

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRM-M-46173-2019
Date of decision : 28.02.2020**

Tilak Raj

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Mr. Arun Kaundal, D.A.G., Punjab
for respondent No. 1

Mr. Shaurya Puri, Advocate
for respondent No. 2

ARUN KUMAR TYAGI, J (ORAL)

The petitioner-Tilak Raj has filed present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for quashing of FIR No. 268 dated 17.09.2019 registered under Section 295-A of the Indian Penal Code, 1860 (for short 'the I.P.C.') at Police Station City Kapurthala, District Kapurthala **(Annexure P-1)**.

2. Briefly stated the facts giving rise to filing of the present petition are that on 17.09.2019 respondent No.2 Bagga Singh alongwith Deepak Gill, Puran Singh and Kiran Devi went to Police Station City Kapurthala and Bagga Singh made statement alleging that he is working in Post Office Department and at present his job is Dak employee in Village Post Office, Bhano Langa. On 16.09.2019 accused-Tilak Raj (present petitioner) called a meeting in the Post Office, Kapurthala regarding opening of account in the Post Office as

well as regarding deposit of forms in the accounts. He, Deepak Gill, Puran Singh, Kiran Devi and other employees of post office Kapurthala were present at Post Office Kapurthala who were all associated with Balmiki fraternity. During the meeting, the petitioner-accused started addressing them that Bhagwan Valmiki originally used to commit thefts and dacoity and even used to kill persons and if he could improve himself then they could also improve themselves. On hearing such offending and indecent words uttered by the petitioner-accused against Bhagwan Valmiki, religious feelings of the persons present in the meeting were hurt. As the statement disclosed commission of offence punishable under Section 295-A of the I.P.C., the above said FIR was registered. The petitioner-accused was arrested on 17.09.2019 and was subsequently released on bail vide order dated 24.09.2019 (**Annexure P-2**) passed by learned Additional Sessions Judge, Kapurthala. Due to his detention for more than 48 hours, the petitioner was placed under suspension till further order vide order dated 27.09.2019 (**Annexure P-4**). The matter is pending investigation.

3. The petitioner has sought quashing of the FIR on the grounds that the petitioner himself is a member of the Scheduled 'Gaddi' Tribe vide certificate dated 15.06.2009 issued by Sub Divisionsal Magistrate, District Chamba, Himachal Pradesh (**Annexure P-5**). Respondent No.2-complainant has given affidavit dated 22.10.2019 (**Annexure P-6**) before the police that FIR in question was got registered under communication gap and misunderstanding. Other persons present during the meeting have also made similar statements.

Puran Singh has also given similar affidavit (**Annexure P-7**). FIR in

question is nothing but an abuse of process of law and deserves to be quashed. Even, if the allegations made in the FIR are taken on their face value, no offence whatsoever, much less an offence under Section 295-A of the I.P.C., is made out against the present petitioner. The petitioner has accordingly prayed that the above-said FIR and also consequential proceedings arising therefrom may be quashed.

4. Vide order dated 30.10.2019 notice of the petition was given to the respondents.

5. Reply by way of affidavit of Mr. Harinder Singh, P.P.S., Deputy Superintendent of Police, Sub Division Kapurthala was filed on behalf of respondent No.1-State of Punjab. In the reply, it has been submitted that the petitioner-accused had made remarks regarding Bhagwan Valmiki which hurt the religious feelings of respondents No.2 and other persons from Balmiki community present in the meeting. The petitioner accused was arrested on 17.09.2019 and the case is still under investigation and on completion of investigation the final report/challan under Section 173 of the Cr.P.C. will be presented in the Court of learned Illaqa Magistrate, Kapurthala against the petitioner-accused. No such affidavit or statement as alleged by the petitioner-accused regarding lodging of FIR under any communication gap/misunderstanding have been submitted/made to the police.

6. Mr. Shaurya Puri, Advocate appeared for respondent No.2-complainant Bagga Singh and stated that respondent No.2 has no objection to quashing of the FIR. However, respondent No.2-complainant Bagga Singh did not file any reply.

7. I have heard learned counsel for the petitioner, learned State Counsel and learned Counsel for the respondent No. 2-complainant and have gone through the relevant record.

8. Mr. Preetinder Singh Ahluwalia, learned Counsel for the petitioner has argued that the petitioner, while sermonising his subordinate employees, said that Bhagwan Valmiki started out as a dacoit but later on transformed himself into a revered Saint and if Bhagwan Valmiki could do so, then there was no reason why the employees of the postal department could not improve the conduct at their job. Narrating something which is already long documented in various pieces of art and literature cannot be said to attract any criminal liability on part of the petitioner. The utterances attributed to the petitioner were made by the petitioner during the said meeting only with an intention to encourage the subordinate employees to discharge their duties in a proper and honest manner. No mala fide intention can be attributed to the petitioner and the same cannot be said to be a deliberate and malicious attempt on the part of the petitioner to hurt the religious sentiments of the Balmiki fraternity or to bring Bhagwan Valmiki into disrepute. Continuation of the proceedings against the petitioner would be gross abuse of the process of law and would have deleterious effect upon the service and livelihood of the petitioner and would result in grave miscarriage of justice. Therefore the FIR and all consequential proceedings arising therefrom may be quashed. In support of his arguments, learned Counsel for the petitioner has placed reliance on the observations in *CRM-M-31988-2012, Maninder Singh and another Vs. State of Punjab and another (Punjab and Haryana*

High Court) and *CRM-M-41015-2012, Brahamcharani Didi Chetna @ Chelna (Jain Sadhvi) Vs. State of Punjab and another (Punjab and Haryana High Court)* where similar references made to life story of Bhagwan Valmiki were held not to fall within the mischief of section 295-A of the I.P.C. and the FIR and all consequential proceedings were quashed.

9. On the other hand, Mr. Arun Kaundal, learned State Counsel has argued that the petitioner called for a meeting of the employees of postal department Kapurthala and during the meeting addressed that Bhagwan Valmiki originally used to commit thefts and dacoity and even kill persons and if he could improve himself than the employees could also improve themselves. Because of such comments of the petitioner, respondent No. 2 and other persons present in the meeting felt insulted and their religious feelings were hurt. On complaint of respondent No. 2 FIR was registered, the petitioner was arrested and the matter is under investigation. No affidavit as to the complaint having been made under some communication gap/mis-understanding as claimed by the petitioner has been submitted to the police. The FIR was registered in accordance with law and does not constitute abuse of process of law. Therefore the petition may be dismissed.

10. Mr. Shaurya Puri, learned counsel for respondent No. 2 has reiterated his stand and argued that the complaint was made under some communication gap and mis-understanding and respondent No. 2 has no objection to quashing of the FIR and all consequential proceedings arising therefrom.

11. On consideration of the submissions made by learned counsel for the parties and perusal of the relevant record, I am of the considered view that FIR in question and all consequential proceedings arising therefrom constitute abuse of process and are liable to be quashed in exercise of the powers under section 482 of the Cr.P.C. and the petition deserves to be allowed accordingly.

12. Section 295-A of the I.P.C., which criminalises and punishes deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs, reads as under: -

“295A. 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.”

13. While upholding the constitutional validity of Section 295A of the Penal Code, ***S.R. Das, C.J. in Ramji Lal v. State of U.P. AIR 1957 Supreme Court 620*** observed as follows :

“.....Section 295A does not penalise any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens but it penalises only those acts of insults to or those varieties of attempts to insult the religion or the religious beliefs of a class of citizens, which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class.

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. It 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.....”

14. In order to attract the mischief of section 295-A of the I.P.C. the following ingredients have to be satisfied:-

- (i) making of a publication by words either spoken or written or by signs or by visible representation or otherwise;
- (ii) such publication must insult or attempt to insult the religion or religious beliefs of any class of citizens of India; and
- (iii) such publication must be made with deliberate and malicious intention of outraging the religious feelings of that class.

15. In order to bring the case within the purview of section 295-A of the IPC it is not so much the matter of publication as the manner of it. The words published must be such as are bound to be regarded by any reasonable man as grossly offensive and provocative and maliciously and deliberately intended to outrage the feeling of any class of citizens of India. The truth of the allegation is no defence to a charge under Section 295-A of the IPC. The offending publication has to be viewed as a whole and the malicious intent of the author/maker of the publication has to be gathered from a broader perspective and not

merely from a few solitary lines or quotations.

16. In the present case the petitioner, who was at the relevant time posted as Superintendent Posts, Kapurthala called a meeting of the postal employees working under him in the Post Office, Kapurthala regarding opening of the accounts and submission of the forms in the accounts. The petitioner is stated to have said, while sermonising his subordinate employees, that Bhagwan Valmiki started out as a dacoit but later on transformed himself into a revered Saint and if Bhagwan Valmiki could do so, then there was no reason why the employees of the postal department could not improve the conduct at their job.

17. The story as to transformation from Ratnakar to Bhagwan Valmiki, from a dacoit to revered saint and as celebrated author of Adi Ramayana has been given in various Scriptures and literary works although there is material on the other side also casting a doubt about the authenticity of the story as to Maharishi Valmiki being a "dacoit" in the beginning as observed in ***Manjula Sahdev Vs. State of Punjab (P&HHC) : 2019 (2) R.C.R. (Criminal) 1004.***

18. It may be observed here that references to life story of Bhagwan Valmiki are made as a source of inspiration. In ***Maru Ram and others Vs. Union of India and others : 1981 (1) SCC 107*** Hon'ble Supreme Court observed as under:-

“85. The question, therefore, is - should the country take the risk of innocent lives being lost at the hands of criminals committing heinous crimes in the holy hope or wishful thinking that one day or the other, a criminal, however dangerous or callous he may be, will reform himself. Valmiki is not born everyday and to expect that

our present generation, with the prevailing social and economic environment, would produce Valmiki day after day is to hope for the impossible.”

19. In ***Rakesh Kaushik Vs. B.L. Vig : AIR 1981 Supreme Court 1767*** Hon'ble Supreme Court observed as under:-

“31. We have drawn the broad lines indicative of the direction of correction and leave it at that. The fundamental fact of prison reforms comes from our constitutional recognition that every prisoner is a person and personhood holds the human potential which, if unfolded, makes a robber a Valmiki and a sinner a saint.”

20. These references in ***Maru Ram and others versus Union of India and others : 1981 (1) SCC 107*** and ***Rakesh Kaushik Vs. B.L. Vig. : AIR 1981 Supreme Court 1767*** also refer to transformation of Bhagwan Valmiki from dacoit to revered saint.

21. In ***Jai Ram Sharma v. State of Punjab : 1998(3) RCR (Criminal) 295; Manjula Sahdev v. State of Punjab (P&HHC) : 2019 (2) R.C.R. (Criminal) 1004*** and ***CRM-M-31988-2012, Maninder Singh and another Vs. State of Punjab and another (P&HHC) decided on 02.08.2013*** books 'Bhagat Mala' published by 'U.P. Hindhi Sansthan', 'Maharishi Balmik-Ekk Samasthik Adhyan' written by 'Manhula Sahdev' and 'Naitik Shiksha' written by 'Jai Ram Sharma' respectively making similar references to Bhagwan Valmiki were held not to fall within the mischief of Section 295-A of the IPC with consequent quashing of the FIR registered regarding the same and in ***Brahamcharani Didi Chetna @ Chelna (Jain Sadhvi) Vs. State of Punjab and another (P&HHC) decided on 29.04.2014*** FIR

registered regarding discourse making similar remarks was quashed on the ground of there being no deliberate and malicious intention of outraging the religious feelings of any class of citizens of India.

22. In *Priya Prakash Varrier v. State of Telangana : 2018(4) RCR (Criminal) 176* a version of a traditional Muslim song from the Malabar region of Kerala sung in various parts of the State of Kerala was picturized as a part of the movie on actress-Priya Prakash Varrier with a wink. F.I.R. was lodged by M.A. Muqeeth Khan alleging the same to be blasphemous and offending the sentiments of a particular community. It was held by Hon'ble Supreme Court that the picturization of the said song, which was in circulation on You Tube since February, 2018, did not tantamount to an insult or attempt to insult the religion or the religious beliefs of a class of citizens because of the 'wink' and did not invite the wrath of Section 295-A of the IPC as there was no deliberate and malicious intention to outrage their religious feelings.

23. In the present case, the utterances attributed to the petitioner were made by the petitioner during the said meeting only with an intention to encourage the subordinate employees to discharge their duties in a proper and honest manner. Reference was made to life story of Bhagwan Valmiki for drawing inspiration for weeding out negative propensities and inducing positive qualities for striving for excellence in personal and professional working. No mala fide intention can be attributed to the petitioner and the utterances attributed to him cannot be said to have been made with deliberate and malicious intention to hurt the religious feelings of the complainant or other employees belonging to Balmiki fraternity present in the meeting. Even

if the allegations made against the petitioner in the FIR are accepted as true, even then in view of the attendant facts and circumstances of the case the essential ingredients of Section 295-A of the IPC are not satisfied and offence under Section 295-A of the IPC is not thereby made out.

24. Section 482 of the Cr.P.C., which saves inherent powers of the High Court provides as under:-

“482. Saving of inherent powers of High Court.—Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

25. In ***State of Haryana and others Vs. Ch. Bhajan Lal and others (SC) : 1991 (1) RCR (Criminal) 383***, Hon'ble Supreme Court has observed as under:-

"107. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. *Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

2. *Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

3. *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

4. *Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

5. *Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

6. *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

7. *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is*

maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

26. In **Varala Bharath Kumar v. State of Telangana, (SC) : 2017(4) R.C.R.(Criminal) 113** Hon'ble Supreme Court observed as under:-

"It is by now well settled that the extraordinary power under Article 226 or inherent power under section 482 of the Code of Criminal Procedure can be exercised by the High Court, either to prevent abuse of process of the court or otherwise to secure the ends of justice. Where allegations made in the First Information Report/the complaint or the outcome of investigation as found in the Charge Sheet, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out the case against the accused; where the allegations do not disclose the ingredients of the offence alleged; where the uncontroverted allegations made in the First Information Report or complaint and the material collected in support of the same do not disclose the commission of offence alleged and make out a case against the accused; where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the power under Article 226 of the Constitution of India or under section 482 of Code of Criminal Procedure may be exercised."

27. In view of the above-referred judicial precedents and the facts and circumstances of the case, continuation of the proceedings against the petitioner will be gross abuse of the process of law and will result in grave miscarriage of justice. Continuation of the same will put

the petitioner to great oppression and extreme injustice will be caused to the petitioner if the FIR and all consequential proceedings are not quashed.

28. In view of the above discussion, FIR No.268 dated 17.09.2019 registered under Section 295-A of the I.P.C. at Police Station City Kapurthala, District Kapurthala (**Annexure P-1**) is quashed along with all consequential proceedings arising therefrom.

29. The petition is allowed accordingly.

(ARUN KUMAR TYAGI)
JUDGE

28.02.2020
kavneet/kothiyal

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No