

HIGH COURT OF TRIPURA

A G A R T A L A

CRL PETN No.08 of 2020

Sri Dulal Ghosh, S/o. late Sukumar Ghosh, Village- Fulchari, P.O. & P.S. Kamalpur, District- Dhalai, Dhalai Tripura.

.....Petitioner(s)

V E R S U S

1. The State of Tripura to be represented by the learned Public Prosecutor, Hon'ble High Court of Tripura.

2. The Investigating Officer (Case No.2020 KMP 010, dated, 09.02.2020), C/o. the Officer-in-Charge, Kamalpur Police Station, Kamalpur, Government of Tripura, P.O & P.S- Kamalpur.

3. The Officer-in-Charge, Kamalpur Police Station, Kamalpur, Government of Tripura, P.O & P.S. Kamalpur.

4. Shyamal Kanti Paul, S/o Sri Dwijendra Kr. Paul, R/o. Manikbhandar, P.S. Kamalpur, District- Dhalai Tripura.

.....Respondent(s)

For Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Samarjit Bhattacharjee, Advocate,
Mr. Kawsik Nath, Advocate.

For Respondent(s) : Mr. Samrat Ghosh, Addl. P.P.

Date of Judgment : *26th February, 2021.*
& Order

Whether fit for reporting : YES.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

JUDGMENT & ORDER (ORAL)

Petitioner has prayed for quashing of an FIR dated 09.02.2020 registered as P.S. Case No.10 of 2020 before Kamalpur Police Station by one Shyamal Kanti Paul, respondent No.4 which is registered by the concerned police station for offence under Section 295A of the Indian

Penal Code (*IPC, for short*). According to the complainant, by putting a comment on his Facebook, the petitioner has hurt the religious feelings of the Hindu community. The petitioner contends that the post in question is deliberately twisted and misinterpreted. The petitioner neither had the intention nor desired to hurt the religious feelings of any community or class of citizens. The petitioner, therefore, requests that the FIR be quashed since even after taking the allegations made in the complaint on the face value, no offence can be stated to have been committed. Both sides have argued at length on this issue. In order to resolve this dispute, it may be useful to take note of the contents of the FIR. The original being in Bengali, the petitioner has placed translation of it on record, which reads as under:

“Sir,

Yesterday, i.e. 08.02.2020, at around 9.30 pm, the below mentioned opposite party made an untasteful and obscene comments on Hindu religion by saying that the Gita, sacred religious text is a “thakbaji Gita” by posting it on Facebook. Due to this, the people of Hindu religion got hurt on their faith.

It is mentioned here that, the below mentioned accused person always made untasteful comments against Hindu religion. The accused persons with pre motivated mind continuously doing such act so that the believers of Hindu religion got hurt. I prayed for impartial investigation of the above said incident and ensure appropriate legal action against the accused person for causing untasteful comments against the Hindu religion.

Under the circumstances stated above, I prayed before your good office, to cause investigation against the accused person as per law.”

[2] The case put forth before me by the petitioner through his learned counsel is as under :

(i) The petitioner is a rationalist and has been posting various comments on social media which may not be agreeable to certain readers. Only on account of his personal beliefs he is being targeted and falsely implicated in a criminal case.

(ii) The post in question has been deliberately twisted and misinterpreted. The petitioner never intended to demean the Holy Book Gita. The words used by the petitioner do not amount to any derogation or insult. The complainant has given a wrong connotation of the term used by the petitioner in order to make out a false case of criminal offence.

(iii) No singular post in isolation of the nature which the petitioner has placed, even if the meaning attributed by the complainant is taken to be true, would constitute an offence under Section 295A of IPC. In this context, counsel has relied on certain decisions reference to which would be made at an appropriate stage.

[3] On the other hand, learned Additional Public Prosecutor strongly opposed the petition contending that the petitioner had exhibited a clear intention to hurt the religious feelings by making derogatory remarks

about a Holy Book. Court should not interfere at a stage where investigation is yet to be completed. This is not the only occasion on which the petitioner has shown such tendency to hurt religious feelings. His post must be seen in the background of his previous posts.

[4] Perusal of the complaint in question would show that the complainant has referred to one Facebook post of the petitioner which he put on 08.02.2020 which was in Bengali and in original script reads as under :

“ঠগভাজী গীতা!!!!”

[5] According to the complainant, by putting such an un-tasteful and obscene comment on Hindu religion by saying that Gita, the sacred religious text is “thakbaji Gita”, the petitioner has hurt the religious feelings of Hindu community. The complainant has further stated that the petitioner always makes such comments about the said religion.

[6] According to the petitioner, the complainant is misinterpreting his post. His post did not convey the meaning that Gita was ‘ঠকবাজি’ meaning deceitful or swindling. Instead, the petitioner had put the post conveying that the Gita is a pan which fries ‘ভাজা’ i.e. swindlers.

[7] The Government has countered the stand of the petitioner by filing a detailed affidavit and on the basis of which learned Additional Public Prosecutor has vehemently contended that the petitioner is now backtracking on his comment since a criminal complaint has been lodged against him which shows *prima facie* that he has committed a serious offence. He painstakingly tried to explain to me the phonetics of spoken Bengali where according to him alphabet 'V' is pronounced as 'Ba' and *vice versa*. For example, the name 'Vipin', he explained, is spoken as 'Bipin' in Bengali. He contended that the petitioner is trying to twist the words used by him and deliberately confusing the phonetical differences between Bengali and Hindi languages.

[8] With rapid spread of social media platforms, the right to free speech has got an entirely new dimension. The words and expressions are placed in social media which have a more lasting effect as compared to transient impact that oral conversation particularly in front of a small audience may have. Such social media posts also have the propensity to reach a vast number of people with supersonic speed. They transgress international boundaries and often times evoke excited responses. The society as well as the laws are grappling to keep pace with such rapid changes. What however continues to hold good is that the right of free speech guaranteed under Article 19(1)(a) of the Constitution is subject to

reasonable restrictions that may be imposed by the State in the interests of sovereignty and integrity of India, security of the State, friendly relations with foreign states, public order, decency or morality, contempt of Court, defamation or incitement of an offence. No exercise of right of free speech can therefore transgress into any of the areas for which the law may have been framed for above purposes. It is in this context, Section 295A of IPC comes into picture. It pertains to an offence of deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs. This Section provides that 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 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.

[9] In the early days of the establishment of the Supreme Court, in case of *Ramji Lal Modi versus State of U.P* reported in *AIR 1957 SC 620*, a Constitution Bench of the Supreme Court considered a challenge to the constitutionality of Section 295A of IPC on the ground that it transgresses the guarantee of free speech. While upholding the vires *inter alia* on the ground that Section 295A of IPC is a law made for the purpose of

maintenance of public order, the Supreme Court made certain important observations which read as under :

“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 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 interest of public order," which is much wider than "for maintenance of" public order. If, therefore, certain activities have a tendency to cause public disorder, a law penalising such activities as an offence cannot but be held to be a law imposing reasonable restriction "in the interests of public order" although in some cases those activities may not actually lead to a breach of public order. In the next place S.295A does not penalise any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens but it penalises only those acts of insults to or those varieties of attempts to insult the religion or the religious beliefs of a class of citizens, which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. Insults to religion offered unwittingly or carelessly or without any 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 and the section, which penalises such activities, is well within the protection of cl. (2) of Art.19 as being a law imposing reasonable restrictions on the

exercise of the right to freedom of speech and expression guaranteed by Art. 19(1)(a). Having regard to the ingredients of the offence created by the impugned section, there cannot, in our opinion, be any possibility of this law being applied for purposes not sanctioned by the Constitution. In other words, the language employed in the section is not wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting the fundamental right guaranteed by Art. 19(1)(a) and consequently, the question of severability does not arise and the decisions relied upon by learned counsel for the petitioner have no application to this case.”

[10] In a subsequent judgment in case of *Mahendra Singh Dhoni versus Yerraguntla Shyamsundar and another* reported in (2017) 7 SCC 760, the three-Judge Bench of the Supreme Court after referring to the judgment in case of *Ramji Lal Modi* (*supra*) made following observations:

“6. On a perusal of the aforesaid passages, it is clear as crystal that Section 295-A does not stipulate everything to be penalised and any and every act would tantamount to insult or attempt to insult the religion or the religious beliefs of a class of citizens. It penalises only those acts of insults to or those varieties of attempts to insult the religion or religious belief of a class of citizens which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class of citizens. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section. The Constitution Bench has further clarified that the said provision only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. Emphasis has been laid on the calculated tendency of the said aggravated form of insult and also to disrupt the public order to invite the penalty.”

[11] The entire issue at hand, therefore, needs to be examined in the background of the observations of the Supreme Court in case of *Ramji Lal Modi* (*supra*) namely that Section 295A does not penalize any and

every act of insult or an attempt to insult the religion or the religious beliefs but it penalizes only those acts of insults or attempts which have been perpetrated with the deliberate and malicious intention of outraging the religious feelings of a particular class. Insults to religion made unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of a class would not come within the said section.

[12] With this background, we may revert to facts of our case. Though the complainant has stated that this is not an isolated post of the nature placed by the petitioner, neither in the complaint nor before me by the State any such previous posts of the petitioner of offending nature, even if for the moment one were to presume that the present post is one, has been placed on record. Mere passing allegation of the petitioner being in habit of placing such posts, cannot be the ground for permitting a fishing inquiry. I must, therefore, proceed on the basis that the petitioner has posted the above post on his Facebook which is a standalone post of its kind. Coming to the post by itself, without there being any background or foreground, it is not possible for any reasonable human being with ordinary common sense and intelligence, to discern any derogatory or demeaning meaning being ascribed by the petitioner to the holy book. Bhagavad Gita is part of Hindu mythology of Mahabharat and it is in form of a conversation between the warrior prince Arjun and Lord Krishna when in

the battle ground Arjun had serious doubts regarding the needless destruction. A purist may not describe it as a holy book since it does not contain religious tenets. Nevertheless, it is treated as something sacred and a revered book containing Hindu scriptures. Deliberate and direct insult or derogation of such a work if otherwise done intentionally and to borrow the expressions of the Supreme Court in case of *Ramji Lal Modi (supra)*, in order to outrage the religious feelings of the community, would undoubtedly in a given case fall with the mischief of Section 295A of IPC. In the present case, however, the words used by the petitioner and which I have reproduced for accuracy in the original Bengali script, do not convey even remotely the meaning which the complainant seeks to extract out of the expression.

[13] As I have noted earlier, there is a dispute about what exactly did the petitioner convey through the said post. In fact, according to the complainant, the term used by the petitioner is different from what the petitioner has actually posted and thereby raises a divergence of opinions. I have referred to the Bengali to English dictionary (Revised & Enlarged Third Edition), Sahitya Samsad Publication for the true meaning of the two expressions. The word 'ঠক' is explained as deceitful, swindling and knavish. When suffix 'বাজি' is added, it conveys the meaning of cheating,

swindling or knavery whereas the term 'ভজা' is explained as to fry or roast.

What the petitioner has written on his Facebook post is 'ঠগভজী'. Whatever this term coined by the petitioner may mean or may not mean anything at all, it certainly does not convey the meaning which the complainant wants to ascribe namely that Bhagavad Gita, is a deceitful document. Learned Additional Public Prosecutor however argued that there is no such expression as the petitioner has placed on his Facebook. Even if he is right, it is not the role of the Court or for that matter the police to extract a meaning of a Facebook post whether the post is possible of any meaning or not. It may be frivolous, it may be redundant, it may make no sense. The question is, by placing such a post has the poster committed offence under Section 295A of IPC? When the answer to this question is in the negative, the complaint must be quashed. The anomaly in the phonetics between Bengali and Hindi language, cannot be a source to explain the stand of the complainant. I have not gone by the pronunciation of the words used by the petitioner but gone by the dictionary meaning of the expression which he has used in original Bengali script. It is not the spoken word which I am trying to interpret. It is a written expression which has to be interpreted. How, such a post can be read when spoken is of no consequence. The expression thus used by the petitioner which is in total isolation, without virtually any background or foreground, therefore would require much

twisting in order to fit within the scheme of Section 295A of IPC which would be wholly impermissible. It is not necessary for me to comment on the submission of the counsel for the petitioner that the petitioner being a rationalist, he is being targeted by instituting a false criminal prosecution. The law is clear. The petitioner can hold his personal beliefs and within the framework of law can also express them, as long as he does not transgress any of the restrictions imposed by law to the freedom of his speech and expression.

[14] In view of these conclusions, it is not necessary for me to examine the alternative contention of the counsel for the petitioner that even if the meaning attributed by the complainant to his post is accepted, in view of the strong observations made by the Supreme Court in case of *Ramji Lal Modi (supra)*, offence under Section 295A of IPC would not be made out.

[15] Under the circumstances, impugned FIR dated 09.02.2020 is quashed.

[16] Petition is disposed of accordingly. Pending application(s), if any, also stands disposed of.

(AKIL KURESHI), CJ