

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 2004 OF 2018

1. Ashok s/o Udaykumar Deshmukh,
Age: 27 years, Occ. Service,
R/o. Zari, Tq. & Dist. Parbhani.
2. Kundalik s/o Jagannath Deshmukh,
Age: 32 years, Occu. Agri.,
R/o. Marwadi, Tq. Jintur, Dist. Parbhani,
3. Ravi s/o. Namdeo Sawant,
Age: 34 years, Occ. Business,
R/o Venkatesh Nagar, Latur,
Tq. & Dist. Latur.
4. Gajanan s/o Bhagwanrao Hendge,
Age: 32 years, Occ. Agril.,
R/o Marwadi, Tq. Jintur, Dist. Parbhani.
5. Subhash s/o Uttamrao Javde,
Age: 27 years, Occ. Service,
R/o. Zari, Tq. & Dist. Parbhani.

... APPLICANTS

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
Vazirabad Police Station,
Nanded, Tq. & Dist. Nanded.
2. Ganesh s/o Dilip Pensalwar,
Age: 27 years, Occ. Business,
R/o Sarafa, Itwar Corner,
Nanded, Tq. & Dist. Nanded.

... RESPONDENTS

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Mr. H. P. Jadhav, Advocate for Applicants.

Mrs. V. S. Choudhari, APP for Respondent No.1 / State.

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CORAM : **T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 04th September, 2018.

JUDGMENT: (Per T. V. Nalawade, J.)

. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2 The proceeding is filed under Section 482 of the Code of Criminal Procedure for relief of quashing of FIR No.73 of 2016, registered with Vazirabad Police Station, District Nanded, for the offence punishable under Section 295-A read with 34 of the Indian Penal Code.

3 FIR is given by Respondent No.2, who did not turn up even after service of process on him. In view of nature of offence, the learned APP was asked to argue exhaustively as the State in such cases is expected to take steps. The learned APP produced on

record the papers of investigation. In FIR, allegations are made by the Respondent against the Applicants that they had posted a photograph of Lord Parshuram on the day of his Jayanti alongwith the photograph of a hero, who was given name as Parshya in the movie Sairat and question was put to the readers as to who was liked by them by writing “तुमचा आवडता परश्या कोण ?”. This post was found on the Facebook account of Applicant No.1, Ashok and allegations are made against other Applicants that they commented as "liked" on the aforesaid post and they then said bad things by other posts about Lord Parshuram. The first informant questioned on Facebook Applicant No.1 and then there were exchanges of matters between the two and also between other Applicants and first informant. The matter posted only by Accused is mentioned in the private complaint. This Court is not feeling it necessary to quote each and every quotation or statements made. It can be said that they are in respect of the beliefs and also few things mentioned in epics and Puranas involve superstition. It is the contention of the first informant that by making such statements on Facebook account by particularly Applicant Nos.1 and 3, they have hurt the feelings of the persons from Hindu religion.

4 The submissions made and record show that the first informant had virtually started exchanging his beliefs or his thoughts with the Applicants. One post of 4th May, 2016 of Ravi Sawant is there and that is expressing views about superstition developed due to a story given in Puran. All the Applicants belong to Hindu religion and some posts show that the dispute, which was raised at the time of giving name of Dr. Babasaheb Ambedkar Marathwada Vidyapeth was also discussed during exchanges. These post and contents show that the first informant virtually picked up quarrel and started exchanging thoughts by questioning thoughts, beliefs of the Applicants. He has made all the persons Accused who had given likes on the first post of Applicant No.1.

5 The learned counsel for Applicants submitted that there was no intention of the Applicants to hurt the feelings of any community or caste. He submitted that the Applicants are also Hindu and they wanted to express their beliefs with regard to the stories given in Puran and in epics. He submitted that they are entitled to have such beliefs and whatever they contended without admitting

such allegations, has rational base, scientific base. It is also submitted that these views are not original views or beliefs of the Applicants and they were expressed by renowned authors and philosophers in the past. There is substance in this submission.

6 During arguments reference was made to some observations made by the Apex Court in two cases reported as **Criminal Appeal No.141 of 2015, arising out of S.L.P. (Cri.) No.6449 of 2014** (Manik Taneja & Anr. Vs. State of Karnataka & Anr.) and also **Transfer Petition (Criminal) No.23 of 2016** decided by the Apex Court on 20th April, 2017. The Apex Court has discussed the provision of Section 295-A of the Indian Penal Code and the purpose behind it. It is observed that the act must amount to insult of the religion or religious beliefs of a class of citizen, who are perpetrated with a deliberate and malicious intention of outraging the religious feelings of that class of citizens.

7 In the present matter, some incidents or stories of Puran are involved, which apparently the Applicants do not believe. It is their contention that there is no scientific base to the things, which can

be made out from the stories. Indirectly, they want to say that it is all superstition and the things have arisen out of myth or they are intentionally created. That is their belief though they are Hindu.

8 In Hindus, there are Varnas, there is castes system and there are sects. Some believe that only Vedas, Shruties came from God and other things, which can be called as Smruties and Puran cannot be given importance equal to Shruties. Some believes that Puran have equal importance. Some believe in God Shiva and some believe in God Vishnu. Likewise some have their own God or Goddess of the family as per the tradition and they call such God or Goddess as Kuldaivat or Kuldevi. Some believe that they are descendants of some Rishi. Then there are many stories about each God, Goddess and Rishi. There are stories about Avataras of almost every God and Goddess. Those who believe that Purans have equal importance with the Shruties, they think that these stories of Purans are part of teachings of Hindu religion. Even from ancient time in Hindus, there were atheists. In the past, the atheists, who expressed their thoughts were made to suffer by believers as atheists were small in number.

9 "Enlightenment movement" picked up momentum after political and industrial revolution, which took place in the West. Then there was remarkable intellectual development and change in beliefs. A number of longstanding ideas and beliefs many of which were related to social life and religion were overthrown. Due to the contact with West, intellectual class of our society interested in social changes started talking about social reforms. The social reformers got support within no time as the class, community feeling oppressed due to discrimination on the basis of Varnas and caste system wanted such social change. Women were also subordinated and after the aforesaid movement, the women recognized the necessity of social change and they also started protesting the situation there were facing. Many prominent thinkers, social reformers of India of 19th and 20th century can be named as a philosophers produced by the enlightenment movement. Due to their efforts, many bad practices, customs like Sati were rooted out and it can be said that in India, it is the achievement of such social reformers.

10 It was not only the question of rights or sufferings of

suppressed class or right of equality. People believing in science think rationally and that class increased. From 19th century itself a trend developed in India to reject the beliefs in traditional authority. Many stories in Purans have emphasized traditional authority of top most Varna. According to some reformers, superstition also developed due to such stories and the ultimate aim behind such stories was to develop and establish traditional authority of top most Varna, Brahmanas. This authority was actually created on the basis of Varna system, caste system and stories from Puranas.

11 The right to fight against the traditional authority of aforesaid nature can be found in Article 14 of the Constitution of India. Article 19 of the Constitution of India is also important in this regard. Article 19 of the Constitution of India is as follows:

“19. Protection of certain rights regarding freedom of speech, etc.-- (1) All citizens shall have the right --

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions or co-operative societies;
- (d) to move freely throughout the territory of

India;

- (e) to reside and settle in any part of the territory of India; and
- (g) to practise any profession, or to carry on any occupation, trade or business.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence.

(3) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(4) Nothing in sub-clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

(5) Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe.

(6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,--

- (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
- (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.”

We are considering the offence punishable under Section 295-A of the Indian Penal Code and that Section runs as under:

"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."

12 In cases like present one, it is the foremost duty of the Court to ascertain the right given and then intention of accused. If the intention of accused on the basis of right was to rebut the claim of Complainant, it cannot be said that there was intention to insult. The aforesaid development in Indian society started debate amongst the persons having different beliefs even about the existence of God. As already observed, on these beliefs, there are two groups of thinkers, who are named by us as theistic persons and atheistic persons. Which thought or belief came in existence by way of reaction cannot matter. Nobody can deny that man could not have moved towards overall development, if there was no enlightenment movement.

Democracy involving right of quality and freedom of expression is also achievements of enlightenment movement. The questioning of traditional authority and superstition is a part of that process. If the person, who has questioned rational behind the proposition or story due to which traditional authority was established and continued and the proposition, which amounts to superstition, is allowed to be prosecuted only for such questioning, that step will stop human development. That is why Courts need to be very cautious in the matters like present one. The Courts need to ascertain carefully whether such questioning can be prevented in the background of aforesaid thoughts and whether such prevention will be in public interest. The interpretation of Section 295-A of the Indian Penal Code needs to be done from that angle.

13 We are living in the world based on rational system and there is no escape from it. Rational system has stood test of time on centrally important social issues. Due to all aforesaid things, there needs to be sophisticated thinking and realization that we cannot return to medieval age. We also need to keep in mind that political revolution, industrial revolution and urbanization have affected

religiosity profoundly. There may be interest to some in religiosity, but many may not have such interest. Many may have religiosity, but their orientation may be critical. In democracy, all such persons are required to live together and there is no other alternative to it.

14 The contents of "post" involved in the present matter show that one Accused had requested to give "likes" by comparing the two photographs, one was of God Parshuram and other was of a film hero of the then popular Marathi movie Sairat. The Complainant could have taken the aforesaid post in humor like all others who believe in God did. Here only it needs to be observed that in India due to absence of humor the tolerance level has gone to shocking down. Those "few" who want to get political advantage by raising such issue or who want to create rift in the society or those who are oversensitive and take such posts seriously, have created problems for our society. In the present matter, copies of various posts present in the police papers show that the Complainant had virtually started quarrel on Facebook with the Applicants over the first post. The Complainant did not supply his posts, which invited more posts on other matters. In other posts, Accused allegedly questioned the Complainant about the

existence of God Parshuram and asked for giving support to the stories told about Lord Parshuram. The questions involve rational thinking. Stories of Lord Parshuram can be found in Puran. These stories are in favour of one top most Varna of Varna system and they are against other Varnas. The theme of such stories show that the writer wanted to establish the authority of a particular Varna and undermine not only the authority, but ability also of other Varna of the persons, who are shown to be placed in other Varnas. The Courts need to keep in mind the distinction between the history and the stories from Puran. Thus, the trial of such allegations, infact involves fight between the beliefs of persons from different Varnas and also of conservatives and of progressive persons. Renowned philosophers, who did the work of reformation, authors, leaders and even the judges have questioned such traditional authority shown to be created by the stories of Purans. The Courts are not expected to allow the debate on such thoughts or beliefs before it. Such debate will divide the society further. The Court is not expected to give decision on such issues.

15 On merits also, it cannot be said that behind putting the aforesaid first post, there was intention to insult own religion, religion

of the Accused or there was intention to insult any community or any caste. This Court further holds that allowing the trial of such issue as an offence will prevent the persons involved in the movement, which is started against superstition, from continuing the movement. As already observed above, it will be interference in the rights given to the persons living in India under Articles 14 and 19 of the Constitution of India. In the result, the following order is passed:

ORDER

- I. The application is allowed.
- II. Relief is granted in terms of prayer clause (C).
- III. Rule is made absolute in those terms.

[SMT. VIBHA KANKANWADI, J.]

[T. V. NALAWADE, J.]

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