
(2013) 07 P&H CK 0281

In the Punjab And Haryana At Chandigarh

Case No : CRM No. M-40567 of 2012 (O and M)

Ashok Kumar and Another

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 120B, 153, 153A, 153B
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3

Citation : (2013) 07 P&H CK 0281

Hon'ble Judges : Ritu Bahri, J

Bench : Single Bench

Advocate : S.S. Sandhu, for the Appellant; D.S. Virk, AAG, Punjab, for the Respondent

Final Decision : Allowed

Judgement

Ritu Bahri, J.—In the present petition u/s 482 Cr.P.C., quashing of F.I.R. No. 146 dated 15.09.2012 registered at P.S. City Samana u/s. 153-A/501-B/502-B/120-B IPC read with Section 3 of S.C. and S.T. Act is sought. Brief facts of the case are that petitioner No. 1 entered into the field of publishing 21 years ago and he started a publishing house under the name Sangam Publication, Samana. The petitioner till date has published the work of proclaimed and esteemed writers/poets/kavishers of Punjabi literature. Petitioner No. 2 (Scheduled Caste/Chamar) is a poet/Kavisher and is a third generation disciple of late Babu Rajat Ali. His lineal Gurus Sarprasat is late Jatheday Jagmal Singh, Subedar Hans Singh. Petitioner No. 2 is singing/narrating the works of Babu Rajab Ali since the last many decades. Petitioner No. 2 thought of compiling and editing the work of Babu Rajab Ali in order to make available to the literature world and scholars the work of his late Guru Babu Rajab Ali. In the year 2010, petitioner No. 2 approached petitioner No. 1 to get this work published through petitioner No. 1. In the year 2010, petitioner No. 2 published a book titled as "ANUTHA RAJAB

ALI" containing a part of the edited work of Late Babu Rajab Ali and contains exclusively his poetry/writings. This edition done by petitioner No. 2 has been appreciated and acclaimed by the President of Punjabi Sahit Academy, Ludhiana (P-1).

2. On 15.09.2012, petitioner Nos. 1 and 2 were arrested as one F.I.R. has been registered against them as mentioned above for publishing the above-mentioned book which contain some poems wherein caste based words have been used (P-2).

3. The petitioners are seeking quashing of this F.I.R. on the following grounds:-

(i) F.I.R. has been registered against both the petitioners under S.C. and S.T. Act whereas petitioner No. 2 himself is a Scheduled Caste community and against him provisions of S.C. and S.T. Act cannot be invoked. The certificate to this effect is P-4.

(ii) The work of late Babu Rajab Ali has earlier been published by authorities/publishers like Language Department Punjab, Govt. of Punjab, Punjabi University Patiala and the trust constituted in the name of Babu Rajab Ali Sahit Sadan Shahkot, Distt. Faridkot and the books containing his work are easily available in Libraries/Market.

(iii) The petitioners are not the authors of the books in question. The poetry contained in the book in question has been written by late Babu Rajab Ali and not by the petitioners. Petitioner No. 2 has only edited the work of Baba Rajab Ali which has already printed and is available in ten volumes.

(iv) Till date, neither the Govt. of Punjab nor any other authority, under any law has imposed any ban on publishing of the work of late Babu Rajab Ali.

(v) Some of the students have also done their doctorate on the work of Babu Rajab Ali and have been awarded Phd. Degrees by the Punjabi University as is evident from the opening page of their Doctorate Thesis (P-5 and P-6).

4. The poetry of late Babu Rajab Ali is archaic and it can only be read and properly understood by the learned and connoisseur and the same cannot be properly read and understood by a lay man without their help. The objectionable lines have been taken from two poems i.e. (i) Kissa Harnam Kaur and (2) Kissa Harphul singh. The over all context of these two poems and their literal interpretation has been done by renowned figure in literary world, Dr. Rajinder Pal Singh Brar, Chairman, Punjabi Department, Punjabi University, Patiala and the same are (P-8 and P-9 colly).

5. The book in question is mainly for the Scholars/students of Punjabi Literature/Libraries. The writer of these alleged objectionable words was born on 10.08.1994 in village Sahoke, Distt. Moga and he breathed his last in June, 1979 when he was 85 years old. He belongs to Muslim community in which there is no caste system so the writings at any point of time were ever written or meant to

target any community.

6. On notice, a reply has been filed by D.S.P., Samana dated 04.04.2013 giving justification for registration of the F.I.R. by stating that due to publication of the book there is lot of annoyance in the public belonging to scheduled caste. Any time, the community based riots may take place and the petitioners by publishing this book have violated the SC and ST Act. After investigation, challan has been presented on 27.09.2012 and the case is fixed for 08.04.2013 for consideration of charge.

7. The book carries objectionable words against one community and there is no violation of Section 501-B/502-B/120-B IPC read with Section 3 of S.C. and S.T. Act.

8. Hon"ble the Supreme Court in a case of Manzar Sayeed Khan Vs. State of Maharashtra and Another, has examined a case wherein the appellant is a constituted Attorney of the Oxford University Press India, having been appointed on 21.06.2001 for a period of three years or for so long as he is employed as the Managing Director of the Oxford University Press India, which is a department of the University of Oxford, a legal entity with charitable status. It furthers the University's objective of excellence in research, scholarship and education, by publishing worldwide in Oxford, New York, Auckland, Bangkok, Buenos Aires, Cape Town, Chennai, Dares-Salaam, Delhi, Hong Kong, Istanbul, Karachi, Kolkata, Kuala Lumpur, Madrid, Melbourne, Mexico City, Mumbai, Nairobi, Sao Paulo, Shanghai, Taipei, Tokyo, Toronto, etc. The Oxford University Press India entered into an agreement for five years with the Oxford University Press, USA, for publishing in India a paper bound book entitled "Shivaji: Hindu King in Islamic India" authored by Prof. James W. Laine, a Professor of Religious Studies, Macalester College, USA, on 28.05.2003. The said book was originally published by the Oxford University Press Inc., USA. As per the terms of the agreement, the Oxford University Press, India agreed to reprint the book without any changes or deletions. In all, 803 copies of the book were published, i.e., 488 copies in June and 315 copies in October 2003. The book was released in July 2003. 215 copies had been sold in July, 25 copies in August, 29 copies in September, 52 copies in October and 19 copies in November from the records available from the States of Maharashtra, Gujarat and Karnataka. The Oxford University Press, India and the appellants had received a letter on 10.11.2003 from four Historians whereby the publisher and the author had been asked to retract the objectionable statement complained of and tender an apology. The Oxford University Press, India through appellant-Manzar Sayeed Khan, expressed regrets for the said statement and informed the objectors that instructions had been issued to all its offices in India to immediately withdraw all copies of the book from circulation. Thereafter, on 05.01.2004, a mob of 100 to 125 persons allegedly belonging to the Shambhaji Brigade ransacked the Bhandarkar Oriental Research Institute (BORI), Pune, and destroyed 18,000 books and 30,000 rare manuscripts. Maharashtra Government then registered the F.I.R. against the author Prof. James W. Laine and the

appellants herein-the publisher and the printer of the book, under sections 153, 153A and 34 of the IPC.

9. Hon"ble the Supreme Court while dealing with Section 153-A IPC which deals with promoting enmity between different classes of the society or creates any situation of hatred between or among the different religions/castes/social groups held that the author thought his work to be worth of dedication to his mother Marie Whitwell Laine, which was purely a scholarly pursuit and without any intention or motive to involve himself in trouble. One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning. F.I.R. against the Professor was quashed. Hon"ble the Supreme Court in paragraph 15, 16 and 17 of the judgment held as under:-

15. Section 153A of IPC, as extracted hereinabove, covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities or acts prejudicial to the maintenance of harmony or is likely to disturb the public tranquility. The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence u/s 153A of IPC and the prosecution has to prove prima facie the existence of mens rea on the part of the accused. The intention has to be judged primarily by the language of the book and the circumstances in which the book was written and published. The matter complained of within the ambit of Section 153A must be read as a whole. One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning.

16. In Ramesh Dalal Vs. Union of India (UOI) and Others, this Court held that TV serial "Tamas" did not depict communal tension and violence and the provisions of Section 153A of IPC would not apply to it. It was also not prejudicial to the national integration falling u/s 153B of IPC. Approving the observations of Vivian Bose, J. in AIR 1947 1 (Nagpur) , the Court observed that the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. It is the standard of ordinary reasonable man or as they say in English Law, "the man on the top of a clapham omnibus.

(Emphasis supplied).

17. Again in Bilal Ahmed Kaloo Vs. State of Andhra Pradesh, it is held that the common feature in both the Sections, viz., Sections 153A and 505(2), being promotion of feeling of enmity, hatred or ill-will "between different" religious or

racial or linguistic or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved. Further, it was observed that merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two Sections.

10. Hon"ble the Supreme Court in a case of Manishi Jani and Another Vs. State of Gujarat and Others, has examined a case where the State Government had issued a notification ordering to forfeit and prohibit the book named "Jinnah-India, Partition, Independence" written by Shri Jaswant Singh and also its display, sale and distribution and any kind of its use in the State of Gujarat. The notification was issued on the ground that the contents of the book are highly objectionable and against the national interest. Further the contents of the books are misleading to the public and are against the interest of the State. Hon"ble the Supreme Court has examined the notification by referring to the case of Narayan Dass Indurakhya Vs. State of Madhya Pradesh, whereby the Government forfeited the copies of book published by the appellant. Hon"ble the Supreme Court after considering the notification, held that there is a considerable body of statutory provisions which enable the State to curtail the liberty of the subject in the interest of the security of the State or forfeit books and documents when in the opinion of the Government they promote class hatred, religions intolerance, disaffection against the State etc. In all such cases, instances the State Government has to give the ground of its opinion. Ground must be distinguished from opinion. Ground of the opinion must mean the conclusion of facts on which the opinion is based and there can be no conclusion of fact which has no reference to or is not ex facie based on any fact. Same is the view taken by the Apex Court in a case of The State of Uttar Pradesh Vs. Lalai Singh Yadav, . This case was related to forfeiture of book captioned Ramayan: A True Reading" in English and its translation in Hindi. View of the Government was that the book was sacrilegiously, outrageously, objectionable, being "deliberately and maliciously intended to outrage the religious feelings of a class of citizens of India. The notification contained an appendix setting out in tabular form the particulars of the relevant pages and lines in the English and Hindi versions which presumably, were the materials which were regarded as scandalizing. The Apex Court held that there is statutory duty to speak, silence is lethal sin for a good reason disclosed by the scheme of fasciculus of sections. It was held that the Court cannot make a roving enquiry beyond the grounds set forth in the order. The notification was set aside by the High Court and upheld by the Supreme Court and held that Section as per Section 99C, the Court has to examine the grounds of Government given in the order and may affirm or upset it.

11. After going through the judgments mentioned above, it is the mens rea of the accused which has to be seen at the time of publication of the book. It is not disputed that the contents of the book has not been composed by the petitioners rather it is the reproduction of the work done by late Babu Rajat Ali. The

reproduction of recitals of earlier poem composed by late Babu Rajat Ali which was published in the earlier books by University did not point out any mens rea on the part of the accused. The contents of book is not composed by the petitioners. Hence the essential ingredients of Section 153-A are not made out against the present petitioners. Petitioner No. 2 himself belongs to Scheduled Caste community and he cannot be prosecuted u/s 3 of S.C. and S.T. Act.

12. Accordingly, F.I.R. No. 146 dated 15.09.2012 registered at P.S. City Samana u/s. 153A/501-B/502-B/120-B IPC read with Section 3 of S.C. and S.T. Act is quashed with all consequential proceedings arising therefrom qua petitioners, in view of the law laid down in State of Haryana and others Vs. Ch. Bhajan Lal and others, The petition is accordingly allowed.