

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL REVISION CASE No.21 of 2020

ORDER:

This criminal revision case is filed by the petitioner-accused against the order dated 18.11.2019 in CrI.M.P. No.1304 of 2019 in CC No.114 of 2018 passed by the Judicial Magistrate of First Class, at Zaheerabad in dismissing the discharge petition filed by the petitioner under Section 239 Cr.P.C.

2. Heard Sri Ch.Ravinder Reddy, learned counsel representing Sri N. Manohar, learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent-State.

3. The learned counsel for the petitioner submitted that the petitioner was arrayed as an accused in Crime No.70 of 2017 dated 25.08.2017 registered by Police, Hadnur for the offence under Section 3 (1) (r) and (s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (for short 'SC & ST (PoA) Amendment Act'). As per the complaint, on 25.08.2017 at 20.30 hours, the SC Madiga Community people of Basanthpur Village came to police station and lodged a report stating that, four days prior

to that day, a tom tom was made in the village by beating drums for conducting Grama Sabha in the village. On 25.08.2017 at 10.00 AM Grama Sabha was conducted. All the villagers attended it. While they were discussing about the village issues, during the said discussion, the petitioner, who was the then Sarpanch, asked them as to who their God was and why they were offering prayers to Lord Jesus Christ and abused them in filthy language in public by taking their caste name and insulted them. Basing on the said report, the above case was registered. Subsequently, as per the orders of the Superintendent of Police, investigation was entrusted to the Sub Divisional Police Officer. The SDPO recorded the statements of the witnesses under Section 161 Cr.P.C. He sought the opinion of the Public Prosecutor of the Court of Special Judge for SC and ST Act cum V Additional District Judge for proceeding with further investigation in the matter and the Public Prosecutor opined that the SC and ST Act would not attract against the petitioner and that it could be referred as 'Mistake of Fact'. On perusal of the said opinion, the DIG issued proceedings dated 26.02.2018 instructing the Investigating Officer to conduct investigation with regard to culpability of the petitioner under Section 295 A IPC. On the

instructions of the DIG, the Investigating Officer found that the offence under Section 295A IPC was attracted to the case and altered the Section of law from Section 3 (1) (r) (s) of SC and ST (PoA) Amendment Act to Section 295 A IPC and filed charge sheet against the petitioner for the offence under Section 295A IPC.

4. The case was taken cognizance by the Judicial Magistrate of First Class, Zaheerabad for the offence under Section 295A IPC on 02.04.2018. At the time of framing of charges, the petitioner-accused filed a petition under Section 239 Cr.P.C., requesting the court to discharge him from the case in CC No.114 of 2018.

5. Notice was issued to the learned Assistant Public Prosecutor of the said Court. He filed counter contending that the statements of the witnesses and the panchanama conducted at the scene of offence would establishe the offence under Section 295 IPC and it was premature to discharge the petitioner-accused. On hearing both the learned counsel for the petitioner and the learned Assistant Public Prosecutor, the trial court dismissed the petition.

6. Aggrieved by the said dismissal, the petitioner-accused preferred this revision contending that the trial court ought to have seen that a false case was filed by the police under political pressure against the petitioner without considering that the statements of the witnesses recorded under Section 161 Cr.P.C. would not attract the alleged offence under Section 295A IPC. The court below ought to have seen that originally the crime was registered for the offence under Section 3 (1) of the SC and ST (PoA) Amendment Act, 2015 and later it was altered to the offence under Section 295A IPC. None of the witnesses stated before the police any incriminating evidence attracting the offence under Section 295A IPC against the petitioner. The court below failed to consider that while taking cognizance for the offence under Section 295A IPC, sanction of the State Government was mandatory under Section 196 Cr.P.C. In the case on hand, there was no such sanction obtained before charging the petitioner-accused for the said offence. On this ground alone, the petition was liable to be allowed. The court ought to have seen that when the offence under Section 3(1) (r) of the SC and ST (PoA) Amendment Act was deleted by the Investigating Officer and the charge under Section 295-A IPC was illegal and contrary to the

record, continuing the prosecution was nothing but abuse of process of law and prayed to set aside the order dated 18.11.2019 in Crl.M.P. No.1304 of 2019 in CC No.114 of 2018 passed by the Judicial Magistrate of First Class, Zaheerabad.

7. Perused the record and the order of the trial court in Crl.M.P. No.1304 of 2019. The trial court observed that it was borne by record that the offence under Section 3 (1) (r) and (s) of the SC and ST (PoA) Amendment Act, 2015 was deleted by the Investigating Officer and the offence under Section 295 A IPC was charged against the petitioner and filed the police report. The then Presiding Officer of the Court had taken cognizance of the offence under Section 295A IPC. The petitioner attended the court after receipt of summons. The trial court after extracting the 161 Cr.P.C. statement of LW.1 Ramesh, observed that the material submitted by the prosecution along with the charge sheet was sufficient to presume that the petitioner was alleged to have involved in the offence. It also further observed that it was borne out by the record that prior to taking cognizance of the offence under Section 295A IPC, sanction of State Government was mandatory under Section 196 Cr.P.C.

8. The trial court referred to various citations filed by the learned counsel for the petitioner and stated that the said citations were supporting his arguments. It further observed that as already cognizance was taken by the then Magistrate of the court, that stage had already gone and the court below being a Magistrate court could not review or revise its own order. According to Section 239 Cr.P.C., the accused could be discharged when the entire material of prosecution was found to be groundless, but when there were irregularities in taking cognizance of the offence, the remedy of the accused was elsewhere. As the allegations in the police report and the statement of LW.1 were sufficient to proceed further in the case, the charge could not be said to be groundless and dismissed the petition.

9. Section 295A IPC 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.”

10. Section 196 Cr.P.C. mandates for prosecuting the offence under Section 295A IPC, sanction of Central or of the concerned State Government or of the District Magistrate is necessary. Section 196 Cr.P.C. reads as follows:

“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 153A, of Indian Penal Code, or ² 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 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government.

(1A) No Court shall take cognizance of-

(a) any offence punishable under section 153B 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.”

11. The learned counsel for the petitioner relied upon the judgment of the Hon’ble Apex Court in **Manoj Rai and others v. State of M.P.**¹ wherein it was held that:

¹ (1999) 1 SCC 728

“In the absence of sanction under Section 196(1) Cr.P.C. for prosecution under Section 295A IPC, proceedings must be quashed.”

12. He also relied upon a judgment of the Hon’ble Apex Court in **Mahendra Singh Dhoni v. Yerraguntla Syhamsundar and another**², wherein it was held that:

“6. On a perusal of the aforesaid passages, it is clear as crystal that Section 295A 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 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.”

13. Thus, when the sanction of the Central Government/State Government/District Magistrate was mandatory under Section 196 Cr.P.C. for taking cognizance of the offence under Section 295A IPC, the observation of the trial court is not in accordance with law.

² (2017) 7 SCC 760

Hence, the impugned order is unsustainable and the same is liable to be set aside.

14. In the result, the Criminal Revision Case is allowed setting aside the order dated 18.11.2019 in Crl.M.P. No.1304 of 2019 in CC No.114 of 2018 passed by the Judicial Magistrate of First Class, at Zaheerabad.

Miscellaneous Petitions, pending if any, shall stand closed.

Dr. G.RADHA RANI, J

November 07, 2022
KTL