

ALLAHABAD HIGH COURT

Buba Khalil Ahamad

Vs.

State (Allahabad)

Criminal Misc. Case No 810 of 1955

(V.G. Oak, A.P. Srivastava and D.P. Uniyal, JJ.)

20.04.1960

JUDGMENT

V.G. Oak, J.

1. This is an application by Baba Khalil Ahmad under Section 99-B, Criminal Procedure Code for setting aside an order of the State Government under section 99-A, Criminal Procedure Code for the forfeiture of six books written by the applicant.

2. The applicant has filed two affidavits in support of his application. According to these affidavits, there is a consensus of opinion of Muslim Ulemas that, Yasid, son of Muawiya was the chief perpetrator of Karbala. In November 1952, a handbill was published in Benaras describing Yasid as one entitled to be admitted to heaven. In other pamphlets Muawiya was praised and was represented as a leader of Hanafi Muslims. The applicant is a Sunni Musalman of Hanafi sect. He considered it his duty to dispel doubts and misunderstanding about the position of Yasid and Muawiya in Muslim history. With the object, the applicant wrote the six books, which were subsequently forfeited by the State Government. The applicant never intended to wound or outrage the religions feelings of any person.

3. The Home Secretary to U. P. Government filed a written statement on behalf of the Government. According to the written statement, the six books in question were prescribed by the receivment in the interest of public order, and on receiving protests from a number of persons whose religious feelings had been injured.

4. One Abdul Malik, who supported the action taken by the State Government, filed two counter-affidavits. According to the counter-affidavits, Amri Muawiya and his father Abu Sufain are held in great legard by Sunni Muslims. The speeches delivered and the books written by the applicant

outraged the religious feelings of Muslims.

5. Muawiya figures prominently in the six books in question. It is, therefore, necessary to point out who Muawiya was. After the death of Mohammad, the prophet, there were disputes about Imamate, that is, spiritual leadership of Muslims. These differences led to the formation of the main sects of Muslims - Sunnis and Shias. According to Sunni's Abu Bakar, Umar and Usman were the first three Khalifas; and Ali was the fourth Khalifa. Shias do not recognise Abu Baker, Umar and Usman as Khalifas. According to Shias, Ali was the first Khalifa. Muawiya, son of Abu Sufain was a contemporary of Mohammad, the prophet, but survived him. Muawiya was the governor of Syria. There was a battle between Muawiya and Ali. There is serious controversy about Muawiya's character. According to the school of thought represented by Abdul Malik, Muawiya was a pious person. According to the applicant's school of thought, Muawiya was a man of mean character.

6. It was urged for the applicant that, the order of forfeiture passed by the State Government is invalid, because the order did not comply with section 99-A, Criminal Procedure Code. Section 99-A, Criminal Procedure Code runs thus:

"(1) Where -

(a) any newspaper, or book.....appears to

the State Government to containany matter..which is deliberately and maliciously intended to outrage the religious feelings of any such classthe State Government may, by notification in the official Gazette, stating the grounds of its opinion declareto be forfeited....."

It was urged for the applicant that, in the present case the order passed by the State Government did not state the grounds of its opinion as required by section 99-A Criminal Procedure Code.

7. The order passed by the State Government in the present case ran thus :-

"In exercise of the powersthe Governor is pleasedon the ground that the said publication contains matter, the publication of which is punishable under section 295A of the Indian Penal Code."

It was pointed out that, the Order made a bare reference to section 295A, Indian Penal Code without specifying the facts of the case and the objectionable features of the books in question.

8. In "*Harnam Das v. State of U.P.*", the Special Bench noticed that, the order passed by the State Government under section 99-A, Criminal Procedure Code was open to a similar objection. Nevertheless, it was held that, in view of the provisions of section 99-D, Criminal Procedure Code the High Court is precluded from considering any point other than the question whether in

fact the document comes within the mischief of the offence charged. The Court followed "*Baijnath v. Emperor*"²

9. In AIR-1925 All 195 (FB) the Special Bench held that, it was precluded by section 99D Criminal Procedure Code from considering any other point than the question whether in fact the matters contained in the document were seditious or not and fell within the mischief aimed at by section 124A, Indian Penal Code. I respectfully agree with the view taken in Baijnath's case, AIR 1925 Allahabad 195 (FB). Section 99-B, Criminal

¹ AIR 1957 All 538

² AIR 1925 All 195 (FB)

Procedure Code provides for an application to High Court to set aside an order of

forfeiture. According to Section 99C, Criminal Procedure Code, such application has to be heard by a Special Bench of the High Court composed of three judges. Sub-Section (1) of section 99-D, Criminal Procedure Code runs thus:-

"On receipt of the application, the Special Bench shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained seditious or other matter of such a nature as is referred to in sub-section (1) of section 99-A, set aside the order of forfeiture." Section 99-G, Criminal Procedure Code states:-

"No order passed or action taken under section 99-A shall be called in question in Court otherwise than in accordance with the provisions of section 99-B."

10. Sections 99-A to 99-G form a single scheme dealing with the same subject-matter - forfeiture of objectionable literature. These seven sections have, therefore, to be read together. If sections 99B, 99-C, 99-D and 99G are read together it becomes clear that the only question for consideration by the Special Bench is that mentioned in section 99D. The inquiry under section 99D has to be confined to only one issue. The issue is whether the books in question contain matter of the nature referred to in section 99-A. If the applicant considers that the proceedings for forfeiture of his books suffer from other defects, he may institute separate proceedings, if so advised. This Special Bench constituted under section 99C, Criminal Procedure Code has to confine its inquiry within limits of section 99D Criminal Procedure Code.

11. In the same connection it was urged for the applicant that, sections 99-A, 99-B and 99-D, Criminal Procedure Code are ultra vires. In the present case we are not concerned with the validity of Section 124-A, Indian Penal Code. In *Ramji Lal v. State of U. P.*³, it was held by their Lordships of the Supreme Court that section 295-A Indian Penal Code is not ultra vires or unconstitutional. The decision in Ramjilal's case, AIR 1957 Supreme Court 620 is binding on us.

12. If section 295A, Indian Penal Code is valid, it is difficult to see how section 99-A, Criminal Procedure Code and the following sections can be successfully attacked. The procedure for forfeiture laid down in section 99-A, Criminal Procedure Code is only consequential to the substantive law laid down in section 295-A, Indian Penal Code. It was urged for the applicant that section 99-D Criminal Procedure Code is invalid because the inquiry under the section is to be confined to only one question. It is true that the scope of the inquiry under section 99-D Criminal Procedure Code is not so wide as that of a criminal trial. But this difference does not involve any breach of the Constitution. There is nothing in the Constitution to suggest that, all inquiries of criminal or quasi-criminal nature must be on the lines of a criminal trial. I hold that Sections 99-A, 99-B and 99-D, Criminal Procedure Code are not ultra vires.

³ AIR 1957 SC 620

13. The central theme of the six books in question is the alleged bad character of Muawiya. It is neither necessary nor proper to quote all the offensive passages from the six books. Reference to a few passages will suffice.

14. The first book is "Ashab-a-Rasool Allah aur Muawiya Ki Sahabiat" (Companions of the prophet of God and the companionship of Muawiya). On page 61 of this book, there is an observation that, Muawiya adopted villainous ways, and rode the steeds of tyranny and perdition. On pages 87 and 88 of the book the author remarked that Muawiya committed every tyrannical act in every way.

15. The second book by the applicant is "Maula aur Muawiya" (Ali and Muawiya). On page 161 of this book, there is a remark that Muawiya means a bitch. On page 213 of the book, there is an obscene reference to Binda, who was Muawiya's mother. On page 317 of the book, the author expressed his view that Muawiya is a person deserving hell, and that he shall for ever remain in hell.

16. The third book is "Radd-e-Fasaile Muawiya" (Refutations of the Virtues of Muawiya). On page 2 of the book it is mentioned that, the book is addressed to Maulana Molvi Abdul Hafiz Sahab and other followers of Muawiya. On pages 11 and 12 of the book, there are observations to the effect that Almighty had crushed Muawiya to be put in hell. It is a decided fact that, when he will remain hungry all along, he will certainly go to hell.

17. The fourth book is, "Haq aur Ahl-e-hak ki Shancar Fateh" (Grand victory of Truth and Pursuers of Truth). On page 2 of the book the author stated that Muawiya was a Kafir, atheist, tyrant and irreligious. On page 16 of the book, there is an observation that, Muawiya is accused.

18. The fifth book is "Qaul-e-Faisal" (Decisive Statement). On pages 38 and 39 of the book, the author remarked that, Muawiya is a person, who is a criminal from head to foot. On page 108 of the book it was observed that Muawiya shall certainly go to hell. On page 109 of the book, there is a statement that Muawiya is a person, whose Abode is not paradise but hell.

19. The sixth book is "Muawiya par Jawaz-e-Lanat ke Sharai Dalayel" (Evidence in the books on Mahomedan Law in support of the verdict of curses of Muawiya). On pages 17 and 18 of the book the author gave a list of 16 sins or misdeeds. On page 18 of the book the author remarked:

"Now the readers may please note as to which of the above misdeeds have not been committed by Muawiya on account of which he may be exonerated from the effects of the above noted sayings."

On page 39 of the book, there is an obscene reference to Muawiya's mother. On page 64 of the book the author gave several reasons for his conclusion that, Muawiya deserves curses.

20. It will be noticed that, the general argument of the author in these six books is that Muawiya was a man of despicable character. The question is whether the author would be guilty under section 295A Indian Penal Code for writing these books. Section 295A Indian Penal Code runs thus:-

"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 visible representations, 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 two years, or with fine or with both."

21. As already pointed out, there are differences among Mussalmans on the question of Muawiya's character. Abdul Malik and men of his school of thought object to Muawiya's description as a man of bad character. In paragraph 10 of the first counter affidavit of Abdul Malik, he stated that Hazrat Amir Muawiya and Abu Sufian are held in great regard by Sunni Muslims as religious leaders. In paragraph 16 of the counter affidavit it is stated that, Amir Muawiya is held in deep religious respect by Sunni Muslims. In paragraph 17 of the counter-affidavit it is stated that, Muawiya's parents, Abu Sufian and Hinda are held in great respect by Sunni Muslims. Although in the rejoinder-affidavit filed by the applicant there is a general denial about the allegations in the counter-affidavit, there is no specific denial about the statements contained in paragraphs Nos. 10, 16 and 17 of the counter-affidavit. In paragraph 18 of the rejoinder affidavit, the applicant stated as follows:-

"That no Sunni objects to the maligning of Muawiya, Abu Safian and Hinda. It is only the Nasibis, posing to be Sunnis, who resent it. These Nasibis are really the enemies of IslamThe claim of the Nasibis that they are Sunnis is only a cloak to conceal their identity in order that they may mislead true Sunni Mussalmans."

This statement amounts to an admission that, certain persons who claim to be Sunni Muslims,

object to the maligning of Muawiya and his parents. We may, therefore, take it that, certain persons object to the maligning of Muawiya and his parents. It makes little difference whether these persons are described as Sunni Muslims as claimed by Abdul Malik, or as Nasibis as suggested by the applicant. Apparently these persons prefer to describe themselves as Sunnis.

22. The main ingredient of section 29.5A Indian Penal Code is insult to religion or religious beliefs of a class of citizens of India. If a person has great regard for Muawiya as a religious leader, he is likely to be offended if Muawiya is described as a man of mean character. Those persons, who describe themselves as Sunnis and have great regard for Muawiya, can well be described as a class of citizens of India. So the books written by the applicant constitute insult to the religious beliefs of a class of citizens of India.

23. Section 295-A Indian Penal Code further requires that, the writing must be with deliberate and malicious intention of outraging the religious feelings of a class of citizens of India. There is no denying the fact that, the applicant's act was deliberate. It is his case that, on finding that certain pamphlets had been issued in support of the opposite view, he wrote the six books in question. The act was clearly deliberate.

24. It was urged for the applicant that, he had no intention of outraging anybody's religious feelings. His object was merely to bring misguided persons on the right path. It may be that the applicant wrote the six books by way of a reply to the pamphlets issued from the opposite camp. But this circumstance will not by itself take out the books from the scope of Section 295A. Indian Penal Code. In "*Kali Charan Sharma v. Emperor*", it was held that, the intention of the writer of a book must be judged primarily by the language of the book itself, though it is permissible to receive and consider external evidence either to prove or to rebut the meaning ascribed to it. If the language is of a nature calculated to produce or to promote feelings of enmity or hatred the writer must be presumed to intend that which his act was likely to produce.

25. We have seen that the applicant's writing is of such a nature that the admirers of Muawiya are bound to be offended. It was pointed out that, the expression used in Section 298, Indian Penal Code is "wounding religious feelings", while the expression used in Section 295-A., Indian Penal Code is "outraging religious feelings". The word 'outrage' is somewhat stronger than the word 'wound'. But on examining the language used by the applicant in the six books, I find that the writing is likely to outrage religious feelings of the admirers of Muawiya. It must be held that, the applicant intended to outrage the religious feelings of that class of citizens, who have great regard for Muawiya.

26. The main plea advanced on behalf of the applicant was justification. Justification was pleaded in two ways. In the first place, it was urged that the allegations made by the applicant against Muawiya are true. Secondly, it was contended that, there is high authority in support of the view expressed by the applicant in his books.

27. Mr. Sadiq Ali appearing for the applicant quoted passages from 'Sprit of Islam' by Amir Ali, and 'The Decline and Fall of the Roman Empire' by Gibbon in support of the contention that, Muawiya was a treacherous man. Mr. Sadiq Ali also referred us to other books, in which a view hostile to Muawiya has been expressed. There are also text books, which take the view that Muawiya was a man of pious nature. I decline to decide the question whether Muawiya was a man of bad character as urged by the applicant, or a pious man as urged on behalf of Abdul Malik. It was pointed out in AIR 1927 Allahabad 649 (FB) that, in such cases the truth of the language can neither be pleaded nor proved. The present enquiry has to be confined to the question whether there was malicious intention of outraging the religious feelings of a class of citizens of India. Even a true statement may outrage religious feelings. It, is, therefore, unnecessary to record a verdict about the true nature of Muawiya's character.

28. Mr. Sadiq Ali pointed out that Muawiya was a historical figure. It was urged that, discussing merits and demerits of a historical figure does not amount to an offence under Section 295-A, Indian Penal Code. In "*Debi Soren v. The Statg*⁵", it was held that, in a prosecution under Sections 124A and 153A, Indian Penal Code, the speeches made may be considered as a whole and in a fair, free and liberal spirit, not dwelling too much upon isolated passages or upon a . strong expression used here and there. An attempt should be made to gather the general effect of the speeches as a whole. Although I have quoted only a few passages from the six books, the general trend of the

⁴ AIR 1927 All 649 (FB)

⁵ AIR 1954 Pat 254

six books is on the same lines - condemnation of Muawiya. It is true that Muawiya was a historical figure. But we cannot overlook the fact that, there is religious sentiment attached to this name. The six books cannot, therefore, be dismissed as ordinary works on history. The books are essentially of a religious character. They are an attack on Muawiya's character.

29. In "*Veerabadran Ohettiar v. Ramaswami Naicker*⁶", it was held that, Section 295, Indian Penal Code 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. That was a case under Section 295, Indian Penal Code. But those observations have a bearing on Section 295-A, Indian Penal Code also.

30. The word 'malicious' used in section 295-A, Indian Penal Code presents some difficulty. According to Stroud's Judicial Dictionary, 'Malice' in common acceptation means ill will against a person. But in its legal sense, it means, wrongful act done intentionally without just cause or excuse.

31. In "*Piare Lal v. Emperor*⁷", Knox, J. referred to "*R. v. Pemblition*⁸", where it was held that, if a person willfully does an act injurious to another without lawful excuse, he does it maliciously.

32. It, therefore, appears that, in Section 295-A Indian Penal Code the word 'malicious' has not been used in the popular sense. In order to establish malice as contemplated by this section, it is not necessary for the prosecution to prove that, the applicant bore ill will or enmity against specific persons. If the injurious act was done voluntarily without a lawful excuse, malice may be presumed. Mr. Sadiq Ali contended that the applicant had a lawful excuse for writing the six books, because pamphlets in support of the opposite view had been issued. I do not think that, this circumstance can be regarded as a lawful excuse. Writing of these six books was a voluntary act on the part of the applicant. There was no command from any superior authority. If the applicant chose to refute certain arguments, he did so at his own risk. Provocation received from supporters of the opposite view cannot be treated as a lawful excuse for writing the offensive books. The applicant was guilty of committing the injurious act without a lawful excuse. He knew the probable result of the writing. Malice, is, therefore, established.

33. All the elements necessary for establishing a charge under Section 295A, Indian Penal Code have been proved. Each of the six books in question contains matter, the publication of which is punishable under Section 295A, Indian Penal Code. The State Government was, therefore, justified in passing the order for forfeiture of the six books.

34. In my opinion, the order of the State Government under Section 99A Criminal Procedure Code should be upheld, and the application by Baba Khalil Ahmad under section 99B, Criminal Procedure Code should be dismissed.

⁶ AIR 1958 SC 1032 ⁸(1874) 43 LJ M.C. 91

⁷15 ALJ 106 : (AIR 1917 All 317 (1))

Srivastava, J.

35. I am of the same opinion.

Uniyal, J.

36. I agree.

BY THE COURT

37. The application by Baba Khalil Ahmad under section 99-B, Criminal Procedure Code: is dismissed. The applicant is directed to pay the opposite party Rs. 600/- as costs Rs. 300/- as translation charges, and Rs. 300/- as Deputy Government Advocate's fee. The order dated 28-4-1955 for interim stay is vacated.

Application dismissed.