrate, West
Champaran at Bettiah in Complaint Case No. 2564(C) of 2011
thereby taking cognizance of offence under Sections 295A, 298, 500
and 504 of the Indian Penal Code.

3. Short fact, as narrated in the complaint, is that on



23.10.2011, complainant, a practicing advocate at Bettiah, read a news item published in the Hindustan newspaper regarding comments made by petitioner on her Twitter handle stating therein that “Muslim women are entitled to have sex on earth with 72 virgin men as they would not get such liberty in heaven.” Complainant alleged that this remark has outraged religious feelings of Muslims women of entire world including the Muslim women of this country.

4. The Magistrate, after recording statement of the complainant on solemn affirmation, under Section 200 of the Code, without entering into the enquiry, under Section 202 of the Code, has taken cognizance of the offence.

5. Learned counsel for the petitioner, seeking quashing of the impugned order on the ground that no ingredients of the alleged offence is made out in the complaint, submits that there is no application of any of the offences and Section 298 of the Indian Penal Code is not drawn at all because no word was uttered by the accused – petitioner in hearing of anyone as uttering of words likely to wound the religious feelings of others is necessary to constitute that offence and also there is no ingredient relating to Section 499 of the Indian Penal Code i.e., defamation, because no any imputation is made by the accused to any of the person intending to harm reputation of that person and also there is lack of any intention of criminal intimidation.



As far as Section 295A of the Indian Penal Code is concerned, at best, the remark is only sarcastic in nature because petitioner, a muslim by faith, is a reputed writer and novelist of international repute and also fighting for the rights of Muslim women. The remark made by the petitioner on her twitter handle was for her followers; moreover the remark is not malicious or deliberate to outrage the religious feeling of a community and the petitioner herself follows Islamic religion. Since there is no malicious imputation in the remark and it was not deliberate to outrage the public disorder and the fact remains that no public disorder was ever caused anywhere even in this country over such remark, nowhere else such complaint of criminal prosecution was launched by anybody to the knowledge of the petitioner. Learned counsel however emphasizes that this section does not penalize every act of insult or attempt to insult of religion rather only such insult which is deliberate and with malicious intent of outraging the religious feelings.

6. Learned counsel places reliance at paragraph no. 7 to a recent judgment of the Apex Court passed in the case of ***Mahendra Singh Dhoni v. Yerraguntla Shyamsundar and Anr.*** reported in ***AIR 2017 Sc 2392***, and submits that there is emphasis laid on the calculated tendency of the said aggravated form of insult and also to disrupt the public order to invite the penalty and has submitted that



there is no public disorder caused anywhere in the country, so the remark made by the petitioner does not contain the basic ingredients of the offence of Section 295A of the Indian Penal Code.

7. Learned counsel for the petitioner further submits that no any person or a woman was examined by the complainant in order to *prima facie* show that Muslim women religious feelings were hurt after reading the tweet being published in the newspaper, so the complainant, being a lawyer, only to get highlighted to seek a publicity stunt, has lodged this complaint and despite filing his Vakalatnama in this case on 17.06.2013 even after giving repeated adjournments, not appeared.

8. Contrary to that, learned counsel for the State submits that *prima facie* offence under Section 295A of the Indian Penal Code is made out.

9. Having considered the rival submissions of both sides and on perusal of record, first let us analyze Section 295A of the Indian Penal Code, which reads as follows:

“295-A. Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.- Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens 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.”

10. The emphasis in this section is that a person with deliberate and malicious acts intends to outrage religious feeling of any class of Indian citizen by using word either spoken or written or by sign or by any visible representation or otherwise insults or attempts to insult the religion or the religious beliefs of that class, then the offence is attracted so the word in writing must be done with deliberate and malicious intention only for outraging the religious feelings of any class of citizen of the country. So the only question is whether the tweet made by the petitioner was made with deliberate and malicious intention to outrage the religious feeling to insult religion of Islam or its religious beliefs. In this context, para-7 of Mahendra Singh Dhoni (supra) case becomes relevant, which is quoted hereinbelow:

“7. On a perusal of the aforesaid passages, it is clear as crystal that Section 295A does not stipulate everything to be penalized and any and every act would tantamount to insult or attempt to insult the religion or the religious beliefs of class of citizens. It penalize only those acts of insults to or those varieties of attempts to insult the religion or religious belief of a class of citizens which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class of citizens. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the



Section. The Constitution Bench has further clarified that the said provision only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. Emphasis has been laid on the calculated tendency of the said aggravated form of insult and also to disrupt the public order to invite the penalty.”

11. In view of the said interpretation, it is obvious that Section 295-A does not stipulate everything to be penalized and any and every act would tantamount to insult or attempt to insult the religion or the religious beliefs of a class of citizens. The only emphasis has been laid on the calculated tendency of the said aggravated form of insult and also to disrupt the public order to invite the penalty. Any insult to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within that Section. It is also clarified that this provision only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class.

12. Section 298 IPC uses the word “uttering, words, etc., with deliberate intent to wound the religious feelings, however, Section 295A uses the word deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs. ‘Outraging’ is a much stronger word than



‘wounding’. In Murray’s dictionary ‘outrage’ is explained as “to wrong grossly, treat with gross violence or indignity”. In the instant case, the tweet made by the petitioner, a woman, professing Muslim religion, has not outraged the religious feeling and it was not made with such intention rather it was a sarcasm.

13. So having considered the contents as alleged in the complaint petition, the only conclusion is that no such ingredient of this Section 295-A of the Indian Penal Code is *prima facie* made out. As far as rest offences are concerned, they are not applicable at all. Besides this, learned Magistrate has also ignored the procedure as laid down under Section 202 of the Code. The Criminal Procedure Code as amended in the year 2005 incorporates a provision under Section 202 of the Code for postponing the issue of processes on the receipt of a complaint of an offence in which he is authorized to take cognizance in case of an accused residing at a place beyond the area of his jurisdiction in order to enquire into the case himself or to direct an investigation to be made by the police officer or by any such person, who is fit for the purposes in order to come to conclusion regarding sufficiency of ground for proceeding. So this procedure too has not been followed in the present case.

14. The Apex Court, in the case of ***Aroon Poorie vs. Jayakumar Hiremath*** reported in (2017) 7 SCC 767, has held as



follows:

“2. The above part, from the materials on record it appears that the appellant-accused in the present appeals have and maintain residence beyond the local jurisdiction of the learned trial court. Under the provisions of Section 202(1) CrPC, it was, therefore, mandatory for the learned Magistrate to hold an inquiry either by himself or direct an investigation by the police prior to the issuance of process. Admittedly, the same had not been done. If the aforesaid mandatory provisions of Section 202(1) CrPC had not been followed, the learned trial court would not have the jurisdiction to issue process/summons as has been done”.

15. Hence, the Court comes to the conclusion that neither ingredients of the alleged offences being made out nor mandatory provision of Section 202(1) CrPC has been complied, so continuation of the criminal proceeding in the instant matter would be abuse of the process of the court, therefore, entire criminal proceeding in the complaint Case No. 2564C of 2011 inclusive of the cognizance order pending in the court of Chief Judicial Magistrate, West Champaran at Bettiah stands quashed. The application stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	AFR
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