



Crl.O.P.No.32335 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.03.2023

Pronounced on : 31.03.2023

CORAM

**THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

Crl.O.P.No.32335 of 2019

and

Crl.M.P.No.17801 of 2019

V.Kaarappan

...Petitioner

Vs.

1.State Rep. by :-

The Inspector of Police

E-2, Peelamedu Police Station (L&O),

Coimbatore District.

(Crime No.1292/2019)

2.D.Nirmalkumar

...Respondents

PRAYER: Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code, to call for the entire records connected with the FIR in



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Crime No.1292 of 2019 pending investigation on the file of the Respondent police, quash the same.

For Petitioner : Mr.N.R.Elango, Senior Counsel  
for Mr.K.Thilageswaran  
For R1 : Mr.A.Damodaran  
Additional Public Prosecutor  
For R2 : No Appearance

### **ORDER**

The petition is to quash the FIR for the alleged offences under Sections 295 - A and 505 (1) (b) of IPC.

2. It is alleged in the complaint that the petitioner in a public meeting had spoken ill about Hindu Gods namely Lord “Krishna” and “Athivarathar”; that the de-facto complainant saw the said speech in a YouTube channel; that the said speech hurt the religious sentiments of Hindus and caused fear in the minds of the public besides affecting public tranquility.

3.Mr.N.R.Elango, the learned Senior Counsel for the petitioner would submit that the allegations even if accepted to be true do not constitute the



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offences alleged in the FIR. The learned Senior Counsel would submit that in order to constitute the offence under Section 295-A of I.P.C., the insult to the religion must be of an aggravated form, besides having a tendency to disrupt the public order. He would submit that in the instant case, the alleged insults were not of such a nature, which could be penalised under Section 295-A of the Indian Penal Code. He relied upon the Judgment of the Honourable Supreme Court in **(2017) 7 SCC 760 (Mahendra Singh Dhoni vs. Yerraguntla Shyamsundar and another)** in support of his said submission. The other offence which the petitioner is accused of is Section 505 (1) (b) of I.P.C. The learned Senior Counsel further submitted that in order to attract the said offence, the speech must have a tendency to cause fear or alarm to the public which may induce any person to commit an offence against the State or against public tranquility. The speech was not intended to cause alarm or fear to the public so as to induce any person to commit any offence against State or public tranquility. He relied upon the Judgment of this Court in **Crl.O.P.No.7 of 2022 (Valarmathi vs. State by the Inspector of Police and another)** dated 06.07.2022. Hence, he prayed for quashing the impugned FIR.



4.Mr.A.Damodaran, the learned Additional Public Prosecutor appearing for the first respondent submitted that the allegations constitute the offences alleged against the petitioner. The learned Additional Public Prosecutor further submitted that the petitioner's speech stating that one cannot keep an account of the number of wives 'Lord Krishna' had and criticising Lord “Athivarathar” stating that the weavers in Kanchipuram were subjected to suffering and hardship during the 48 days of darshan would attract the offences alleged. Hence, the learned Additional Public Prosecutor prayed for dismissal of the quash petition.

5.Though notice was served on the second respondent, none has entered appearance on his behalf.

6.This Court finds that the allegation against the petitioner is that he had in a meeting insulted the Hindu Gods, Lord “Krishna” and Lord “Athivarathar”. The said insults have been made in an irresponsible and distasteful manner. The petitioner ought to have avoided such speeches which has a tendency to insult the Gods of the Hindu religion. However, the question is whether the said speech would attract the alleged offences. Section 295-A of I.P.C., reads as follows :



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***“295-A. 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 extend to "[three years], or with fine, or with both.]***

The Honourable Supreme Court in ***Ramji Lal Modi vs. State of Uttar Pradesh*** reported in ***1957 AIR (SC) 620*** upheld the constitutional validity of Section 295 - A of IPC, and held as follows:

“5...

*9...If, therefore, certain activities have a tendency to cause public disorder, a law penalising such activities as an offence cannot but be held to be a law imposing reasonable restriction "in the interests of public order" although in some cases those activities may not actually lead to a breach of public order. In the next place, Section 295-A 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. The calculated tendency of this aggravated form of insult is clearly to disrupt the public order and the section, which penalises such activities, is well within the protection of clause (2) of Article 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Article 19(1)(a). Having regard to the ingredients of the offence created by the impugned section, there cannot, in our opinion, be any possibility of this law being applied for purposes not sanctioned by the Constitution. In other words, the language employed in the section is not wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting the fundamental right guaranteed by Article 19(1)(a) and consequently, the question of severability does not arise and the decisions relied upon by*



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*the learned counsel for the petitioner have no application to this case."*

Following the above said Judgment, the Hon'ble Supreme Court in **(2017) 7 SCC**

**760 (Mahendra Singh Dhoni vs. Yerraguntla Shyamsundar)** held as follows:

*"6. On a perusal of the aforesaid passages, it is clear as crystal that Section 295-A 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 a class of citizens. It penalises 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"*



7.From the above, it is clear that in order to attract the offence under Section

295-A of IPC:

(i)the act must be to insult the religion or religious belief of a class of citizens.

(ii)it must be deliberate and malicious with the intent to outrage the religious belief.

(iii) it must be intended to disrupt public order.

8.Thus, in order to constitute the offence under 295-A of I.P.C., the insults must be so aggravated that it must be deliberate, malicious and must have the tendency to disrupt the public order. In the instant case, this Court finds that the allegations have been made in a distasteful and carelessness manner. The reading of the FIR does not suggest that it was made in a calculated and deliberate manner to hurt the religious sentiments. It cannot be said to be an aggravated form of insult which is likely to disrupt police order. Hence, the offence under Section 295 – A of I.P.C., is not made in the facts of this case.



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9. In order to constitute the offence under Section 505 (1) (b) of I.P.C., the act must be such that it must be intended to cause fear or alarm to the public whereby, any person may be induced to commit an offence against the State or against the public tranquility. The allegations in the FIR do not suggest that the speech of the petitioner was intended to cause fear or alarm to the public which had a tendency to induce any person to commit offence against the State or disrupt the public tranquility. This Court had quashed similar proceedings in Crl.O.P.No.7 of 2022 dated 06.07.2022 (*Valarmathi vs. State by the Inspector of Police and another*). In this regard, it would be useful to refer to the Judgment of the Hon'ble Supreme Court in *Kedar Nath Singh vs. State of Bihar* reported in (1962) 2 Cri LJ 103, wherein it has been held as follows:-

*“29. It is only necessary to add a few observations with respect to the constitutionality of Section 505 of the Indian Penal Code. With reference to each of the three clauses of the section, it will be found that the gravamen of the offence is making, publishing or circulating any statement, rumour or report (a) with intent to cause or which is likely to cause any member of the Army, Navy or Air Force to mutiny or otherwise, disregard to fail in his duty as such; (b) or to cause fear or alarm to the public or a section of the public which may induce the commission of an*



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*offence against the State or against the public tranquility; (c) or to incite or which is likely to incite one class or community of persons to commit an offence against any other class or community. It is manifest that each one of the constituent elements of the offence under Section 505 has reference to, and a direct effect on, the security of the State or public order. Hence, these provisions would not exceed the bounds of reasonable restrictions on the right of freedom of speech and expression. It is clear, therefore, that clause (2) of Article 19 clearly saves the section from the vice of unconstitutionality.? ”*

The Hon'ble Supreme Court held that the essential ingredient for the offences mentioned in Section 505 of I.P.C., is that the act must have direct effect on the security of the State or public order. In the instant case that essential element is not found.

10.As stated earlier, the act committed by the petitioner is certainly not in good taste. The petitioner should refrain from such acts in future.



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11. With the above observations, the impugned FIR is liable to be quashed.

Accordingly, the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

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*dk/ay*

Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Case Citation: Yes / No

To

1. The Inspector of Police  
E-2, Peelamedu Police Station (L&O),  
Coimbatore District.

2. The Public Prosecutor  
High Court of Madras  
Chennai – 600 104.



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**SUNDER MOHAN. J,**  
dk/ay



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Pre Delivery Order in  
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