



Crl.O.P.No.16677 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 05.08.2022

DELIVERED ON : 11.08.2022

CORAM:

**THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

Crl.O.P.No.16677 of 2022  
and Crl.M.P.No.9785 of 2022

1. T.J.Gnanavel
2. Suriya

.. Petitioners/A1 & A2

Vs.

1. The State represented by  
The Inspector of Police,  
J-7, Velachery Police Station,  
Velachery, Chennai - 600 042.  
(Crime No.275 of 2022)

2. Santosh. K.

.. Respondents

**Prayer:** Criminal Original Petition filed under Section 482 of Cr.P.C., seeking to call for the records in Crime No.275 of 2022 pending on the file of the first respondent police and to quash the same.

For Petitioners : Mr.M.S.Murali

For Respondent 1 : Mr.E.Raj Thilak  
Additional Public Prosecutor

For Respondent 2 : Mr.K.Venkatesan

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## **ORDER**

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This petition has been filed seeking to quash the F.I.R. in Crime No.275 of 2022, filed against the petitioners, by the first respondent police, pursuant to the directions of the learned XVIII Metropolitan Magistrate, Saidapet, for the offence punishable under Section 295A of IPC.

2. The crux of the allegation in the FIR is that the defacto complainant / second respondent and his friend has watched a movie by name "Jai Bhim" acted and produced by Mr.Suriya (A2) and directed by Mr.T.J.Gnanavel (A1) and released in OTT platform. It is projected that as if it is a real story and that they came to know that it in order to insult and humiliate the defacto complainant's community and incite communal violence, the story has been projected as if a Irular community man was killed by a Sub Inspector of Police named Guru. It is the case of the defacto complainant that name of Guru has been given to the police officer and in fact the name Guru refers to the former President of Vanniyar Sangam. Further, it can be seen that the daily calendar of the Vanniyar Sangam was also used and thereby FIR has been lodged for an offence punishable under Section 295A of IPC.



**WEB COPY 3.** The learned counsel appearing for the petitioners vehemently contended that the film showcases the torture inflicted upon the Irular community people under police custody. The story is based on a case conducted before the Madras High Court. The names are not connected with any particular section or community. The movie was also given appropriate certificate by the Censor Board. He further contended that absolutely there is no allegation which attracts the offence under Section 295A of IPC. Merely on the inference and presumptions of the defacto complainant that his caste leader's name has been used, the offence under Section 295A of IPC cannot be invoked.

**4.** It is the further contention of the learned counsel appearing for the petitioners that before forwarding the complaint under Section 156(3) of Cr.P.C., the learned Magistrate ought to have seen that sanction has been properly obtained for screening the motive from a Statutory Body, whereas, the learned Magistrate has mechanically forwarded the complaint, which resulted in lodging of the complaint against the Director and the Producer. Therefore, he seeks to quash the entire FIR as it is an abuse of process of law.



**WEB COPY 5.** Whereas, the learned counsel appearing for the defacto complainant, apart from filing the counter, would submit that in the movie a caste leader of a particular caste has been projected in a negative manner and humiliated. The entire movie has instigated violence between two sections of the society and hence the offence under Section 295A of IPC has been clearly attracted and at this stage, the FIR cannot be quashed.

**6.** The learned Additional Public Prosecutor appearing for the first respondent police would submit that police registered the FIR since there was a direction under Section 156(3) of Cr.P.C. by the learned XVIII Metropolitan Magistrate, Saidapet and submitted that he is leaving the matter to the Court.

**7.** Heard the learned counsel on either side and also perused the materials available on record.

**8.** Normally if there is a prima facie allegation and it discloses a cognizable offence, the Courts will not interfere with the F.I.R. during investigation stage. But at the same time, if the F.I.R is lodged on any



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assumptions or presumptions without any such incident has occurred or as a  
**WEB COPY** result of some motive, the Court can very well interfere with such F.I.R  
while exercising power under Section 482 of Cr.P.C.

**9.** Perusal of the FIR, it can be seen that the movie called "Jai Bhim" was released in OTT platform and the second petitioner herein Mr.Suriya has acted and produced the film and the first petitioner herein Mr.T.J.Gnanavel has directed the film. It is the case of the defacto complainant that the movie has been produced only in order to incite caste feelings and violence against the Vanniyar community. On a perusal of the FIR in its entirety, except contending that the movie has been projected in such a manner to incite violence and hostility on a particular community, no specific instance whatsoever has been stated in the FIR. On the other hand the entire FIR is only based on the inference and presumptions of the defacto complainant.

**10.** Admittedly, the movie has been certified by the Censor Board, which has not been disputed. It is stated that the movie has been mainly based on the Habeas Corpus Petition (HCP), which was conducted before this Court in respect of custodial violence. The movie has been duly certified. Merely assuming that the name given to a character in the movie



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resembles that of the leader of a community, it cannot be presumed that in

fact such projection was made or directed against a particular community.

Merely referring the same name, one cannot assume that the said name is related to a particular community.

**11.** As far as in this country, there are many people with similar name. Merely, because one such name is referred, one cannot assume or presume that such name is targeted only against a particular community. Therefore, when the movie has been legally certified by the Censor Board under the Cinematography Act, 1952 merely on the assumption that the name given to a particular character related to a particular community and allow such prosecution for the offence under Section 295A of IPC, then it will certainly infringe the rights guaranteed under Article 19(1) of the Constitution of India.

**12.** Be that as it may, to attract an offence under Section 295A of IPC there must be a deliberate and malicious intention on the part of the accused person to outrage the religious feelings of any citizens of India by words either spoken or written or by signs or by visible representations or otherwise insults or attempts to insults the religion or the religious beliefs.



The said Section 295A of IPC reads as follows:

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"Section 295 A. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs:-

*Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of 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."*

**13.** This Court is of the view that when the FIR not even discloses the nature of the insult which outraged a particular section of the people, merely on the inferences and presumptions of the defacto complainant the offence under Section 295A of IPC will not get attracted. If such inference or presumption of a particular person or some individual is given importance, no doubt it will curtail the freedom of speech and expression guaranteed under the Constitution of India.



**WEB COPY 14.** In *S.Rangarajan Vs. P.Jagjivan Ram* reported in *(1989) 2 SCC*

*574*, wherein the case relates to revocation of the 'U Certificate' granted to the film 'Ore Oru Gramathile', which was an anti-reservation film. There were protests against this film and it was held by the Hon'ble Supreme Court that the effect of the so called offending words must be judged from the standards of reasonable, strong minded, firm and courageous men and not those of weak and vacillating minds. It was further held that the State cannot plead its inability to handle the problem of hostile audience. It is its obligatory duty to prevent it and protect the freedom of expression.

**15.** In *Prakash Jha Productions vs. Union of India*, reported in *(2011) 8 S.C.C 372*, the case involved was suspension of the Hindi film 'Aarakshan' by the State of Uttar Pradesh even after the Censor Certificate was issued on grounds that it would cause a 'law and order' issue. The Hon'ble Supreme Court has held that the film was to be allowed to be screened. 'Law and order' maintenance was the duty of the State. The Court held that it is the duty of the State to maintain law and order and therefore, the State shall maintain it effectively and potentially.



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16. In *Srishti School of Art, Design & Technology vs Chairperson,*

**WEB C** *Central Board of Film Certification,* reported in *2011 (123) D.R.J.* the

makers of the documentary called 'Had Anhad' were asked to carry out cuts, which the petitioner therein protested against. It was held that the cuts proposed were violative of the petitioner's right to free speech and expression and was allowed. The Court observed that the Indian Constitution provides a democratic space to voice views unacceptable to others but for the reason it is unacceptable, it cannot be prevented from being expressed. It was thus held that a book must be read as a whole and the context must not be ignored and it is reasonable to see what would be the reaction of a common reader.

17. In *LYCA Productions Pvt Ltd vs. Government of Tamil Nadu,*

reported in *2014 S.C.C. Online Mad. 1448*, the producers of the popular Tamil commercial feature film 'Kathi' were Sri Lankans and the film was objected to owing to the nationality of its producers. They were forced to sign an agreement to remove their names from the movie hoardings, which the police attempted to enforce against them. This Court held agreement not valid and cannot be enforced. It was observed that the letter of undertaking cannot be relied upon by the Police, which cannot grant a seal of approval to



such letters of undertaking, as the same tantamount to the creation of a super-Censor Board. It was further observed that the police should not permit attempts of such blackmails to succeed, which if allowed, would automatically lead to extortion and the surrender of power of governance and the rule of law to a few intolerant people.

18. In *Ajay Gautam vs. Union of India*, reported in *2015 S.C.C. Online Del 6479*, the movie 'PK' was sought to be banned on the grounds that it hurt the religious sentiments of the Hindus and violated the rights of the Hindus under Article 19(2) of the Constitution of India. Holding that no one is captive audience and it is a conscious choice of a viewer, who is free to avoid watching the film, the case was dismissed.

19. In *S.Khushboo vs. Kanniammal*, reported in *2010 (5) S.C.C. 600*, the quashing of cases filed against the petitioner therein for remarks made by her on pre-marital sex. This Court observed that a culture of responsible reading is to be inculcated amongst the prudent readers. Morality and criminality are far from being co-extensive. An expression of opinion in favour of non-dogmatic and non-conventional morality has to be tolerated as the same cannot be a ground to penalize the author.



**WEB COPY 20.** In *Sony Pictures vs. State*, reported in **2006 3 L.W. 728**, the ban imposed by the State of Tamil Nadu on the English film 'The Da Vinci Code' was challenged. A learned single Judge of this Court observed that when the State has a duty to prevent all threats of demonstrations and processions which amount to intimidating the right of freedom of expression, it cannot plead its inability to handle breach of peace if and when it arises. The order imposing the ban on the film was thus quashed.

**21.** Similarly, in *Mahendra Singh Dhoni Vs. Yerraguntla Shyamsundar and another* reported in **(2017) 7 SCC 760** the Hon'ble Supreme Court has held in paragraph 6 as follows:

*"6. On a perusal of the aforesaid passages, it is clear as crystal that Section 295A does not stipulate everything to be penalised and any and every act would tantamount to insult or attempt to insult the religion or the religious beliefs of class of citizens. It penalise only those acts of insults to or those varieties of attempts to insult the religion or religious belief of a class of citizens which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class of citizens. Insults to religion offered unwittingly or carelessly or*



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*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."*

**22.** Considering the above judgments, merely because same name has been referred to, it cannot be inferred by the defacto complainant that their religious leader and their community has been portrayed badly in the film. The defacto complainant is not a captive audience and it is a conscious choice of the viewer and he is free to avoid watching the film if at all he feels that the movie is accusing his community.

**23.** Merely on inference of some sections of the people, the offence under Section 295A of IPC will not get attracted. Considering the various pronouncements and also the facts of the case and considering the nature of the allegations contained in the FIR, this Court is of the view that the offence under Section 295A of IPC is not attracted.



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**WEB COPY 24.** The learned Magistrate has forwarded the complaint mechanically without applying his mind. It is also relevant to note that the learned Magistrate while referring the complaint generally observed that the complaint discloses some cognizable offence. The learned Magistrate has not even stated which of the cognizable offence is made out. The learned Magistrate has mechanically forwarded the complaint for investigation observing that some cognizable offence has been made out, which is not valid.

**25.** Such view of the matter, considering the entire allegations contained in the FIR, this Court is of the view that offence under Section 295A of IPC is not attracted in this case. Hence, the complaint in Crime No.275 of 2022 pending on the file of the first respondent police is liable to be quashed and accordingly quashed. The Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

**11.08.2022**

Index : Yes / No  
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To

- WEB COPY
1. The XVIII Metropolitan Magistrate,  
Saidapet.
  2. The Inspector of Police,  
J-7, Velachery Police Station,  
Velachery, Chennai - 600 042.
  3. The Public Prosecutor,  
Madras High Court.



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**N.SATHISH KUMAR, J.**

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**PRE DELIVERY ORDER in**  
**CrI.O.P.No.16677 of 2022**  
**and CrI.M.P.No.9785 of 2022**

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