
(2010) 09 KAR CK 0024
In the Karnataka High Court
Case No : Writ Petition No. 1750 of 2008

Hulikal Nataraju

APPELLANT

Vs

State of Karnataka and K.H. Chetan

RESPONDENT

Date of Decision : 13-09-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 153 A, 298

Citation : (2010) 09 KAR CK 0024

Hon'ble Judges : H.N. Nagamohan Das, J

Bench : Single Bench

Advocate : Ravi verma Kumar for B.M. Irishad Ahmed, for the Appellant; H.S. Chandramouli, SPP and Zaheer Ahmed, GA for R-1, R-2, for the Respondent

Final Decision : Allowed

Judgement

H.N. Nagamohan Das, J.—In this writ petition the Petitioner has prayed for a writ in the nature of certiorari to quash the proceedings in C.C. No. 1703/2006 on the file of Principal Civil Judge (Junior Division) and JMFC Madikeri and to reject the complaint dated 27.02.2008 as per Annexure L and for other reliefs.

2. Petitioner is a teacher in Swamy Vivekananda Higher Primary School at Doddaballapur in Bangalore Rural District. Petitioner travels extensively to debunk miracles and try to find and establish the scientific truth behind the miracles. An organisation called Shivashakti Yuva Vedike situated at Madikeri invited the Petitioner to perform a programme on miracles at Madikeri on 26.02.2006. Accordingly the Petitioner conducted a programme exposing the miracles of godmen, witches and tricksters. Large number of people including local officers and elected representatives attended the programme conducted by the Petitioner.

3. On 27.02.2006 the second Respondent claiming to be an activist of Bajarangadal of Madikeri unit gave a complaint to the jurisdictional police at Madikeri as per Annexure L. In the complaint it is stated that on 26.02.2006 in

the night while watching Television channel called MMN he heard and saw the Petitioner stating that he will create "Thirthodbhava at Talakaveri", "The eagle revolving round Garudagambha at Sri. Aiyappaswamy Temple as false" and also the "Light that appears on Makara Sankranti as false". These alleged statements said to have been made by the Petitioner wounded the Hindu religious beliefs, practices and customs and therefore the Respondent No. 2 lodged a complaint requesting the jurisdictional police at Madikeri to take appropriate action against the Petitioner in accordance with law.

4. This complaint at Annexure L came to be registered by the jurisdictional police in crime No. 21/2006 for the offences punishable u/s 153A IPC. After investigation the police have now filed a charge-sheet against the Petitioner for the offences punishable u/s 298 IPC. The Jurisdictional Magistrate had taken cognizance of the offence u/s 298 IPC and issued non-bailable warrant as per the order dated 30.10.2006 - Annexure X. Hence, the Petitioner is before this Court for a writ of certiorari to quash the proceedings in C.C. No. 1703/2006 and also the complaint at Annexure L.

5. Heard arguments on both the side and perused the entire writ papers.

Freedom of speech

6. Un-freedom is the result of oppression and freedom is the outcome of liberation. It is through long drawn struggles man has achieved the freedom of speech and expression. The struggle for India's independence was also the struggle for freedom of speech and expression amongst others. One of the values foreseen during the freedom struggle was to provide fundamental rights to the citizens of India. Our Constitutional makers realised that Freedom of Speech and Expression is the basic prerequisite of democratic setup to which we have pledged ourselves in our Constitution. Thus the echo of freedom struggle for freedom to speech and expression was translated in to a fundamental right in Article 19(1)(a) of our Constitution. This fundamental right to speech and expression is not an absolute right. The State is empowered to enact law imposing reasonable restrictions on the exercise of this right in the interest of sovereignty and integrity of India, the security of the State, friendly relation with foreign States, public order, decency or morality, in relation to contempt of Court, defamation or incitement to an offence. In the Republic of India the judiciary has zealously guarded and expanded this important fundamental right to speech and expression in several pronouncements.

7. This freedom of Speech includes freedom to dissent. Our Constitution do not recognise a freedom to destroy freedom to dissent. Any form of intolerance to dissent is dangerous to democracy. This right to dissent should be unhampered by the cramps of the past or the shackles of the present. French writer Voltaire said "I do not agree with a word of what you say, but I will defend to death, your right to say it." If a person exercises this freedom to dissent, State should not interfere unless it comes within the reasonable restrictions. The State is under an

obligation to ensure that every citizen of India enjoys freedom of speech and expression which includes freedom to dissent.

8. For social development of a society the fullest possible opportunity for the free play of the human minds is an indispensable prerequisite. Therefore the liberty of man to search for truth ought not to be fettered, no matter what orthodoxies he may challenge. More than just freedom of speech, we need active debate on all important issues. Progress is made, not by comfortably agreeing with the conventional wisdom, but by having the courage to say that no one else is saying and to say it with scientific reasons that motivate people to change their opinions. For development of thinking process, for efflorescence of rational facilities, for broadening of mental horizons, for the full growth of human personality it is imperative that one should have access to all kinds of views. In a democracy it is the duty of State to provide access to all kinds of views to its people.

9. In *Dennis v. United States* 34 US 494 (1951) Justice Frankfurter observed:

For social development of trial and error, the fullest possible opportunity for the free play of human mind is an indispensable prerequisite. The history of civilisation is in considerable measure the displacement of error which once held sway as official truth by beliefs which in turn have yielded to other truths. Therefore the liberty of man to search for truth ought not be fettered, no matter what orthodoxies may challenge. Liberty of thought soon shrivels without freedom of expression. Nor can truth be pursued in an atmosphere hostile to the endeavour or under dangers which are hazarded only by heroes.

10. India is having a rich history of search for truth and challenge to blind beliefs. Devaguru Bruhaspathi otherwise called as "Nireeshwara Charvaka" was the earliest who challenged then orthodoxy on the Indian soil. Later came the Great Gauthama The Buddha and he said:

- Do not believe what you have heard
- Do not believe in tradition because it is handed down many generations.
- Do not believe in anything that has been spoken of many times
- Do not believe because the written statements come from some old sage
- Do not believe in conjecture
- Do not believe in authority or teacher or elders
- But after careful observation and analysis, when it agrees with reason and it will benefit one and all, then accept it and live by it.

11. The 12th Century Social reformer of Karnataka Basaveshwara founded a forum called "ANUBHAVA MANTAPA". This Anubhava Mantapa was a forum of rational, free thinking and discussions. People from all over the country representing all classes and different castes participated in the discussions at

Anubhava Mantapa. These discussions gave birth to thousands and thousands of Vachana Literature in Kannada. A reading of Vachanas reveals that the discussions were based on rationalism, realism and scientific outlook. The ultimate aim of these Vachanas is to establish a classless and caste-less society and to eradicate gender inequalities. Former Chief Justice D.M. Chandrashekar in a small compilation in English titled as "Sri. BASAVESHWARA" observed as under:

Basaveshwara was rationalist and free thinker. India can not boast of a long tradition of free thinking, although its contribution to the intellectual heritage of mankind, is quite substantial. Free thinking was not encouraged in India excepting a few flashes during the period of Upanishads and during the rise of Buddhism.

In the words of Arthur Miles, Basaveshwara was the first Indian free thinker. He encouraged the spirit of enquiry and gave free scope for discussion. He subjected to enquiry the age old beliefs and practices and emancipated people from superstition and meaningless rituals and practices.

12. Former President of India and a great Philosopher Dr. S. Radhakrishnan in his book "RECOVERY OF FAITH" observed:

The great religious teachers of the world preach something different from the traditions they inherit. The Seers of Upanishads, Gautama the Buddha, Zoroaster, Socratic, Jesus, Mohammed, Nanak and Kabir had to undergo in their lives an inevitable break away from the traditional views. Even as the Seers of the Upanishads and the Buddha protested against Vedic Ceremonialism, even as Jesus denounced Rabbinical orthodoxy, we have to protect the enduring substance of religion from the forms and institutions which suffer from the weakness of man and the corruption of times. We must get away from a religion which has lost the power of creative expression in conformity with the needs and demands of our age. Kalidasa in his Malavikagnimitra says: Everything is not good simply because it is old, no literature should be treated as unworthy simply because it is new. Great men accept the one or the other after due examination. (only) the fools has his understanding misled by the beliefs of others.

13. Knowledge or wisdom cannot be ordained from sky neither they are ready made objects. When the knowledge of human experience is sharpened and blended according to the present day needs, contemporary knowledge emerges. When the knowledge of human experience is subjected to the test of criticism, rationalism takes birth and such rational thinking is called progressive thought. It is through this process the human civilisation marched from Hunting stage to the present Digital age. A word of caution is necessary in the matter of criticism. There shall be no unhealthy, destructive and harmful criticism. There shall be no criticism to hate, aimed at divisiveness, with pre-determined purpose of hurting individuals and communities. A criticism must be healthy, constructive to correct a mistake and to elevate from the present stage to better higher stage. Therefore freedom of speech and expression includes freedom to criticise. It is

the duty of State to protect the persons who advances a healthy and constructive criticism. It is the obligation of society to be tolerant to such criticism as observed by the Supreme Court in *Bijoe Emmanuel and Others Vs. State of Kerala and Others*, as under:

Our traditions teaches tolerance;

Our philosophy preaches to tolerance;

Our Constitution practices tolerance;

Let us not dilute it.

Superstitions

14. It is difficult to distinguish between "blind beliefs and faiths" from "beliefs and faiths". The dividing line is very thin. There are explained beliefs and faiths. There are also unexplained beliefs and faiths. There are beliefs and faiths which are non-violent, provide solace, creates confidence and useful to the people. A blind belief or faith not based on reason, knowledge or experience is called as superstition. These superstitions are found all over the world and in all walks of life concerning all activities throughout history. Like people of the World over, most Indians are superstitious. Even the daily life of Indians is governed by superstitions.

15. There are superstitions which are violent, dangerous, destructive, harmful and inhuman. The superstition of human sacrifice still continues. The practice of torturing women to death in the name of "Witches" or "Sorceress" is still continuing. The greatest damage done by these harmful superstitions is that they deflect attention from the primary cause and lead to defeatist attitude of helpless acceptance. They stand in the way of unearthing the root cause and undertaking adequate remedial steps. They made the ignorant people weak and driven them for mental laziness. They deprived the people of all grandeur and historical energies. They subjected man to external circumstances, instead of elevating man to be the sovereign of circumstances. They transformed a self-developing social state into never changing natural destiny. These superstitions are perpetuating and promoting exploitation, slavery, untouchability, inferiority complex, superiority complex, caste, creed, gender and varna based inequalities. They became instruments in the hands of few to exploit, cheat and deceive the ignorant people.

Scientific temper

16. Realising the consequences of harmful superstitions our first Prime Minister Jawaharlal Nehru while delivering the Convocation address of Allahabad University in 1946 said:

It is science alone that can solve the problems of hunger and poverty, of insanitation and malnutrition, of illiteracy and obscurantism of superstition and deadening customs, of rigid traditions and blind beliefs, of vast resources going

to waste of a rich country inhabited by starving millions.

Pandith Nehru wanted this rationalism of science to spread throughout the length and breadth of our land. To him this appeared to be the only method of alleviating the suffering of our country and rising them from the object state they were in. To him scientific temper was the sword which by its rationalism could fight the darkest forces of superstition. It was also the shield which could protect the people of India from prejudice, ignorance and obsecurantism which have kept the people enslaved and degraded all these years. Only by having the scientific temper in every one, India could launch a new adventure into the unknown.

17. By experience we have realised that to some extent education and economic development can help in eradicating superstitions. But, scientific temper and the spirit of enquiry is a must for eradicating superstitions. Why should we have to develop the scientific temper? Science is the knowledge of the structure and dynamics of the world around us. Developing scientific temper means pursuit of ways of understanding the world around us, so that we may function more efficiently, more effortlessly and more happily. It questions rational based on factual assessment and helps in eradicating dogmatism. It helps as a powerful tool in eliminating customary irrational practices. It creates a conducive atmosphere to eradicate class discrimination, slavery, bonded labour, untouchability, gender discrimination and racial discrimination.

18. It infills courage by including true knowledge based on truth, factual information and realistic approach. It also creates an independent ability to accept things and situations after due enquiry and questioning instead of blindly accepting things merely on the ground that a prominent person has said so or it is stated in a holy relic. It helps in developing self respect to maintain independent and boosts self confidence. It makes an individual to come out of illusionary myths and helps him in understanding the real meaning of life. It helps to fight courageously in times of need. It also helps in eliminating inferiority complex and boosts self confidence.

Fundamental duties

19. Realising the importance of developing scientific temper and spirit of enquiry in our society our Law makers by 42nd amendment to the Constitution inserted Article 51A(h) as a fundamental duty and the same reads as under:

Article 51A(h):To develop the scientific temper, humanism and the spirit of enquiry and reform.

20. Fundamental duties as defined in Article 51(A) are not made enforceable by a writ of Court just as the fundamental rights are. But every citizen of India is fundamentally obligated to develop scientific temper, humanism and the spirit of enquiry. It is the duty of every citizen to contribute to reform the society for better way of life. Whenever there is threat for a citizen from discharging his fundamental duties then it is obligatory on the part of State to protect such a

citizen. A citizen is also entitled to approach the writ Courts for a direction to the State to extend protection to perform his fundamental duties just as he is entitled to protect his fundamental rights.

Facts in the present case

21. Respondent No. 2 gave a complaint to the jurisdictional police on 26.02.2006 as per Annexure L and the same came to be registered in crime No. 21/2006 u/s 153(A) of IPC. After investigation a charge sheet was filed in C.C. No. 1703/2006 u/s 298 of IPC. This Court summoned the Home Secretary to be present before this Court to explain as to why action should not be initiated against the erring officer who has conducted improper investigation. Accordingly on 04.06.2010 the Home Secretary was present before this Court and promised that he would initiate action immediately and take appropriate steps against the concerned Investigating Officer. Respondent No. 1 with their statement of objections filed copy of the order dated 06.07.2010 imposing a minor penalty of withholding one increment for a period of one year on the Investigating Officer who investigated the matter in this case for improper investigation. This material on record manifestly establishes that Respondent No. 1 concedes that there is improper investigation in the matter. On this ground alone the criminal proceedings against the Petitioner are liable to be quashed.

22. The charge-sheet filed against the Petitioner is for the offence punishable u/s 298 IPC and the same reads as under:

Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places, any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

23. A reading of Section 298 IPC specifies that the following essential ingredients are necessary to constitute an offence.

- i. that the accused wounded the religious feelings of some person or persons;
- ii. that the accused did so by uttering some words or making any sound in the hearing of that person (persons) or by making any gestures in the sight of that person or by placing any object in the sight of that person;
- iii. that the accused did so with deliberate intention.

24. In the complaint Annexure N it is not alleged that the Petitioner directly uttered any words to Respondent No. 2 offending him. Further in the complaint it is not alleged that the Petitioner uttered words with deliberate intention of wounding the religious feelings of Respondent No. 2. In the absence of these essential ingredients in the complaint at Annexure L there is no offence committed by the Petitioner u/s 298 of IPC.

25. In the complaint at Annexure L it is alleged that Respondent No. 2 while

watching Television Channel heard and saw Petitioner uttering some words. The statement of person incharge of the Television Channel is not recorded. The Compact Disk, popularly called as C.D., telecasting the alleged statements made by the Petitioner is not seized. Though Respondent No. 2 had undertaken to produce the C.D. before the police has failed to produce the same. In the additional statement of Respondent No. 2 he has stated that he can not produce the C.D. The Investigating Officer during the course of investigation recorded the statements of four witnesses as found at Annexures C, T, V. and W. A reading of these statements makes it clear that there is no change from the statement of one witness to the other witness. The statement of these witnesses are noting but carbon copies of the same statement. Except the complaint Annexure L and the statement of witnesses there is no other evidence on record. Even if this entire evidence is accepted, then the same do not constitute an offence u/s 298 IPC.

26. An order summoning a person to appear in a Court of law to answer a criminal charge entails serious consequences. Therefore at the time of issuing the process what the Court is required to do is to find out whether there is prima facie case. The Court should apply its mind and take note of the allegations made in the complaint, the evidence collected in the course of investigation, the involvement of the of the accused in the offence and is it an abuse of the process of the Court. The Court shall not issue the process in a mechanical manner. In the instant case, as already held, even if the entire evidence collected in the course of investigation is accepted, the same do not constitute an offence alleged against the Petitioner.

27. For the reasons stated above, the following;

ORDER

- i. Writ petition is hereby allowed.
- ii. The proceedings in C.C. No. 1703/2006 on the file of Principal Civil Judge (Junior Division) and J.M.F.C., Madikeri are hereby quashed.
- iii. The complaint dated 27.02.2008 - Annexure L is hereby quashed.
- iv. The Petitioner is discharged.
- v. Ordered accordingly.