

PRIYA PRAKASH VARRIER AND OTHERS

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v.

STATE OF TELANGANA AND ANOTHER

(Writ Petition (Criminal) No. 44 of 2018)

AUGUST 31, 2018

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**[DIPAK MISRA, CJI, A. M. KHANWILKAR AND
DR. D.Y. CHANDRACHUD, JJ.]**

Penal Code, 1860: s. 295A – When attracted – On facts, allegation against petitioner that by picturization of the song ‘manikya malaraya poovi’, in the movie, they offended sentiments of muslim community – FIR against petitioners for offence u/s. 295A – Petitioners-actor, producer and director of the movie, seeking quashing of FIR – Petitioners case that the said song was sung in various parts of the State of Kerala since 1978, the said song, is a mappila song which is a version of a traditional Muslim song from the Malabar region of Kerala; and that the song is being sung in the movie which is yet to be released and is available in Youtube and other mediums as a promotional venture – Held: Section 295A not attracted in the instant case – Picturization of the said song solely because of the ‘wink’ would not tantamount to an insult or attempt to insult the religion or the religious beliefs of a class of citizens – Said song has been on Youtube since February, 2018 – It cannot be perceived that any calculated tendency is adopted by the petitioners to insult or to disturb public order to invite the wrath of s. 295A – Furthermore, intervenor, who was informant in FIR, in all possibility has been an enthusiast to gain a mileage from the FIR, though the same was really not warranted – In view thereof, FIR is quashed – Also, no FIR u/s 154 or any complaint u/s. 200 CrPC to be entertained against the petitioners – Constitution of India – Art. 32.

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Ramji Lal Modi v. State of U.P. AIR 1987 SC 620 – relied on.

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Manohar Lal Sharma v. Sanjay Leela Bhansali and Ors. (2018) 1 SCC 770 ; Mahendra Singh Dhoni v. Yerraguntla Shyamsundar and Another (2017) 7 SCC 760 : [2017] 3 SCR 763 – referred to.

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Case Law Reference

(2018) 1 SCC 770 referred to Para 10

[2017] 3 SCR 763 referred to Para 11

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AIR 1987 SC 620 relied on Para 13

CRIMINAL ORIGINAL JURISDICTION : Writ Petition
(Criminal) No. 44 of 2018

Under Article 32 of the Constitution of India.

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Haris Beeran, Mushtaq Salim, Usman Ghani Khan, Dev Prakash, Ms. Pallavi Pratap, S. Udaya Kumar Sagar, Mrityunjai Singh, Pradeep Kumar Kaushik, Dr. Sunil Kumar, R.P. Goyal, Advs. for the appearing parties.

The Order of the Court was passed by

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DIPAK MISRA, CJI. 1. In the instant writ petition preferred under Article 32 of the Constitution of India, the petitioners, namely, the actor, producer and director of the movie, have prayed for quashing of F.I.R. No.34 of 2018, dated 14.02.2018, registered at Falaknama Police Station, Hyderabad, Telengana. That apart, a prayer has also been made that no F.I.R. should be entertained or no complaint under Section 200

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of the Code of Criminal Procedure should be dealt with because of the picturization of the song “*Manikya Malaraya Poovi*” by the petitioner No.1 in the film, namely, “*Oru Adaar Love*”.

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2. The grievance of the petitioners is that the said song has been sung in various parts of the State of Kerala since 1978. It is urged by the learned counsel for the petitioners that the song has been picturized by petitioner No.1 as a part of the movie and the said song, as averred in the writ petition, is a mappila song which is a version of a traditional Muslim song from the Malabar region of Kerala. It is contended that the petitioners cannot be made liable for the song being sung in the movie which is yet to be released. It is not disputed that the song has been available in Youtube and other mediums as a promotional venture.

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3. The F.I.R. in the matter has been lodged by the intervenor, namely, M.A. Muqeeth Khan, son of Jawad Khan. The allegation in the F.I.R. is that the song offends the sentiments of a particular community.

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The F.I.R. has been lodged for an offence under Section 295A of the Indian Penal Code. A

4. The pivotal issue that emerges for consideration is whether Section 295A of the I.P.C. would get attracted to the obtaining fact situation.

5. We have heard Mr. Haris Beeran, learned counsel for the petitioners, Mr. S. Udaya Kumar Sagar, learned counsel for the State of Telangana and Mr. Pradeep Kumar Kaushik, learned counsel for the intervenor. B

6. Section 295A of the I.P.C. reads thus:-

“295-A. *Deliberate and malicious acts, intended to outrage religious feelings or any class by insulting its religion or religious beliefs.*—Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.” C D

7. It is worthy to note here that the constitutional validity of the said provision was assailed before this Court and a Constitution Bench in Ramji Lal Modi vs. State of U.P. A.I.R. 1987 SC 620, spoke thus:- E

“8. It is pointed out that S. 295A has been included in chap. 15, Penal Code which deals with offence relating to religion and not in chap. 8 which deals with offences against the public tranquillity and from this circumstance it is faintly sought to be urged, therefore, that offences relating to religion have no bearing on the maintenance of public order or tranquility and consequently a law creating an offence relating to religion and imposing restrictions on the right to freedom of speech and expression cannot claim the protection of cl. (2) of Art. 19. A reference to arts. 25 and 26 of the Constitution, which guarantee the right to freedom of religion, will show that the argument is utterly untenable. The right to freedom of religion assured by those Articles is expressly made subject to public order, morality and health. Therefore, it cannot be predicated that freedom of religion can have no bearing F G

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- A 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. Those two Articles in terms contemplate that restrictions may be imposed on the rights guaranteed by them in the interests of public order.
- B 9. Learned counsel then shifted his ground and formulated his objection in a slightly different way. Insults to the religion or the religious beliefs of a class of citizens of India, may, says learned counsel, lead to public disorders in some cases, but in many cases they may not do so and, therefore, a law which imposes restrictions on the citizens' freedom of speech and expression by simply making insult to religion an offence will cover both varieties of insults, i.e., those which may lead to public disorders as well as those which may not. The law in so far as it covers the first variety may be said to have been enacted in the interests of public order within the meaning of cl. (2) of Art. 19, but in so far as it covers the remaining variety will not fall within that clause. The argument then concludes that so long as the possibility of the law being applied for purposes not sanctioned by the Constitution cannot be ruled out, the entire law should be held to be unconstitutional and void. We are unable, in view of the language used in the impugned section, to accede to this argument. In the first place
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- E cl. (2) of Art. 19 protects a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression "in the interests of public order," which is much wider than "for maintenance of" public order. If, therefore, certain activities have a tendency to cause public disorder, a law penalising such activities as an offence cannot but be held to be a law imposing reasonable restriction "in the interests of public order" although in some cases those activities may not actually lead to a breach of public order. In the next place section 295A does not penalise any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens but it penalises only those acts of
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- G 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
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the religious feelings of that class do not come within the sanction. A
It only punishes the aggravated form of insult to religion when it is
perpetrated with the deliberate and malicious intention of outraging
the religious feelings of that class. The calculated tendency of
this aggravated form of insult is clearly to disrupt the public order
and the section, which penalises such activities, is well within the B
protection of cl. (2) of Art. 19 as being a law imposing reasonable
restrictions on the exercise of the right to freedom of speech and
expression guaranteed by Art. 19 (1) (a). Having regard to the
ingredients of the offence created by the impugned section, there
cannot, in our opinion, be any possibility of this law being applied
for purposes not sanctioned by the Constitution. In other words, C
the language employed in the section is not wide enough to cover
restrictions both within and without the limits of constitutionally
permissible legislative action affecting the fundamental right
guaranteed by Art. 19 (1) (a) and consequently the question of
severability does not arise and the decisions relied upon by learned D
counsel for the petitioner have no application to this case.”

8. The English translation of the song that has been promoted is
to the following effect:-

“She bloomed like a precious flower
in the sacred land of Mecca, great Khadeeja Beevi E
was roaming in the sacred land
The lady roaming
She called for the respected lord, prophet
And send him for trade
She saw him and F
Coveted him in the heart of hearts
She came back after trade
And She sought her hand
Sought her hand” G

9. Learned counsel for the informant, who has filed an application
for intervention, would submit that he has no problem with regard to the
song as it is a folk song and is in the public domain since 1978. His
grievance relates to the manner of picturization. Be that as it may. H

- A 10. On a keen scrutiny of Section 295A and the view expressed by the Constitution Bench in Ramji Lal Modi (supra), we do not find that the said provision would be attracted in the present case. We are inclined to think so, for the picturization of the said song solely because of the ‘wink’ would not tantamount to an insult or attempt to insult the religion or the religious beliefs of a class of citizens. The said song has been on Youtube since February, 2018. We do not perceive that any calculated tendency is adopted by the petitioners to insult or to disturb public order to invite the wrath of Section 295A of the IPC. In this regard, we may refer to a three-Judge Bench decision in Manohar Lal Sharma vs. Sanjay Leela Bhansali and Others (2018) 1 SCC 770, wherein the Court observed thus:-
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“A story told on celluloid or a play enacted on a stage or a novel articulated in a broad and large canvas or epic spoken with eloquence or a poem sung with passion or recited with rhythm has many a layer of freedom of expression of thought that requires innovation, skill, craftsmanship and, above all, individual originality founded on the gift of imagination or reality transformed into imagination or vice versa. The platform can be different and that is why, the creative instinct is respected and has the inherent protective right from within which is called artistic license.”

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11. In Mahendra Singh Dhoni vs. Yerraguntla Shyamsundar and Another (2017) 7 SCC 760, the justification for the registration of an F.I.R. under Section 295A had come up for consideration before this Court. Appreciating the act done by the petitioner therein, the Court quashed the F.I.R. for an offence under Section 295A I.P.C.
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12. If the ratio of the Constitution Bench is appropriately appreciated, the said provision was saved with certain riders, inasmuch as the larger Bench had observed that the language employed in the section is not wide enough to cover restrictions, both within and without the limits of constitutionally permissible legislative action affecting the fundamental right guaranteed by Article 19(1)(a) of the Constitution. The emphasis was laid on 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.
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13. As we perceive, the intervenor, who was an informant in F.I.R. No.34 of 2018, in all possibility has been an enthusiast to gain a mileage from the F.I.R., though the same was really not warranted. What is urged before us is that picturization which involves the actress with a wink is blasphemous. Barring that there is no other allegation. Such an allegation, even if it is true, would not come within the ambit and sweep of Section 295A I.P.C., as has been explained in Ramji Lal Modi (supra). A B

14. In view of the aforesaid, we allow the writ petition and quash the F.I.R. No.34 of 2018. We also direct that no F.I.R. under Section 154 or any complaint under Section 200 of the Code of Criminal Procedure should be entertained against the petitioners because of the picturization of the song. However, there shall be no order as to costs. C

Nidhi Jain

Writ Petition allowed.