

In Re: M.R. Radha

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SooperKanoon Citation : sooperkanoon.com/813297

Court : Chennai

Decided On : Jul-11-1962

Reported in : (1962)2MLJ520

Appellant : In Re: M.R. Radha

Judgement :

ORDER

Sadasivam, J.

1. Petitioner M.R. Radha has been convicted under Section 7(1) of the Madras Dramatic Performance Act, 1954 and sentenced to pay a fine of Rs. 200 in default to simple imprisonment for three weeks by the learned Second Presidency Magistrate, George Town, Madras.

2. The prosecution case is that on 19th July, 1959, between 7 and 10 p.m. at Theagaraja College, Open Air Theatre, Washermanpet, Madras, the petitioner staged the drama Kathal Bali, which is substantially the same as the drama Thooku Medai, the performance of which has been prohibited by the Government in G.O. No. 1193, dated 25th April, 1959. But before staging the drama, the script of the drama was submitted to the Commissioner of Police and a licence was obtained to stage the drama on the basis of the script so furnished. The learned advocate for the petitioner urged that the finding of the Second Presidency Magistrate that both the performances Thooku Medai and Kathal Bali ' are

substantially similar ' is not sufficient to sustain the conviction of the petitioner under Section 7(1) of the Madras Dramatic Performance Act, 1954, and that in the absence of the script of Kathal Bali submitted by him in view of his having obtained a licence from the Commissioner of Police to stage the drama, the prosecution against him could not be sustained.

3. The script of Kathal Bali submitted by the petitioner has not been filed as an exhibit in this case and there is no explanation for the same. The learned Second Presidency Magistrate erred in allowing P.W. 3 Gangadharan, who arranged the drama for raising building funds of the Hindu Elementary School, Sankarapuram, Nanguneri Taluk, Tirunelveli District, to give evidence as to how the drama Kathal Bali actually enacted by the petitioner deviated from the original script submitted to the Commissioner of Police. In cross-examination P.W. 3 Gangadharan admitted that only from memory he stated that some of the offending passages in the drama Kathal Bali actually enacted by the petitioner were not found, in the original script given to him by the manager and another agent of the accused. He admitted that he cannot repeat the script. He did not witness the drama and the Inspector examined him six or seven months after the performance.

4. The same objection holds good even as regards the evidence given by P.W. 4 S.J. Inniah, Sub-Inspector of Police, Intelligence Section, Madras City. He did not also attend the drama Kathal Bali enacted by the petitioner. He merely perused the transcript Exhibit P-5 made by P.W. 2 Joseph Jegaraj, Shorthand Sub-Inspector attached to Shorthand Bureau, Vellore, who attended the drama Kathal Bali and from his memory of what he had read in the transcript submitted to the Commissioner of Police he came to the conclusion that the objectionable passages were not in the original script. He admitted in cross-examination that he told the Police that he could not state anything about the objectionable matter in Kathal Bali without referring to the original script which he had perused earlier, when he scrutinised the transcript Exhibit P-5 of the play Kathal Bali enacted by the petitioner.

5. During his examination under Section 342, Criminal Procedure Code, the petitioner stated that he enacted the drama Kathal Bali according to the script

given to the Commissioner of Police. The prosecution has not produced the script of Kathal Bali submitted by the petitioner and I have already pointed out that there is no explanation for the same. I have already given reasons for holding that the evidence of P. Ws. 3 and 4 is not admissible to prove that the script of Kathal Bali submitted to the Commissioner of Police, did not contain the objectionable matter found in the drama actually enacted by the petitioner. Hence I shall proceed to consider the prosecution case after accepting the plea of the accused that the drama Kathal Bali actually enacted by him was in accordance with the script of the drama submitted by him to the Commissioner of Police.

6. In fact the material question to be determined under Section 7(1) of the Madras Dramatic Performance Act is whether the drama actually staged by the petitioner is substantially the same as the drama banned by the Government and not whether the script of the drama submitted to the Commissioner of Police is substantially the same as the banned drama Thooku Medai.

7. The drama Kathal Bali is not identically the same as the drama Thooku Medai. Exhibit P-7 is the script of the drama Thooku Medai. Exhibit P-5 is the transcript of the drama Kathal Bali actually enacted by the petitioner. The petitioner could be convicted for the offence charged against him only if it is proved that the two dramas are substantially the same. But the learned Second Presidency Magistrate has in paragraph 24 of his judgment found that the drama Kathal Bali is substantially similar to the objectionable performance Thooku Medai banned by the Government.

8. There is no doubt a distinction between the words 'substantially similar' and the words 'substantially the same.' In *Greenleaf v. Goodrich*, United States 101 S.C.R. 845. (S.C.) 11, Otto 278-285 in construing the Tariff Act it, was held that the statute does not contemplate that the goods classed under the words 'of similar description' shall be in all respects the same. The words 'substantially the same' have been considered in *In re Burford* (1932) LR 2 Ch. D. 122, in construing the said words in Order 16(a), Rule 12, Special Rule 1 of R.S.C. The decision in *Mansion House Association on Railway Traffic v. London and South Western Railway Co.* (1895) LR 1 Q.B. 927, is not of much assistance in this case as it

turns on the interpretation of the words ' for the same or similar services' in Railway and Canal Traffic Act. There can, however, be no doubt that the finding ' substantially similar' cannot be equated to a finding 'substantially the same which is required for a conviction under Section 7(1) of the Madras Dramatic Performances Act, 1954.

9. But a reading of the judgment of the learned Second Presidency Magistrate clearly shows that in his opinion the drama Kathal Bali is substantially the same as the drama Thooku Medai. Thus in paragraph 19 of his judgment the Second Presidency Magistrate has observed:

A persual of the transcription of Kathal Bali shows that it is substantially the same as Thooku Medai with slight modifications here and there.

Again at the end of the same paragraph the learned Second Presidency Magistrate has found that it would be seen that Kathal Bali is practically the same as Thooku Medai. Evidently the learned Second Presidency Magistrate has not borne in mind the distinction between the words ' same' and ' similar' when he gave the finding in paragraph 24 of his judgment.

10. Under Section 439, Criminal Procedure Code, the High Court acting in revision may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 423, 426, 427, and 428, Criminal Procedure Code. It is therefore open to this Court to consider the evidence in this case and give the necessary finding to support the conviction and maintain the sentence.

11. At the request of both sides I adjourned the case more than once to enable both sides to take me through the relevant portions of the drama Thooku Medai and Kathal Bali to support their respective contentions. There can be no doubt that the plot of the play Kathal Bali is the same as the plot of the drama Thooku Medai and this fact was not disputed by the learned advocate for the petitioner. The characters in both the dramas are the same and even the names of several of the characters are identical. Theagaraja Mudaliar, Paramarthika Iyengar, Munjan, Velalagan, Kanakam and Ardhanari are the same characters in both the dramas. The characters Pandiyan, Veni and Vanitha in Thooku Medai appear as Maran

Mala and Kamala respectively in Kathal Bali. The learned Public Prosecutor has prepared a long list of objectionable passages which are common in both the dramas. It is true, as pointed out by the learned advocate for the petitioner, that some of the offending passages in Thooku Medai do not find a place in Kathal Bali. Thus the first scene of Thooku Medai in which a poojari of Kali Temple rapes a virgin has been omitted in the drama Kathal Bali. There are also other minor omissions of some passages. But if the first scene of Thooku Medai had been incorporated in Kathal Bali and the missing passages had also found a place in Kathal Bali, the two dramas would be identical in all respects.

12. G.O. Exhibit P-8 shows that the drama Thooku Medai has been prohibited as an objectionable play on the ground that it deliberately intended to outrage the religious feelings of a class of citizens of India and also on the ground that it is indecent, scurrilous and obscene. Thus the drama appears to have been banned on the ground mentioned in Clauses (a) and (vi) of Section 2(1) of the Madras Dramatic Performances Act. There can be no doubt that several passages in Thooku Medai which have been held to be objectionable having regard to Clauses (v) and (vi) of Section 2(1) of the Madras Dramatic Performances Act, 1954, also find a place in Kathal Bali. It is not necessary to consider every one of the passages found in both the dramas. There is a passage in both the dramas which shows that the Mudaliar wants to propitiate the God Vinayagar by breaking large number of cocoanuts in Pillaiyar temple in order to escape from the charge of murder of his wife Kanakam. In both the dramas the Hindu names Athikesavan and Kunchithapatham are held up to ridicule by giving the meaning of the words composed in the names. The Mudaliar expresses a desire to play with the daughter of the Headmaster studying in the college and refer to her as a child with whom he wants to play. God Vinayagar is held in high esteem by large section of the Hindu community. There are passages in both the dramas holding up the Deity to ridicule. There can be no doubt that the above and similar passages found in both the dramas would insult the religious feelings of the members of the Hindu community who believe in Hindu religion. Some of these and other passages are also indecent or obscene.

13. The learned Public Prosecutor referred to some passages in both the plays which would incite people to acts of violence, but as rightly pointed out by the learned advocate for the petitioner, the prohibitory order was passed by the Government. Only on the grounds mentioned in Section 2(1)(a) and (vi) of the Madras Dramatic Performances Act, 1954 and not on any other ground. Hence passages which might incite persons to acts of violence in the dramas would not be relevant.

14. It is true that some of the passages such as passages attacking religious beliefs opposed to scientific principles may be of educative value and may be considered fair criticism. But as pointed in Explanation II to Section 2 of the Madras Dramatic Performances Act in judging whether any performance is an objectionable performance, the play, pantomime or other drama should be considered as a whole. The proper test is whether one who knows the banned drama Thooku Medai attends the drama Kathal Bali without being informed about the title of the play would get the impression that he is witnessing the banned drama. Judged by this standard there can be no doubt that the play Kathal Bali which contains most of the objectionable passages found in Thooku Medai is substantially the same as Thooku Medai not only as regards the story, characters, dialogue and : plot but also as, regards objectionable passages.

15. The only remaining question to be considered is whether the fact that the Commissioner of Police has granted a licence to the staging of the drama Kathal Bali on the basis of the script of the drama furnished to him would absolve the petitioner of his liability for the offence charged against him. The said fact should no doubt be taken into consideration in arriving at the finding whether the drama Kathal Bali staged by the petitioner is substantially the same as Thooku Medai banned by the Government. It is true I have rejected the evidence of the prosecution witnesses that the script of Kathal Bali submitted to the Commissioner of Police did not contain objectionable passages found in the script of the play. Exhibit P-5 actually enacted by the petitioner. There can be no doubt that the licence has been granted for the staging of the drama Kathal Bali inadvertently without examining properly whether the script of Kathal Bali submitted to the Commissioner of Police is substantially the same as the script of the drama

Thooku Medai. The learned advocate for the petitioner fairly conceded that if the Commissioner had granted licence to the petitioner to enact a drama identical in all respects with the banned drama Thooku Medai, but under a different name Kathal Bali, it would not be a defence to a prosecution under Section 7(1) of the Madras Dramatic Performances Act. In my opinion, it would make no difference if there are alterations in the script of the drama Kathal Bali as in this case, if the drama is substantially the same as the banned drama Thooku Medai and the licence granted by the Commissioner of Police cannot be put forward as a valid defence to the prosecution. It should be noted that the petitioner Radha staged the earlier drama Thooku Medai which was banned by the Government and he could not therefore plead ignorance of the fact that the subsequent drama Kathal Bali is substantially the same as the banned drama Thooku Medai.

16. The learned advocate for the petitioner contended that the fact that the Commissioner of Police had granted a licence to enact the drama Kathal Bali would bar the prosecution of the petitioner, and, at any rate, it would negative the necessary mens rea required for the offence charged against the petitioner. He relied on the decision in *Williamson v. Norris* L.R. (1899) 1 Q.B. 7, where it was held that a servant of the Kitchen Committee of the House of Commons could not be convicted of selling liquor contrary to Section 3 of the Licensing Act, 1872, it being found that he merely acted under the orders of the Committee. He contended that the petitioner enacted the drama on account of the licence granted by the Commissioner of Police and hence the petitioner acted in the honest and reasonable belief that he was entitled to stage the drama. A reading of the above decision should clearly show the circumstances under which the servant of the House of Commons was held not liable for acting under the orders of the Committee. It was pointed out in that decision that the true meaning of Section 3 of the Licensing Act, 1872, mentioned therein is, that the sale which is prohibited must be a sale by the person who ought to be licensed, that every pile knows that a barman or a waiter is not a person licensed and that the sale struck by the Act is a sale by the master or the principal and not a sale by an innocent waiter or a barman.

17. An objectionable performance could be prohibited by the Government under Section 3 of the Madras Dramatic Performances Act or by the Commissioner of Police in the Presidency Town or by the District Collector elsewhere under Section 4. Under the first part of Section 7 of the Madras Dramatic Performances Act a person who organises or is responsible for the conduct of a performance which has been prohibited either under Section 3 or Section 4 of the Madras Dramatic Performances Act is liable to be punished. Under the latter part of Section 7 a person who takes part in the objectionable performance could be prosecuted only if he had the knowledge about the prohibitory order under either Section 3 or Section 4 of the Act. The learned advocate for the petitioner argued that the word 'knowledge' qualified not only the order but also the latter clause referring to the performance which is substantially the same and that the prosecution should prove that a person accused of the offence knew that the objectionable drama was substantially the same as the drama banned. I am unable to accept this contention. It is clear from a reading of Section 7 of the Act that the section does not contemplate any knowledge on the part of a person who organises or is responsible for the conduct of the objectionable performance. In case of a person who merely takes part in the drama, it is necessary for the prosecution to prove that he had knowledge of the order under Section 3 or 4 of the Act. It is no doubt the duty of the prosecution to prove affirmatively that the drama which was actually enacted is substantially the same as the prohibited drama. But it is not necessary for the prosecution to prove further that the accused had the knowledge of the same. Further, in this case the petitioner Radha who staged the drama Kathal Bali is the same person who staged the drama Thooku Medai banned by the Government under Section 3 of the Act. Hence it could easily be inferred that he had knowledge that the drama Kathal Bali enacted by him is substantially the same as the banned drama Thooku Medai. The Commissioner of Police cannot grant a licence to enact a drama which has been prohibited by the State Government under Section 3 of the Madras Dramatic Performances Act or a drama which is substantially the same as the prohibited drama. Hence the licence granted by the Commissioner cannot absolve the petitioner of his liability for the offence charged against him.

18. The conviction of the petitioner under Section 7(1) of the Madras Dramatic Performances Act is therefore correct. But having regard to the fact that the Commissioner of Police erroneously granted a licence to the petitioner to enact the drama the prosecution of the petitioner by the same Commissioner appears to be anomalous and hence justice would be met by releasing him after due admonition under Section 3 of the Madras Probation of Offenders Act. I therefore set aside the sentence of fine and admonish him under Section 3 of the Madras Probation of Offenders Act. The fine amount if collected is ordered to be refunded to the petitioner.

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