



CrI.O.P.No.12376 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CrI.O.P.No.12376 of 2016

&

CrI.M.P.No.6366 of 2016

1. Franco Rajendra Dev
Correspondent
2. Selvarani
Principal
3. Jeyanthi Sundar
Vice Principal
4. Sherley paul
CEO, SBIOA Educational Trust
5. John Anbalagan
Head master

all petitioners having their office
at No.18, Anna Nagar Western Extension,
Chennai 600 101

... Petitioners

Vs.

R. Abirami

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C.,
to call for the records and quash the complaint in C.C.No.2863 of 2016
on the file of the Metropolitan Magistrate No.XIV, Egmore, Chennai for the



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offences under sections 295A and 298 IPC.

For Petitioner : Mr.A. Ramesh, Senior counsel
for Mr.C.Arun Kumar

For Respondent : Notice served – no appearance

ORDER

This Criminal Original Petition is filed by the petitioners to call for the records and quash the complaint in C.C.No.2863 of 2016 on the file of the Metropolitan Magistrate No.XIV, Egmore, Chennai for the offences under sections 295A and 298 IPC.

2.The learned counsel for the petitioners contended that the petitioners are correspondent, Principal, Vice Principal, CEO and Headmaster respectively of SBIOA School, Chennai. The defacto complainant was employed as a teaching assistant in the said school. Among the five petitioners, the 4th petitioner/A4 died.



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3. He further contended that the respondent/complainant gave a complaint against the petitioners before V5 Thirumangalam Police Station alleging that on 13.3.20212, while the defacto compainant offered secular prayers (Sarvamadha Prarthanai) for class 12 students, by chanting "Om Vigneshwaraya Namaha', the 3rd petitioner tried to remove the mike from her, in spite of the same, she continued with Christian and Islamic prayers. Subsequently, the 3rd petitioner switched off the mike and made another staff to continue the prayers. The 4th and 5th petitioners insulted her infront of other staffs by closing the four gates of the school on 13.03.2012, pursuant to which, a case was registered in Cr.No.937 of 2014 for the offences under sections 295A and 298 IPC. During investigation statements of various witnesses were recorded under section 164 Cr.P.C., however, after completing the investigation, the police closed the complaint 'action has been dropped' and filed closure report before the X Metropolitan Magistrate. Notice in this regard has also been served on the defacto complainant. Aggrieved over such closure report, the respondent filed protest petition before the XIII Metropolitan Magistrate, Egmore, Chennai



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in CrI.M.P.No.133 of 2016 seeking to take cognizance against the accused for committing the offences under sections 295A and Sec.298 IPC. Considering the protest petition, the learned XIV Metropolitan Magistrate Court, Egmore, Allikulam, Chennai, by his order dated 07.04.2016, took cognizance of the private complaint for the offence under sections 295A and 298 IPC and the case was taken on file as C.C.No.2863 of 2016.

4. The learned counsel further contended that as per section 196 Cr.P.C., for taking cognizance against a person for the offence under section 295 A of IPC., previous sanction from the State or the Central Government is warranted. In this case, no sanction is granted by the Government for taking cognizance of the offence under section 295 A IPC. On this ground, the criminal proceedings initiated against the petitioners is vitiated. He further contended that the the offence under section 298 IPC is also not made out. The allegation in the complaint in paragraph 3 reflects no ingredient attracting the offence under section 298 IPC. The Only allegation against the petitioners is switching of mike while the respondent



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conducting secular prayers and stopped her from continuing prayers.

There is no allegation of deliberate action to wound the religious feelings of any persons. In the circumstances, the complaint given by the respondent is unsustainable, hence, continuing the criminal proceedings against the petitioners is misusing the process of court. Thus, he seeks to quash the complaint.

5. In support of his contention, he relied upon the following judgments;

- 1. Manoj Rai Vs. State of Madhyapradesh, reported in MANU/SC/0488/1998;**
- 2. I.Periyasamy Vs. State of Tamil Nadu and others, reported in MANU/TN/3492/2022;**
- 3. Kamal @ Kamalahasan Vs. State of Tamil Nadu, Order of this Court dated 21.05.2021;**
- 4. Arvind Life Style Brands Vs. Madhavan @ Madhan , order of this High Court, dated 21.11.2019**
- 5. Shalibadra Shah Vs. Swami Krishna Bharati reported in MANU/GJ/0159/1980**



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6. **Malleshappa Vs. Sri Kumar reported in MANU/KA/1128/2015;**
7. **Aveek Sarkar Vs. State of West Bengal reported in MANU/WB/0211/2015;**
8. **Poonam Pandey Vs. S.Umesh reported in MANU/KA/0702/2015;**
9. **Kamala Kant Singh Vs. MD, Bennet Colman & Co reported in MANU/UP/0860/1987**

6. Though notice has been served on the respondent, there is no representation for her either in person or through counsel today when the matter is called.

7. I have considered the matter in the light of the submissions made by the learned counsel for the petitioners and perused the records.

8. On perusal of records, the fact reveals that the respondent/complainant was working at SBIOA School as Teaching Assistant. The allegation in the complaint in paragraph 3 reads as follows;

'3. On 13.03.2012, I was offering secular prayers along with the students of class 12 at the indoor



auditorium of the school, on the eve of the said students going to write Chemistry Examination at the center prescribed by CBSE Board. But when I chanted the stanza OM VIGNESWARAYA NAMAHA, school's vice-principal Jayanti Sundar, tried to remove the mike from the hands of me. Her action was rude. I was surprised and dumb-stuck and could not understand the behaviour of the vice-principal. In an instinct action I only resisted the attempt of the vice-principal's physical imprudence. There was no oral communication. I resisted seizure of the mike informing the Vice-principal that the Prayer was not yet completed and despite this provocation, I did not give up as the prayer was done for the sake of children and continued to say the Christian and Islam prayers. The vice-principal suddenly switched off the mike, but I continued the prayer without the mike in a still louder voice. Then the Principal switched on the mike and asked English teacher Mrs.Vinodhini Prabhakar who is a Christian to resume the prayers. She resumed Christian prayer. ACCUSED no.4 and 5 also insulted me in front of other teachers by closing the four gates of the school on 13/3/12..'



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9. Initially, the police registered the case and recorded the statement of witnesses. After investigation, as they found no case was made out against the petitioners, they closed the complaint and also sent the closure report to the Magistrate Court. Aggrieved over such closure report, the complainant filed a protest petition before the XIII Metropolitan Magistrate Court, Egmore, Chennai. On hearing the protest petition, the learned Judge took cognizance of the complaint for the offence under section 295A, 298 IPC on 07.04.2016.

10. According to the learned counsel for the petitioners, as per section 196 Cr.P.C., to charge an individual under section 295 A, it is mandatory to get previous sanction of the Central Government and the State Government concerned. Section 196 of Cr.P.C., runs as follows;

'Section 196 Cr.P.C.: Prosecution for offences against the State and for criminal conspiracy to commit such offence.

(i) No Court shall take cognizance of-



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(a) any offence punishable under Chapter VI or under section 153A of Indian Penal Code, or 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.'

11. In this case, no sanction has been obtained. On perusal of the list of documents, no sanction order from State or Central Government was not enclosed.

12. The Honourable Supreme Court in the case of ***Manoj Rai Vs. State of Madhyapradesh, reported in MANU/SC/0488/1998*** held that for prosecuting offence under section 295A IPC, sanction is required under section 196 Cr.P.C. For want of sanction from the Government as required



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under section 196 Cr.P.C., the prosecution of offence under section 295 A IPC was quashed. The same legal principle was followed by other High Courts in rest of the cases cited supra..

13. Further, with regard to other offence under section 298A IPC, on perusal of complaint averments, it is seen that there is no allegation of deliberate intention upon the accused persons to wound the religious feelings of the respondent/complainant so as to attract offence under section 298-A IPC. In the complaint averment, it was only stated that the 3rd respondent 'switched off the mike' and stopped the respondent from continuing with the prayers. Apart from this, there is no specific allegation attracting the ingredients of section 298-A IPC.

14. In the circumstances, in the absence of sanction from State or Central Government, as required under section 196 Cr.P.C., taking cognizance against the petitioners under section 295-A is unsustainable. Further the requirement of 298 A IPC is also not fulfilled in the complaint.



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The ingredients set out in section 298 A IPC is not present in the complaint averments. In such circumstances, the impugned criminal proceedings in C.C.No2863 of 2016 is a clear abuse and misuse of process of court. Therefore, the criminal proceedings pending on the file of XIV Metropolitan Magistrate, Egmore, Chennai is liable to be quashed. Accordingly, it is quashed. The Criminal original petition is allowed. Consequently, the connected miscellaneous petition is closed.

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Index: Yes/No
Internet: Yes/No
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To

The Metropolitan Magistrate No.XIV, Egmore, Chennai



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V.SIVAGNANAM, J.,

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