

Dr. Malleshappa Vs. Kumar

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Court : Karnataka Kalaburagi

Decided On : Feb-27-2015

Judge : K.N. Phaneendra

Appeal No. : Criminal Petition No. 200695 of 2014

Appellant : Dr. Malleshappa

Respondent : Kumar

Advocate for Pet/Ap. : Sri. Sanjay Kulkarni

Judgement :

(Prayer: This Criminal Petition is filed under Section 482 of Cr.P.C., praying to quash the private complaint in PCR No.288/2014 and its further proceeding for offences punishable under Sections 295, 295-A and 298 of IPC pending on the file of I-Additional Civil Judge and JMFC-I Court, Bijapur.)

1. Heard Sri Mahadev Patil, learned counsel for Sri Sanjay Kulkarni, learned counsel for the petitioner. Perused the records. Notice issued to the respondent was personally served. The respondent being Advocate has not appeared before the Court to contest the proceedings.

2. The petitioner has sought for quashing of the entire proceedings in PCR No.288/2014 registered against the petitioner for the offences punishable under Sections 295, 295A and 298 of IPC. The factual matrix discloses that respondent

being an Advocate of Bagalkot filed a private complaint under Section 200 of Cr.P.C., making allegations that he has read a newspaper dated 10.06.2014 in which publication, a news item was published wherein the petitioner herein has reiterated what has been stated by Dr. U.R.Ananthamurthy. It is specifically stated that the petitioner on 09.06.2014, on Monday, in a function at Bangalore Vignana Bhavana, was speaking on the subject Moudyamukta Samaja and he has quoted the experiment of Dr. U.R.Ananthamurthy, wherein, through his experiment it is proved that even if a person urinate on the idols of god, it is not a wrongful act. Because, idols which are made up of stones have no power to save the people or serve the people or even to destroy the people. Kannada version noted in the complaint is extracted below:

KANNADAM

3. On the basis of such allegations, complaint came to be lodged and the Court has taken cognizance and issued summons to the accused for the offences punishable under Sections 295, 295A and 298 of Indian Penal Code.

4. Now let me deal with the above provisions with reference to the facts of this case. Section 295 of IPC reads as follows:

295. Injuring or defiling place of worship with intent to insult the religion of any class. Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

5. In order to attract the provision of Section 295 of IPC, there must be allegations that a person against whom the offence is alleged must have destroyed, damaged or defiled any place of worship, or any object held sacred by any class of people with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punishable with

imprisonment of either description for a term which may extend to two years, or with fine or with both.

6. On meaningful reading of the above said provision, it is clear that there must be allegations in the complaint that there was destruction or damage or defilement of any place of worship or object. But here, even on meaningful reading of the complaint, no such allegations are there that the petitioner has destroyed, damaged or defiled any place of worship or any object held sacred by any class of persons. Therefore, even if the allegations made in the complaint are accepted as it is, it does not constitute any offence under Section 295 of IPC.

7. Sections 295A and 298 of IPC thus reads:

[295A. 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.]

298. Uttering, words, etc., with deliberate intent to wound the religious feelings of any person. Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places, any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

8. Sections 295A and 298 of IPC are almost similarly worded because, these two provisions say that the persons against whom the offence is alleged, had with deliberate and malicious intention to outrage religious feelings of any class of citizens in 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 either with description for a term which may extend to three years or with fine or with both.

9. The wordings used in Sections 295-A and 298 of IPC are almost similar. The only difference is, Section 298 of IPC is referable to an individual person, but Section 295A is referable to a class of persons or citizens of the country as class of persons. Therefore, even if private individuals religious feelings are hurt who is part and parcel of a class of persons, due to the uttering of such words which are malicious or intended to outrage the religious feelings of a class of persons, then Section 298 of IPC individually cannot be pressed into service because it is addressed to a class of persons.

10. The above said provisions if applied to the facts on hand, it is stated by the complainant that he belong to Hindu community and the statement made by the petitioner in fact, hurt the feelings of the entire class of people who are Hindus, that is to say persons who are having lot of sacred belief in Hinduism etc. Such allegations when made, persons who would like to file any complaint requires to take permission of the Government under Section 196 of Cr.P.C., which deals with prosecution for offences against the State and for criminal conspiracy to commit such offence, which reads thus:

196. Prosecution for offences against the State and for criminal conspiracy to commit such offence.-

(1) No Court shall take cognizance of

(a) any offence punishable under Chapter VI or under section 153A, [Section 295A or sub-section (1) of section 505] of the Indian Penal Code, or

(b) a criminal conspiracy to commit such offence, or

(c) any such abetment, as is described in section 108A of the Indian Penal Code,

except with the previous sanction of the Central Government or of the State Government.

11. Therefore, in order to file a complaint under Section 295A of IPC, one has to take previous permission of the Government, and no Court can take cognizance for the said offence unless the complaint is accompanied by permission of the

competent Government. As I have stated, though Section 298 of IPC is invoked, but actually ingredients of Section 295A of IPC is attracted in this case, because even according to the complainant, it is adverted against class of persons not to the individual. Therefore, looking from any angle, without competent Governments permission, cognizance could not have been taken for the offences under Sections 295A and 298 of IPC.

12. Even otherwise, the complaint averments if read meticulously and understood, do not disclose any offence being committed by the petitioner as such. The allegations made against the petitioner is that the petitioner has uttered the words,-

By virtue of experiment by Dr. U.R.Ananthamurthy it is proved that it is no wrong even if anybody urinates on the idols of the god which are made up of stones, as the said stones have no power to save or even to destroy any person or anything.

13. According to the complainant himself these wordings arose out of the experiment by Dr. U.R.Ananthamurthy and the same is reiterated by the petitioner. Therefore, there is no material to show that petitioner has individually expressed his personal opinion, but it is alleged that he only relied upon experiment made by Dr. U.R.Ananthamurthy. Therefore, on facts also, allegations do not constitute any offence against the petitioner. Hence, the same is liable to be quashed. The learned Magistrate before issuing summons has not applied his judicious mind to the provisions of law and to the facts of the case. In a very mechanical manner, he has taken cognizance and issued summons against the accused. Such type of mechanical attitude of the learned Magistrates, in my opinion is not proper.

14. It should be borne in mind, whenever a private complaint is lodged, the learned Magistrates have to go through the contents of the complaint in order to ascertain whether plain and broad reading of the allegations made in the complaint constitute any offence under any penal law for the time being in force, then only, the learned Magistrates are empowered to take cognizance. The learned Magistrates before taking cognizance should also apply their mind to ascertain as to whether there is any legal bar to take cognizance (as it is there in this particular case) and thereafter, the learned Magistrate has to record the sworn statement of

the complainant after taking cognizance of the offence. After analyzing the materials on record to find out whether it is a fit case to proceed against the accused by issuing summons, if he is of the opinion that no case is made out, he shall dismiss the complaint under Section 203 of Cr.P.C. The same has not been done by the Magistrate. Therefore, the proceedings deserves to be quashed. If the proceedings are allowed to be continued, it amounts to abuse of process of law.

15. Accordingly, I pass the following:

ORDER

The petition is allowed. Consequently, all further proceedings pending before the I-Additional Civil Judge, JMFC-I Court at Bijapur, in PCR No.288/2014 and any Criminal Case (C.C.) being registered on the basis of the such PCR and order dated 05.07.2014 in taking cognizance of the above said offences, stands quashed.

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