

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 6323 OF 2017

1. Pawan Kamalakar Deshpande,
Age: 38 years, Occu. Service,
R/o : Lokmat Bhawan, B-3.
MIDC Ambad, Nasik.
 2. Prakash Sopan Sapkale,
Age : 35 years, Occu: Service,
R/o : As above.
 3. Sudhir Prabhakar Mahajan,
Age : 58 years, Occu. Service,
R/o: Lokmat Bhawan, Jalna Road,
Aurangabad.
 4. Vijay Jawaharlal Darda,
Age: 67 years, Occu: Business,
R/o : Yavatmal House, Rahate Colony,
Wardha Road, Nagpur
- ...APPLICANTS

VERSUS

1. The State of Maharashtra,
 2. Amjad Khan Rahim Khan Pathan,
Age : 37 years, occu: Business,
R/o : Sadar Bazar, Ambajogai,
Dist: Beed.
- ...RESPONDENTS

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Mr. Satyajeet S. Bora, Advocate for applicants
Mr. S.N. Kendre, APP for respondent No. 1-State
Mr. S.S. Kazi, Advocate for respondent No. 2

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CORAM : K.K. SONAWANE, J.
RESERVED ON : 3rd APRIL, 2019.
PRONOUNCED ON : 2nd MAY, 2019.

JUDGMENT :-

Heard. **Rule.** Rule made returnable forthwith. The present criminal application is taken up for final hearing on merit with the consent of both sides.

2. The applicants, taking recourse of remedy under section 482 of the Code of Criminal Procedure (for short "Cr.P.C."), preferred the present criminal application and agitated the propriety and maintainability of the proceeding of private complaint bearing RCC No. 209 of 2016 (old Misc. Criminal Application No. 631 of 2015) filed by respondent No. 2-original complainant against applicants - accused for the charges under Sections 295-A, 153-A read with Section 34 of the Indian Penal Code (for short, "IPC").

3. The applicants are the office personnels attached to the office of Lokmat Media Private Limited. Applicant No. 2 was the Graphic Designer, whereas applicant No. 3 and applicant No. 1 were the Editor and reporter of the newspaper "Dainik Lokmat" published from Aurangabad City. Applicant No. 4 was the Chairman of Lokmat Media Private Ltd. It has been alleged that in the supplement "Manthan" of news paper "Dainik Lokmat" dated 29-11-2015, there was an article published on the topic of rise in the terrorist activities of outfit known as Islamic State of Iraq and Syria (for short "ISIS") and its financial sources. There were endeavour to highlight illegal activities of terrorist organization ISIS and its source of funding to promote their destructive activities. There was a graphic showing image "Piggy Bank" also known as "Penny Bank" sketched with the aforesaid article published in the news paper "Dainik Lokmat" on 29-11-2015.

According to applicants, the intention to display the graphic was to point out various modes and avenues for procuring funds by outfit known as "ISIS" for its terrorist activities in the world. The image of the "Piggy Bank" in the graphic was one of the attempt to describe the mode and manner to collect money from various sources by the terrorist organization to promote its destructive activities. There was no intention to insult the religious feelings of particular community or to promote inimical terms in between different religious groups on account of religion etc.

4. However, the respondent No. 2 Mr. Amjad Khan Rahim Khan Pathan, resident of Sadar Bazar area, Ambajogai District Beed appears aggrieved by the graphic sketched with the alleged article. According to him, in the graphic there was image of animal "pig" shown under guise of "Piggy Bank" and words "*Allah Rasool Muhammad*" were scribed on the image of animal pig (swine). According to respondent No. 2, animal - Pig (Swine) is not considered as sacred animal in the Islam. Therefore, the words "*Allah Rasool Muhammad*" scribed on the graphic diagram of animal Pig (swine) would cause hurt and outrage the religious feelings of the Muslim community. Therefore, respondent No. 2- Mr. Amjatkhan approached to the Court of learned Judicial Magistrate, First Class, Ambajogai, District Beed and filed the application under Section 156(3) of Cr.P.C. to direct the concerned Police to registered and investigate the allegation

nurtured under Sections 295-A and 153-A read with section 34 of the IPC against applicants /accused.

5. The learned Magistrate considered the allegations nurtured on behalf of respondent-complainant and instead of order under section 156(3) of Cr.P.C. to direct Police investigation, preferred to treat the present application as complaint under section 2(d) of the Cr.P.C. Pursuant to directions, the complaint appeared before the learned Magistrate for further process. His statement on oath was recorded under Section 200 of the Cr.P.C. The learned Magistrate took the cognizance of the offence and after verification of factual aspect under Section 200 of the Cr.P.C. proceed to issue process against applicant-accused for the offence under Section 295-A and 153-A read with Section 34 of the Indian Penal Code.

6. Being dissatisfied with the mode and manner adopted by the learned Magistrate while dealing with the allegations nurtured on behalf of complainant-respondent No. 2 which resulted into issuance of process, the present applicants/accused rushed to this Court and by invoking remedy under section 482 of the Cr.P.C. put in question the maintainability and propriety of private complaint filed against the present applicants in absence of compliance of mandatory formalities prescribed under law.

7. Mr. Bora, learned counsel for the applicant vehemently submits that there are no circumstances on record to constitute an offence under Sections 295-A and 153-A read with Section 34 of the IPC against the applicants-accused. The learned trial Court did not appreciate the factual aspect of the matter in its proper perspective. The article published in weekly supplement under the caption "Manthan" of newspaper "Dainik Lokmat" on 29-11-2015 with alleged graphic was not of such nature to cause any insult or hurt to religious feelings of the Muslim community. There was no intention on the part of applicants/accused to outrage religious sentiments or emotions of the Muslim community nor there was any deliberate act with knowledge that the article would create enmity feelings on the ground of religious belief in Muslim community. He further explained that the provisions of Section 295-A of the IPC does not penalized each and every act of insult or attempt to insult religious feelings of particular class of citizen. The act of insult the religious feelings or belief of a class of citizen would come within mischief of Section 295-A of the IPC., only when it appears that the act was perpetrated with the deliberate and malicious intention to cause outrage the religious feelings of that community. The insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage religious feelings of that class, do not come within

purview of Section 295-A of the IPC. The penal provision of section 295-A of the IPC only punishes the aggravated form of insult to religion when it was seen perpetrated with the deliberate and malicious intention. Learned counsel for applicants further submits that the alleged news article published on 29-11-2015 even remotely does not indicate *malafide* or deliberate intention of the applicants-accused to insult religion feelings of the particular community. He explained that the object and purpose to publish the article was to bring to the knowledge of members of the society at large about illegal activities of the organization known as ISIS and its source of income. The diagram of "piggy bank" shown with the alleged article was the symbolic image to describe in what manner the ISIS was collecting funds for its illegal activities. The learned counsel further assailed that in view of provisions of Section 196(1)(a) of the Cr.P.C., there is statutory bar for the Magistrate to take cognizance of the offence punishable under Sections 153-A and 295-A of the IPC without previous sanction from the Central Government or State Government or the concerned District Magistrate, as the case may be. The learned counsel gave much more emphasis that in the matter in hand the respondent No. 2 did not obtain any previous sanction from Government Authority for prosecution of applicants-accused under Sections 153-A and 295-A of the IPC. Therefore, learned Magistrate can not exercise

jurisdiction to take cognizance of any offence, as alleged by the complainant for issuance of process against the present applicants. Therefore, learned counsel urged that when the Magistrate is not authorized to take cognizance of the allegations nurtured on behalf of complainant - respondent No. 2, the entire proceeding initiated by the Magistrate is illegal, bad in law and required to be vitiated and quashed. Mr. Bora, learned counsel for the applicants-accused in support of his contentions placed reliance on the judicial precedents in the cases of ***Mahendra Singh Dhoni Versus Yerraguntia Shyamsundar and Ors. Reported in MANU/SC/0473/2017 :: 2017(2) Crimes 357 (SC), State of Karnataka and others Vs. Pastor P Raju in Criminal Appeal No. 814 of 2016 (Arising out of Special Leave Petition (Cri.) No. 5450 of 2005) dated 04-08-2006, Manoj Rai and others Vs. State of M.P. In Criminal A. No. 762 of 1998 (Arising out of SLP (Cri) No. 155 of 1998) decided on 03-08-1998, Vineet Kacker Vs. The State of Maharashtra Criminal Writ Petition No. 2713 of 2009 and Aleeqe Padamsee and ors Vs. Union of India and others in Writ Petition (Cri) 11-15 of 2003 dated 18-07-2007.***

8. Learned counsel for respondent No. 2 raised objection and submit that the Article published in supplement "Manthan" of the Newspaper "Dainik Lokmat" dated 29-11-2015 with image of animal pig (Swine) embeded with words "Allah Rasool

Muhammad” caused hurt to the religious functions of the Muslim community. He produced document of transcription of the Arabic words “*Allah Rasool Muhammad*” the meaning of which is that “Muhammad is the messenger of Allah”. According to learned counsel, the Pig (Swine) is not considered sacred animal under Islam. Therefore, words scribed on the diagram of Pig depicts from the graphic of article create inimical and hatred feeling in the class of Muslim community. The learned Magistrate has considered the circumstances on record in its proper perspective and there was no any abuse of process of law. Therefore, no interference is warranted in the present case to meet the ends of justice.

9. Having considered the rival submissions, I find force in the arguments advanced on behalf of Mr. Bora, learned counsel for the applicants-accused. It is not in dispute that respondent No. 2 approached to the learned Magistrate and filed the proceedings of RCC No. 209 of 2016 (old Misc. Criminal Application No. 631 of 2015) and requested for relief to direct concerned Police under Section 156(3) of the Cr.P.C to register and investigate the offence.

10. The learned Magistrate dealt with the application filed by respondent No. 2- complainant Amjat Khan Rahim Khan Pathan, and instead of issuing directions under Section 156(3) of

the Cr.P.C for registration and investigation of the charges pitted against applicants-accused, preferred to adopt later course prescribed under Section 200 of the Cr.P.C. by taking cognizance of the alleged offence under Section 190 of the Cr.P.C. The relevant documents produced on record adumbrates that complainant/respondent No. 2 appeared before the learned Magistrate for compliance of the provisions under Section 200 of the Cr.P.C. and after due verification the learned Magistrate applied judicious mind and preferred to issue process against the applicants/accused for the offence punishable under Sections 295-A and 153-A read with Section 34 of the IPC.

11. It is evident from the aforesaid factual aspect that, the learned Magistrate did not favour the complainant to transmit the matter to the Police for investigation under section 156(3) of the Cr.P.C. But, he opted for later recourse as laid down under Section 200 of the Cr.P.C. by taking cognizance of the charges pitted against the applicants under Section 190 of the Cr.P.C.

12. At this juncture, it would apposite to make a reference of legal provision as envisaged under Section 196(1)(a) of the Cr.P.C., which is reproduced as below:-

"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.

[(1-A) 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) XXXX

(3) XXXX"

13. The bare reading of aforesaid provision of Section 196 of Cr.P.C. manifestly makes it clear that no Court can take cognizance of offence punishable under Sections 153-A and 295-A of IPC, except with the previous sanction from the Government authority. The opening words of provision, "no court shall take cognizance" created statutory bar against taking cognizance by the Court except with previous sanction from the concerned Government authority. The sanction from Government authority is a *sine-qua-non* and the Magistrate can not exercise his jurisdiction for taking cognizance of an offence under

Section 295-A and 153-A of IPC, unless the order granting sanction. Undisputedly, offences under Section 295-A and 153-A of IPC are of serious and exceptional in nature relating to public peace and tranquility, with which, the State Government is concerned, and, therefore, the object of Section 196 of Cr.P.C. is to prevent unauthorized persons from intruding in the matters of State by instituting prosecution and to secure that such prosecution for reasons of policy, shall only be instituted under the authority of the Government. Therefore, it is evident that there is an absolute bar against cognizance without sanction and it is obligatory for the Magistrate, when taking cognizance of an offence, must examine, whether his powers to take cognizance has been taken away. The provision under Section 196 of Cr.P.C. is mandatory in nature and essential to be strictly complied with.

14. The question as to what is meant by taking cognizance is no longer *res-integra* as the issue has already been decided by several decisions of Honourable Apex Court and various High Courts including this Court. The Honourable Apex Court, in the case of - ***State of Karnataka and another Versus Pastor P. Raju, 2006 (6) SCC 728***, categorically described the word 'cognizance', and considered it as judicious hearing of a matter and held as under :-

"10. Several provisions in Chapter XIV of the Code of Criminal Procedure use the word cognizance. The very first section in the said Chapter viz. Section 190 lays down how cognizance of offences will be taken by a Magistrate. However, the word cognizance has not been defined in the Code of Criminal

*Procedure. The dictionary meaning of the word cognizance is judicial hearing of matter. The meaning of the word has been explained by judicial pronouncements and it has acquired a definite connotation. The earliest decision of this Court on the point is (R.R.Chari Vs. State of U.P.) 7, 1951 DGLS (soft) 22 : 1951 S.C.R. 312 : A.I.R. 1951 S.C. 207, wherein it was held :
.... taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence."*

15. In the case of ***Darshan Singh Ram Kishan Versus State of Maharashtra***, reported in, ***AIR 1971 SC 2372***, the Honourable Apex Court, while considering Section 190 of Cr.P.C., observed as under :-

"Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a Magistrate first takes judicial notice of an offence. This is the position whether the Magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a person other than a Police Officer."

16. The Honourable Apex Court, in the case of - ***Narayandas Bhagwandas Madhavdas Vs. The state of West Bengal*** ***MANU/SC/0054/1959 :: 1959 CriLJ 1368***, held as under-

"Before it can be said that the Magistrate has taken cognizance of any offence under section

190(1)(a) of Criminal Procedure code, he must not only have applied his mind to the contents of the petition but must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of the Chapter- proceeding under Section 200 and thereafter sending it for inquiry and report under Section 202. It was observed that there is no special charm or any magical formula in the expression taking cognizance which merely means judicial application of the mind of the Magistrate to the facts mentioned in the complaint with a view to taking further action."

17. In the matter in hand, as referred above, respondent-complainant filed application under Section 156(3) of Cr.P.C. to direct the Police authorities to investigate into the crime. The Magistrate, instead of issuance of any directions under Section 156(3) of the Cr.P.C. for registration and investigation of the charges pitted against applicants-accused, preferred to exercise discretion for converting application filed under Section 156(3) of Cr.P.C. to the complainant, as envisaged under Section 2(d) of Cr.P.C. The Magistrate has chosen to transpose the application as complaint for adopting later course prescribed in Chapter XV of Cr.P.C. The relevant documents of the matter also reflect that respondent No.2-complainant shown inclination to proceed further by treating his application as complaint under Section 200 of Cr.P.C. He appeared before the learned Magistrate and complied with the procedural formalities under Section 200 of Cr.P.C.

18. The learned Magistrate verified statement of the complainant recorded on oath in the proceedings. After appreciation of

circumstances on record, the learned Magistrate has taken cognizance of allegations nurtured on behalf of respondent No. 2-complainant. The learned Magistrate passed the impugned order to issue process against appellant-accused for the charges under Sections 295-A and 153-A of IPC.

19. It transpires that the learned Magistrate has unwittingly overlooked the mandatory provisions prescribed under Section 196(1) (a) of Cr.P.C. in regard to statutory bar for taking cognizance of such offences except previous sanction from the Government authority. Admittedly, there are no any averments in the application/complaint about previous sanction from the Government authority for lodging prosecution against applicants-accused for the charges under Sections 295-A and 153-A of IPC. In absence of any affirmation or averments or any relevant documents of previous sanction from Government authority, it would not permissible to the Magistrate to take cognizance of offence levelled against the applicants-accused. The Honourable Apex Court, in the case of – ***Manoj Rai and others Versus State of M.P.*** (referred *supra*), proceeded to quash the entire impugned proceedings for want of sanction under Section 196(1) of Cr.P.C. Therefore, it is explicit that there is legal infirmity occurred in the present proceedings. The act of taking cognizance by the learned Magistrate is itself invalid, illegal and bad in law. The provision under Section 196(1)(a) of Cr.P.C. does not permit the Magistrate to take cognizance of offence under Sections 295-A and 153-A read with Section 34 of IPC against the applicants-accused without previous sanction from the Government authority. In the aftermath, the

impugned order of issuance of process by taking cognizance of the offence on the part of learned Magistrate is perverse, invalid and not within ambit of law.

20. Now, turning to another spectrum of the matter in regard to merits of allegations cast on behalf of respondent-complainant for the offence under Section 295-A and 151-A of IPC. I find that the arguments advanced on behalf of learned counsel Shri. Bora for the applicants-accused appears more sustainable and considerable one. The article published in weekly supplement under the caption "Manthan" of newspaper "Dainik Lokmat" on 29-11-2015 with alleged graphic can not be blamed as offensive one to cause any insult or hurt to religion of the Muslim community. There are no incriminating circumstances on record to draw an inference that the alleged article published, in supplement "Manthan" of newspaper "Dainik Lokmat" on 29-11-2015, was an deliberate act with malicious intention to outrage religious feelings of Muslim community. The Honourable Apex Court, in the case of – **Mahendra Singh Dhoni Versus Yerraguntia Shyamsundar and Ors.** (referred *supra*), held as under:-

"(i) As per precedent, section 295A of Code, 1860 does not stipulate everything to be penalised and any and every act would tantamount to insult or attempt to insult the religion or the religious beliefs of class of citizens. It penalise only those acts of insults to or those varieties of attempts to insult the religion or religious beliefs of a class of citizens which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class of citizens."

21. In the light of aforesaid legal guidelines, it is crystal clear that the act of insult the religion or religious feelings or belief of particular class of citizens would come within mischief of Section 295-A of IPC, only when it was found perpetrated with deliberate and malicious intention of outraging the religious feelings or emotions of the particular community. The penal provision of Section 295-A of IPC only punishes the aggravated form of insult to religion, perpetrated with *malafide* intention and purported motivation.

22. In the matter in hand, it is hard to believe that the alleged news article published on 29-11-2015 was the fallout of any ill-intention or malafide on the part of applicants-accused to create hatred or insult the religious feelings of Muslim community. At this juncture, the object and purpose of publication of such kind of article described on behalf of applicants appears convincing and plausible one. It is discernible from the news article that the applicants-accused was intending to make acquainted the public at large about the illegal activities of the terrorist organization known as, "ISIS" and its sources of funding. The diagram of "Piggy Bank" shown in the article was the symbolic image to point out the mode and manner in which "ISIS" used to collect the funds for its illegal activities. In such peculiar circumstances, it is unsafe to draw adverse inference that the act of publishing alleged news articles with graphic of

"Piggy Bank" having sketch of animal pig (swine) with the words "*Allah Rasool Muhammad*", would come within the mischief of Section 295-A or Section 153-A of IPC. It is preposterous and incomprehensible to conclude that the alleged article would be an deliberate act to cause insult or outrage the religious feelings and emotions of Muslim community.

23. In the above premise, there is no impediment to hold that the learned Magistrate committed error in exercising the discretion to take cognizance of the offence levelled against the applicants-accused in absence of previous sanction from the Government authority. In view of legal provision under Section 196(1)(a) of Cr.P.C., there was legal infirmity and lacuna in the proceedings filed on behalf of respondent No.2-complainant. The act of taking cognizance by the Magistrate itself could be held as an abuse of process of law. The absence of previous sanction from Government authority caused serious dent in the penal proceedings initiated by the respondent No.2-complainant. Moreover, as discussed above, the act of publishing the impugned article cannot be considered as an deliberate and *malafide* on the part of applicants-accused to cause insult or hurt to the religious feelings and emotions of Muslim community. In such circumstances, the interference by exercising inherent jurisdiction under Section 482 of Cr.P.C. is apt and essential to meet the ends of justice. Therefore, the present application

deserves to be allowed.

24. In sequel, the Criminal Application is allowed. The impugned proceedings of private complaint filed by respondent No. 2 -complainant bearing Regular Criminal Case No. 209 of 2016 (old Miscellaneous Criminal Application No. 631 of 2015) for the offence punishable under Sections 295-A and 153-A read with Section 34 of Indian Penal Code, is hereby quashed and set aside. The entire proceedings initiated by the learned Magistrate after taking cognizance stands vitiated. Inform the concerned Magistrate, accordingly.

25. Rule is made absolute accordingly. The Criminal Application stands disposed of in above terms. No order as to costs.

[K. K. SONAWANE]
JUDGE

MTK.
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