

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRR No. 1677 of 2003 (O&M)

Date of Decision: 18.07.2018

Ram Chander Sarkar and another

....Petitioners

VERSUS

Bhupinder Singh

....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Damandhir Advocate
for Mr. Amarjeet Markan, Advocate
for the petitioners.

None for the respondent.

SURINDER GUPTA, J.

Respondent-Bhupinder Singh Khalsa filed complaint against M/s B. Lal Beeri Factory Pvt. Ltd. Calcutta (now Kolkata); Dhullian Trading Co., Salempur Market, Delhi; Sunder Dass, Janvadh Lal, Raikot, Ludhiana; Ramesh Kumar @ Bholla, Mittal Traders, New Grain Market, Sangrur and Shri Gayatri Pictograph, Sivakasi, Madras (now Chennai) for offences punishable under Sections 295-A and 298 of Indian Penal Code.

2. Learned Magistrate, Sangrur found no reason to summon Sunder Dass and Ramesh Kumar @ Bholla arrayed as accused no. 3 and 4 in complaint and ordered summoning of remaining accused for offences punishable under Sections 295-A and 298 IPC. After recording pre-charge evidence, aforesaid accused were ordered to be discharged with the observation that no prior permission has been taken by complainant for prosecuting the accused for the offence punishable under Section 295-A IPC and the offence punishable under Section 298 IPC is not made out against them.

3. Against order of learned Magistrate, respondent filed revision before Court of Sessions and learned Additional Sessions Judge, Sangrur vide order dated 17.05.2003 set aside order of learned Magistrate to the extent that he discharged the summoned accused for the offence punishable under Section 298 IPC with the observation that offence under Section 298 IPC is made out against these accused and trial Court was directed to frame charge and proceed further in the matter in accordance with law.

4. Against this order, petitioners Ram Chander Sarkar and K.T. Sampy have filed instant revision in which proceedings before trial Court were ordered to be stayed vide order dated 16.08.2004.

5. Facts of the complaint in brief as discussed by learned Magistrate in para 3 of his order are reproduced as follows:-

“3. The accused no. 1 is manufacturer of beeris prepared from tobacco and after manufacturing the same, it distributes the same in different cities of the country. The accused no. 2 sells the said beeris in Punjab through accused no. 3. The accused no. 5 got prepared the calendar for the year 1996 in which, there is photograph of Sai Baba and four religious places of different religions. There is also a photograph of Darbar Sahib, Amritsar on the said calendar. In the said calendar, it was written that always use 666 number beeri and bundles of beeris have also been printed in the said calendar. The accused no. 1 after getting the said calendar published and printed sent the same to different sale offices and to the distributors. It is stated

that accused by printing and publishing the calendar has hurt the religious feelings of Sikhs and insulted their religious place. The complainant (sic accused) delivered the copies of said calendar to different persons having belief in Sikh religion. The complainant reported the matter to the police, but no action was taken. Hence, the present complaint.”

6. The question, which arises for consideration in this case, is as to whether the offence under Section 298 IPC is disclosed against the accused? Section 298 IPC reads as follows:-

“298. Uttering, words, etc., with deliberate intent to wound the religious feelings of any person — Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places, any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

7. To hold a person liable under Section 298 IPC, following ingredients must be established:-

1. the accused uttered any word or made any sound in the hearing of, or made any gesture in the presence of that person or placed an object in the sight of the person;
2. the accused did so intentionally and deliberately; and
3. his intention was to wound the religious feelings of any other persons.

8. It is evident from provisions of above referred section that essence of offence under Section 298 IPC consists of deliberate intention of wounding religious feelings of persons by uttering words or making any sound in their hearing or making gesture and placing any object in their sight. The deliberate intention has to be inferred from the words spoken, place where they were spoken and the person to whom those words were addressed. In this case neither any word or sound was addressed to complainant nor any gesture in his presence was made or no object was placed before him to offend his religious feelings.

9. The entire stress of complainant is on publication of a calendar by accused no. 1 M/s B. Lal Beeri Factory, which has photograph of a saint known as Sai Baba with inscription below his photograph "Sabka Malik Ek" and around his photograph temple, mosque, church and *gurudwara sahib* have been shown in the picture.

10. Though, petitioner no. 1-Ram Chander Sarkar is not accused by name in the complaint, learned counsel for petitioners submits that he is proprietor of Dhulian Trading Company. Petitioner no. 2-K.T. Sampy has also not been arrayed as accused in person but he has filed this petition on behalf of Gayatri Pictographs, Sivakasi, Madras. The complainant while appearing as CW-5 has categorically stated that he was not aware of any of the accused and had arrayed them only from details given in the photograph (Ex. P-1). He had seen that calendar (Ex. P-1), which was printed with photograph of *Sri Darbar Sahib* and advertisement of '*Beeri*' but has nowhere stated that it was shown to him by any of the accused.

11. The question, which arises for consideration in this petition, is as to whether any liability of petitioners is attracted in this case? As per

complainant, petitioner no. 1-Ram Chander Sarkar is dealer of manufacturer while petitioner no. 2-K.T. Sampy had published this photograph. Even if plea of complainant be believed, it does not depict that ingredients to make out the offence under Section 298 IPC are attracted against them. It is nowhere the contention of complainant that this calendar was got published with intention to wound religious feelings of complainant.

12. Learned Additional Sessions Judge, Sangrur while setting aside order of discharge of accused by the trial Court has observed that photograph of *beeri* underneath photograph of Golden Temple has hurt the feelings not only of revisionist i.e. complainant but also of Sikh Community. However, he has not taken note of role of petitioners in publication of that calendar or tried to distinguish the findings recorded by trial Court or to take note of ingredients of Section 298 IPC, which are not attracted to this case. The order passed by Court below suffers from legal infirmity on this score and is not legally sustainable, as such, is set aside and that of learned trial Court is restored *qua* petitioners.

13. This petition has merit and is accepted.

A copy of this order be conveyed to learned trial Court.

July 18, 2018
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No