
(2010) 01 BOM CK 0055

In the Bombay High Court

Case No : Criminal Application No. 2074 of 2002

Devidas Ramchandra Tuljapurkar

APPELLANT

Vs

The State of Maharashtra, Vasant Dattatraya Gujar and
Dhananjay Dadasaheb Kulkarni

RESPONDENT

Date of Decision : 20-01-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 153A, 153B, 292, 292(2)

Citation : (2010) 112 BOMLR 535 : (2010) CriLJ 1967

Hon'ble Judges : A.V. Potdar, J

Bench : Single Bench

Advocate : V.J. Dixit and S.P. Katneshwarkar, for the Appellant; N.B. Patil, APP, for the Respondent

Final Decision : Dismissed

Judgement

A.V. Potdar, J.—By the present application u/s 482 of the Criminal Procedure Code, the applicant, who is original accused No. 1 in RCC No. 134/1995, prays to quash and set aside the order dated 03.08.2002 passed in criminal revision application No. 79/2001 thereby rejecting the revision & confirming the order dated 04.05.2001 passed below Exhibit66 in RCC No. 134/1995, filed by the applicant No. 1 along with respondents No. 2 & 3, seeking discharge.

2. It appears that the present application came to be admitted on 06.06.2003.

3. Such of the facts as are necessary for the just decision of the present application can be summarized thus

a) One poem, composed by present respondent No. 2, titled as "GANDHI MALA BHETALA" was published in the month of July August 1994 in an issue of bimonthly magazine cum bulletin published by present applicant and printed by present respondent No. 3. This bulletin is meant for circulation amongst members of All India Bank Association for private circulation.

b) An organization, namely, "Patit Pawan Sanghatana", through one V.V.Anskar, filed an application with the Commissioner of Police, Pune, making grievance that the said poem is obscene and the contents of the same would lower down the image of the father of the nation i.e. Mahatma Gandhi. The Commissioner of Police, Pune, in turn, transmitted the said complaint to the Latur Police. On the basis of the said complaint an offence at CR No. 7/1994 came to be registered u/s 153A, 153B and 292 of the Indian Penal Code, against the present applicant and respondents No. 2 and 3. After completion of investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Latur and then the case was numbered as RCC No. 134/1995.

c) It further appears that the present applicant and respondents No. 2 and 3 appeared before the CJM, Latur and prayed for discharge by filing an application at Exhibit 66. It appears that the learned CJM, Latur, discharged the applicant and respondents No. 2 and 3 for the offence punishable u/s 153A and 153B, however, proceeded against them u/s 292(2) of the IPC, vide order dated 04.05.2001.

d) It also appears that being aggrieved by the order dated 04.05.2001 criminal revision application No. 79/2001 came to be filed before the learned Sessions Judge, Latur. However, the Criminal Revision Application No. 79/2001 came to be rejected vide order dated 03.08.2002 and hence the present application u/s 482 of the Criminal Procedure Code for quashing of the said order for the grounds stated in paragraph No. 21 (i) to (xv).

4. In this background, heard Mr. V.J. Dixit, learned senior counsel for the applicant followed by the submissions of learned APP. Also perused the order passed below Exhibit 66 as well as the impugned order dated 03.08.2002.

5. It is urged by learned senior counsel on behalf of the applicant that the contents of the poem "Gandhi Mala Bhetala" may be vulgar, but may not be obscene. According to learned senior counsel, the poem composed by present respondent No. 2, is a fair criticism and a piece of literature in the form of satire. As the bulletin, in which the poem was published, was meant for circulation amongst the highly qualified and educated bank employees only and the same is also appreciated by number of renowned persons and hence it cannot be said that the contents of the said poem are obscene and may hurt the feelings of the readers. In the premise, it is urged that no offence is made out to proceed against the applicant and respondents No. 2 and 3 u/s 292 of the Indian Penal Code. Learned senior counsel, in support of his contentions, placed reliance on the judgment reported in *Samaresh Bose and Another Vs. Amal Mitra and Another*, . He also placed reliance on the ruling reported in *Shri Chandrakant Kalyandas Kakodkar Vs. The State of Maharashtra and Others*, and on the judgment reported in *Ranjit D. Udeshi Vs. State of Maharashtra*, .

6. Before considering the ratio laid down in the above referred judgments, it is necessary to consider that all the three judgments, referred supra, arise out of the trials concluded by the concerned criminal courts after evidence was lead and

the courts below came to the conclusion that the contents of the publication impugned in the said matters, are obscene and the said judgments do not relate to the orders passed on discharge applications.

7. In his submissions, learned APP supports the orders passed by both the courts below and prays for dismissal of the application.

8. Section 292 of the Indian Penal Code, as amended in the year 1969, reads as follows:

292. Sale, etc., of obscene books, etc.

(1) For the purposes of Sub-section (2), a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or : (where it comprises tow or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

(2) Whoever

(a) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes produces or has in his possession any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object whatsoever, or

(b) imports, exports or conveys any obscene object for any of the purposes aforesaid, or knowing or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation, or

(c) takes part in or receives profits from any business in the course of which he knows or has reason to believe that any such obscene objects are, for any of the purposes aforesaid, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation, or

(d) advertises or makes known by any means whatsoever that nay person is engaged or is ready to engage in any act which is in offence under this section, or that any such obscene object can be procured from or through any person, or

(e) offers or attempts to do any act which is an offence under this section, shall be punished on first conviction with imprisonment of either description for a term which may extent to tow years, and with fine which may extent to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment of either description for a term which may extent to five years, and also with fine which may extent to five thousand rupees.

Exception - This section does not extent to

(a) any book, pamphlet, paper, writing, drawing, painting, representation or figure

(i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting, representation or figure is in the interest of science, literature, art or learning or other objects of general concern, or

(ii) which is kept or used bona fide for religious purposes:

(b) any representation sculptured, engraved, painted or otherwise represented on or in

(i) any ancient monument within the meaning of the Ancient Monuments and Archaeological Sites and Remains Act, 1958, or

(ii) any temple, or on any car used for the conveyance of idols, or kept or used for any religious purposes

9. Before this amendment, the definition of the obscene was not inserted in the Penal Code, however, by virtue of this amendment, the meaning of obscene can be gathered from the ingredients of the section which reads as follows:

8. "OBSCENE" MEANING OF

(a) Ingredients

Sub-section (1), which defines the word "obscene" was inserted, in this section by the Indian Penal Code (Amendment) Act 1969. Before it this Code did not contain any definition of this word. The said subs (1) now lays down that for the purposes of subs (2) of this section, a book, pamphlet, paper, writing, drawing, painting, representation, figure or any other object shall be deemed to be obscene if:

(i) it is lascivious of

(ii) it appeals to the prurient interest, or

(iii) its effect, or (where it comprises two or more distinct items) the effect of any of its items, if taken as a whole, such as to tend to deprave and corrupt persons, who are likely having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

10. Meaning of "obscene", as per "Black's Law Dictionary, reads thus

Obscene, Extremely offensive under contemporary community standard of morality and decency; grossly repugnant to the generally accepted notions of what is appropriate. Under the Supreme Court's three part test, material is legally obscene - and therefore not protected under the First Amendment - if, taken as a whole, the material (1) appeals to the prurient interest in sex, as determined by the average person applying contemporary community standards;

(2) portrays sexual conduct, as specifically defined by the applicable state law, in a patently offensive way; and (3) lacks serious literary, artistic, political, or scientific value.

If there be no abstract definition..... should not the word "obscene" be allowed to indicate the present critical point in the compromise between candor and shame at which the community may have arrived here and now? *United States V Kennerley* 209 F.119.121 (S.D.N.Y. 1913) (per Hand. J.)

11. In the matter of *Somersh Bose*, referred supra, it is observed by the Apex Court as to what is the mode for deciding the question of obscenity in the books, which reads thus-

It is beyond dispute that the concept of obscenity usually differs from country to country depending on the standards of morality of contemporary society in different countries. In our opinion, in judging the question of obscenity, the Judge in the first place should try to place himself in the position of the author and from the view point of the author the Judge should try to understand what is it that the author seeks to convey and what the author conveys has any literary and artistic value. The Judge should thereafter place himself in the position of a reader of every age group in whose hands the book is likely to fall and should try to appreciate what kind of possible influence the book is likely to have in the minds of the readers. A Judge should thereafter apply his judicial mind dispassionately to decide whether the book in question can be said to be obscene within the meaning of S.292, IPC by an objective assessment of the book as a whole and also of the passages complained of as obscene separately. In appropriate cases, the Court, for eliminating any subjective element or personal preference which may remain hidden in the subconscious mind and may unconsciously affect a proper objective assessment, may draw upon the evidence on record and also consider the views expressed by reputed or recognized authors of literature on such questions if there be any for his own consideration and satisfaction to enable the Court to discharge the duty of making a proper assessment.

12. In the ruling of *Samaresh Bose*, reference of the judgment reported in AIR 1970 SC 1390 (supra) is given at para 25 as well as reference of the judgment reported in AIR 1965 SC 881 (Supra) is given in paragraphs No. 23,25 and 26, which are the cases decided after opportunity being given to the defense and prosecution to lead evidence on the point as to whether any act, committed by the respective appellants, covers under the provisions of Section 292 of the IPC. In view of the observations of the Apex Court in the matter of *Samaresh Bose* (supra), I do not think it appropriate to discuss the ratio laid down in the other two cases, separately.

13. The question requires to be considered is as to whether in the given parameters, in the rulings referred supra, what is the standard of morality in India where the image of late Shri Mahatma Gandhi, regarded as father of the

Nation, is regarded in high esteem by the public at large. Mahatma Gandhi is regarded as a pious person and a saint in this Country. Mahatma Gandhi, is known for his simple living and high thinking and high morals. The contents of the poem, "Gandhi Mala Bhetala", do not suggest that again Mahatma took birth on the earth and the present situation was narrated to him by somebody else, but it is a theme of the poem that after the demise of Mahatma Gandhi, when he met the author, some indecent words are put in his mouth, alleging that this is the present day scenario. Though the poet has not given numbers to the stanzas of the poem, yet for the sake of convenience, numbers are given to the same. The words used in stanzas No. 4, 8, 9, 10, 12, 23, 25, 27, 28, 30, 34 and 36 of the said poem are not only vulgar but also obscene and indecent, which will definitely damage the image and reputation of the father of nation, which is nurtured by every citizen of this Country. In the premise, I am not in agreement with the learned senior counsel appearing for the applicant that considering the remarks given by some renowned authors it has to be held that the poem is a fair criticism and satire of Gandhian thoughts and ideals, as the said remarks are given by intellectual persons and not by general public. Secondly, as the said remarks are not forming part of the Court record, as the said authors or renowned persons have not deposed before the Court on oath and at the same time, there are no remarks of the readers, amongst whom the bulletin was circulated, the said remarks cannot be accepted. At the time of considering case of discharge, the court has to consider as to whether from the set of evidence before it, prima facie offence is made out or not. In the present case, prima facie offence, punishable u/s 292 of the IPC, is made out. As it is not disputed that the poem composed by respondent No. 2 is published and circulated by the present applicant, which is certainly obscene in nature and hence, there are no merits in the application. In the premise, the application needs to be dismissed.

14. In the result, the application is rejected. As the application was admitted, in other words rule was issued by this Court, the same stands discharged accordingly.

15. As the application fails, the applicant and respondents No. 2 and 3 are directed to appear before the Chief Judicial Magistrate, Latur to face the trial, within a period of 3 weeks from today. If the applicant and respondents No. 2 and 3, fail to appear before the learned CJM, Latur, the learned CJM, to take appropriate steps for securing presence of the applicant and respondents No. 2 and 3.