

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

244

CRM-M-25233-2017 (O&M)

Date of decision: 24.03.2023

Harbhajan Singh and another

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Anirudh Gupta, Advocate
for the petitioners.

Ms. Kanica Sachdeva, AAG, Punjab.

Mr. Nimish Gautam, Advocate for
Mr. Dheeraj Mahajan, Advocate
for respondent No.2.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioners are seeking quashing of FIR No.33 dated 31.03.2012 under Sections 295A/153A of the IPC registered at Police Station Subhanpur, District Kapurthala and all other consequential proceedings arising therefrom.

2. Learned senior counsel for the petitioners *inter alia* contends that:

(i) petitioner No.1 is a partner of Bhai Chatar Singh Jeewan Singh (hereinafter referred to as 'Publishing House') a renowned publishing house. The Publishing House publishes religious books including Sikh Religious Literature;

(ii) in the year 2004, petitioner No.2 authored a book titled as

'Baara Maaha Manjh/Steek' (hereinafter referred to as 'the Book') which was published by the Publishing House. The Book emphasised that in case any person listened to 'Gurbani'/or came in contact with 'Gurbani', he would be transformed irrespective of any misdeeds which he may have committed earlier in his life;

(iii) on pages 49, 50 and 51 of the Book, there was also a reference to the life of Maharishi Valmik. In support, learned senior counsel drew the attention of this Court to Annexure P-1 wherein pages 49, 50 and 51 of the Book have been reproduced;

(iv) in the year 2012, i.e. 08 years after the publication of the Book, respondent No.2/complainant, who was the then President of Balmiki Majhbi Sikh Morcha, for the first time raised objections over some reference made in the Book to the life of Maharishi Valmik, prior to his attaining Sainthood;

(v) the observations and other facts contained in the Book qua Maharishi Valmik were based on old scriptures, historical books and hence no oblique motive could be attributed to the petitioners much less to cause any hurt or humiliation to the Balmiki community in particular; and

(vi) the portions pertaining to the life of Maharishi Valmik, which though were not offensive, and had purportedly hurt the complainant, were subsequently removed from the Book, so as to assuage his feelings, yet strangely vide order dated 17.02.2017, the Additional Chief Secretary, Government of Punjab, Department of Homes and Jails, granted sanction for the prosecution of the petitioners

under Sections 295A and 153 of the IPC.

3. Learned senior counsel for the petitioners further submits that even the Government of Punjab while granting sanction for the prosecution of the petitioners ignored that in holy Sikh books/scriptures, and in Shri Guru Granth Sahib, there is a reference to the life of Maharishi Valmik before he transformed into a better human being after coming in contact with 'Gurbani'. Learned senior counsel has submitted that it was evident that the FIR in question had been registered with the sole motive to create unnecessary furore and bickering between different communities. Learned senior counsel has still further submitted that on 10.07.2012 itself, petitioner No.2 wrote a letter to petitioner No.1 asking him to remove the 'Sakhi' (story) of Maharishi Valmik on account of hurt having been caused to the Balmiki Community, which fact was duly communicated to the Senior Superintendent of Police, Kapurthala; so much so, thereafter a new edition of the Book was published minus the Valmik Sakhi (story). In support, learned senior counsel has drawn the attention of this Court to Annexures P-14 and P-15 wherein the said fact of the deletion of the allegedly offensive portions are reflected. Learned senior counsel has further argued that even otherwise from a bare perusal of the contents of the FIR, no offence under Sections 295A and 153A of the IPC is made out against the petitioners as *mens rea* which is one of the primary ingredients for attracting the mischief of an offence under Section 295A of the IPC is clearly missing in the case in hand. Hence, in the facts and circumstances, it has been urged that the FIR in question which stands reproduced hereinafter, along with all subsequent proceedings, be quashed.

“Statement of Sh. Mahinder Singh Hamira, President Balmiki Majhbi Sikh Morcha, Punjab S/o Bahadur Singh resident of village Hamira, PS Subhanpur, District Kapurthala aged about 45 years. It is stated that I am the President of Balmiki Majhbi Sikh Morcha Punjab. On 14.03.2012 I alongwith Charanjit Singh Hans Bahujan Samaj Party Kapurthala S/o Sh. Pindi Dass resident of Mohalla Sehria Kapurthala and Harjinder Singh S/o Bhajan Singh, caste Balmik resident of Dialpur, Police Station Kartarpur, Jalandhar went to the house of Sarpanch Kashmir Singh in village Vijola at about 10:00 hours and went to Gurudwara Sahib Vijola taking Sarpanch Kashmir Singh alongwith us. After paying obeisance, Granthi Gurnam Singh told me that he has one book and the name of that book is “Baara Maaha Manjh” wherein, is written about Lord Balmik Ji. We saw and read, wherein it is written about Balmik is that he used to do snatching, looting, theft and commit dacoities. He was a bad person. When we read these insulting words, we got hurt. Then we studied the book which is written by Giani Mohan Singh Urlana S/o Inder Singh Baara Maaha Manjh (Steek) and published by Chatar Singh Jeewan Singh Amritsar. They have hurt the feelings of entire Balmik brotherhood by writing insulting words against Balmik Ji. The pages in the book where is written about Lord Balmik Ji are Page no.49, 50, 51 and photocopies are being presented. Take the legal action against writer and publisher. Statement is written, heard, found correct. Sd/- Mahinder Singh Hamira, Charanjit Singh Hans. Sd/- Harjinder Singh Dyalpura.”

4. In support of his contentions, learned senior counsel has placed reliance upon ***CRM-M-46173-2019 titled as 'Tilak Raj Vs. State of Punjab and another' decided on 28.02.2020; Mahendra Singh Dhoni Vs. Yerraguntia Shyamsundar : 2017(2) (Criminal) 746; Jai Ram Sharma Vs. State of Punjab : 1998(3) RCR (Criminal) 295; Shivaji S/o Sukhdeo Jaware Vs. The State of Maharashtra and another : 2014(24) RCR (Criminal) 766; Priya Prakash Varrier and others Vs. State of Telangana and another : 2018(4) RCR (Criminal) 176; CRM-M-18590-2010 titled as 'Manjula Sahdev and others Vs. State of Punjab and another' decided on 23.04.2019; Aash***

Mohammad Vs. State of Haryana and others : 2017(2) RCR (Criminal) 855 and CRM-M-31988-2012 titled as 'Maninder Singh and another Vs. State of Punjab and another' decided on 02.08.2013.

5. Reply by way of affidavit of Devinder Singh, PPS, Deputy Superintendent of Police, Sub Division Bholath, Kapurthala, is on record which has been filed on behalf of respondent No.1-State.

6. Learned counsel appearing for respondent No.2 has submitted that he does not wish to file any reply and would make his submissions without a reply.

7. Per contra, learned State counsel assisted by learned counsel for respondent No.2, has submitted that there are specific allegations against the petitioners of having intentionally referred to the earlier life of Maharishi Valmik and his subsequent transformation. It has been submitted that no doubt the offensive portions stand removed from the Book, however, the fact remained that removal of the said portions would not be enough to assuage the hurt that had been caused to respondent No.2-complainant. Learned State counsel has argued that since publication made by the petitioners has hurt the religious feelings of Balmiki community, therefore, prima facie offence under Section 295A of the IPC is made out, and the police after completion of investigation has even presented the challan before the Trial Court.

8. Learned counsel for respondent No.2-complainant has further submitted that it was apparent that the petitioners had intentionally made a reference to the life of Maharishi Valmik as there was no evidence or material from which it could be inferred that he was a dacoit prior to his alleged transformation.

9. I have heard learned counsel for the parties and perused the relevant material on record.

10. Before proceeding further, it would be apposite to reproduce Sections 295A and 153A of the IPC which read as thus:-

“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.

153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—

(1) Whoever—

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or

caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Offence committed in place of worship, etc.— Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.”

11. A bare reading of the above reproduced provisions of law reveal that the basic ingredients to attract the mischief of an offence under Section 295A of the IPC are :-

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

12. The basic ingredients to attract the offence under Section 153A of the IPC are:-

- (i) the words, statements, or signs must cause enmity, hatred, and disturbance of harmony between different racial, religious, and language groups;
- (ii) the alleged enmity must be caused among two or more communities;

(iii) the presence of *mens rea*, i.e., the person must have the intention of causing enmity and disharmony between different groups and communities of people; and

(iv) the words, spoken or written, must be of a serious nature and must directly hurt the deep religious sentiments of the groups or community.

13. Considering the case at hand, it is nothing but preposterous to interpret the particular portions of the Book i.e. at pages 49, 50 and 51, as malicious or derogatory to any community or sect, in the instant case to the Balmik community. To put facts in the right perspective, we are talking about none other than the Great sage, Maharishi Valmik, who is the author of 'The Ramayana', which as per the Hindu religion was written in Sanskrit at the behest of Lord Brahma, and which is held sacrosanct by people from all communities and walks of life irrespective of their social strata, race, caste or creed etc. Even as per historical books and ancient scriptures, Maharishi Valmik was born as Ratnakar, before he attained enlightenment; while in meditative penance, eons passed and he remained in eternal bliss and trance, oblivious of the ant hill that had engulfed his entire body, thereby getting the name of Valmik. Hence, it is ill founded to conceive Maharishi Valmik, as belonging exclusively to any particular community or sect. Maharishi Valmik does not belong to any one sect or community, rather he is revered by one and all. Since the petitioners have supplied a list of relevant literature in para 5 of the petition, wherein also similar references have been made to the life of Maharishi Valmik, therefore, it cannot be said that a story has been fabricated by

the petitioners just to create sensation or cause intentional hurt to any community. This Court fails to comprehend that how an aggravated form of insult has been caused by the references made to the earlier life of Maharishi Valmik in the Book of the petitioners so as to attract the mischief of the offence under Section 295A of the IPC, when the reference to the past life of Maharishi Valmik is not only a matter of popular belief but also a subject of various religious and literary authorities. Moreover, going by our ancient scriptures, which are the earliest hand written manuscripts too, and for many the word of God, this Court fails to see anything derogatory in the reference to the earlier life of Maharishi Valmik, who was born as Ratnakar.

14. The allegations levelled and the contents of the Book in the instant case, need to be examined in the background of the observations of the Apex Court made in ***Ramji Lal Modi Vs. State of U.P., AIR 1957 SC 620***, which were reiterated in ***Mahendra Singh Dhoni's case (supra)*** which are as follows:-

“8. It is pointed out that section 295A has been included in chapter XV of the Indian Penal Code which deals with offences against the public tranquility and from this circumstance it is faintly sought to be urged, therefore, that offences relating to religion have no bearing on the maintenance of public order, or tranquillity and, consequently, a law creating an offence relating to religion and imposing restrictions on the right to freedom of speech and expression cannot claim the protection of cl. (2) of Article 19. A reference to Articles 25 and 26 of the Constitution, which guarantee the right to freedom of religion, will show that the argument is utterly untenable. The right to freedom of religion assured by those Articles is expressly made subject to public order, morality and health. Therefore, it cannot be predicated that freedom of religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion cannot under any circumstances be said to have

been enacted in the interests of public order. These two Articles in terms contemplate that restrictions may be imposed on the rights guaranteed by them in the interests of public order.

9. Learned counsel then shifted his ground and formulated his objection in a slightly different way. Insults to the religion or the religious beliefs of a class of citizens of India may, says learned counsel, lead to public disorders in some cases, but in many cases they may not do so and,, therefore, a law which imposes restrictions on the citizens' freedom of speech and expression by simply making insult to religion an offence will cover both varieties of insults, i.e., those which may lead to public disorders as well as those which may not. The law in so far as it covers the first variety may be said to have been enacted in the interests of public order within the meaning of el. (2) of Article 19, but in so far as it covers the remaining variety will not fall within that clause. The argument then concludes that so long as the possibility of the law being applied for purposes not sanctioned by the Constitution cannot be ruled out, the entire law should be held to be unconstitutional and void. We are unable, in view of the language used in the impugned section, to accede to this argument. In the first place el. (2) of Article 19 protects a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression "in the interests of" public order, which is much wider than "for maintenance of" public order. 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 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. 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)(s) and consequently, the question of severability does not arise and the decisions relied upon by learned counsel for the petitioner have no application to this case.”

15. It is thus obvious from the above observations of the Hon'ble Supreme Court that emphasis in such like cases has to be laid on the calculated tendency of an aggravated form of insult which would disrupt public order.

16. Still further, Section 295A of the IPC does not penalize any and every act of insult or an attempt to insult the religion or the religious beliefs of a person or a community but it penalizes only those acts of insults or attempts which have been perpetrated with a deliberate and malicious intent so as to outrage the religious feelings of a particular class/community. Insults to religion made unwittingly or carelessly without any malicious or deliberate intent would certainly be out of the purview of Section 295A of the IPC.

17. It would also be appropriate to notice here that the Publishing House had made amends in their subsequent publications in deference to the feelings of the complainant and had deleted the alleged offending portions of the Book.

18. In view of the above discussion, the instant petition is

allowed and the FIR in question and all consequential proceedings arising therefrom are quashed.

24.03.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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