

S. Veerabadrán Chettiar

Vs

E. V. Ramaswami Naicker and Others

Criminal Appeal No. 49 of 1956

(B. P. Sinha, K. N. Wanchoo, Syed Jafar Imam JJ)

25.08.1958

JUDGMENT

SINHA J. -

The only question for determination in this appeal by special leave, is whether the petition of complaint, disclosed a prima facie offence under section 295 of the Indian penal Code. The courts below have taken the view that it did not, and on that ground, it stood summarily dismissed, before evidence pro and con had been recorded.

It appears that the appellant filed a petition of complaint in the court of the Additional First-Class Magistrate, Tiruchirapalli, against the respondents, three in number. The petition of complaint alleged inter alia that the first accused is the leader of Dravida Kazakam (a community of persons who profess to be religious reformers, one of whose creeds is to carry on propaganda against idol worship), and as such, he was out to vilify a certain section of the Hindu community and do propaganda by holding meetings and writing articles. It is further alleged in the petition of complaint that "recently, the first accused announced his intention of breaking the image of God Ganesa, the God sacred to the Saiva Section of the Hindu Community on 27th May, 1953, in a public meeting at Town Hall. This caused terror commotion in the mind of the Saivite Section of the Hindu Community." The complainant claims to be a Saivite. The complainant further alleged in his petition that on May 27, 1953, at about 5-30 p.m. the accused broke an idol of God Ganesa in public at the Town Hall Maidan, and before breaking the idol, he made a speech, and expressly stated that he intended to insult the feeling of the Hindu Community by breaking the idol of God Ganesas. The said act of breaking the idol was alleged to have been actively abetted by instigation and aid by the other two accused persons, who also made speeches. The petition of complaint also alleged that the said act of breaking the image of God Ganesa was done with the intention of insulting the religious feelings of certain sections of the Hindu community, who hold God Ganesa in veneration, and that the acts complained of, amounted to offence under sections 295 and 295A of the Indian Penal Code. On those allegations, the petition of complaint (dated June 5, 1953) prayed that processes might issue against the three accused persons. In the list of witnesses appended to the petition, figured the Additional District Magistrate, the Sub-Divisional Magistrate, the Town Sub-Inspector of police, Tiruchi Fort, and Sub-Magistrate, Tiruchy Town. On the same date, the learned magistrate examined the complainant on oath. The complainant made statement in support of his allegations in the petition of complaint. Thereupon, the learned magistrate directed that the petition of complaint be sent to the Circle Inspector of Police, Tiruchy, for inquiry and report under section 20, Criminal Procedure Code, On June 26, 1953, on receipt of the police report which showed that though the occurrence as alleged had taken place it was a point of law if the act of the accused would amount to any offence", the learned magistrate passed his order, dismissing the complaint under section 203 of

the Criminal Procedure Code. In the course of his over, the learned magistrate observed as follows :

"The mud figure of Ganesa alleged to have been broken by accused I is not an object held sacred to worshipped by any class of persons. Simply because it resembled the God Ganesa held in veneration by a section it cannot become an object held sacred. Even Ganesa idol abandoned by the people as unworthy of worship loses its sanctity and it is no longer an object held sacred by anybody, sine such given up idols are found in several places of defilement. It is not an offence if a person treads upon any such abandoned idol. Therefore the breaking of mud figure of Ganesa does not amount to an offence under Section 295, Indian Penal Code."

"The speeches delivered by the accused with deliberated and malicious intention of outraging religious feelings of a community, no doubt amount to an offence under Section 295-A, Indian Penal Code. But for laying a complaint under this section the sanction of the Government is necessary. This section has been clearly mentioned in the complaint and it cannot be said it was included by oversight. Without a proper sanction an offence under this section is unsustainable. I therefore see no sufficient ground for proceeding with the complaint and I dismiss the same under section 203, Criminal Procedure Code."

The complainant moved the learned Sessions Judge of Tiruchirapalli, by his petition in revision, filed on July 9, 1953, under sections 435 and 436 of the Criminal Procedure Code, for setting aside the order of dismissal of the complaint. In the petition filed in the Court of Session, the Complaint stated that the petition was confined to the complaint in respect of the alleged offence under section 295, Indian Penal Code, and that it did not seek to revise the order of dismissal of the complaint in respect of an offence under section 295. A of the Indian Penal Code. The learned Sessions Judge dismissed the petition by an order dated January 12, 1954, holding in agreement with the learned Magistrate, that the acts complained of did not amount to an offence under section 295, Indian Penal Code. In the course of his order, the learned Sessions Judge made the following observations :-

"I agree with the learned Magistrate that the acts complained of do not amount to an offence. The accused, who profess to be religious reformers in a campaign against idolatory organized a public meeting at which they broke an earthen image of the God Ganesa. The particular image broken was the private property of the accused and was not in itself an object held sacred by any class of persons; not do I think that idol breaking by a non believer can reasonably be regarded by a believer as an insult to his religion; and the ingredients of Section 295, Indian Penal Code, are therefore not made out."

The complainant then moved the High Court in its revisional jurisdiction under section 439 of the Code of Criminal Produce. The matter was heard by a learned single Judge of that court. The learned single Judge also agreed with the courts below in the reasons given by them for dismissing the petition of complaint, and refused to order further inquiry. In the course of his judgment, he discussed the question whether a mud image of God Ganesa, came within the scope of the words any object held sacred by any class of persons in section 295, and the answered the question in the negative. In this connection, he referred to the judgment of the full Bench of the Allahabad High Court in the case of Queen Empress v. Inam Ali ([1887] I.L.R. 10 All. 150), which is directly an authority for this proposition only that the word object in section 295 of the Indian Penal Code, does not include animate objects. That case dealt with the complaint of killing a cow, Edge C.J. in the

course of his judgment, made an observation that the word 'object' should be interpreted ejusdem generis with the words 'place of worship', and by way of an example of such an inanimate object, he mentioned an idol. That observation, if anything, is not against the complainant. The learned single Judge also referred to the case of Romesh Chunder Sannyal v. Hiru Mondal ([1890] I.L.R. 17 Cal. 852), which also is not in point inasmuch as it dealt with the case of a dedicated bull. But the learned Judge seemed to draw from those cases the inference which may be stated in his own words, as follows :

"Interpreted like that, it would mean that the section would apply only to cases where an idol in a temple is sought to be destroyed, damaged, or defiled. The words 'any object held sacred by any class of persons' even otherwise will apply only to idols in a temple or when they are carried out in processions on festival occasions. The 'object held sacred' will mean only the idols inside the temple and when they are taken out in processions on festival occasions. In such circumstances as in the present case the breaking is nothing more than a doll taken from the shop. Though the intention of the respondents may be to decry the feelings and wound the susceptibilities of a large section of the people, still the intention alone is not sufficient unless it is carried out by an act which must fall within the scope of this section. The dolls in the shop, though they may resemble several of the deities in the temple, cannot be held to be objects held sacred by any class of persons. In modern society there are several images of the deities in the drawing rooms of several houses. It cannot for a moment be suggested that these images are objects held sacred. These have got to be distinguished from the objects held sacred, which can only be when they are duly installed in a temple and from which they are subsequently taken out in procession on festival occasions. What was broken therefore by the respondents is nothing more than a doll taken either from a shop or made for the occasion, and it cannot by any means be called an object held sacred. The offence is not made out and the dismissal is therefore justified.

The petitioner moved the High Court for the necessary certificate of fitness for making an appeal to this court. The learned Judge, who had heard the case on merits, also dealt with this application, and refused to certify that this was a fit case for appeal to this court under Art. 134(1)(c) of the Constitution. The Petitioner moved this court and obtained the necessary special leave to appeal.

It is regrettable that the respondents have remained ex parte in this court. The learned counsel for the appellant has urged that the courts below had unduly restricted the meaning of the words of section 295, particularly, the words "any object held sacred by any class of persons", and that the words have been used in their fullest amplitude by the Legislature, in order to include any object consecrated or otherwise, which is held sacred by any class of persons, not necessarily belonging to a different religion or creed. In the first place, whether any object is held sacred by any class of persons, must depend upon the evidence in the case, so also the effect of the words "with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such, destruction, damage or defilement as an insult to their religion". In this case, the facts alleged in the petition, do not appear to have been controverted, but the learned magistrate as also the learned Sessions Judge and the learned Judge in the High Court, have thrown out the petition of complaint solely on the ground that the image of God Ganesa, treated by the respondents as alleged by the complainant, could not be said to be held sacred by any class of persons. In the instant case, the insult alleged was by destruction of the image of God Ganesa. Apart from the question of evidence which had yet to be adduced, it is a well known fact

that the image of Lord Ganesa or any objective representation of a similar kind, is held sacred by certain classes of Hindus, even though the image may not have been consecrated.

The Learned Judge in the Court Below, has given much too restricted a meaning to the words "any object held sacred by any class of persons", by holding that only idols in temples or idols carried in procession on festival occasions, are meant to be included within those words. There are no such express words of limitation in section 295 of the Indian Penal Code, and in our opinion, the learned Judge has clearly misdirected himself in importing those words of limitation. Idols are only illustrative of those words. A sacred book, like the Bible, or the Koran, or the Granth Saheb, is clearly within the ambit of those general words. If the courts below were right in their interpretation of the crucial words in section 295, the burning or otherwise destroying or defiling such sacred books, would not come within the purview of the penal statute. In our opinion, placing such a restricted interpretation on the words of such general import, is against all established canons of construction, any object however trivial or destitute of real value in itself, if regarded as sacred by any class of persons would come within the meaning of the penal section. Nor is it absolutely necessary that the object, in order to be held sacred, should have been actually worshipped. An object may be held sacred by a class of persons without being worshipped by them. It is clear, therefore, that the courts below were rather cynical in so lightly brushing aside the religious susceptibilities of that class of persons to which the complainant claims to belong. The section has been intended to respect the religious susceptibilities of persons of different religious persuasions or creeds. Courts have got to be very circumspect in such matters, and to pay due regard to the feelings and religious emotions of different classes of persons with different beliefs, irrespective of the consideration whether or not they share those beliefs, or whether they are rational or otherwise, in the opinion of the court.

As a result of these considerations, it must be held that the courts below have erred in their interpretation of the crucial words of section 295 of the Indian Penal Code. But the question still remains whether, even after expressing our strong disagreement with the interpretation of the section by the courts below, this court should direct a further inquiry into the complaint, which has stood dismissed for the last about 5 years. The action complained of against the accused persons, if true, was foolish, to put it mildly, but as the case has become stale, we do not direct further inquiry into this complaint. If there is a recurrence of such a foolish behaviour on the part of any section of the community, we have no doubt that those charged with the duty of maintaining law and order, will apply the law in the sense in which we have interpreted the law. The appeal is, therefore, dismissed.

Appeal dismissed.

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