

In Re: P. Ramaswamy

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Court : Chennai

Decided On : Sep-06-1961

Reported in : 1962CriLJ146; (1962)2MLJ210

Appellant : In Re: P. Ramaswamy

Judgement :

Veeraswami, J.

1. The appellant who was the Editor and Publisher of a Tamil Weekly called ' Nathigam ' has been convicted of an offence under Section 295-A of the Indian Penal Code and sentenced to a fine of Rs. 200 on each of two counts in respect of two articles published in the Journal, dated 20th February, 1959. This appeal is directed against the conviction and sentence.

2. Section 295-A makes it an offence to speak or write any words with a deliberate and malicious intention of outraging the religious feelings of any class of citizens of India or insulting or attempting to insult the religion or the religious beliefs of that class. To constitute the offence the necessary ingredients are

(1) words either spoken or written or visible representations,

(2) deliberate and malicious intention to outrage the religious feelings of any class of citizens of India or

(3) deliberate and malicious intention to insult or attempt to insult the religion or religious beliefs of such a class. The articles in respect of the editing and publication of which the appellant has been charged under Section 295-A, are styled as which literally translated, means chaste women in Kailas, and meaning murderous Christians. The first of the articles is styled as an imaginary drama and is in substance a dialogue between Sita and Droupathi, both held by the Hindus in high religious veneration, the former being the heroine, of Ramayana and the latter being the heroine of Mahabaratha. The substance of the dialogue is that each was vilifying the morality of the other, and the impression conveyed by the dialogue is that both were ordinary women devoid of any moral virtue. Apparently, the Journal, as indicated by its name, is intended to give expression to atheism. Pursuant to that object, the first of the two articles was evidently edited and published with a view to disabuse the Hindus of their belief in the Godliness of Sita and Droupathi. The other article consists of four stanzas of poetry and appears to relate to two alleged crimes, one a murder committed in Pudukottai Church, and the other a theft committed in the Church at Santhome. The theme of the poems is that the crimes had been committed by Christians who profess to follow the tenets of Jesus Christ, who according to the article was the product of an adulterous union. In other words, under the guise of criticising the two alleged commission of crimes by Christians, the occasion is utilised to vilify the immaculate conception of Jesus Christ which is the sacred belief of the Christendom. The two articles ex facie appear very morbid and most insulting to the two religions, Hinduism and Christianity and to those who profess the respective faiths. Actually in this case evidence has been let in on behalf of the prosecution that the articles outraged the religious feelings of the Hindus and Christians and were insulting to the religions and their religious beliefs. It is hardly necessary to refer to this evidence because, the learned Counsel appearing for the appellant conceded that the articles were certainly such as outraged the religious feelings of a section of Hindus and of Christians and insulted the respective religions and religious beliefs. The learned Counsel was prepared even to go further and admit that the articles were deliberately and intentionally published to have that effect. In the circumstances, the contention on behalf of the appellant was restricted to a very narrow ground, to wit, that there is nothing in the prosecution evidence to prove that the editing and

publishing of the articles were actuated by any malice on the part of the appellant.

3. Malice, no doubt, is one of the important ingredients of the offence, under Section 295-A, and it is certainly for the prosecution to establish that element by proper evidence. But it has to be realised that malice is a state of the mind and often is not capable of direct and tangible proof. In almost all cases where it is required to be proved, it has to be inferred from the surrounding circumstances having due regard to the setting, background and connected facts in relation to editing and publishing articles of the nature here in question.

4. Learned Counsel for the appellant drew my attention to a dissenting judgment of a learned Judge of the Andhra Pradesh High Court in *N. Veerabrahman v. State* : AIR 1959 AP572 . That was a case under Section 99-A of the Code of Criminal Procedure in which the validity of the section was canvassed. The majority of the Full Bench reached the conclusion that the section did not offend Article 19 (1) (a) of the Constitution. The Book that was in question there was called ' Bible Bandaram ' which meant the treasure of the Bible. After examining the passages in the publication, the learned Chief Justice, who spoke for the majority view, stated that it was clear from the book that the author had not spared even the founder of the religion, Jesus Christ and he had described him as the offspring of an adulterious intercourse and this certainly offended the Christian religious beliefs. The dissenting view was expressed by Bhimasankaram, J., on the question of the validity of the section. But even he proceeded on the footing that the passages in the book constituted insults or attempts to insult the religion or the religious beliefs of Christians. But Bhimasankaram, J., pointed out that, that was not sufficient and that it must be shown that the aggravated form of insult to religion was purported with the deliberate and malicious intention of outraging religious feelings of Christians. Observed the learned Judge:

However injudicious or regrettable the passages may be and deliberate as they may found to be, the presence of malice also must be established.

I do not think that on this point there was any disagreement in that case among the learned Judges and I respectfully agree that malice must be established, as I have already mentioned, by the prosecution by clear evidence.

5. In this case I find no difficulty in holding that malice is apparent from the very nature and tenor of the captions of the articles and the theme and contents thereof. As I already stated, the appellant himself does not dispute that the two articles were, with the deliberate intention, edited and published. The appellant did not also dispute that the articles were such as would offend the relative religions and religious beliefs of sections of Hindus and Christians. If so much is granted, malice must naturally and necessarily be implicit in and be apparent from those facts. Malice in one sense is a negation of bona fides. If a person knowing that his words, either uttered or written, are likely to offend or injure the religious faiths of others, indulges in them it would be difficult to hold that his act was done bona fide and without malice. It is true that the whole object of the Journal is, as evident from its title, to propagate atheism and it may be conceded that freedom of speech is one of the basic rights guaranteed by the Constitution. But the limits of the freedom end where the religions and religious beliefs are insulted or outraged. Section 295-A is obviously a reasonable restriction which is in public interest. In my opinion, therefore, the two articles squarely fall within the mischief of that section.

6. The appellant does not appear to be a first offender and the fine imposed is not excessive. The appeal is dismissed.