

Public Prosecutor Vs. P. Ramaswami

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Court : Chennai

Decided On : Oct-16-1963

Reported in : AIR1964Mad258; 1964CriLJ672

Judge : Kailasam, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 295 and 295A; [Constitution of India](#) - Article 19, 19(1), 19(2) and 25

Appeal No. : Criminal Appeal No. 358 of 1963

Appellant : Public Prosecutor

Respondent : P. Ramaswami

Advocate for Def. : V.M. Lenin, Adv.

Advocate for Pet/Ap. : V.V. Radhakrishnan, Adv. for ;Public Prosecutor

Judgement :
ORDER

Kailasam, J.

1. This appeal is preferred by the Public Prosecutor against the acquittal of the respondent by the Third Presidency Magistrate, Saidapet, Madras, of an offence Under Section 295-A, I. P. C.

2. The respondent was the printer and publisher of the Tamil Weekly, 'Nathikam'. He published three articles in Nathiksm on 16-12-1960, 6-1-1951 and 13-1-1961 under the caption 'Allavin Thandanaiyil Alangolam.' The case for the prosecution is that these articles were published within deliberate and malicious intention of out raging the religious feeling of the Muslims. The purport of the two articles which are relied on by the prosecution is given below.

3. The first article, which appeared in the issue of 16-12-1960, dealt with the punishment of stoning to death prescribed in Koran to persons found guilty of adultery. The writer criticised the punishment prescribe for the offence and commented that there was inconsistency in the Koran which had made provision for divorce and remarriage and at the same time prescribed such cruel punishment for adultery. The author of the article also pointed out that, though having relationship with: more women than one would be strictly adultery, the Muslims do not punish a person when he goes through the ceremony of nikha and marries four women. The writer in pointing out that the law as enunciated in Koran is not just has also made reference to Allah the God. After observing that, if a married man had relationship with a woman he liked other than his wife, the proper thing Would be to allow a divorce and permit the person to -marry the woman he liked, he proceeded to put a question which is as follows:

'Why did not Allah know this proper course an justice? Is that Allah a fool, or is he an unjust personincapable of behaving in a just manner?.....Is Allah, who preached that persons who committed adultery should be stoned to death different from the Allah, who preached divorce and remarriage? If not, why should a barbarous punishment be prescribed on the one side and divorce and remarriage prescribed on the other? Is it because Allah is not able to understand the difference between these two? If Allah is in the position of not understanding this difference, how can we accept that Allah is all Knowing?Without following the proper course why should Allah foolishly say that they should be stoned to death? When all these are taken into consideration it is clear that Allah is an absolute fool who is unable to understand what is meant by adultery. How can persons with intelligence accept Allah who has not got the capacity to understand the crime as a creator of laws punishing all sins?'

4. The second article dated 6-1-1961 relates to punishment prescribed in Koran for theft. In Koran the punishment prescribed for theft is cutting off both the hands. After giving an extract from paragraph 33, Ch. 5 of Koran the author commented that this punishment was prescribed by no less a person than the all powerful and wise Allah, and the Koran also says the same. Dealing with the all powerful Allah the author remarked:

'If Allah came from Heaven and prescribed his law, even Muslim countries like Afganistan and Turkey would not follow him. On the other hand they would bury him. The law prescribed by Him is prevalent only in Kabarthan and if Allah is God he will be sent to that place only. A foolish and barbarous person like Allah has no place in this world. If Allah is powerful, let Him go to that place and show his power.....'

Dealing with the Wisdom of Allah, the author remarked:

'The law enunciated by Allah 1300 years ago was given up by Romans, Greeks and Tamils as not suitable..... How can Allah who prescribed such a barbarous punishment 200 years after the civilised people gave it up, be called a wise man'.

The article concluded by observing-

'Allah, who when looked at from any point of view, is not powerful or wise, calls himself as an all powerful and wise man in the Koran?'

The author proceeded to observe that when he pointed out that Allah, who prescribed a barbarous punishment of cutting the hands of a thief is a confirmed idiot and a barbarous person, Allah's followers did not agree.

5. The Public Prosecutor did not rely on the third article and it is unnecessary to deal with it.

6. It has been held by the Supreme Court in *Ranjilal Modi v. State of U. P.*, : 1957 CriLJ1006 , that Section 295-A, I. P. C. is well within the protection of clause (2) of Article 19 of the Constitution and its validity is beyond question. The Supreme Court pointed out that -

'In the first place cl. (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..... 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.'

7. The section punishes only the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of a class of citizens. The Supreme Court further pointed out that -

'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).'

8. The Supreme Court in *Veerabadran Chettiar v. Ramaswami Naicker*, : 1958 CriLJ1565 , has laid down that the Courts have to be circumspect and pay due regard to the feelings and religious emotions of different classes of persons with different beliefs, irrespective of the consideration whether or not they shared those beliefs or whether those beliefs were rational or not in the opinion of Court. Dealing with Section 295, Indian Penal Code the Supreme Court observed that a much too restricted meaning of the words 'any object held sacred by any class of persons' should not be given and that a sacred book, like the Bible, or the Koran or the Granth Saheb was clearly within the ambit of those general words. Koran is undoubtedly a book held sacred by Muslims. Allah is considered as the God. The right of freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution will no doubt enable a citizen to criticise the religion and the religious beliefs of a class of persons. In this case the respondent is a non-believer in God (Nathikan) and claimed a right to propagate his views and convert others to his

own views. Article 25 of the Constitution confers a right on all persons to freedom of conscience and a right freely to profess, practice and propagate religion, subject to certain conditions. The appellant is entitled to express and propagate his own views so long as he does not affect public order, morality and health or offend any of the provisions of the Constitution or laws of the land. Chapter 15 of the I. P. C. punishes certain acts as offences against religion. As 'S. 295-A, I. P. C. has been held to be constitutionally valid, it has to be seen whether the two articles offend the provisions of the section. Every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens will not amount to an offence under the section. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class will not come under this section. But if the intention was to outrage the religious feelings deliberately and maliciously an offence under this section will be made out. The question that has to be considered is whether the two articles were written with a deliberate and malicious intention of outraging the religious feelings of Muslims.

9. The first article deals with the punishment for the crime of adultery. The punishment prescribed to a person found guilty of adultery is stoning to death. The object of the article is certainly not for changing the law, for the law applicable to all persons irrespective of religion is the Indian Penal Code and the punishment of stoning to death is not prevalent in this country. The author, though he touches upon the custom of a Muslim marrying four wives does not attempt to bring about any reformation in the law of marriage amongst Muslims. As the caption of the Article indicates, the aim of the writer seems to be to show inconsistencies (Alangolam) in the punishments prescribed by Allah. The author would have been quite justified in pointing out what according to him, is the injustice in the punishment prescribed, and criticizing the followers. But it is totally unnecessary for the purpose of the article to comment that Allah is a fool or an unjust person incapable of behaving in a just manner. The comment that if Allah could not understand the contradiction between prescribing a barbarous punishment for adultery, and divorce and remarriage in other cases, he could not be called as an all-knowing person is made with malice. The concluding remark of the article is that Allah, who could not understand what adultery is, is an absolute fool and that

a person who is incapable of understanding the nature of the crime cannot be accepted as a creator of laws punishing all sins. Allah is considered as God by Muslims and Koran is their sacred book. The remarks made by the author of the article is totally irrelevant for the purpose he had in his mind. The reference to Allah is scurrilous and the suggestion that He is either a fool or a knave and that He is an absolute fool, who could not understand the offence of adultery would only have been made with a deliberate and malicious intention of outraging the religious feelings of Muslims. The words are so highly provocative and insulting that there can be no doubt that the feelings of Muslims will be outraged. There being no justification or relevancy for these remarks, it can be safely inferred that they were made with a deliberate and malicious intention to outrage the feelings of Muslims.

10. Under the second article the author dealt with the punishment of cutting off both the hands prescribed by Koran for the offence of theft. The reference to Allah as all powerful and wise is made with intent to ridicule. The passage that if Allah came down even to Muslim countries like Turkey and Afghanistan, he would be buried and that a foolish and barbarous person like Allah has no place in this world, is totally uncalled for and irrelevant for the purpose of the article. The concluding portion of the article, that Allah, who looked at from every point of view is not all powerful and wise, calls himself as all powerful and wise in Koran, is highly provocative and insulting to the Muslims.

11. The two articles clearly establish that the author had a deliberate and malicious intention to outrage the religious feelings of the Muslim community.

12. The learned Magistrate observed that his attention was not, drawn to any violent or obscene language indulged by the respondent, except the reference to Allah as a fool in the form of a question. The learned Magistrate was of the view that the expressions cannot be said to manifest any malicious intention on the part of the accused to outrage the feelings of Muslims. The passages complained of by the prosecution as offending Section 295-A were given as an appendix to the charge itself, and the learned Magistrate ought to have referred to and dealt with those passages. For the reasons stated, I am unable to agree with the conclusion

arrived at by the lower Court. The order of acquittal is therefore set aside. The respondent is found guilty Under Section 295-A, I. P. C.

13. Considering the highly provocative and insulting language used by the respondent in the two articles I sentence him to rigorous punishment for six months.

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