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Court : Kerala

Decided On : Jul-13-2012

Judge : S.S. Satheesachandran

Appeal No. : Crl.MC. Nos. 3796 of 2011, 3910 of 2011 & WP(C). No. 26840 of 2011

Appellant : Jayamala

Respondent : State of Kerala and Another

Judgement :

1. Crl.M.C.No.3910 of 2011 is filed by the 1st and 2nd accused, both of them together, and Crl.M.C.No.3796 of 2011 and W.P.(C).No.26840 of 2011 are by the 3rd accused, in a case pending on the file of the Judicial First Class Magistrate Court, Ranni.

2. In the above case cognizance of the offences under Section 120B and 295A of the Indian Penal Code, for short the 'IPC', has been taken against all the three accused by the learned Magistrate on a charge filed by the Superintendent of Police, CBCID, EOW-II, Kottayam in Crime No.144/CR/KTM/07 of Crime Branch, Kottayam Police Station. The aforesaid crime was initially registered against accused Nos.1 and 2 and one V.S.Rajagopalan Nair @ Rajan for offences punishable under Sections 295 and 120B of the IPC. During the course of investigation, the aforesaid Rajan was removed from the array of the accused and

the present 3rd accuse (A3) was included.

3. The gravamen of the facts leading to the registration of the crime and later inclusion of the present 3rd accused as well, in short, can be stated thus:

The 1st accused is an astrologer, and the 2nd accused is his associate. In Sree Dharma Sastha Temple, Sabarimala, a 'Devaprasnam' was conducted from 16.06.2006 to 19.06.2006, under the supervision and as headed by the 1st accused. Pursuant to criminal conspiracy hatched with the 2nd and 3rd accused, it is alleged, the 1st accused made certain disclosures as part of deciphering the Devaprasnam that a woman had entered into the sanctum sanctorum (Garbha griha) of the temple and touched the idol of Lord Ayyappa. He made such a false statement knowing full well that no female above the age of 10 and below 50 years can ever enter into even the peripheries of the temple. He made further declaration while Devaprasnam continued on 17.06.2006 that the woman who had committed such sacrilege is an artist and an accomplished dancer. To reinforce the false declarations made by the 1st accused, under his instructions, the 2nd accused contacted the 3rd accused, a film actress, and she was instructed to send a communication to the Executive Officer, Sabarimala that she had touched the idol of Lord Ayyappa. The 1st accused had previously conducted an Ashtamangalya Prasnam in the house of the 3rd accused in Bangalore, in which it was disclosed that the 3rd accused while she had a darsan at Sabarimala, in the heavy rush, fell down in the temple, and, then, touched the feet of the idol, Lord Ayyappa. To seek penance for such gross misdemeanor, the 3rd accused was directed to send a message as indicated above, and, thereupon, she did so sending a fax message to the Executive Officer, Sabarimala that she had touched the idol of Lord Ayyappa. Later the 1st and 3rd accused over the print and visual media persisted with the false declarations made as above, and all the three accused, by their false declarations and acts done, have caused hurt and also insulted the religious belief, tenets and faith of the followers of Hindu religion and the devotees of Lord Ayyappa, is the case imputed against them for the offences under Sections 295A and 120B of the IPC.

4. After completion of the investigation and final report filed, the Magistrate took cognizance of the offences against all the three accused. Cognizance so taken was challenged by the 3rd accused filing an original petition before this Court under Article 226 of the Constitution of India, in which the validity of the final report laid in the case was impeached on various grounds. The final report was filed beyond the period of limitation prescribed under the Code of Criminal Procedure, for short the 'Code', in relation to the offences imputed, was one among the grounds canvassed apart from challenging its validity as illegal and unsustainable. That original petition was disposed by judgment dated 12.04.2011 with some directions to the Magistrate to examine whether the final report has been filed within the time prescribed under the Code, and if not, to consider and pass appropriate orders if any application is moved by the prosecution for condoning the delay to take cognizance of the offences under such report. Though challenge against the final report was raised only by the 3rd accused, it was made clear that quashing the cognizance taken would ensure to the benefit of the other two accused as well. On such remission, following the directions issued, the Learned Magistrate examined whether the final report has been filed within the prescribed period. In such enquiry, the report was found to be filed beyond the prescribed period, and the Magistrate passed an order holding so. Pending enquiry over the question of delay, the Investigating officer had moved an application under Section 473 of the Code for condonation of delay in filing the report. The respondents, who were given notice, resisted that application filing written objections. The learned Magistrate, after hearing both sides, found that no sustainable ground has been made out for condoning the delay by the Investigating officer; but, still, forming a conclusion that in the facts and circumstances involved in the case, to secure the ends of justice, delay has to be condoned, and, accordingly, it was so ordered in the interests of justice.

5. CrI.M.C.No.3910 of 2011 is filed by the 1st and 2nd accused against the order passed by the learned Magistrate condoning delay. Annexure 4 produced in the above petition is the order so passed by the learned Magistrate, and assailed by the petitioners.

6. Crl.M.C.No.3796 of 2011 is filed by the 3rd accused, in which apart from challenging the above order she has challenged final report in the crime as unsustainable and illegal. W.P.(C) No. 26840 of 2011 is also filed by the 3rd accused (A3) against Ext.P3 sanction order passed by the Government. By which sanction to prosecute the accused in the case for the offences under Sections 295A and 120B of the IPC has been accorded.

7. I heard the respective counsel appearing for the petitioners and also the learned Public prosecutor. Relying on a good number of judicial authorities, both sides have presented arguments in support of their respective case canvassed over the orders passed by the Magistrate condoning the delay in filing of the final report, validity and legality of the final report and also the sanction order issued by the Government to prosecute the accused in the case. After hearing the counsel for the respective parties in extenso, I find the questions projected over the delay and sanction accorded and the order of the learned Magistrate condoning the delay as well need be gone into, if necessary, only after examining the validity and legality of the final report laid in the case under Section 173 (2) of the Code.

8. Copy of the final report is Annexure 1 produced in Crl.M.C.No.3910 of 2011 and Annexure-IV in Crl.M.C.No.3796 of 2011, which, for the sake of convenience is referred to as 'Annexure 1'. Challenge to such report has been raised only by the 3rd accused in Crl.M.C.No.3796 of 2011. She had previously challenged the validity of that report in the earlier original petition filed before this Court, which gave rise to annexure-V judgment produced in the above Crl.M.C. The decision rendered under Annexure-V judgment, by which, cognizance already taken was quashed and remission of the case was ordered for considering the question of delay in filing the report, spells out that challenge raised against the validity of the report has been left intact. The operative portion of Annexure-V judgment numbered as '(vi)' reads thus:

“(vi) It is made clear that this judgment is without prejudice to the right of petitioner to agitate other contentions raised in this original petition before the appropriate forum at the appropriate stage.”

That being so, challenge against the final report raised by the 3rd accused, which has been left open in the original petition disposed of, has to be considered now.

9. The question emerging for consideration is whether on the final report placed before the court, has the investigating agency made out a case to proceed against the accused for the offence under Section 295A of the IPC. The other offence imputed under Section 120B of the IPC, criminal conspiracy by the petitioners, may have significance and relevance only if it is shown that the offence under Section 295A of the IPC would lie against them on the facts and circumstances involved and the materials produced. In the Devaprasnam conducted at Sabarimala temple, which was headed by the 1st accused with the 2nd accused as his associate, he made some disclosures/revelations, which were totally false, and to substantiate that false declaration, on his instructions and as directed by the 2nd accused, the 3rd accused also sent a fax message, and, later, both of them, through the visual and print media, gave wide publicity to the false assertions made by them and such acts were done by them pursuant to criminal conspiracy, and by their disclosures, acts and deeds, they have hurt and insulted the Hindu religious followers and devotees of Lord Ayyappa, is the imputation made to prosecute the accused for the offences under Section 295A of the IPC. True it is also imputed that the 1st accused made such false disclosures during the Devaprasnam and later, knowing full well what has been stated by him was quite improbable, but, it was so made to enhance his fame as an astrologer. Be that as it may, that imputation cannot have any relevance in examining whether he or the other accused, even assuming that a conspiracy was entered into by them as alleged, could be proceeded for the offence under Section 295A of the IPC. So, basically the question melts down whether the accused or any of them by the disclosures made in the Devaprasnam and assertions made later through the print and visual media by the 1st and 3rd accused, and by their acts connected thereto, are liable to be proceeded with for the aforesaid offence.

10. Section 295A of the IPC reads thus:

[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].”

The aforesaid penal provision was brought into the IPC by the Criminal Law Amendment Act, 1927 (25 of 1927) following the wide spread agitations erupting from the decision in *Rajpaul v. Emperor* (AIR 1927 Lahore 590), commonly called as “Rangila Rasul’s case”, rendered by the Lahore High Court. Interpreting Section 153A of the IPC, which alone was there in the Statute then, it was held that no offence would lie thereunder however indecent be the comments made against a deceased religious leader. In fact, a few months before Rangila Rasul’s case was decided by the Lahore High Court, a totally dissenting view over the application of Section 153A of IPC had been rendered by the Allahabad High Court in *Kali Charan Sharma v. Emperor* (AIR 1927 Allahabad 649), holding that scurrilous and bad taste remarks against a religion or its founder promoting ill feelings between sects of different faith could be proceeded under Section 153A of the IPC. It was at that stage, the Legislature stepped in and brought in a new penal provision under Section 295A in IPC. In the Statement of objects and reasons for incorporating such amended provision, it has been stated thus:

“..... it is proposed to insert a new section in Chapter XV of the I.P.C., with the object of making it a specific offence intentionally to insult or attempt to insult the religion or outrage or attempt to outrage the religious feelings of any class of his Majesty’s subjects.”

Previously, for the words of “citizens of India” as of now in the Section, what was there was “His Majesty’s subjects”, and the amendment was effected to by the Adaptation of Laws Order, 1950. By making a scurrilous or indecent remark or declaration against a religious leader or religious people, by that alone an offence under Section 295A of the IPC cannot be stated to have been committed by the maker. It must be shown that the intention of such maker was to outrage the religious feelings of any class of persons and it was deliberate and malicious. His

declaration or remark resulted in wounding the feelings of a class of persons or even going to the extent that such declarations made by him were false, to his knowledge is not sufficient to hold that the outrage was malicious as well as deliberate. In *Shiv Ram Dass Udasin v. The Punjab State* (1955 Cr.L.J.337), it has been held that the words used should be such as are bound to be regarded by any reasonable man as grossly offensive and provocative and maliciously and deliberately intended to outrage the feeling of any class of citizens of India. Whether the words spoken or declaration made are true or not, it has been held, cannot be a good defence to be a charge under this section (See *The State of Mysore v. Henry Rodrigues and another* (1962 (2) Cr.L.J.564). The Apex Court in *Ramji Lal Modi v. State of Uttar Pradesh* (AIR 1957 SC 620) has held that this section does not penalise any and every act of insult or attempts to insult the religion or the religious beliefs of class of citizens, but it penalises only those acts of insult 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. (emphasis supplied)

11. Section 295A of the IPC does not penalise every act of insult but penalises only deliberate acts of insult, so that even if by any expression insult is in fact caused, that expression is not an offence if the insult offered is unwilling or unintended. If we go by the final report presented in the case (Annexure 1), it rests on the fulcrum that the revelations or disclosures made by the 1st accused through Devaprasnam were false to his Knowledge, and to perpetrate such falsehood, the 3rd accused made further declarations after she was contacted over phone by the 2nd accused, and, later, accused Nos.1 and 3 reiterated such declarations before the visual and print media. Similar to the case that the truth of the declaration or remark is not a good defence to a charge under the section, falsity of the declaration or remark without anything more, cannot also be the basis for imputing a charge thereunder. What has to be shown to sustain a charge for the offence under the Section is that the declaration has been made deliberately and maliciously with the intention to outrage the religious feelings of any class of persons, to insult or attempt to insult the religion or religious beliefs of that class. May be the declarations made by the 1st accused during the Devaprasnam, to his knowledge, were false and it has wounded the religious feelings of a good number

of followers of Hindu religion and also devotees of Lord Ayyappa, but, unless it is shown that such declarations had been made by him with deliberate and malicious intention of outraging the religious feelings of any class, that too, for insulting or attempting to insult the religion or religious beliefs of such class, no prosecution against him for the offence under Section 295A of IPC would lie. Similar is the case with that of the other accused (A2 and A3) as indicated earlier, even assuming that the prosecution allegation is true that the 1st accused had previously conducted an Ashtamanglaya prasnam at the house of the 3rd accused at Bangalore, and the disclosures or revelations which he had then, had been projected as disclosures during the Devaprasnam at Sabarimala. The question is whether in making the declarations he had intentionally and maliciously outraged the religious feelings of any class of persons to insult the religion and religious beliefs of that class. He has wounded the religious feelings of the devotees of Lord Ayyappa and the followers of Hindu religion in general making such declarations or revelations, and to the extent, such declarations were false and outraging, without it being shown that he had the deliberate and malicious intention to do so, that too, for insulting or attempting to insult the religion and religious beliefs of class of persons cannot invite the penal consequences under Section 295A of the IPC against him. Probably, if false declarations were made by him during Devaprasnam, that too, on the basis of some revelations which he had earlier during the course of an Ashtamangalya prasnam in the house of the 3rd accused, he could be prosecuted for some other offence, if so provided under law, but, in the absence of showing that he had the deliberate and malicious intention to outrage the religious feelings of any class of persons, that too, to insult or attempt to insult the religion and religious beliefs of that class, for having made such declarations as imputed in the Devaprasnam, his prosecution under Section 295A of the IPC is not at all justified. The report is silent as to who were the other participants in the Devaprasnam though it is stated that 20 persons well-versed in that field were involved. Have they agreed to the disclosures or revelations made by the 1st accused as visualised in the Devaprasnam has also got some significance in examining the merit of prosecution charge imputed against the accused in the case. The declarations were made by the 1st accused during the course of Devaprasnam conducted in the temple, before the Lord to ascertain 'His

Wished', in which apart from him many others well-versed in the field too were involved. None of them had raised any challenge when such declarations were made as disclosed in the Devaprasnam, at least on the first day. That has also got significance in examining whether there was any deliberate and malicious intention on the part of the 1st accused in outraging the religious feelings of any class of persons. As already indicated, his declarations made in the Devaprasnam could be taken exception to as false, perhaps, also of having done so with the mala fide intention to enhance his fame as an astrologer, or even to injure or harm the thanthris or the Devaswom or any other person associated with the temple. May be, a view could also be taken that he made such declarations mala fide on the basis of some disclosure from the 3rd accused while he conducted an Ashtamangalya prasnam at her house earlier. That is not sufficient to hold that he had made such declarations with deliberate and malicious intention to outrage the religious feelings of a class of persons, that too, to insult the religion and religious feelings, to invite the penal consequences under Section 295A of the IPD. Fax message send by the 3rd accused on the instructions of the 1st accused through the 2nd accused and also further declarations made by accused nos.1 and 3 in relation to the disclosures/revelations made by the 1st accused in the Devaprasnam for the reason that the declarations so made are totally false, that alone, which is the case of the prosecution, and perhaps probable, that cannot be a basis to prosecute them for the offence under Section 295A of the IPC. The declaration or acts made by a party has wounded, even amounted to insult the religion or religious beliefs of a class of people is not sufficient, but it must be shown that there was deliberate and malicious intention of outraging their religious feelings insulting or attempting to insult their religion or the religious beliefs.

12. Annexure 1 final report challenged by the 3rd accused, imputing the offence punishable under Section 295A of the IPC against her, in the aforesaid circumstances, cannot be sustained, and it is liable to be quashed. Though accused Nos.1 and 2 have not challenged the report, quashing of the report will ensure to them also as they are also not liable to be prosecuted for the offence under Section 295A of the IPC.

13. In the light of the conclusion formed as above holding that Annexure 1 report is liable to be quashed, any enquiry into the validity of Ext.P3 sanction order challenged in the writ petition and also the order condoning the delay passed by the learned Magistrate is uncalled for.

Crl.M.C.No.3796 of 2011 filed by the 3rd accused is disposed of ordering the quashing of Annexure 1 final report and all further proceedings therefrom against all the accused (A1 to A3) invoking the inherent powers of this Court under Section 482 of the Code. Crl.M.C.No.3910 of 2011 and W.P.(C).No.26840 of 2011, in the light of the above order, are closed.

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