

In Re: Rup Lal Kapur

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Court : Chennai

Decided On : Nov-24-1954

Reported in : AIR1955Mad429; 1955CriLJ1081

Judge : Somasundaram, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 99A; Indian Penal Code (IPC) - Sections 295A

Appeal No. : Criminal Misc. Petn. No. 1228 of 1954

Appellant : In Re: Rup Lal Kapur

Advocate for Pet/Ap. : A.C. Muthana, Adv. for the State Prosecutor, for the State

Disposition : Petition dismissed

Judgement :

ORDER

Somasundaram, J.

1. This is an application preferred by the accused in C. G. No. 1128 of 1954 on the file of the Chief Presidency Magistrate, Egmore. The accused was undefended in the lower Court. He was not represented in this Court to argue this petition. He was prosecuted for an offence under Section 235-A, I. P. C. but was acquitted of that offence. After acquitting the accused, the learned Magistrate passed an order

confiscating some of the material objects, M. Os. 3 and 4, and directing the destroyal of M. Os. 1, 2, 5 and 6. Though the accused is not present in Court, the learned counsel who appears for the State Prosecutor has taken me through the evidence and the judgment and has pointed out how the order of the learned Chief Presidency Magistrate, i.e., the order relating to the confiscation which he purports to pass under Section 99-A, Criminal P. C. is not sustainable.

2. The facts which led up to the prosecution are these: the police happened to search the premises which was occupied by the accused and in the search they seized certain books, 206 in number, named, 'The Third Religion'. A search list was prepared. There was also a bundle of composed matter for the book, M. O. 2, typed materials, M. O. 3 series and a chassis containing composed type M. O. 4. These books were proscribed by the Punjab Government by a Notification dated 21-7-1953 and the Punjab Government had declared those books to be forfeited.

3. The possession of these books is not disputed by the accused in his statement in the lower Court and the learned Magistrate has acquitted the accused on the ground mainly that though these books were found in the possession of the accused, there is no evidence that he by any means circulated them to any person or that he did any positive act to circulate the books to others. The learned Magistrate was certainly justified in acquitting him of the offence under Section 295-A on the ground mentioned by him; but the learned Magistrate has ordered the confiscation and destroyal of the books holding that under Section 99-A, Criminal P. C., the proscribed books can be seized and confiscated. Section 99-A, Criminal P. C. says:

'Where--(a) any newspaper, or book as defined in the Press and Registration of Books Act, 1867, or (b) any document, wherever printed, appears to the Provincial Government, to contain any matter..... which is deliberately and maliciously intended to outrage the religious feelings of any class by insulting the religion or the religious beliefs of that class, that is to say, any matter the publication of which is punishable under Section 124-A or Section 133-A or Section 295-A, I. P. C. the Provincial Government may, by notification in the Official Gazette, stating the grounds of its opinion, declare every copy of the issue of the newspaper

containing such matter, and every copy of such book or other document to be forfeited to the State Government and thereupon any police officer may seize the same.....'

Under this section, there is no doubt, the police officer may seize any book if he finds the book was proscribed by a notification as mentioned above. In this case undoubtedly the police officer was justified in seizing the books as they have been proscribed by the Punjab Government by a notification issued by it. But when such books are seized by the police officer, then, the person who has got any interest in such books, may under Section 99-B, Criminal P. C. within two months of the date of such order, apply to the High. Court to set aside that order on any of the grounds mentioned in that section, and then under Section 99-C every such application shall be heard and determined by a Special Bench of the High Court composed of three Judges.

The Court therefore has no power to confiscate or destroy the books under Section 99-A, Criminal P. C. under which the Chief Presidency Magistrate appears to have acted. He can only direct the restoration of the books to the authorities who seized the books; the authority that seized the books is the police officer in this case. The only order to be passed by the Chief Magistrate after acquitting the accused is that these books should be returned to the police officer who seized them. In short, they should have been returned to the State Government instead of either destroying or confiscating them. The order, therefore, relating to confiscation is set aside to this extent, namely, that the books will be returned to the State. It was open to the accused to prefer an appeal against the notification, but as such time has expired an appeal can only be filed with a petition to excuse the delay which has not been done in this case. The material objects will be handed over to the police, They cannot be returned to the petitioner.

4. The petition is dismissed with the above observations.