

Court No. - 77

Case :- APPLICATION U/S 482 No. - 43911 of 2019

Applicant :- Faraheem Qureshi

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Amir Khan

Counsel for Opposite Party :- G.A.

Hon'ble Arun Kumar Singh Deshwal,J.

1. Compromise affidavit filed on behalf of the applicant is taken on record.
2. Heard Sri Amir Khan, learned counsel for the applicant, Sri Saurabh Kumar, holding brief of Sri Hemant Sharma, learned counsel for the opposite party no. 2 and Sri Pankaj Saxena, learned A.G.A. for the State.
3. The present 482 Cr.P.C. application has been filed to quash the entire proceedings of charge sheet dated 18.02.2019 in Criminal Case No. 620 of 2019 under Section 295-A I.P.C., Police Station- Khurja Nagar, District- Bulandshahr, pending in the court of learned Additional Chief Judicial Magistrate, Khurja, Bulandshahr as well as cognizance order dated 05.07.2019 passed by learned Additional Chief Judicial Magistrate, Khurja, Bulandshahr.
4. Contention of learned counsel for the applicant is that applicant made certain post on social media which is the basis for the F.I.R. in question. It is further submitted, even if entire allegation of F.I.R. as well as post of the applicant on social media is taken as true even then offence u/s 295-A I.P.C. is not made out as the basic ingredient u/s 295-A I.P.C. is deliberate and malicious intent to outrage religious feelings but in the post of the applicant, there is nothing

which shows that it is directly or indirectly related to any religion or intended to outrage any religious feelings. It is further submitted that now the applicant and opposite party no. 2 have also settled their dispute amicably and a written compromise dated 20.11.2024 has also been entered into between them in which opposite party no. 2 has clearly stated that he does not want to pursue the impugned proceeding.

5. Per contra, learned A.G.A. has submitted that it is a State case which relates to the public at large and merely because opposite party no. 2 was the first informant, impugned proceeding cannot be quashed on the basis of compromise between the applicant and the first informant.

6. Considering the submissions of parties and on perusal of record, it appears that the applicant has posted a message on social media which is being quoted as under :-

पुलवामा अटैक, कहीं 2019 की तैयारी तो नहीं, मुझे तो ऐसा ही लगता है, ये राजनीति बड़ी कुत्ती चीज़ है। आप लोग क्या सोचते हो।

7. This message was itself basis for lodging of F.I.R. and thereafter, filing impugned charge-sheet as no other material except the statement of opposite party no. 2 as well as the aforesaid message was the ground for filing the charge-sheet.

8. To attract the liability u/s 295-A I.P.C., basic condition is that the intention must be to outrage the religious feelings of any class of citizens, 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 the class of citizens. Section 295-A I.P.C. is being quoted as under :-

"295A. 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."

9. From the perusal of the definition of Section 295-A I.P.C., it is clear that to attract the liability under this section, intention must be to outrage the religious feeling or religious belief of any class of citizen. If from the words, spoken or written or by any other mode, it appears that it was not for outraging the religious feeling but for other purpose like attacking on a political party or a particular group which is not associated in any manner to any particular religion, then the offence under this section will not be attracted. It is also clear from Section 295-A I.P.C. that the intention to outrage the religious feeling should be deliberate and malicious. Therefore, if a person insults a religion unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feeling, that will also not attract the liability u/s 295-A I.P.C.

10. Vires of Section 295-A I.P.C. was challenged before the Apex Court in the case of **Ramji Lal Modi Vs. State of U.P., AIR 1957 SC 620**, which was heard by the Constitution Bench and after hearing the matter, the Constitution Bench of the Apex Court upheld the validity of Section 295-A I.P.C. and observed that it does not affect the fundamental right guaranteed under Article 19(1)(a) of the Constitution of India. Paragraph nos. 8 and 9 of **Ramji Lal Modi (supra)** are being quoted as under :

"8. It is pointed out that Section 295-A has been included in Chapter XV of the Penal Code which deals with offence relating to religion

and not in Chapter VIII which deals with offences against the public tranquility 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 tranquillity 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 clause (2) of Article 19. A reference to Articles 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 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.

9. The 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 the 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 insofar as it covers the first variety may be said to have been enacted in the interests of public order within the meaning of clause (2) of Article 19, but insofar 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, clause (2) of Article 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, Section 295-A 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 clause (2) of Article 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Article 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 Article 19(1)(a) and consequently, the question of severability does not arise and the decisions relied upon by the learned counsel for the petitioner have no application to this case."

11. The Apex Court again considered Section 295-A I.P.C. in the case of **Mahendra Singh Dhoni Vs. Yerraguntla Shyamsundar and Another, (2017) 7 SCC 760**. In that case, the Hon'ble Apex Court observed that Section 295-A I.P.C. does not stipulate everything to be penalised and every act would be insult or attempt to insult the religion or religious belief. It was further observed by the Apex Court that Section 295-A I.P.C. penalises only those acts of insult or attempts to insult the religion or religious belief which are deliberate and malicious with the intention to outrage the religious feeling of a class of citizen. Paragraph no. 6 of **Mahendra Singh Dhoni (supra)** is being quoted as under :

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 d 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.

12. The above legal position was again reiterated by the Apex Court in the case of **Amish Devgan Vs. Union of India, (2021) 1 SCC 1**, wherein the Apex Court observed that first part of Section 295-A I.P.C. specially refers to deliberate and malicious intention on the part of maker to outrage religious feeling of any class of citizens and last part referred to harm-based element, that is, insult or attempt to insult religions or religious belief of that class. Paragraph no. 100 of **Amish Devgan (supra)** is being quoted as under :

100. The two provisions have been interpreted earlier in a number of cases including Ramji Lal Modi v. State of U.P., AIR 1957 SC 620, Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955, Bilal Ahmed Kaloo v. State of A.P., (1997) 7 SCC 431. It could be correct to say that Section 295-A of the Penal Code encapsulates of all three elements, namely, it refers to the content-based element when it refers to words either spoken or written, or by signs or visible representation or otherwise. However, it does not on the basis of content alone makes a person guilty of the offence. The first portion refers to deliberate and malicious intent on the part of the maker to outrage religious feeling of any class of citizens of India. The last portion of Section 295-A refers to the harm-based element, that is, insult or attempt to insult religions or religious belief of that class. Similarly, sub-section (2) to Section 505 refers to a person making publishing or circulating any statement or report containing rumour or alarming news. Thereafter, it refers to the intent of the person which should be to create or promote and then refers to the harm-based element, that is, likely to create or promote on the ground of religion, race, place of birth, residence, language, caste, etc. feeling

of enmity. hatred or ill-will between different religions, racial language, religious groups or castes or communities, etc.

13. From the above analysis and legal position, it is clear that only those words which have been spoken or written with deliberate and malicious intention to hurt the religious feelings of any class of citizen, can be categorised as offence u/s 295-A I.P.C. It is further observed that merely because particular word or post on social media intends to insult a particular political party or a group who are not inextricably associated with any religion or its belief will not attract the ingredients of Section 295-A I.P.C. as it does not in any manner affect or outrage the religious feeling or belief of a class of citizen.

14. From the perusal of the post of the applicant made by him on social media which has been quoted as above, it is clear that no offence u/s 295-A I.P.C. is made out and there is no material on record that apart from this post, any other post on social media has been made by the applicant which could attract the ingredients of offence u/s 295-A I.P.C. Therefore, impugned proceedings deserves to be quashed.

15. This Court also observes that the objection of learned A.G.A. is also correct that if any F.I.R. has been lodged by particular person relating to offence against the society then on the basis of compromise between the accused and the first informant, proceedings cannot be quashed in such cases which are against the public at large.

16. In view of the above, entire proceedings of charge sheet dated 18.02.2019 in Criminal Case No. 620 of 2019 under Section 295-A I.P.C., Police Station- Khurja Nagar, District- Bulandshahr, pending in the court of learned Additional Chief Judicial Magistrate, Khurja, Bulandshahr as well as

cognizance order dated 05.07.2019 passed by learned Additional Chief Judicial Magistrate, Khurja, Bulandshahr, are hereby quashed.

17. This application is accordingly **disposed of**.

Order Date :- 21.1.2025

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