SUPREME COURT OF INDIA

Mahendra Singh Dhoni

Vs.

Yerraguntla Shyamsundar

Tr.P.(Crl)No.23 of 2016

(Dipak Misra and A.M.Khanwilkar and Mohan M. Shantanagoudar,JJ.,)

20.04.2017

JUDGMENT

Dipak Misra,J.,

1. The present transfer petition was filed seeking transfer of proceedings in Complaint Case No.1320 of 2015 titled as *Yerraguntla Shymsundar v. Mr. Chaitanya Kaibag & Anr.* pending before the learned Additional Judicial First Class Magistrate, Anantpur, Andhra Pradesh to the Court of Chief Metropolitan Magistrate at Bangalore in Karnataka.

2. When the matter was listed on 29.01.2016, this Court issued notice and directed stay of further proceedings of the complaint case pending before the learned Additional Judicial First Class Magistrate, Anantpur, Andhra Pradesh. Thereafter, the matter was called on certain occasions and today when the matter was taken up, Ms. Liz Mathew, learned counsel appearing for the petitioner filed a Criminal Miscellaneous Petition No.7115 of 2017 seeking quashment of the complaint case filed against the petitioner. Ordinarily, we would have been loath to entertain such an application but, in view of the asseverations made to the effect that a complaint of same nature arising from a different trial court has been entertained and quashed, we have entertained the same.

3. Learned counsel has drawn inspiration from order dated September 5, 2016 passed in Criminal Appeal Nos.843 and 847 of 2016 whereby this Court has quashed the criminal proceedings initiated in Complaint Case No.1978 of 2015 titled as Jayakumar Hiremath v. Mahendra Singh Dhoni & others filed in the Court of IX Chief Metropolitan Magistrate at Bangalore for the offence punishable under Section 295A read with Section 34 of the Indian Penal Code (IPC). Be it noted, in the said case, though the High Court of Karnataka was moved under Section 482 of the Code of Criminal Procedure, it declined to intervene and quash the proceedings. This Court, upon perusal of the complaint and the allegations made in the complaint petition, opined that the allegations made in the complaint petition did not satisfy the ingredients to constitute an offence under Section 295A read with Section 34 IPC and accordingly quashed the same.

4. In the present case, as we find, the complaint petition is based on the allegation that the complainant had purchased a monthly business magazine and was disappointed with the main page of the magazine which carried a painting painted with the photo of the petitioner with a caption "God of Big Deals". There was description underneath which had the characters of some advertisement. As is discernible from the complaint petition, the complainant went to the town Police Station to lodge an F.I.R. on 22.1.2013 but as the police declined to register the same, he was compelled to file a complaint petition under Section 200 of the Code of Criminal Procedure. The learned Magistrate entertained the same and issued summons.

5. The seminal issue that arises for consideration is whether the allegations made in the complaint constitute an offence under Section 295A of the IPC and whether this Court, in the obtaining factual matrix, relegate the trial at some other place or grant him liberty to file an application under Section 482 CrPC for quashing. At this juncture, we may refer to Section 295A of the IPC which reads as follows:-

> "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 273 [citizens of India], 274 [by words, either spoken or written, or by signs or by visible representations or otherwise], insults or attempts to insult the re ligion or the Religious beliefs of that class, shall be Punished with imprisonment of either description for a term which may extend to 4[three years], or with fine, or with both."

6. Be it noted, the constitutional validity of Section 295A was assailed before this Court in *Ramji Lal Modi v. State of U.P.*[1] which was eventually decided by a Constitution Bench. The Constitution Bench, adverting to the multiple aspects and various facets of Section 295A IPC held as follows :-

> "8. It is pointed out that s. 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 el. (2) of Art. 19. A reference to Arts. 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 Art. 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 Art. 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 s. 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 deli. berate 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 cl. (2) of Art. 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Art. 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 Art. 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."

7. 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.

8. Ms. Liz Mathews learned counsel for the appellant contends that the allegations, if read in entirety, do not satisfy the essential ingredients of the offence and, therefore, there is no justification that the appellant should be compelled to face the trial. It is also her submission that on the doctrine of parity, (as similar complaint has been quashed) the original proceeding arising within a different territorial jurisdiction deserves to be quashed.

9. Mr. Jaideep Singh, learned counsel appearing for the complainant, respondent No.1, submitted that if the test, as provided by the Constitution Bench, is applied, the complaint may not meet the standards but there is some allegation which may be considered for the purpose of offence.

10. To satisfy ourselves, we have bestowed our anxious consideration and scrutinized the allegations made in the complaint petition and we have no hesitation in holding that the allegations remotely do not satisfy the essential ingredients of the offence and, therefore, applying the principle stated in *State of Haryana & Ors. v. Bhajan Lal & others*[2], we quash the complaint proceedings initiated against the petitioner.

11. It is pertinent to state here that very monthly business magazine was the subject matter in Criminal Appeal No. 843 & 847 of 2006, which were allowed, as mentioned hereinbefore. At this juncture, Mr. Sanchit Guru, learned counsel submitted that he is representing the co-accused before the trial Court in the complaint case. Once the complaint petition is quashed in entirety because of lack of allegations against the accused persons, the same benefit has to flow in favour of the accused no.1. According to him, to keep the trial alive would not only be the abuse of the process of the court, but also tantamount to travesty of justice.

12. In this regard, we may refer to a three-Judge Bench decision in *Harbhajan Singh v. State of U.p*[3]. wherein this Court granted benefit in appeal to one of the accused persons, and thought it appropriate that similar benefit should be extended to the co-accused also. It is interesting to note that the said benefit was extended despite the fact that the earlier appeals of that accused were dismissed by this Court on an antecedent date. It is profitable to reproduce the passages from the said judgment:-

> "19. In the circumstances hereinabove stated, I am of the opinion that it will be manifestly unjust to allow the death sentence imposed on the petitioner to be

executed. The question that, however, troubles me is weather this Court retains any power and jurisdiction to entertain and pass any appropriate orders on the question of sentence imposed on the petitioner in view of the fact that not only his special leave petition and review petition have been dismissed by this Court but also the further fact that his petition for clemency has also been rejected by the President.

20. Very wide powers have been conferred on this Court for due and proper administration of justice. Apart from the jurisdiction and powers conferred on this Court under Arts. 32 and 136 of the Constitution I am of the opinion that this Court retains and must retain, an inherent power and jurisdiction for dealing with any extra-ordinary situation in the larger interests of administration of justice and for preventing manifest injustice being done. This power must necessarily be sparingly used only in exceptional circumstances for furthering the ends of justice. Having regard to the facts and circumstances of this case, I am of the opinion that this is a fit case where this Court should entertain the present petition of Harbans Singh and this Court should interfere."

Be it noted, similar view has been taken in *Akhil ali Jehangir Ali Sayyed v. State of Maharashtra*[4].

13. In the case at hand, as the complaint is quashed, needless to say, for the reasons for which the complaint is quashed shall squarely apply to the co-accused, who is the Editor of the magazine. Therefore, we apply the same principle and quash the complaint even against co-accused. We may hasten to clarify that we have passed the order of quashment keeping in view the criminal miscellaneous petition filed in this case for quashing and also not to allow more space for abuse of the process of the Court.

14. Before parting with the case, we would like to sound a word of caution that the Magistrates who have been conferred with the power of taking cognizance and issuing summons are required to carefully scrutinize whether the allegations made in the complaint proceeding meet the basic ingredients of the offence; whether the concept of territorial jurisdiction is satisfied; and further whether the accused is really required to be summoned. This has to be treated as the primary judicial responsibility of the court issuing process.

15. The transfer petition and the criminal miscellaneous petition stand disposed of accordingly.

Judgment Referred.

[1]*AIR 1957 SC 0620*
[2]*(1992) Supp.1 SCC 0335*
[3]*(1982) 2 SCC 0101*
[4]*(2003) 2 SCC 0708*