
(2016) 10 SC CK 0085

In the Supreme Court Of India

Case No : Writ Petition (Criminal) Nos. 135 of 2016

Ashish Khetan

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 03-10-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 295

Citation : (2016) 4 RCRCriminal 626 : (2016) 6 RecentApexJudgments(RAJ) 27

Hon'ble Judges : Dipak Misra and Uday Umesh Lalit, JJ.

Bench : Division Bench

Advocate : Sarim Naved, Harsh Parashar, Advocates, for the Petitioners

Final Decision : Dismissed

Judgement

1. Heard Mr. Sarim Naved, learned counsel for the petitioner.

2. In this petition preferred under Article 32 of the Constitution of India, the petitioner has prayed for declaring Section 295A of the India Penal Code, 1860 as ultra vires Articles 14, 19 and 21 of the Constitution of India. Be it noted, a Constitution Bench of this Court in Ramji Lal Modi v. State of U.P. [AIR 1957 SC 620] has upheld the constitutional validity of Section 295A of the Indian Penal Code by holding thus :

"8. It is pointed out that Section 295A has been included in Chapter XV of the Indian Penal Code which deals with offences relating to religion and not in chapter VIII which deals with offences against the public tranquility and from this circumstance it is faintly sought to be urged, therefore, that offences relating to religion have no bearing on the maintenance of public order, or tranquility and, consequently, a law creating an offence relating to religion and imposing restrictions on the right to freedom of speech and expression cannot claim the protection of clause (2) of Article 19A reference to Articles 25 and 26 of the Constitution, which guarantee the right to freedom of religion, will show that the argument is utterly untenable. The right to freedom of religion assured by those

Articles is expressly made subject to public order, morality and health. Therefore, it cannot be predicated that freedom of religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion cannot under any circumstances be said to have been enacted in the interests of public order. These two Articles in terms contemplate that restrictions may be imposed on the rights guaranteed by them in the interests of public order.

9. Learned counsel then shifted his ground and formulated his objection in a slightly different way. Insults to the religion or the religious beliefs of a class of citizens of India may, says learned counsel, lead to public disorders in some cases, but in many cases they may not do so and,, therefore, a law which imposes restrictions on the citizens' freedom of speech and expression by simply making insult to religion an offence will cover both varieties of insults, i.e., those which may lead to public disorders as well as those which may not. The law in so far as it covers the first variety may be said to have been enacted in the interests of public order within the meaning of clause (2) of Article 19, but in so far as it covers the remaining variety will not fall within that clause. The argument then concludes that so long as the possibility of the law being applied for purposes not sanctioned by the Constitution cannot be ruled out, the entire law should be held to be unconstitutional and void. We are unable, in view of the language used in the impugned section, to accede to this argument. In the first place clause (2) of Article 19 protects a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression "in the interests of" public order, which is much wider than "for maintenance of" public order. If, therefore, certain activities have a tendency to cause public disorder, a law penalising such activities as an offence cannot but be held to be a law imposing reasonable restriction "in the interests of public order" although in some cases those activities may not actually lead to a breach of public order. In the next place, Section 295A 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. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section. It only Punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. 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). Having regard to the ingredients of the offence created by the impugned section, there cannot, in our opinion, be any possibility of this law being applied for purposes not sanctioned by the Constitution. In other words, the language employed in the section is not

wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting the fundamental right guaranteed by Article 19(1)(s) and consequently, the question of severability does not arise and the decisions relied upon by learned counsel for the petitioner have no application to this case."

3. In our considered opinion, the controversy having been put to rest, the matter does not deserve to be reopened for the purpose of referring to a larger Bench.

4. In view of the aforesaid, we are not inclined to entertain this prayer. Needless to say, if the petitioner intends to challenge lodging of FIR on the grounds permissible as per law, he is at liberty to approach the High Court.

5. With the aforesaid observation, the writ petition stands dismissed.