

(1987) 07 AHC CK 0043
In the Allahabad High Court
Case No : Criminal Revision No. 667 of 1985

Kamla Kant Singh

APPELLANT

Vs

Chairman/Managing Director, Bennetta Colman and Co.
Limited and Others

RESPONDENT

Date of Decision : 27-07-1987

Acts Referred:

Constitution of India, 1950 — Article 19, 19(2)
Criminal Procedure Code, 1973 (CrPC) — Section 196, 200, 202, 204, 397
Penal Code, 1860 (IPC) — Section 120B, 153, 153A, 292, 293
Press (Objectionable Matter) Act, 1951 — Section 11

Citation : (1987) 11 ACR 662

Hon'ble Judges : B.L. Yadav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.L. Yadav, J.—This revision u/s 397/401 of the Code of Criminal Procedure, 1973, (for short the Code), is directed against the order dated 26-3-1985 refusing to issue process against the opposite party No. 1 to 4, whereas by the same order the process was issued against Sri. Ved Prakash Vajpayee, the author of the article "Satsang Nagar jahan dharm ke nam per apradhon ki kheti hoti hai."

2. The short account of the events leading to the present revision is that at the distance of 226 Km. from Patna City there is a place named Deoghar, where over about 500 acre of land there is a Satsang town, one of the biggest religious centre of the country, which has got about 200 branches over different parts of the world. Its head office, however, is situated at Deoghar. The said religious institution is run by a trust. Persons from different parts of the country, as also from abroad, collect there on different auspicious days for meditation and religious discourses. This religious centre was founded by late Thakur Anukul Chand, who was the incarnation of God as his disciples and followers accept it. The disciples have implicit faith, devotion in and profound regards for the late Anukul Chand, who left for his heavenly abode on 26-1-1969. After his death the

Satsang is managed by Sant Amrendra Nath alias Barda. Some criticism about the management of the Satsang was published in the weekly "Dinman" dated 19-5-1984 (pages 39 and 41). The said respectable Thakur Anukul Chand, used to propagate that all the religions of the world have got similar good qualities, hence to discriminate one religion from another was an incorrect approach. Every religion deals with the spiritual aspect.

3. In that article it was stated that a young man named Mahru Verma was killed at the instance of some followers of the Satsang and some criminals used to take shelter in that Ashram, that one Jogeshwar Ojha, a servant of the Ashram, was also killed and there was molestation of a minor daughter of one Shanker Mahto, that Barda married thrice and even it was reported that he married his step sister. It was further stated that respectable Thakur Anukul Chand, who was supposed to be the incarnation of God, married thrice. There was some dispute about the property. Some pasture land was occupied by force and there was some dispute from nearby villagers. There was a plan by the Satsang in 1960 to bring the holly river Ganga besides the Ashram. The Satsang gets an annual income of 2 crores and sixteen laks which is subscribed by its devotees. The Satsang supplies free food and lodging to about 700-800 people. There are a hospital, colleges and Goshalas and philanthropical institutions connected with the Ashram. The employees of the Ashram put in hard labour, but some criminals conceal their identity in the Ashram.

4. On the basis of the contents of that article a complaint was filed on 27-7-1984 by the present applicant Sri. K.K. Singh, who is a practising lawyer of this Court and is a devotee of that Ashram, to punish the opposite parties including the Chairman/Managing Director of the "Dinman" Weekly, its printer, publisher, Editor, Associate Editor, the author of the article and others for the offence under Sections 120-B, 153, 153-A, 292 to 294 and 295-A and 298 of the Indian Penal Code. After taking statements under Sections 200 and 202 of the Code, the Magistrate by the impugned order dated 26-3-1985 issued process only against opposite party No. 5, namely, Sri. Ved Prakash Vajpayee, the author of the article, for offence under Sections 295-A and 298 IPC, whereas he rejected the complaint against the rest of the persons against whom the present revision has been filed. By the present revision it has been prayed that the process may be issued u/s 204 of the Code against the present opposite parties also, as by the said article the offence u/s 120-B (Criminal conspiracy to commit an offence), Section 153 (Wantonly giving provocation with intent to cause riot), Section 153-A (promoting enmity between different groups and also in place of worship etc.), Section 292 (sale etc. of obscene pictures), Section 295-A (maliciously insulting religion or religious place of any class) and Section 298 (uttering words or making any sound or making any gesture with intent to wound religious feeling), has been made out.

5. As the process has been issued only against the author of the article, Sri. Ved Prakash Vajpayee, to appear on 30-4-1985 for the offence u/s 295-A/298, IPC

and under other Sections i.e. 120-B, 153-A etc. process was not issued. But that part of the order in not issuing process for offence u/s 120-B and 153-A etc. against Sri. Ved Prakash Vajpayee has not been challenged. That part of the impugned order became final. As an inevitable corollary, the present revision has to be decided with reference to offence u/s 295-A and 298 IPC and also about the question of obscenity as contained u/s 292 to 294 IPC.

6. Sri. Kamala Kant Singh, who is a practising Advocate of this Court is the applicant in the present revision, appeared in person and strenuously urged that there was sufficient prima facie evidence led on behalf of the applicant Under Sections 200 and 202 of the Code including the statements of his own, recorded Under Sections 200 and 202 of the Code (a true copy of which has been filed as Annexure-2 to the affidavit) and that of Dr. P.C. Gupta, PW 2 (Annexure-3) and the statement of Ram Chandra Gupta, PW 3 (Annexure-4). The present applicant has also filed his own affidavit (Notary), a true copy of which has been filed as Annexure-5 to the affidavit. It was urged on the basis of the said statements that it was sufficiently proved that the publication and distribution of the said obscene article was punishable under Sections 292 to 294 IPC and urged that publication also constituted an offence under Sections 295-A/298 IPC, i.e. maliciously insulting the religious belief of others. There was sufficient ground for proceeding against the accused, hence the process must have been issued u/s 204, but the learned Magistrate erred in holding otherwise in rejecting the complaint u/s 203. Reliance was placed on Samresh Bose and Another Vs. Amal Mitra and Another, .

7. Sri. Harihar Prasad Tripathi learned Counsel appeared on behalf of the State of U.P. The learned Counsel for other opposite parties urged and adopted arguments of Sri. Tripathi and supported the impugned order. He urged that the process has correctly been issued u/s 204 of the Code against Sri. Ved Prakash Vajpayee, the author of the article. The article cannot be said to be obscene nor it contains deliberate and malicious statement to insult religion, rather it was a criticism about the management of the Satsang Ashram. There was no deliberate attempt for an offence u/s 295-A and 298 or under Sections 292 to 294. If any offence at all was made out, it was u/s 11 of the Press (Objectionable Matters) Act, 1951, but in support of it there was no material.

8. Having heard the learned Counsel for the parties, points for determination are these. First point is as to whether the contents of the article published in the "Dinman" Weekly under the caption "Satsang Nagar jahan dharm ke nam per apradhon ki kheti hoti hai" can be said to constitute an offence under Sections 295-A and 298, 292 and 293 etc. of the IPC. The second point is as to whether there was sufficient material to proceed against the opposite parties and to issue process u/s 204, and the third point, even though not so seriously urged, is as to whether the test for determination of obscenity of acts or articles and expressions is in conflict with the freedom of speech and expression guaranteed under Article 19 of the Constitution of India. The fourth is that as to whether any offence has been made out on the facts of the case u/s 11 of the Press

(Objectionable Matters) Act, 1951 (for short the Act). The fifth point for determination is as to whether the complaint can be said to be barred by Section 196 of the Code.

9. As regards the first point as to whether the article in question makes out a prima facie case punishable under Sections 295-A, 298 of the IPC. In this connection it is relevant to mention that Section 295-A of the IPC enacts that whoever with deliberate and malicious intention of outraging religious feeling of any class of citizens of India insults its religion or religious beliefs by words etc. shall be punished with imprisonment. It is to be noticed that religious feelings are not only to be insulted, but in order to make it punishable, the religious feelings must be outraged. Outraging religious feelings is more serious than hurting the religious feelings. Generally the intention of the author of article or the person who hurts the religious feeling of any class of citizen of India has been made material. But it is to be noticed that not only simple intention but there must be deliberate and malicious intention. If somebody has got an innocent intention to outrage the religious feelings of any class of citizens that would not constitute an offence. There must be deliberate and malicious intention on the part of the person outraging the religious feelings. The words employed u/s 295-A indicates the wisdom and intendment of legislature. Unless these ingredients are satisfied, the offence cannot be made out. Section 295-A of the IPC has to be interpreted with reference to the intendment of the legislature as expressed by the words used. It is well known principle of interpretation that it must be textual as well as contextual. As regards the use of words "deliberate and malicious intention", suffice it to say that the intention must not only be malicious, but it must be deliberate as well. An act may be deliberate without being malicious and it may be malicious without being deliberate. As an act may be reckless without being intentional. But u/s 295-A what is required to constitute an offence, is presence of both, namely, the intention must be deliberate and malicious.

10. In order to interpret Sections 292 to 294, 295-A and 298 and other Sections of Indian Penal Code or any other penal statute the principles applicable is that the Penal Statute must be strictly construed in favour of the subject. But not beyond the literal and obvious meaning in a particular statute. It is better to quote an observation from Statutory Interpretation by Sir Rupert Cross (1976 EC 7 149 as follows:

Strict Construction of Penal Statutes: The phrase "penal statute" is used to cover both statutes creating a crime and those providing for the recovery of penalty in civil proceedings. In either case the present position is that if to use the words of Lord Reid in *Director of Public Prosecutions v. Ottevell* 1970 AC 642 , "After full enquiry and consideration, one is left in real doubt, the accused or person from whom the penalty is claimed must be given the benefit of that doubt. It is not enough for the provision under construction to be ambiguous in the sense that it is capable of having two meanings" .

11. In *Tuck and Sons v. Preestor* (1897) 19 QBD 629, Lord Esker has made the following observations, in connection with the interpretation of penal statutes:

If there is reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction. If there are two reasonable constructions we must give the more lenient one. That is the settled rule for construction of penal Sections".

12. In *Corpus Juris Secundum* (Volume 24-B), page 558 para 1979, it has been stated:

Statutes prescribing punishments are strictly construed in favour of the accused or convicted person, but not as intending to prevent punishment unless no other alternative is permissible statutes prescribing punishments are strictly construed. It is also held that statutes prescribing punishment must be construed together. They are never construed against an accused or a convicted person beyond their literal and obvious meaning, Courts will not attribute to the legislature an intention to punish more severely than the language of the statute clearly imports in the light of the pertinent legislative history.

If a statute creating or increasing a penalty is capable of two constructions, it should be construed so as to operate in favour of life and liberty. Laws should not be construed, however as intending to prevent punishment unless no other alternative is permissible, or where a statute forbids a thing affecting the public, but is silent as to any penalty the doing of that thing is punishable as at common law".

13. u/s 298, IPC what has been made punishable, is uttering words etc. with deliberate intention to wound religious feelings. What is to be marked is that even to wound the religious feelings is not punishable unless it is with deliberate intention. Deliberate intention means premeditated intention with sole object to wound the religious feelings. It is better to have the object in enacting Section 298 of the IPC. The authors or the framers of the Code say as follows:

In framing this clause we had two objects in view : We wish to allow all fair latitude to religious discussion and at the same time to prevent the professors of any religion from offering under the pretext of such discussion intentional insults to what is held sacred by others. We do not conceive that any person can be justified in wounding with deliberate intention the religious feelings of his neighbours by words, gestures or exhibitions. A warm expression dropped in the heat of controversy, or an argument urged by any person, not for the purpose of insulting and annoying the professors of a different creed, but in good faith for the purpose of vindicating his own, will not fall under the definition contained in this clause".

14. In view of the aforesaid object in enacting Section 298 etc. it is clear that if there is good faith in expressing the words or opinion about the religious feelings, or sentiments of neighbours that would not constitute the offence. It

appears that the legislature has taken precaution in making the offence against religion punishable. As India is a country of different religions, there is bound to be difference of opinion in discussion or in holding belief. In discussion or expression about religion professed by other Section of society, some bitterness is bound to come. Even the persons professing same religion create bitterness amongst themselves. Hence bitterness amongst the persons professing different religion is bound to occur. Precaution has been taken in making expression of opinion about religion to be punishable. As the bitterness pertaining to religion is supposed to be serious as expressed in the maxim "Null Darrrdi Major Quam Qude A Religione Fit", which connotes that no animosities are more bitter than those which arise from religion. It is manifest that unless the intention in uttering words are deliberate and malicious no offence can be deemed to have been made out. Reading the article as a whole in reference to opposite parties, I am satisfied that there could be no deliberate intention on the part of opposite party Nos. 1 to 4 to wound the religious feelings, nor there could be any deliberate or malicious intention of outraging the religious feelings of any class of citizens of India in getting the said article published in the Weekly "Dinman". As regards Sri. Ved Prakash Vajpayee, the person who wrote the article is concerned, process has been issued against him u/s 204 but the case of opposite party Nos. 1 to 4 stands on different footing.

15. Much emphasis was laid by the applicant that the article contained elements of obscenity. It becomes necessary to decide whether the article in question can be said to be an obscene article. In other words, what is the test of obscenity. No doubt Section 292 of the IPC provides that whoever sells or distributes or puts in circulation any obscene picture or any obscene object shall be punished. Section 293 provides that whoever sells to any person under the age of twenty years any obscene object, shall be punished with imprisonment for a term which may extend to six months or with fine. Section 294 enacts that whoever to the annoyance of others does any obscene act, shall be punished with imprisonment. But obscenity is not a defined term under the Indian Penal Code. The principle to ascertain meaning of a word is that in case a particular word has been statutorily defined, that meaning has to be looked into. But when a particular word is not defined, the Court may take assistance of the Dictionary meaning. See *State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another*, and *Geeta Enterprises and Others Vs. State of U.P. and Others*, .

16. The word "obscenity has been explained in Bowitts" Dictionary of English Law as follows:

An article is deemed to be obscene, if its effect, or where the article comprises two or more distinct items, the effect of any one of its items if taken as a whole, is to tend to deprave and corrupt persons, who are likely having regard to all the relevant circumstances to read, to see or hear matters contained or embodied in it. (See *R. v. Claytone and Hasley* (1963) 1 QB 163, *R. v. Anderson* (1972) 1 QB 304)". Obscenity and depravity are not confined to sex. (See *John Calder*

Publications v. Powell (1965) 1 QB 509.

17. According to New Standard Dictionary (L.D. Wagnalls), obscene means offensive to chastity, delicacy or decency. According to Black's Law Dictionary obscenity means character or quality of being obscene, conduct, tending to corrupt the public merely by its indecency or lawdness. According to Webster's New International Dictionary, word "obscene" means disgusting to the senses, usually because of some filthy grotesque or unnatural quality, grossly repugnant to the generally accepted notions of what is appropriate.

18. In order that the present article can be said to be obscene, there has to be an intention to corrupt the public morals. In the instant case, the contents of the article being taken as a whole, there does not appear to be any intention either, in the language used in the article, or in the material supplied or the facts discussed. There is nothing to indicate that the object of the opposite parties in permitting it to be published was to prejudice the public morality and decency. Just to say that some criminals take shelter in the Ashram or how the management of the Ashram is carried on, or that some person was killed by some inmates or that a girl was molested, would not constitute obscenity. There does not appear to be any such deliberate or malicious intention on the part of the opposite parties. The case of the author is not before me and I am not concerned, nor that part of the order has been challenged. There is nothing obscene except healthy criticism. In Indian philosophy there have been healthy criticisms of all the great saints, thinkers and philosophers and even of religious books. Most of the Indian saints have entertained and honoured criticism, in case the same was levelled against them. The illustrations are not far to seek. A great saint and philosopher said "Nindak neyare rakhiye, angan kuti chavayn" which means that if somebody criticises a saint, he has to be kept very close to the saint or in the Courtyard of the saint so that the criticism of the saint may be audible to him and he may improve himself. Similarly Saint Tulsi Das a great saint of his times stated in his Book Vinayapatrika as follows:

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19. This means that people used to abuse and call him by names and criticise him. But he does not mind the criticism or the obscene language as he has no intention to marry his son or daughter with the persons who criticise him. Tulsidas would attain his object when his God Ram remained pleased to him and in case his God Ram is not pleased to him, his purpose and object would be frustrated as he would not attain salvation (moksh or mukti). This was a sense of dedication in philosophy and mythology. The criticism must be taken with healthy spirit.

In Srimad Bhagwatgita it is stated as follows:

* * * * * Geeta-4-20 * * * * * Geeta-4-21 Sant Tulsidas again said:

* * * * *

20. These quotations from Sant Tulsidas's Vinaya Patrika, Ram Charitmanas and Srimad Bhagwatgita, it is crystal clear that a person either he is saint or has saintly spirit or devotee of some great saint, or a person possessed with godly spirit need not worry nor take it seriously either criticism or appreciations.

21. Samresh Bose v. Amal Mitra (supra), relied upon by the learned Counsel for the applicant, contains the principles, how to decide the questions of obscenity, as follows:

In Judging the questions 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 on the minds of the reader. 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 Section 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 sub-conscious mind and may unconsciously affect a proper objective assessment, may draw upon the evidence on record and also consider the view expressed by reputed or recognised 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".

22. In the aforesaid case the subject for consideration was a novel intended to expose evils prevailing in the society, emphasis was given on sex and use of slang and unconventional language in the said novel. Applying the principles for determination of obscenity in the books, it was held that even though the language appear to be unconventional and there was emphasis on sex, and further even though a writing may appear to be vulgar but nevertheless it is not necessarily obscene as obscenity is different than vulgarity or vulgar writing. The aforesaid case, therefore, would not be of any assistance to the Petitioner rather it is helpful to decide as to whether an article of writing of book is obscene.

23. Coming to the next point as to whether there was any sufficient material on record to warrant an order for issuing process u/s 204. No doubt PW 1 was the complainant himself. PW 2 was Dr. P.C. Gupta and PW 3 was Ram Chandra Gupta (Annexures 2, 3 and 4 respectively to the affidavit accompanying the revision), I have perused their statements, who, except stating that the facts mentioned in the article were incorrect, nothing has been stated about the allegation of obscenity and .how far it shall be effective to corrupt the public morals and decency etc. Just by saying that some incorrect statements have been made in a particular article or misstatement of facts have been made, that article cannot be said to be obscene nor it can constitute an offence under Sections 292, 293 and

294 or under Sections 295-A or 298, with reference to the present opposite parties. Further so far as the author is concerned there can be said, that a prima facie case was made out to proceed against him and, therefore, process has been issued against him. But so far as the present opposite parties are concerned, I am of the view that there was no material on record on the basis of which it could be said that there was sufficient ground for proceeding against them. Consequently the impugned order as regards the opposite parties are concerned, is perfectly correct.

24. As regards the third point, no doubt, this is a constitutional issue of far reaching character, as stated earlier, the word "obscene" has not been defined either in the Code of Criminal Procedure or in the IPC. The test to be evolved would certainly be of a general character which may vary even from case to case. The line of demarcation may not necessarily be very clear. In short Article 19(2) of the Constitution provides an exception that nothing in Sub-clause (a) of Clause (1) shall affect the operation of any existing law or prevent the State from making any law, in so far as such law imposes reasonable restriction on the exercise of right conferred by either Sub-clauses in the interest of sovereignty and "integrity of India, the security of the State, friendly relations with foreign states, public order, decency or morality. In this view of the matter Article 19(2) provides exception in respect of any law pertaining to public order, decency or morality. In this view of the matter as the obscenity pertains to public order, decency or morality and if reasonable restrictions have been imposed as enacted under Sections 292, 293 and 294 the said provisions cannot be said to be in conflict with the fundamental right contained under Article 19 of the Constitution. Similar question arose in *Ranjit D. Udeshi Vs. State of Maharashtra*, , and *Hidayatullah, J.*, as he then was, observed as follows:

Speaking in terms of the Constitution it can hardly be claimed that obscenity which is offensive to modesty or decency is within the constitutional protection given to free speech or expression, because the article dealing with the right itself excludes it. That cherished right on which our democracy rests is meant for the expression of free opinions to change political or social conditions or for the advancement of human knowledge. This freedom is subject to reasonable restrictions which may be thought necessary in the interest of the general public and one such is the interest of public decency and morality".

25. As regards the next point that the opposite parties were Chairman/ Managing Director, Publisher, Printer and Associate Editor of the Weekly Dinman, in fact, the offence which has been disclosed in accordance with Section 11 of the Press (Objectionable Matters) Act, 1951, but nothing has been stated about the objectionable matter in the statement made by P Ws 1, 2 and 3. Even in the complaint nothing has been stated about any offence u/s 11 being made out. An offence u/s 11 of the Act is made out when an objectionable matter as defined u/s 3, including any work or writing containing grossly indecent, scurrilous or obscene matters, or said writing promotes feelings of enmity or hatred between

different Sections of the people of India, has been published, State Govt. may take action including forfeiture with the certificate of Advocate General. Even though Sections 292 to 294 IPC and offence u/s 295-A etc. operates in different field than Section 11 of the aforesaid Act, but nevertheless it must have been specifically stated in the complaint and there must have been evidence including statements under Sections 200 and 202. But neither there is an allegation nor any prima facie evidence. I am of the view that there is nothing on the record to constitute an offence u/s 11 of the Act.

26. Now adverting to the last point about the bar of Section 196 of the Code, so far as offence under Sections 153-A, 295-A etc. are concerned about want only giving provocation with intent to cause riot- and promoting enmity between different groups on grounds of religion, race etc. or maliciously insulting religion etc., no Court shall take any cognizance except with the previous sanction of the State Govt. or the Central Govt. Nothing has been stated in the statements of P Ws 1, 2 and 3 about the bar of Section 196 of the Code being removed. Consequently, without previous sanction of the State Government or the Central Government no Court could take cognizance of the offence of criminal conspiracy or the offences punishable u/s 153A and Section 295-A of the IPC.

27. Applying the text as adopted by their Lordships of the Supreme Court in *Samresh Bose v. Amal Mitra*(supra), to determine the question of obscenity, I have assumed myself to be the publisher etc. of the article and have tried with sincerity to understand what was intended to be conveyed to the public. I also endeavoured to ascertain as to what was the idea to be conveyed against religion or religious feelings of the devotees of Satsang Ashram. Further I considered whether there was any deliberate and malicious intention or motive in the article. At the same time I also placed myself to the position of readers of the said article. Even I tried to ascertain as to what would have been the effect on the minds of the persons of every age group particularly devotees of Satsang Ashram. This I have done with particular reference to the opposite parties, who are not the author of the article, but they are Publishers, Printers and Manager etc. After applying the appropriate assessment test, I have come to the conclusion that there was nothing in the article on the part of the opposite parties, which could have either affected the minds of the devotees of the Ashram or the readers of any other age group nor there was any deliberate intention of the opposite parties in getting the said article published in the said weekly. I am accordingly satisfied that no offence has been made out against the opposite parties for getting the said article published. The learned Magistrate was justified in not issuing the process against the opposite parties.

28. In the result, the present revision fails and it is accordingly dismissed. The matter has dragged on for too long. What is required is expedition.

29. Office is directed to send back the record of the Court below immediately.