

ANDHRA PRADESH HIGH COURT

N. Veerabrahmam

Vs.

State of A.P

Writ Petn. No. 842 of 1958 and Criminal Misc. Petn. No. 888 of 1958

(P. Chandra Reddy, C.J., Bhimasankaram and Srinivasachari, JJ.)

12.03.1959

JUDGMENT

Chandra Reddy, C.J.

1. The subject-matter of both the petitions is the order of the Government of Andhra Pradesh passed under Section 99-A of the Criminal Procedure Code in G. O. Ms. No. 501 Home (General-C) dated 22nd March, 1958.
2. The petitioner is the author of a book called 'Bible Bandaram', which means the 'Treasure of the Bible'. He claims to have dealt with the Bible from a scientific and rationalistic point of view. Being of opinion that it contains matter, which falls within the purview of Section 99-A, Criminal Procedure Code, the State Government declared that all copies of the aforesaid book, wherever found, should be forfeited to the Government. Pursuant to this, the books are said to have been confiscated by the officers concerned. These two petitions are filed in this Court challenging the validity of that order. Cri. M. P. No. 888 of 1958 is preferred under Section 99-B Criminal Procedure Code, while the Writ Petition raises the question of the constitutional validity of Section 99-A.
3. The main theme of the argument of the counsel for the petitioner in support of both the petitions is that Section 99-A of the Criminal Procedure Code offends Article 19(1)(a) of the Constitution, which guarantees to the citizens freedom of expression. The stress of the argument of the learned counsel for the petitioner is that any law, which takes away or even curtails any of the freedoms enshrined in Article 19 is void and should, therefore, be struck down.
4. It is contended that the power conferred by that Section could be used by the executive in such a way as to interfere with the right of freedom of expression of a citizen and thus destroy the protection afforded under Article 19. The crucial point for consideration is whether there is any repugnancy between Article 19 of the Constitution and Section 99-A Criminal Procedure Code.
5. We will presently show that the impugned action does not in any way violate Article 19(1)(a). The right now claimed is created by Article 19 and is not independent of it and is subject to the

limitation imposed by it and as such is not an unrestricted or unqualified right. It is useful to extract here the relevant provisions of Article 19.

6. Article 19(1) in so far as it is relevant runs as follows :-

"19 (1) All citizens shall have the right
(a) to freedom of speech and expression
XX XX XX
(f) to acquire, hold and dispose of property
,

Article 19(2) says :

-

"Nothing in sub-cl, (a) of Clause (1) shall after the operation of any existing law or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence.

Article 19(5) says : -

"(5) Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub-clauses either in the interests of the general public or for the protection of the interests of any scheduled tribe."

7. It is seen that the rights guaranteed under Clause 1 are subject to certain restrictions of a reasonable kind. The restrictions on the rights contemplated should be within the limits set by Clause 2. Therefore, the point for decision is whether the offending Section is saved by sub-art. (2). This, in its turn, depends upon the terms of Section 99-A of the Criminal Procedure Code. We will have therefore to read that Section here. It runs thus :-

"(1) Where
(a) any newspaper, or book as defined in the Press and Registration of Books Act, 1867 (25 of 1867) or
(b) any document

Wherever printed, appears to the State Government to contain any seditious matter or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of the citizens of India or which is deliberately and maliciously intended to outrage the religious feelings of any such class by insulting the religion or the religious beliefs of that class, that is to say, any matter the publication of which is punishable under Section 124-A or Section 153-A or Section 295-A of the Indian Penal Code, 1860 the State Government may by notification in the Official Gazette, stating the grounds of its opinion, declare every copy of the issue of the

newspaper containing such matter and every copy of such book or other document to be forfeited to Government and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorise any police officer not below the rank of Sub-Inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be."

8. It is seen that this Section does not take away the right to write and publish books. People are at liberty to write books without offending deliberately the religious sentiments of the other citizens who are as much entitled to certain freedoms as the petitioner himself. Section 99-A does not place a total prohibition on the exercise of the fundamental right guaranteed to a citizen. It only empowers the Executive to take action in the interest of public order etc., in the eventualities mentioned therein.

Surely, no citizen could claim a right to insult the religion or religions beliefs of another Section of the population. The right which one citizen claims should be consistent with the rights of the other citizens. If people are permitted to indulge in activities calculated to wound the religious susceptibilities of the other religious denominations in the State, that would inevitably lead to the disruption of public order. If there is no law authorizing the executive to take necessary action to prevent or combat activities prejudicial to the maintenance of public order, there will be disorder in society and bitter feelings and even hatred between various sections of society which is not conducive to the maintenance of order. Any law aimed at preventing such a mischief is reasonable and is not intended to abridge any of the rights conferred under Article 19. The impugned provision is conceived in the interests of public order, decency or morality etc. That being so, the restriction placed by this statutory provision on the freedom of expression is a reasonable one and as such it falls within the reservation under Clause (2) of the Article. Consequently, it is not open to any objection based on the Constitution.

9. Sri Chowdhury invited our attention to some of the rulings of the Supreme Court, which dealt with the scope and ambit of this Article of the Constitution None of these rulings Viz : *Romesh Thappar v. State of Madras*¹, *Chintaman Rao v. State of Madhya Pradesh*², and *Brij Bhushan v. State of Delhi*³, is in point. They do not bear on any treatise which insults the religimi or religious feelings and in regard to which Section 99-A had been involved.

10. Further, Article 19(2) was amended after these rulings were rendered by the Supreme Court so as to nullify the effect thereof. Therefore, these decisions cannot render much assistance to the petitioner. Article 19(2) before the amendment read as follows :-

"Nothing in sub-Clause (a) of Clause (1) shall affect the operation of any existing law so far as it relates to, or prevents the State from making any law relating to, libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of or tends to overthrow the State."

¹1950 SCJ 418: AIR 1950 SC 124 ³1950 SCJ 425 : AIR 1950 SC 129

²1950 SCJ 571 : AIR 1951 SC 118

As a result of the amendment, the scope of Article 19(2) was very much enlarged. The amended article is couched in wide language so as to include restrictions to cover all eventualities enumerated in the amended Article. The expression in the interests of is of wide connotation. So,

any law penalizing activities which have a tendency to cause public disorder is within (the scope of) authorized limits. The impugned section, therefore, comes within the range of clause 2 of that Article.

11. A similar contention was repelled by the Supreme Court in *Ramjilal Modi v. State of Uttar Pradesh*⁴, There, the question posed was whether Section 295-A of the Indian Penal Code was obnoxious to Article 19 of the Constitution. The answer was. in the negative. Their Lordships have observed that Article 19(2) only punishes an aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. In the course of the judgment, the learned Chief Justice observed :-

"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."

This pronouncement of the Supreme Court applies equally to Section 99-A Criminal Procedure Code since it is only a matter that would fall either within the ambit of Section 295-A or Section 124-A and Section 153-A of the Indian Penal Code that would enable the Government to take action under Section 99-A.

12. Another ruling of the Supreme Court which is of assistance in this enquiry is *Virendra v. State of Punjab*⁵, In that case, Section 2 of the Punjab Special Powers (Press) Act, which is analogous to the offending Section was declared valid on the ground that it imposed reasonable restrictions on the exercise of the rights conferred by Articles 19(1)(a) and 19(1)(g) in the interests of public order and of the general public and was therefore, protected by Article 19(2) of the Constitution. Section 2(1)(a) of that Act runs as follows :-

"2 (1) The State Government or any authority so authorized in this behalf if satisfied that such action is necessary for the purpose of preventing or combating any activity prejudicial to the maintenance of communal harmony affecting or likely to effect public order, may, by order in writing addressed to a printer, publisher, or editor :-

(a) prohibit the printing or publication in any document or any class of documents of any matter relating to a particular subject or class of subjects for a specified period or in a particular issue or issues of a newspaper or periodical :

Provided that no such order shall remain in force for more than two months from the making thereof :

Provided further that the person against whom the order has been made may within 10 days of the passing of this order make a representation to the State

⁴1957 SCJ 522 : AIR 1957 SC 620

⁵1958 SCJ 88 : AIR 1957 SC 896

Government which may on consideration thereof modify, confirm or rescind the order."

Their Lordships however declared Section 3 invalid since there was no time limit for the operation of the order made under that Section nor any provision made for any representation being made to the State Government notwithstanding the fact that the powers under Section 3 were subject to the same condition as to the satisfaction of the State Government or its delegates as mentioned in Section 2(1)(a). The principle underlying that judgment governs the instant case

13. In considering whether Section 99-A imposes a reasonable restriction, it has to be remembered that Section 99-D contains a provision for judicial corrective. That is a safeguard which is absent in Section 3 of the Punjab Special Powers (Press) Act. Further, in deciding whether a particular restriction is reasonable or not, the Court should take into account the character of the right alleged to have been violated and the underlying purpose of the restriction imposed, "the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition and the prevailing condition at the time" etc. Vide : *State of Madras v. V.G. Row*⁶, We feel that the restriction imposed by Section 99-A is not disproportionate to the evil sought to be remedied. For these reasons, we hold that Section 99-A is not hit at by Article 19 of the Constitution and its validity cannot be impeached.

14. It was next faintly argued that this legislation also interferes with the right to acquire, hold and dispose of property within the ambit of Article 19 and as such infringes clause (f) of that Article. We cannot accede to this contention. Section 99-A does not seem to have any impact on Clause (f). Assuming that it has any such effect, it is protected by Clause (5) of that Article, as such an enactment is necessary in the interests of the general public. By that as it may, the law in dispute is protected by clause (2), as it is concerned with the freedom mentioned in clause (a). Therefore, no further, question arises.

15. The validity of this provision is attacked on another ground also. It is urged that the right of application contained in Section 99-B of the Criminal Procedure Code is an illusory one in that it does not contemplate the issue of a notice of forfeiture to the person concerned, while a time limit is fixed for the filing of an application. The order forfeiting the books generally does not come to the knowledge of the persons affected. The publicity in the Official Gazette does not amount to proper notice as the value of such notification is very little. This defect renders the encroachment upon the right conferred by clause (a) of Article 19(1) unreasonable and takes it out of the operation of the saving clause, argues the Counsel for the petitioner. Reliance for this proposition is placed upon 1952 SCJ 253 : AIR 1952 Supreme Court 196. We are not very much impressed by this argument either.

16. The decision in 1952 SCJ 253 : AIR 1952 Supreme Court 196 (supra), has not laid down any proposition that the notification of an order in an Official Gazette is not proper publication and does not amount to notice. All that their Lordships remarked

⁶1952 SCJ 253 : AIR 1952 SC 196

was :-

"Publication in the official gazette whose publicity value is by no means great, may not reach the members of the association declared unlawful, and if the time fixed expired before they know of such declaration, their right of making a representation, which is the only opportunity of presenting their case, would be lost."

Their Lordships have not stated as an invariable rule that the notification in the Official Gazette does not constitute notice to the persons concerned. These remarks have to be understood in the context they were made, viz., whether an association which was sought to be declared unlawful on the ground that it would interfere with the maintenance of public order, should not be given sufficient opportunity to make a representation to the Government within the time prescribed by that order in regard to the existence of the grounds on which the Government proposed to take action. That decision, therefore, does not establish the proposition of the Counsel for the petitioner. Under Section 99-A, the forfeiture has to be notified in the Official Gazette. That, in our opinion, is sufficient publication. The normal mode of notifying any order of Government is by publication of it in the official gazette and no personal service is generally contemplated. Therefore, Section 99-A is not open to attack on that ground.

17. Further, before the order is put into effect, the order should be communicated to the person concerned, be it the author, the printer or the publisher and that would enable him to move the High Court under Section 99-B. It is contended that the Government could deprive a party of the right of application by postponing the actual forfeiture of the book. We do not think that there will be any justification for attributing evil designs or mala fides to the Government. It cannot be assumed that Government will throw obstacles in the way of the exercise of the right of application derived from the Sub-Section. The remedy provided by Sub-Section D (sic) is a very effective one and gives an opportunity to have the legality of the order tested in the High Court. So Section 99-A cannot be challenged even on that account.

18. It was alternatively contended that the order in dispute does not comply with the terms of Section 99-A. It is said that it is vitiated by the failure of the State Government to state the grounds of its opinion. It is true that the order has not set out the grounds for the opinion of the State Government that the book contains matter which is punishable under Section 295-A Indian Penal Code. It is also indisputable that the section requires the Government to mention the facts in support of its opinion and that a mere statement that the book contains matters constituting an offence under any of the provisions of the Penal Code recited therein does not fulfil the requirement of that section, which is a Mandatory one. But the defect in the order cannot be a ground for this Court to quash that order. Under Section 99-D, this Court has to consider whether the newspaper or book or other document ordered to be forfeited contains such of the matters as are referred to in Section 99-A. If the Special Bench is not satisfied that there is no such material, the order of forfeiture would be set aside. If on the other hand, there is enough material to justify the action of the Government this Court will not interfere with it.

Therefore, all that this Court is called upon to do by Section 99-D is to see whether there is any justification for the Government to pass the order forfeiting the books. It is pertinent to note that under Section 99-A the grounds of the order given in their factual aspects are tested in the enquiry by the Special Bench of the High Court. So the existence of grounds which would justify the order is amenable to determination by the High Court. Therefore, the argument that the non-observance of the rule in regard to the subject-matter of the grounds vitiates the whole order does not commend itself to us. There would have been substance in the argument if the satisfaction of the Government is final and is not open to question in a judicial proceeding. That is not the position under Section 99-A. The Special Bench has to be convinced about the existence of the grounds forming the basis of the order. It is not permissible for the Special Bench to consider a matter other than that specified in Section 99-D such as the one now raised for the petitioner.

There is authority for this position in *Harnam Das v. State of Uttar Pradesh*⁷, which followed a judgment of the same Court in *Baijnath v. Emperor*⁸, This contention is, therefore, negated.

19. Another point raised is that the book contains only a dissertation on the unscientific, un-historical and unrationalistic nature of the Bible and that if any of the passages therein have the effect of issuing the religion or religious beliefs of Christians, that does not attract the applicability of Section 99-A unless it is found that the petitioner had deliberately and maliciously done it. The petitioner had no intention at all to insult in any way the Christian religion, his only object in writing the book being to examine the Bible and its literature from a rationalistic point of view. The book in question was a dispassionate and scientific study of the Bible and the author as a rationalist had applied reason to the investigation of phenomena, proceeded the argument.

20. We do not think that we can accept this proposition. It is true that each and every insult to the religion or religious feelings of a sect which are unintentional would not bring the matter within the ambit of Section 99-A. Sometimes it may be offered unwittingly or carelessly and without any deliberate or malicious intention. It is only insults to religion or religious beliefs that are deliberately and maliciously made that would bring into play Section 99-A Criminal Procedure Code. But the intention of the author has to be gathered primarily from the language used. If the words employed are of such a nature as would lead any reasonable man to think that they are grossly offensive and provocative and are intended to be regarded as such, the consequences indicated in that section ensue.

21. Judged in that light, the ideas expressed in the book and the language used manifest a malicious intention to outrage the religious feelings of the Christian community by insulting their religion and their religious beliefs. The very title of the book is disparaging and contemptuous in its tone and insinuation. The expression "Bandaram" is used in popular parlance in a satirical sense. Coming to the body of the books, the petitioner has used abusive and insulting language in regard to the religious personalities and the tenets of the Christian faith. The tenor and the tone of the publication is consistent only with a deliberate and malicious intention to offer insults

⁷ AIR 1957 All 538 (SB)

⁸ AIR 1925 All 195 (SB)

to that religion.

22. The effect of some of the passages therein, as set out in the counter-affidavit fully supports this conclusion :-

"(a) That the Bible contains vivid descriptions of tribal warfare, sacrifices, drink, bloodshed which show that this book was produced by the uncivilised who were determined and engaged to destroy the more civilised races.

"(b) That the Old Testament is neither the word of God Jehovah nor the New Testament the word of Jesus. This is amply proved by the incongruities, excesses, improbabilities and anachronisms, vulgarities that are manifest in every page of the Bible.

(c) That the Old Testament came into existence in the 4th and 5th century B. C. A critical reading of the Old Testament indicates that it is God Jehovah who is a cruel and selfish tyrant while Satan is a most excellent, noble and normal person. The five books of the

Old Testament are mere forgeries and cannot be said to have been written by Moses at the word of Jehovah. The prophecies contained in the Old Testament are mere poetic imaginations. The story of Jesus Christ built upon, the shaky foundations of the Old Testament is a mere myth. The gospels of Saints Mathew, Mark, Luke, and John in the New Testament are subsequent fabrications. The material discrepancies contained in these gospels regarding the birth, life teachings, death and resurrection of Jesus amply prove their spurious nature. A person by name Jesus was reported to have been born out of an adulterous intercourse between his mother Mary and a Greek soldier in the Roman Army. The conception of the Holy Ghost was a later creation by interested followers to purify the sinful birth of Jesus. The virginity of Mary and her subsequent apotheosis were absurd and unwarranted. The story of resurrection is also untrue and improbable. Christianity is therefore a false and fabulous religion. Its early propagation is steeped in bloodshed and it is of little credit to the teachings of Christ. The Bible justifies such barbarities. The Christian Moral Code as thought in the Bible is contrary to human nature and natural evolution. The growth of fascism in European countries is entirely due to the previous propagation and belief in the stupid and extraordinary teachings of the Christian religion."

23. These passages clearly show that the petitioner is vilifying in grossest terms the principles and tenets of Christianity. There are other passages in the work which though not so objectionable as the above are calculated to produce the same effect. It is clear that he had not spared even the founder of that religion Jesus Christ and he had described him as the off-spring of an adulterous intercourse. The Christian religious beliefs were depicted in grossly offensive and provocative terms. In these circumstances, the claim of the petitioner that it was a dispassionate study of religion could not carry conviction. On a reading of the offending passages, the reasonable conclusion that could be reached is that the book was published with the deliberate and malicious intention of outraging the religious feelings of Christians.

24. It was next urged that no significance need be attached to the passages, a gist of which was given above and that the book should be read as a whole and the general effect which it would have on the mind of the people gathered. In support of this argument, reliance is placed on the judgment of the Supreme Court in *State of Bihar v. Shailabala Devi*⁹, That ruling does not support the wide proposition that even if there were a number of objectionable passages in provocative terms against the founder of a religion and other religious teachers, they should be ignored and the State Government should remain inactive. In that case, the document that was sought to be forfeited was said to contain matter which had a tendency to incite people to overthrow the Government. Their Lordships thought that the document did not deserve much consideration, that it was some kind of patchwork with no consistency or cohesion between the different parts, that some portions of it were unmeaning and non-sensical and that in other parts it talked of revolution in the abstract and there was no appeal to anybody in particular or for any known or specific cause. It was remarked that the document was written in high-flown Bengali language and contained a good deal of demagogic clap-trap with some pretence to poetic flourish. Therefore, that case does not furnish any analogy here.

25. Another contention pressed upon us was that the thoughts expressed by the petitioner were

not born of a desire to insult any particular religion and that in fact he said such things in regard to other religions also. It is also said that as a free thinker he was justified in giving expression to his views and propagating them by means of a publication like this. It was further argued that similar ideas were expressed by several eminent writers in several other countries, to which no exception was taken and there was no reason why a book of his embodying similar concepts should be confiscated. We do not think that weight could be given to this argument.

26. Free thinking does not involve freedom to make scurrilous attacks on the religion and religious beliefs of other sects with impunity. It is not free-thinking to abuse and insult other religions. Further, the method and the manner of discourse on a particular topic also matters very much. All the citizens of India are guaranteed freedom of religion and freedom of conscience by our Constitution and each one has a right to pursue his own way of attaining salvation, unhampered and without interference from others. It is the duty of the State to create such a climate as would enable every one of its citizens to exercise freedom of religion and conscience. Section 99-A of the Criminal Procedure Code and Section 295-A of the Indian Penal Code are only legislative recognition of the power of the State to take action for the purpose of affording such protection to all its citizens. If the deduction that any citizen could intentionally wound the religious beliefs of others in the name of free-thinking were legitimate, no affront however deliberate and malicious it might be would be governed by Section 99-A of the Criminal Procedure Code and Section 295-A of the Indian Penal Code with the result that they become otiose.

27. As regards the justification pleaded viz : that there are writings of a similar description in other countries, we think that it is wholly outside the scope of this enquiry to consider the nature of those publications. All those writings have not been placed before us and we do not know whether those ideas were couched in a language similar to the one before us and what effect they would have on the mind of the readers. We are also not aware whether provisions akin to Section 99-A Criminal

⁹1952 SCJ 465 : AIR 1952 SC 329

Procedure Code and Section 295-A of the Indian Penal Code exist in the statute books, of those countries. So, assuming that there are writings, which are of the same character as the one in this case and no action was taken in regard to them, that would not absolve the author of a document or a book from liability if it attracts the applicability of Section 99-A, Criminal Procedure Code. We have to judge the writings in the setting of that section the conditions existing in this country, the light in which such treatises will be viewed by the people of this country who read them and the kind of people whose religious beliefs are attacked by the book. In fact, it is disclosed in the counter-affidavit that representations were received from Indian Christian Associations that the book offered insults to the Christian religion and religions beliefs. If the conditions envisaged in that section are fulfilled, the author will become liable to be proceeded against.

28. It is also no defence to a charge under either of the two sections to say that the author had incidentally attacked other religious beliefs also. For these reasons, we negative these contentions. We are satisfied that the writing is of such a nature as to come within the purview of Section 99-A Criminal Procedure Code.

29. There remains the point whether the forfeiture should be confined to one part or to both the parts of the book in question. What was maintained on behalf of the petitioner in this behalf was

that in the second part of "Bible Bandaram", he merely picked up passages from different parts of the Bible itself and placed them in juxta-position, so that the contradictions may be easily noticed by the readers, and, therefore, there is no ground for applying the section to this part also. It was contended that the two parts constitute two books because they are bound in two volumes and that part of it which does not contain matter of the nature contemplated by that section, should be excluded from the purview of the order confiscating the books. We do not think we can accept these theories. First of all, it should be noted that the second part is a vituperative commentary on the Bible. Some of the teachings and tenets of Christianity are described as "Sriranga Neethulu," which conveys the idea that the teachings are ludicrous ones. Further, in order to gather the effect a book is likely to produce on the mind of the reading public, it should be read as a whole. It cannot be postulated that the operation of Section 99-A, Criminal Procedure Code should necessarily be confined to isolated parts of the book, which come within the mischief of that Section. All that the section emphasises is that the book should contain matter which is deliberately and maliciously intended to outrage the religion or religious beliefs etc. It does not prescribe that each and every part of the book should in itself be of the nature indicated in that section. It is difficult to accede to the theory that only such parts of the book as would offer insults that should be extracted from the writing and forfeited.

30. Taking up the next proposition, viz., that each part should be regarded as a separate book we think it is equally untenable. Section 99-A talks of a book as defined in the Press and Registration of Books Act (Act XXV of 1867), which defines a "book" as including every volume, part or division of a volume and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed or lithographed. It is seen that the definition takes in every volume or division of a volume. Therefore, a book can be in more than one volume and each volume does not constitute a separate book. That apart, one of the meanings of the word 'book' as given in the Oxford English Dictionary, Vol. I is a literary composition such as would occupy one or more volumes without regard to the material form or forms in which it actually exists. This clearly indicates that the expression 'book' is of wide import and covers every part and every volume of it. The fact that each part is bound in a different volume does not take it out of the meaning of the word 'book'. The question is posed whether all the volumes of Halsbury's Laws of England or Encyclopaedia Britannica constitute each a book. This is easily answered because they deal with different topics and different subjects. In considering whether a particular volume is a book or not, the main test is whether the treatise deals with one subject and it does not depend upon whether a book is bound in one volume or in two volumes. Often a book is bound in two volumes if the size of it makes it convenient to have it so. If the number of pages of a book makes it unwieldy to have it as one volume, the publishers may think of having it bound in more than one volume so that they could be easily handled by the readers. Not unfrequently a book, which was published in the form of one volume at one stage, may be bound in two volumes at a later stage. Take the instance of the Civil Procedure Code by Mulla. The earlier editions consisted of only one volume but the latest edition consists of two volumes. Thus it depends upon the convenience and whims and fancies of the publisher whether a particular book is to be in one volume or in two volumes. So the question whether a particular part or volume constitutes a separate book does not turn upon how they are bound. Regard must be had to the contents of the book. If each volume deals with a distinct subject, it forms a book by itself. The condition is not satisfied in the instant case. Both the parts together discuss the Bible and expose its hollowness and pretension and point out the alleged incongruities, contradictions and the immoral nature of the doctrines contained therein. The first part anticipates the contents of the

second part.

31. The petitioner did not treat them as two separate and independent books in his petition. Throughout the petition, he proceeds on the assumption that the two parts make one book. In paragraph 7 of the affidavit of the petitioner it is alleged that there was no demonstration against the publication of his work and again he talks of the book 'Bible Bandaram' in the same paragraph. In the next paragraph he also refers to the two parts as one book in several places. Thus, the petitioner himself did not treat them as two books. In our opinion, the two books together constitute one book and the second part also falls within the mischief of Section 99-A of Criminal Procedure Code.

32. In this connection, the judgment of the Allahabad High Court in AIR 1925 Allahabad 195, relied on for the petitioner does not furnish any guidance in this enquiry. There, the applicant published a Hindi reader for use in schools. It was composed of six separate readers numbered 1 to 6 and was designed for the instruction of boys of 8 to 13 or 14 years of age. The local Government issued a notification under Section 99-A declaring all copies of volumes 3, 4 and 5 forfeited inasmuch as they contained seditious matter. Their Lordships remarked that it was necessary that they should consider each of the readers separately but this does not help the petitioner for the reason that the present position is not analogous to that envisaged in that decision. It should be noted that in the case under examination, each of the readers was meant for boys of a different class and they were separate text books. As appears from the statement of facts, each was a different reader meant as a separate text book. Thus the case cited does not come to the rescue of the petitioner. The case on hand has to be decided with reference to the contents and nature of the two parts. We are satisfied that the two parts together answer the definition of 'Book' in the relevant enactment and together fall within the operation of Section 99-A. Consequently we think that the State Government was right in passing the order now assailed before us and we do not find any grounds for interfering with it. W. P. No. 842 of 1958 is dismissed with costs and Criminal M. P. No. 888 of 1958 is dismissed. Advocate's fee is fixed Rs. 200/-.

Bhimasankaram, J.

33. I regret my inability to concur in the order proposed by my Lord.

34. The Criminal Miscellaneous Petition is an application made under Section 99-B of the Code of Criminal Procedure, whereby the applicant seeks to have set aside an order made by the State Government under Section 99-A of that Code on 22-3-1958 and published in the Anemia Pradesh Gazette dated 10-4-1958 whereby all copies, wherever found, of the Telugu book entitled "Bible Bandaram" written by the petitioner and published by Kavirajasramam, Nagandla, Guntur District and all other documents containing copies, re-prints, translations of, or extracts from the said book are forfeited to the Government.

35. We have set as a special Bench of three judges to hear the application as required by Section 99-C of the Code. Along with this application, the applicant has filed a writ petition under Article 226 of the Constitution 'impugning the constitutional validity of Section 99-A.

36. It will be convenient to set out even at the outset the sections of the Code to which reference

will have to be made in this opinion :

"99-A (1) Where :

- (a) any newspaper, or book as defined in the Press and Registration of Books Act, 1867;
- or
- (b) any document,

Wherever printed, appears to the State Government to contain any seditious matter or any matter which promotes or is intended to promote feelings of enmity or hatred between different classes of citizens of India or which is deliberately and maliciously intended to outrage the religious feelings of any such class by insulting the religion or the religious beliefs of that class, that is to say, any matter the publication of which is punishable under Section 124-A or Section 153-A or Section 295-A of the Indian Penal Code, the State Government may, by notification in the Official Gazette, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to Government and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorize any police officer not below the rank of Sub-Inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

(2) In Sub-Section (1) "Document" includes also any painting, drawing or photograph, or other visible representation.

99-B. Any person having any interest "in any newspaper, book or other document, in respect of which an order of forfeiture has been made under Section 99-A, may, within two months from the date of such order, apply to the High Court to set aside such order on the ground that the issue of the newspaper, or the book or other document, in respect of which the order was made, did not contain any seditious or other matter of such a nature as is referred to in Sub-Section (i) of Section 99-A.

XX XX XX XX

99-D. (1) 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 (i) of Section 99-A, set aside the order of forfeiture.

(2) Where there is a difference of opinion among the Judges forming the Special Bench the decision shall be in accordance with the opinion of the majority of those Judges.

99-E. On the hearing of any such application with reference to any news-paper, any copy of such newspaper, may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the order of forfeiture was made.

XX XX XX XX

99-G. No order passed or action taken under Section 99-A shall be called in question in any Court otherwise than in accordance with the provisions of Section 90-B."

It is also necessary to read Section 295-A of the Indian Penal Code as in the present case the Government notification states that the publication in question is within the mischief of that section :

"295-A. 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 be extended to two years, or with fine, or with both".

The definition of a book in the Press and Registration of Books Act, 1867, referred to in Section 99-A of the Code of Criminal Procedure is as follows :

" 'Book' includes every volume, part or division of a volume, and pamphlet, in any language and every sheet of music, map, chart or plan separately printed or lithographed."

Before considering the arguments, two obvious but: important facts must be noted : One, that the State Government has in its notification not stated the grounds of its opinion as required by the Statute; two, that the notification does not expressly refer to the two volumes of the book which is declared forfeited.

37. In support of his application under the Code and his writ petition, the applicant has filed an affidavit; therein, he has attempted to show 'Inter alia' that in writing the book he is not guilty of the "deliberate and malicious intention of outraging the religious feelings of any class of citizens of India". The Government has now tried to make up for the breach of its statutory duty by summarising in the counter-affidavit filed on its behalf in these proceedings the effect of three or four passages from Volume I of the book to justify its stand that the book is within the mischief of Section 99-A of the Code. No endeavour has however been made by the Government even at the time of the hearing of these matters to translate into English which is still the official language of this court the whole of the book or at least the offending passages therein in their entirety and to place such a translation before us. Indeed, the court has not been furnished even with three copies of the original, one for each of the Judges constituting the Special Bench. What is more remarkable is that although it is contended for the State that the notification covers both volumes, (or parts) of the book no copy of the second volume was available even to the 3rd Government Pleader, who was not aware until one was produced by the petitioner's advocate that there was more than a single volume of the book. It is needless to add that no reference has been made in the counter-affidavit to the contents of the second volume.

38. As both the writ petition and the application under Section 99-B have been heard together, the arguments raised in both may be dealt with together.

39. The applicant has contended broadly in the first place that Section 99-A infringes the right to freedom of expression, the right to hold and dispose of property and also the right to practice any profession or carry on any occupation or business. He has argued that in clothing the Government with such a power, the legislature is not protected by Clauses 2, 5 or 6 of Article 19 of the Constitution. He has next contended that in so far as the order passed by the State Government does not state the grounds of its opinion, it should be struck down 'in limine,'

without reference to the merits, as such a statement of the grounds of its opinion is a precondition to the exercise of its power. He has then urged that he is a seeker after religious and philosophical truth, that he has no animus against any religion in particular, that he is opposed to all religions, that therefore he cannot, if the passages referred to in the Government's counter-affidavit are read in the context of the whole book, be charged with my intention to outrage the religious feelings of Christians, still less of a deliberate and malicious intention of that kind. He has drawn our attention to the fact that one of the passages complained of is an extract from the well-known book of Ernst Haeckel "The Riddle of the Universe." and that the other passages are entirely innocuous. He has further argued that even assuming that Section 99-A is not obnoxious to the Constitution and even if it is established that the passages in question are objectionable as being of the nature mentioned in Section 295-A, Indian Penal Code, still the Government's power to forfeit the book is limited to the volume containing the offensive passages and does not extend to so dealing with the second volume.

40. The learned 3rd Government Pleader has, on the other hand, argued that Section 99-A is not open to any Constitutional objection; that the passages clearly evince an intention of the nature mentioned in Section 295-A Indian Penal Code, that the order of the Government is not liable to be quashed merely because it does not contain a statement of the grounds of the opinion of the Government; and that as the power of the Government to forfeit a book extends to all the volumes which make up the book, the word 'book' in the notification in the present case must be held to include both the volumes. He has in addition contended that the burden is on the applicant to establish his innocence of the guilty intention.

41. I shall first deal with the last submission of the 3rd Government Pleader first. He submits that it is for the applicant in an application under Section 99-B to convince this Court that the order of forfeiture is unsustainable. In support of his proposition, the learned Pleader relies on a decision of the Allahabad High Court in AIR 1957 Allahabad 538. Dealing with a similar application impugning an order of forfeiture under Section 99-A which too did not contain the grounds of the opinion of the Government, the learned Judges observed as follows :

"When an application is made under Section 99-B to have an order of forfeiture set aside on the ground that the matter published does not fall within the mischief of Section 153-A or 295-A of the Indian Penal Code it is for the applicant to convince the Court that for the reasons he gives the order is a wrong order."

Then again, towards the end of their opinion, they said :

"The applicant has entirely failed to show that the books did not contain matters which promoted feelings of enmity and hatred between different classes, or which did not insult or attempt to insult the religion or religious beliefs of the Sikhs." With great respect to the learned Judges, I must confess my inability to appreciate their point of view.

42. It falls to be observed in the first place that in order that a newspaper etc., may be attracted by Section 99-A the matter which is published must be punishable under Section 295-A (or the other Sections mentioned) of the Indian Penal Code; that is to say, when a conclusion is reached under Section 99-B by the Court, the Court is finding that a crime has been committed and the

person responsible for the publication is liable to the punishment under Section 295-A, Indian Penal Code.

This would clearly in my opinion point to the necessity of the Government establishing the satisfaction of the Court that the book forfeited contains objectionable matter of the nature mentioned in Section 99-A.

43. In the second place, there can be, in my opinion, no real question of onus in a case like this where the only material before the Court is the contents of a book and the question that arises for consideration is thus in substance a question of law. A question of law is to be decided not with reference to any doctrine of onus but on the basis of arguments, the duty to, decide in accordance with reason, right and justice being always on the court. It is true that Judges do say occasionally that the burden of establishing a proposition of law is on a particular party; but in saying so, it seems to me they are only adopting a rhetorical device to convey the meaning that they are not satisfied that the propounder is right.

44. It is conceivable however that in a particular case the Government may rely upon some facts to justify its order. It may seek to establish the objectionable intention on the part of the author by reference to other similar productions of his and certain other relevant facts (vide : Sections 14 and 15 of the Evidence Act). Questions of fact might then fall to be determined at the instance of the Government and the burden, undoubtedly, will, in such cases, be on the Government. It will of course be otherwise when the applicant himself relies upon certain facts.

45. Looking at the words themselves of Section 99-D, no other conclusion seems possible. Under it, the Special Bench shall

"if it is not satisfied that the issue of the book contained matter of such a nature set aside the order of forfeiture."

Now, how can one be "not satisfied" that there is such and such a thing ? Either when the proof that the thing exists is not satisfactory or where there is satisfactory proof that it does not exist. In my opinion, the party who asserts the affirmative must carry the burden, if burden there is, of establishing it.

46. Further, the view of the learned Judges in AIR 1957 Allahabad 538, seems to be opposed to the view of an earlier decision of Special Bench of their own High Court in AIR 1925 Allahabad 195. It was observed as follows :

"Counsel for the applicant raised the further point that the onus lay upon the Local Government. This is a question of construction, not free from difficulty. We are inclined to think that having regard to the framework of the Section, the onus is cast upon the local Government."

47. Even assuming for the sake of argument that there is any question of burden and that the burden rests upon the applicant, it would be highly technical in my opinion to insist upon his carrying the burden even in a case where the Government is guilty of breach of its statutory obligation to state the grounds of its opinion. When no such grounds are stated, the applicant is

entirely in the dark as to how and why it falls within the purview of Section 99-A. It must be remembered that neither the author nor the publisher of a book is entitled to notice under Section 99-A and the Legislature provides that any person having an interest in the book must apply to the High Court to set aside such an order within two months from the date of such an order. The order is to be made under Section 99-A by a notification in the official gazette, the publicity value of which, to use the words of the Supreme Court in 1952 SCT 253 : AIR 1952 Supreme Court 196, is "by no means great".

When the applicant receives no personal notice and therefore may in a particular case be approaching the Court within a few days of his becoming aware of the orders; when, further, he is handicapped by the fact that no grounds of opinion are stated in the order it would be unfair to insist upon his satisfying the court that the book does not contain matter of such a nature.

48. Even if the practical effect of such a view would be only that he would have to translate the whole of the book and give the Court and the other made an adequate number of copies, I should be inclined to hold that the burden to show that the order made is right apart from its obvious duty to establish the intention - is on the Government.

49. But perhaps in using the word 'burden' in this context, what is meant is the right to begin and the right to reply. If that only is meant the Government ought not to complain because they will have the advantage of opening and reply. I may state however that as a matter of fact the applicant himself began the arguments before us. I, therefore, see no substance in this contention urged on behalf of the Government.

50. I shall now deal with the objection raised by the applicant that Section 99-A of the Code of Criminal Procedure operates as an impermissible abridgement of some of the fundamental rights conferred on a citizen by Article 19 of the Constitution of India. The Section confers on the Government the power to forfeit copies of an objectionable book, newspaper or a document containing matter the publication of which is punishable under Section 124-A or Section 153-A or Section 295-A of the Indian Penal Code. Now, in the present case, we are concerned with a book alleged to contain matter the publication of which is punishable under Section 295-A of the Indian Penal Code. In my opinion, it is unnecessary for us to consider the question whether Section 99-A in so far as it empowers the Government to deal with a newspaper etc., containing matter, the publication of which is punishable under Section 124-A or Section 153-A transgresses the constitutional limits. The power of the Government to forfeit a publication containing matter falling within the mischief of Section 295-A seems to me clearly severable and its constitutional validity can be upheld even assuming for arguments' sake that the power of the Government to deal with a newspaper etc., containing matter, the publication of which is punishable under Section 124-A or Section 153-A should be held to be 'ultra vires'

51. Now, we are absolved from the task of pronouncing upon the constitutional validity of Section 295-A, Indian Penal Code, because we have the recent pronouncement of the Supreme Court on that matter in 1957 SCJ 522 : AIR 1957 Supreme Court 620. In that case, it was contended that Section 295-A, Indian Penal Code is 'ultra vires' and void as it interferes with a citizen's right to freedom of speech and expression and is not protected by the reservation made under Clause (2) of Article 19 of the Constitution. The contention was repelled by a unanimous decision of the Constitutional Bench of Supreme Court. It follows from this decision that a person can be punished in spite of Article 19 of the Constitution with imprisonment of either

description for a term which may extend to two years or with fine or with both, if he with the deliberate and malicious intention of outraging the religious feelings of any class of citizens of India by words, either spoken or written, insults or attempts to insult the religion or the religious beliefs of that class. Now, Section 99-A empowers the Government to forfeit any newspaper etc., which contains words or visible representations insulting or attempting to insult the religion, or religious beliefs of any class 'of citizens of India. Does this power with which the local Govr., is clothed, extend beyond the terms of the respective saving clauses in Article 19 of the Constitution ? First I shall consider the right of freedom of expression. If it is proper that a person should be punished for publishing words which outrage religious susceptibilities, then it seems to me to be equally proper that the words so published should not be allowed to be circulated. Any law aimed at destroying such dangerous words must surely in my opinion be deemed to be reasonable. I cannot conceive it as an excessive curtailment of the citizen's freedom of expression, when

"in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality"

any matter which outrages the religious feelings of a class of citizens is wiped out of existence. No man's freedom of expression is prejudiced merely because he cannot deliberately and maliciously outrage the religious feelings of a class of his fellow-citizens. I therefore think that Section 99-A is saved by Article 19(2) of the Constitution.

52. Now, coming to the argument that it offends the right to acquire, hold and dispose of property, the State has got under clause (5) of Article 19 the right to make a law

"imposing reasonable restrictions in the interests of the general public or for the protection of the interests of any Scheduled Tribe". It seems to me that the phrase "in the interests of the General Public" contained in Clause (5) of Article 19 should be understood in a broad sense. The Supreme Court pointed out in 1957 SCJ 522 : AIR 1957 Supreme Court 620, already referred to, that the phrase "in the interests of public order", used in clause (2) of Article 19 of the Constitution has much wider connotation than the expression "for maintenance of public order". To quote the words in that decision "the calculated tendency of this aggravated form of insult (i.e. insult to religion when it is perpetrated with deliberate and malicious intention of outraging the feelings of that class is clearly to disrupt the public order".

The words in this clause "in the interests of the Public" are even wider in scope than the words, "in the interests of public order", apprehend therefore that the power to seize and forfeit any property the user of which tends to disrupt the public order is without a doubt, well within the limits of reasonableness, and the grant of such power to the executive (subject to judicial supervision), can be fairly described as conceived "in the interests of general public". It is not unlike the forfeiture to the State of a lethal instrument used by an offender to commit a crime, I therefore see no force in this contention either of the applicant.

53. Coming then to the objection based upon the violation of the right guaranteed under Article

19(1)(g), the saving clause is contained in Clause (6) of the Article which, in so far as it is material, is as follows :

"(6) Nothing in sub-Clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or - any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause."

Preventing a book-seller from publishing a matter which has the effect of disrupting the public order is, in my opinion, clearly no more than imposing a reasonable restriction of the exercise of his right to carry on business. I, therefore, hold that Section 99-A does not infringe any of the rights guaranteed by Article 19 of the Constitution.

54. It has also been argued that the mode of notification prescribed in Section 99-A and the limitation imposed in Section 99-B whereby the order can be brought before this Court only within a period of two months from the date of such notification render the encroachment upon the guaranteed rights unreasonable and place it outside the saving clauses of Article 19 above-referred to. With respect to the mode of notification, although as I have already observed referring to the Supreme Court's decision in 1052 SCJ 253 : AIR 1952 Supreme Court 196, the publicity value of such a notification is not great, still, it seems to me, that having regard to the nature of the power, it can hardly be expected to be exercised only after due notice of not only to the author or publisher but also to a book-seller or indeed any person who may be in possession of copies of the offending newspaper etc. The power vested in the Government to prevent the mischievous consequences that may flow from the circulation of the paper or the book will be rendered almost nugatory if there should be any such requirement as to notice. In the circumstances, therefore, I am not persuaded that the procedure prescribed militates- against the Constitutional validity of Section 99-A.

55. With respect to the limitation as to time, it is true that in certain cases, it may cause hardship. It is possible for instance that an author, publisher or book-seller who has- invested heavily in publishing or keeping for sale a number of copies may find to his dismay that the period provided by Section 99-B has already expired by the time that he becomes aware of the order and may thus be disabled from impeaching its validity. But I venture to doubt whether the provision in Section 99-B limiting the right to question the order to two months could prevent the exercise of the power vested in the High Court under Article 226, and in the Supreme Court under Article 32 of the Constitution. It seems to me that an unconstitutional order which affects a citizen's fundamental right can always be brought up for question before the High Court or the Supreme Court so long as it is in force and may be used in derogation of such a right. The limitation as to time therefore in my opinion should be construed as affecting the availability of the special mode of relief provided by Section 99-B. In that view, I am not inclined to uphold the contention that that provision by itself operates to render the power vested in the Government under Section 99-A of the Code of Criminal Procedure unconstitutional if the nature of the power itself is otherwise, as I have held it is, within constitutionally permissible limits. These contentious too, have little force.

56. As to the submission that the order of the State Government is to be set aside merely on the ground that it does not contain the grounds of the opinion of the Government, I am inclined to think that we cannot and in any case ought not to do so. Under Section 99-D of the Code all that

we are called upon to do is to decide whether the book in question contains matter of such a nature as is referred to in Sub-Section (1) of Section 99-A and to set aside the order only if we are not satisfied that it does.

Further, I do not read the phrase stating the grounds of its opinion," in Section 99-A as a condition precedent to the validity of the order passed under Section 99-A, particularly when the whole matter can be thrashed out in the High Court before a special Bench of three Judges. The prejudice if any caused by the non-statement is no more than inconvenience and the applicant can be said at the worst to be somewhat handicapped in the conduct of his defense. But such a non-statement does not, in my opinion, go to the validity of the order.

57. It may however be argued that our powers under Article 226 of the Constitution are wider than those which are conferred by Section 99-D and they may be resorted to. But it seems to me that even so, it would be taking too technical a view of the matter, to set aside the order of forfeiture solely on the ground that the grounds of the Government's opinion are not stated therein, if, as a matter of fact, we find that the book does contain objectionable matter.

58. This brings me to the question as to whether there is material placed before us which enables us to draw the conclusion that the applicant is guilty of deliberate and malicious intention to outrage the religious feelings of the Christian community. This cannot be a matter merely of presumption arising from the fact that the Government has forfeited the book. It should be a matter of proof and the proof should, beyond all question, be offered by the Government. There is little doubt, as I have already pointed out, that if a prosecution were launched under Section 295-A, the burden would be wholly upon the Government to establish the intention. Of course, the intention in such a case is to be gathered mainly from the words used by the author. But when I speak of the words used, I have in my mind not merely the words- used in isolated passages. From the point of view of common sense, as well as semantics alike, all words should be read and interpreted with reference to their context. The context of any passage in a book such as the one we are dealing with here is the whole of the book. Otherwise to give an example, it would not be difficult by a careful selection of passages or illustrations from a text-book of physiology or psychology of sex or a book on family planning to make out a strong case that the author concerned has a pornographic intention. The authority of the Supreme Court is available for this view, if authority be needed, in the decision of 1952 SCJ 485 : AIR 1952 Supreme Court 329. Dealing with a case under Section 4(1) of the Press (Emergency Powers) Act, XXIII of 1931, they held that

"in order to determine whether a particular document falls within the ambit of any of the clauses of Section 4(1) of the Press Act, the writing has to be considered as a whole and in a fair and free and liberal spirit, not dwelling too much upon isolated passages or upon a strong word here and there, and an endeavor should be made to gather the general effect which the whole composition would have on the mind of the people."

59. The relevant passages in the counter-affidavit filed on behalf of the Government may now be extracted in order to ascertain how they want to make out firstly that the applicant has insulted or attempted to insult by words the religion or the religious beliefs of Christians and secondly that he has done so with the deliberate and malicious intention of outraging their religious feelings. The relevant portions of their counter-affidavit will therefore have to be read:

"2. The very title of the book Bible Bandaram is disparaging and contemptuous in its tone and insinuation as the word 'Bandaram' in Telugu is used in popular parlance in a disparaging and satirical sense. The claim of the petitioner that the book is a dispassionate and scientific study of the Bible connected with Biblical literature is inconsistent with the abusive and insulting language in which religious personalities and tenets of the Christian (sic) have been characterized in the pages of the book as would be evident from some of the passages to which a detailed reference will be made hereinafter as typical of the insulting tone and content of the subject-matter of the book.

The petitioner may call himself a rationalist and humanist. He may claim that he is not a believer in the Hindu Religion and that the very basis of religion is shocking to his conscience. Whatever the scientific or rationalist motives that might have actuated the petitioner in embarking upon a vituperative and abusive commentary on the Bible, I respectfully submit the intention to outrage the Christian religion and its leading lights and its adherents is apparent from a reading of the book and the publication of the book would certainly come within the four corners of Section 295-A of the Indian Penal Code attracting the power of the Government to issue the prohibitory order under Section 99-A of the Criminal Procedure Code.,..... Whether the book 'Bible Bandaram' is the outcome of truth seeking rationalism or scientific humanism or dogmatic religionism it is certainly a publication brought out with the deliberate and malicious intention of outraging the religious feelings of the Christian community, as borne out by some of the passages in the book which are to the following effect :

- (a) That the Bible contains vivid descriptions of tribal warfare, sacrifices, drink, bloodshed which shows that this book was produced by the uncivilized who were determined and engaged to destroy the more civilised races.
- (b) That the old testament is neither the word of God Jahovah nor the New Testament the word of Jesus. This is amply proved by the incongruities, excesses, improbabilities and anachronisms, vulgarities that are manifest in every page of the Bible
- (c) That the old Testament came into existence in the 4th and 5th Century B. C. A critical reading of the old Testament indicates that it is God Jehovah who is a cruel and selfish tyrant while Satan is a most excellent, noble and normal person. The five books of the old Testament are mere forgeries and cannot be said to have been written by Moses at the word of Jehovah.

The prophecies contained in the old Testament are mere poetic imaginations. The story of Jesus Christ built upon the shaky foundations of the old Testament is a mere myth. The gospels of Saints Mathew, Mark, Luke, and John in the New Testament are subsequent fabrications. The material discrepancies contained in these gospels regarding the birth, life, teaching, death and resurrection of Jesus amply prove their spurious nature. A person by name Jesus was reported to have been born out of an adulterous intercourse between his mother Mary and a Greek Soldier in the Roman Army. The conception of the Holy Ghost was a later creation by interested followers to purify the sinful birth of Jesus. The virginity of Mary and her subsequent apotheosis were absurd and unwarranted. The story, of resurrection is also untrue and improbable Christianity is therefore a false and fabulous religion. Its early propagation is steeped in blood-

shed and it is of little credit to the teachings of Christ. The Bible justifies such barbarities. The Christian Moral Code as taught in the Bible is contrary to human nature and natural evolution. The growth of fascism in European countries is entirely due to the previous propagation and belief in the stupid and extraordinary teachings of the Christian religion.

3. In view of the above grossly offensive and provocative language used in depicting the Christian Religious beliefs and in painting the birth and character of Jesus Christ in an indecent manner the claim of the petitioner that it is a dispassionate study of religion cannot carry any conviction.

On the contrary the petitioner's deliberate intention to outrage the feelings of the Christians would be evident therefrom and various representations have been received from the Christians and Christian associations, that the book has deeply wounded their religious feelings and sentiments." It is unnecessary to refer to the other portions of the affidavit which do not directly bear upon the important question now under consideration. Speaking for myself I am not prepared to hold that evens if the word 'Bandaram' in Telugu carries a disparaging and satirical sense in popular parlance, it follows that it necessarily establishes malice on the part of the author. Disparagement and satire do not in my opinion, necessarily import malice. On the other hand I may make it clear that the petitioner's contention that the word 'Bandaram' means only "treasure" in the innocuous sense does not commend itself to me.

60. I shall now refer to the passages to which a detailed reference is made in other to see whether they necessarily evince the particular intention.

61. The first passage referred to in sub-paragraph (a) of paragraph above-referred to is to be found at page 10 of the book. Freely translated, the passage is as follows :-

"Just as in the Hindu Vedas, evil practices like racial hatred, wars, sacrifices, and the taking of intoxicating drink are also freely found in the Bible. It may be that this is the result of the fact that this book was born in communities which, destroy the communities in which the civilisation had progressed."

In this passage, there is criticism not only of the Bible but also of the Vedas of the Hindus. At the bottom of the previous page, the author stated thus :-

"In truth, these books (referring to the sacred books of various religions) serve only to enable us to know the social culture of the times to which they relate and cannot be treated, as the followers of the religion foolishly think, as affording authority for an all time faith, because when any idea embodied in a book becomes effete and that idea sets a limit to man who has to progress by attaining ever-new knowledge, then it is equivalent to his death. The Zend Avesta of the Zoroaslrrians, the Vedas of the Hindus, the Pitakas of the Buddhists, the Bible of the Christians and the Quoran of Mohammedans etc., are books which point to man death as the alternative way.

These passages indicate that the author is attacking the sacred books of all the leading religions of the world. He may be right or wrong but in my opinion, it would be incorrect to attribute to the author a malicious intention towards the adherents of a particular religion although in the book under notice he is dealing with the Sacred Book of one religious community. It would be inappropriate in my opinion to use the word 'malice' with respect to an attitude of mind which makes no distinction between one class of people and another. It would hardly be correct in my judgment to speak of a man having malice towards the whole of humanity or towards followers of all religions. Malice should have a more specific and direct aim. Such a person may be styled a cynic, a misanthrope, but cannot be characterized as malicious.

62. It would not be out of place in judging the intention of the applicant to compare his words with those of other authors of books in wide circulation all over the civilised world.

63. In Frederic Harrison's book "The Creed of a Layman" we find the following passage. Reviewing a book entitled 'Essays and Reviews' to which several authors contributed and which he describes as a book "which at once repudiates miracles, inspiration, Mosaic history, and the authenticity of the Bible". Harrison observes as follows with reference to one of the essays therein written by Dr. Williams who, to use Harrison's words, is a well-known tutor at Cambridge, who is now vice-principal of a training college for the priesthood and thus adds to the character of vicar, that of an educator of the clergy :-

..... it subjects the entire scripture to a process which combines that pursued by Niebuhr upon Livy, with that of Wolf upon Homer. In short, the truth of the narrative and the identity of the authors disappear together. It becomes a medley of legend, poetry and oral tradition, compiled, remodelled, and interpolated by a priestly order centuries after the times of its supposed authors. And this applies to the New Testament (though in a much less degree) just as to the Old."

The essay reviewed by Harrison was written and published in the year 1860 in England where there is no constitutional guarantee of freedom of expression. One can hardly dream of attributing malice to Dr. Williams in subjecting the Bible to such searching criticism or to Harrison for describing the process.

64. Then with regard to the aspersions of the applicant against the Jewish race, I may quote a passage from the same book :-

"Now, in spite of their monotheism, which they held in common with other Oriental races, the Jewish national character bounds in repulsive features We ask whether morbid pride, egotism, ferocity, inhuman hate and frantic fanaticism, superstition and hypocrisy, went for nothing in the national character ? Why, all history scarcely shows a race whose character was distorted by such hateful vices It poisons their wild mythology and their sanguinary annals, it stiffens the Mosaic ritual into a debasing formalism; their national songs choke with the thirst for vengeance, and the warnings of their prophets are veiled in a gloomy horror."

It would be preposterous to charge the great and distinguished author of these words with a malicious intention to malign the Jewish race or outrage the feelings of Christians.

65. I am therefore inclined to think that the first passage relied on by the Government does not establish malice.

66. As regards the second passage referred to in sub-paragraph (b) of paragraph 2, it seems to me to be wholly innocuous. No reference is made in the affidavit to the particular page or pages in the book from which this passage is extracted. I have not been able to find in the book any single passage to this effect. The book, however, does any these things although it may not be contained in a single passage. I consider it difficult to hold that this criticism furnishes any evidence of malice.

67. As regards what is contained in sub-paragraph (c) of paragraph 2 of the counter-affidavit, I may say that passages similar to what is contained up to the words 'spurious nature' are to be found in most books of Biblical criticism. For example, I may extract the following passages from Ingersoll's Lectures and Essays, Second series, entitled "Some Mistakes of Moses." :-

"The real oppressor, enslaver and corrupter of the people is the Bible. That book is the chain that binds, the dungeon that holds the clergy. That book spreads the pall of superstition over the colleges and schools. That book puts out the eyes of Science, and makes honest investigation a crime. That book unmans the politician, and degrades the people. That book fills the world with bigotry, hypocrisy, and fear. It plays the same part in our country that has been played by 'Sacred Records' in all the nations of the world.

The first five books in our Bible are known as the Pentateuch. For a long time, it was supposed that Moses was the author, and among the ignorant the supposition still prevails. As a matter of fact, it seems to be well settled that Moses had nothing to do with these books, and that they were not written until he had been dust and ashes for hundreds of years." No one pretends that Shakespeare was inspired and yet all the writers of the books of the Old Testament put together could not have produced Hamlet. My own opinion is that General Joshua knew no more about the motions of the earth than he did about mercy and justice." About the meaning of this book, called a revelation, there have been ages of war, and centuries of sword and flame..... ..

It is not infinitely more reasonable to say that this book is the work of man, that it is filled with mingled truth and error, with mistakes and facts, and reflects, too faithfully perhaps, the "very form and pressure" of its time ?

If there are mistakes in the Bible, certainly they were made by man. If there is anything contrary to nature, it was written by man. If there is anything immoral, cruel, heart-less, or infamous, it certainly was never written by a being worthy of the adoration of mankind. With reference to the applicant's statement about Satan, it may be noted that Bertrand Russell's History of Western Philosophy quotes the following sentence from William James in the Chapter (XXIX) headed "William James" :

"The prince of darkness may be a gentleman, as we are told he is; but whatever the God of earth and heaven is, he can surely be no gentleman."

Neither William James nor Bertrand Russell could be charged with a malicious intention to outrage the religious feelings of any community.

68. The only passage in sub-paragraph (c) of Paragraph 2 to which objection, could really be taken is contained in the following sentence :-

"A person by name Jesus was reported to have been born out of an adulterous intercourse between his mother Mary and a Greek Soldier in the army."

The other sentences cited are commonplaces of what is known as Rationalistic criticism. As regards this particular sentence, this is really a translation of a passage from the well-known book of the celebrated German Biologist Ernst Haeckel entitled "The Riddle of the Universe". Ernst Haeckel begins by saying in a preceding page that

"the dogma of the immaculate conception means that Mary was exempted at her birth, or conception from the law by which every child of Adam incurs the guilt of original sin, according to the teaching of the Catholic Church." Then the author proceeds to say :-

"With regard to the doctrine of the miraculous conception of Christ by Mary (or the doctrine of "The Virgin Birth"), comparative religion has shown that this myth has even less claim to originality than most of the other stories in the Christian mythology; it has been borrowed from older religions, especially Buddhism. Similar myths were widely circulated in India, Persia, Asia Minor, and Greece several centuries before the birth of Christ. Whenever a king's unwedded daughter, or some other maid of high degree, gave birth to a child, the father was always pronounced to be a God, or a demi-God; in the Christian case, it was the Holy Ghost."

Then follows this passage :-

"To return to the particular question of the impregnation of the Virgin Mary by the Holy Ghost, we are referred to the gospels of testimony to the fact. The only two evangelists who speak of it, Matthew and Luke, relate in harmony that the Jewish maiden, Mary was betrothed to the carpenter Joseph, but became pregnant without his cooperation, and, indeed, "by the Holy Ghost"When, therefore, we find in one of them, the gospel of Hicodemus (which is assigned by some scholars to the second century), a statement that Jesus was accused by the Jews of being "begotten in sin" - a statement that is somewhat enlarged by the second century Platonist writer Celsus (as indicated by Origen, Contra Colsum, I-32) into the charge that "the mother of Jesus was divorced by the carpenter who had married her, because she was convicted of adultery, and had borne a child to a certain soldier named Pantheras" - we naturally connect it with the later Jewish story (in the.....)." ."

The passages are to be found in the book in the chapter entitled "Science and Christianity". That book was published in the 19th century and has been in circulation, I believe, all over the civilized world ever since and has been reprinted several times by the Rationalist Press Association, the latest edition to which I have access being that in the Thinker's Library and published in February, 1929. I am not concerned to deny that a book or a newspaper or a document may well fall within the mischief of Section 99-A in spite of the fact that the words used therein are not of the author himself but of somebody else, although the fact that the idea expressed thereby is not the author's brain-child but one adopted from a book in wide circulation may well be a factor to be taken into account in reaching a conclusion as to his intention. But in the present case, I am not satisfied that a malicious intention can be gathered. It will be readily conceded, I apprehend, that such malicious intention could hardly be attributed to so earnest and sober-minded an investigator of scientific truth as Haeckel.

69. Now there are lot of people both in America and in England, not to mention other countries in the European continent, who believe that all sacred books were written by man and contain mere myths. I am prepared to admit that conditions in India are different from those in other parts of the civilized world in regard to religious beliefs, and that there are classes of people in this country prone to fanaticism, bigotry and superstition. But all the same, we must not forget that we are in a secular State and cannot object to free-thinking. As a people, we must get used as a result of the enjoyment of our fundamental rights to greater tolerance even of intolerance. That will of course take time but that is no reason why we should not try to keep up in these matters with other advanced countries. One cannot of course be unmindful of the terrible ordeal through which our country has passed for one or two years both before and after the attainment of independence. In spite of it all, our law and Constitution do allow citizens oven to offer insults to religion, if such insults are not made with the deliberate and malicious intention of outraging the religious feelings of that class, on the twin principles that curbs on freedom of expression are a greater evil than any consequences that may follow the exercise of such freedom and that one must not be afraid of error so long as truth is free to combat it. I may mention that there are some books of Anatole France, the well-known French writer, which contain passages contemptuous of Christianity. Who has not read his famous story, entitled "Procurator of Judaea"? Swinburne's well-known Hymn to Proserpine breathes anti-Christian spirit. It is true that present day Rationalists of Europe no longer adopt the violent language of abuse to which the Bible was subjected in the 19th Century but that is only because rationalism has become established there for nearly a century. But new converts to rationalism, like new converts to any religion or cult, are apt to be fanatical and the applicant is obviously so. But fanaticism, however reprehensible, is not malice.

70. To sum up I grant that conditions in our country are different. I grant also that the passages relied on by the State may be offensive and shock the susceptibilities of overzealous Christians : But I may point out that they are no worse than excerpts I have cited from authors of three different countries where Christianity is the prevailing religion of part of one of the countries. The fact is also significant that the passages from the English author are nearly a century old while those from the American and German authors are nearly 60 years old. They are, too, from books, two of which at least must be very widely in circulation because they have been re-issued several times in "paper-books" while the other book that by Harrison, has been published by one of the most respectable publishing companies in the world, M/s. Macmillan and Co. That being so, it is difficult to hold that ideas and sentiments which have been freely in vogue for more than half a century and nearly a century in large parts even of the Christian world could be said to

outrage Christian feelings.

71. Further, in the present case, the first volume of the "Bible Bandaram" closely read shows that according to the author there was no person like Jesus Christ. Viewed in that light, it cannot be said that the Christ of Christianity is intended to be disparaged. You cannot be guilty of disparaging a non-existing individual. Furthermore, having read the book through in the original Telugu (a course which I was forced to adopt because of the failure on the part of the Government to recognise their duty to give an English translation of the book) I am satisfied that although the passages may outrage the feelings of some Christians, it cannot be said that the author was inspired by the malicious intention to do so. He may be accused, perhaps, of deficiency in taste or discretion. He may be characterised as a fanatical rationalist. His choice of words may not be considered happy. He is quite clearly contemptuous of what is found in any sacred book. But we live in a country which, has guaranteed freedom of expression in its Constitution.

72. We must not overlook the fact that it is not enough to find an intention to outrage but we must go further and find affirmatively a deliberate as well as a malicious intention. These passages may, at the worst, be held to evince a mere intention to outrage but there is in my judgment nothing in the book to show that the author had a deliberate intention to outrage and that he was actuated by malice : The evidence afforded by the passages considered in the light of the whole of the book cannot, I think, bring home to the applicant any guilty intention.

73. Now, it is also to be remembered that by finding the book as manifesting the necessary intention, we are holding the author guilty of a crime. In holding that Section 295-A Indian Penal Code falls under the reservation made under Clause (2) of Article 119 of the Constitution, the Supreme Court has observed in 1957 SCJ 522 : AIR 1957 Supreme Court 620 :-

..... Section 295-A does not penalize 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"

74. Now, I am prepared to concede that the passages in question may constitute insults or attempts to insult the religion or the religious beliefs of Christians, but it will not be enough for us to hold that they are such. We shall have to hold that they constitute that aggravated form of insult to religion which is perpetrated with the deliberate and malicious intention of outraging the religious feelings of Christians. However injudicious or regrettable the passages may be and deliberate as they may be found to be, the presence of malice also must be established. That Christians, (accustomed perhaps as the more enlightened among them must be to criticisms of

this kind contained in books freely in circulation even in this country) have not been, as a matter of fact, outraged is to my mind shown by the fact that although this book was published in November, 1956, the present action by the Government has been taken only on the 10th of April, 1958, when the present notification was issued. The Government have adduced no evidence whatsoever even to the effect that Christians as a class have shown that their feelings have been outraged. But it is an aspect of the case that need not be pursued because it does not bear directly on the question of the applicant's intention. I shall content myself with stating that it is the duty of the State to prove the objectionable intention beyond all reasonable doubt as in a criminal case and that it has failed to prove it.

75. I shall now turn to the next question as to whether it is open to the Government to issue an order covering all the volumes of a book issued in several volumes when only one of the volumes contains obnoxious matter. It has been contended before us that the word 'book' means every volume of a book and Section 99-A enables the Government to do so. Speaking for myself, I can only express my great surprise that such an argument could be advanced. The whole object of Section 99-A is to prevent the outrage of religious feelings by deliberate and malicious action. Objectionable words which have so outraged, if they are contained in a particular volume, that particular volume which causes the offence should be destroyed. But I can think of no conceivable reason why when a book consists of 16 volumes and the offending matter is contained in the 14th volume all the 16 volumes should be forfeited. It seems to me that there is no justification for the State Government exercising any such power either on the ground of common sense or on, the plain meaning of the words of the section. 'Book' is defined in the Press and Registration of Books Act, 1867, as including every volume, part or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan separately printed or lithographed. (This definition will perhaps have to be taken along with the clause above it that this is the meaning of 'book' unless there is something repugnant to the subject or context). This is only an inclusive definition and therefore we must read into it in addition the ordinary meaning of a "Book". A book in its plain and ordinary meaning is in my opinion a separately bound volume. Of course the word also has a larger sense. All Shakespeare's dramas can be referred to as one book when they are contained in a single volume. The whole Bible is a book and so is the New Testament by itself. Every volume of Gibbon's "Decline and Fall of the Roman Empire" is a book and so likewise is the whole of the Encyclopaedia Britannica. Even a single volume is found sometimes divided into 'books'. The word 'book' has thus a wide as well as a narrow sense and when the word has to be understood in a particular statute, it should be understood with reference to the context as well as the purpose and object of the Statute. The purpose of the Statute is to destroy the offending matter by forfeiture. It is well settled that when forfeiture is involved, the narrowest possible construction consistent with the object of the statute should be adopted. The definition includes even a part or a division of a volume but part or a division of a volume cannot be separately forfeited. So, the power should be read as extending to the forfeiture of the volume containing the offensive matter. That is the sense in which the word 'book' is to be understood in the present context having regard to the object and effect of the Statute. I think the matter is so plain that it requires no authority to support it. However, I may refer to the decision of the Allahabad High Court in AIR 1925 Allahabad 195. There the learned Judges of the Special Bench were dealing with six separate text books of Hindi Readers, Nos. 1 to 6, each being a volume by itself. By a notification under Section 99-A, all copies of Parts 3, 4, 5 and 6 were declared to be forfeited by the Government. The order of forfeiture was impugned before the learned Judges. In their order, they state that they did not propose to go into the

contents of each of the books in any great detail and observe as follows :-

..... but it is necessary that we should consider each of the Readers separately; and that if we find in any one of the series extracts which though extravagant, do not fairly come within Section 124-A, it is our duty to exempt that particular Reader."

The argument of the learned 3rd Government Pleader to the contrary is to my mind also otherwise unsustainable on the facts of this particular case, because as I have already noticed at the outset of this opinion, the Government does not seem to have been aware of the fact that there is a second volume of "Bible Bandaram". The notification does not refer to two volumes or parts. No copy of the second part or volume has been produced before us by the Government; nor any passages from that volume referred to in the counter-affidavit filed on behalf of the Government. It is not our duty, as I conceive it, to make an order of forfeiture but only to examine the correctness of any such order made by the Government. It was suggested at one stage of the argument that the learned 3rd Government Pleader would translate portions of the second volume to show that they also contained passages to which objection could be taken. A translation of some of the passages has been handed over to us after the arguments were closed. But I have excused myself from the trouble of going through them because in my view, apart from the merits of the contention and the infirmities in the procedure adopted by the Government at the hearing of these petitions, it is not the task of this court in the discharge of the statutory duties imposed upon it by Section 99-D to go through a volume in which the Government have failed to discover for themselves any obnoxious matters. Having read through the book, I am not inclined to consider that the assertion of the applicant in paragraphs 1 and 2 of his affidavit that he only attempted to probe in a rationalistic spirit into the historicity of the Christ and the origins of the Christian gospels and faith is unacceptable. It seemed to me moreover that it would be an improper procedure to take into consideration against the applicant passages which were neither referred to in the counter-affidavit filed by the Government nor relied on at the hearing and which he had no opportunity of explaining.

76. Before I conclude I ought to mention the argument on behalf of it the Government that the applicant has not clearly made the point in his affidavit that there is an innocuous second volume of his book which, if deemed to be covered by the order, should be declared exempt therefrom, I am disposed to consider this objection as one conspicuously devoid of substance. In the first place, this is not a matter to be decided on 'technical points. In the second place, when there are two or more volumes of a book in a notification under Section 99-A, the Government should state in a manner free from all ambiguity whether their order is intended to cover one or more of the volumes. In the present case, as I have already stated, neither the Government nor their counsel seems to have been even aware that there were two volumes and that is clear from the fact that at the hearing of these petitions they have only produced one. The counter-affidavit does not refer to any passages from the second volume - so much the learned counsel for the State was compelled to concede. And what is not less striking is that in the counter-affidavit filed, the deponent skips over the passage in paragraph 8 of the applicant's affidavit which, after referring to the two parts of the book advances the claim that the 2nd part "should be excluded from the operation of the order." Hence, I overrule this technical objection urged on behalf of the Government. Whether I am right or wrong in my view as the Volume I. I have no hesitation in reaching the conclusion that Volume 2, was not intended to be covered by the notification and

cannot be covered by it. In the absence of a separate order of forfeiture in relation to it, we have no jurisdiction to go through the contents of the Second Volume in order to record the satisfaction or want of satisfaction mentioned in Section 99-D.

77. I may add that if the submission for the Government is right - and of course, I do not accent it - I should hold that Section 99-A would have the effect of imposing an unreasonable restriction on the right of freedom of expression, not to mention the right to acquire, hold and dispose of property, because if would then empower the Government to deal not only with the offending matter or volume containing it but also altogether innocuous material.

78. The result is that in my opinion, this application should be allowed. If my order should prevail, I should be inclined to award the petitioner Rs. 300/- by way of costs of the application.

79. In my opinion, the writ petition need not be separately considered having regard to the result of the main application. In so far as its object is to attack the constitutionality of Sections 99-A and 99-B of the Criminal Procedure Code, it must fail. I propose to dismiss it. But having regard to what I propose to do in the result of the Criminal Miscellaneous petition, I would make no order as to costs.

Srinivasachari, J.

80. I have had the advantage of perusing the judgments of my Lord the Chief Justice and Bhimasankaram, J., and on a consideration of all the material placed before the court and the circumstances of this case I am inclined to agree with my Lord the Chief Justice that this writ petition should be dismissed and I would like to add a few words of my own.

81. The title of the book now under consideration is. "Bible Bandaram". It is urged that Bandaram in ordinary parlance means "treasure". The heading would connote that the book deals with, the treasure of the Bible. But it cannot be gainsaid that if the words in a book, leave alone the title, though prima facie innocent are reasonably susceptible of a defamatory meaning, then it is a question to be determined as to what meaning the readers would attach to the words. It will be of no avail if the publisher urges that he meant the words in the innocent sense. No doubt courts would not strain to find an innocent meaning for words prima facie defamatory, neither will they put a forced construction which may fairly be deemed harmless. The court will find out the meaning of the words even though disguised in a riddle or in hieroglyphics. The sting of a libel may be contained in a word or sentence. If 'the book is a fair and honest criticism of the tenets contained in the Bible, then there could be no harm. But if it transgresses the bounds of fair and honest criticism and enters the realm of obscene abuse, the courts would step in to put an end to this criticism. Certain sentences occurring in the book now under consideration have been extracted in the judgment of the learned Chief Justice such as that "Jesus was the result of adulterous intercourse". It may be that the author of the book might justify it by reference to books which speak about this. But it is not the justification that matters as what consequences it would have been upon the religious susceptibilities of the Christian Community, who hold the Bible to be sacred.

82. The Supreme Court in the case of *Veerabhadra Chettiar v. Ramaswami Naicker*¹⁰, observes that

"Section 295 of the Penal Code has been intended to respect the religious susceptibilities of persons of different religions, 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 persons with different beliefs irrespective of the consideration....

Whether they are rational or otherwise in the opinion of the Court." It follows from these observations that we cannot in a light-hearted way brush aside the religious susceptibilities of a class of persons. Section 295-A of the Indian Penal Code was introduced after an abortive prosecution of a person who had published a pamphlet called "Rangeela Rasool" meaning "amorous Prophet" in which he described the incontinence of the Prophet Mohammed. When he was charged under Section 153-A Indian Penal Code the Lahore High Court held that the man could not be convicted as the attack was only on the founder of the religion and did not amount to creating class hostilities or hatred between classes within the meaning of Section 153-A. If the inevitable consequence of such writing is the excitement of feelings of hatred between the followers of two religions, then it must be put an end to. The matter must be

¹⁰ AIR 1958 SC 1032

fudged 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 in the order of forfeiture : *Kali Charan Sharma v. Emperor*¹¹,

83. No doubt where there is religious freedom, a certain latitude must of necessity be conceded in respect of a free expression of opinion together with a certain measure of liberty to criticise the beliefs of others but it is contrary to all reason, to imagine that liberty to criticise includes the licence to resort to vile and abusive language.

84. The right to freedom of religion is guaranteed under Article 25 and Article 26 of the Constitution. In a case before the Supreme Court where a person was charged under Sections 153-A and 195-A and found convicted for having published an article in a paper or a cartoon about a donkey on which the agitation was started by the Muslims of Uttar Pradesh, it was contended before the Supreme Court that Section 295-A was ultra vires in that it interfered with the petitioner's right to freedom of expression guaranteed to him under Article 19(1)(a) of the Constitution and it was urged that the restriction imposed thereon was not a reasonable restriction. While dealing with this question, their Lordships stated that where the restriction was in the interests of the security of the State and where the restriction is made in the interests of public order, such a restriction was a reasonable restriction and, therefore, it is no longer open to contend that Section 295-A of the Penal Code is violative of the fundamental rights guaranteed to the citizen under Article 19(1)(a) of the Constitution-Vide 1957 SCJ 522 : AIR 1957 Supreme Court 620.

85. For all the above reasons I am in agreement with my Lord the Chief Justice that this writ petition should be dismissed with costs.

Petition dismissed.

¹¹ AIR 1927 All 649