

(2009) 09 GUJ CK 0046
In the Gujarat High Court

Case No : Criminal Miscellaneous Application No. 9865 of 2009

Manishi Jani and Another

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 04-09-2009

Acts Referred:

Criminal Law (Amendment) Act, 1932 — Section 5
Criminal Procedure Code, 1973 (CrPC) — Section 95, 99A, 99B, 99C
Penal Code, 1860 (IPC) — Section 124A, 153A, 153B, 295A

Citation : AIR 2010 Guj 30 : (2010) 1 GLR 437 : (2010) 3 RCR(Criminal) 403

Hon'ble Judges : K.S. Radhakrishnan, C.J.;K.M. Thaker, J;Akil Kureshi, J

Bench : Full Bench

Advocate : A.J. Yagnik, for the Appellant; Tushar Mehta, A.A.G. and Devang Vyas, Addl Public Prosecutor for Respondents 1 and 3, for the Respondent

Final Decision : Allowed

Judgement

K.S. Radhakrishnan, C.J.—Francis Bacon, Lord Chancellor of England and a renowned Jurist quoted thus;

2. Read not to contradict and confute; not to believe and take for granted; nor to find talk and discourse; but to weigh and consider. Some books are to be tasted, others to be swallowed, and some few to be chewed and digested: that is, some books are to be read only in parts, others to be read, but not curiously, and some few to be read wholly, and with diligence and attention.

3. Government of Gujarat in exercise of the powers conferred u/s 95 of the Code of Criminal Procedure, 1973 (for short Cr.PC) read with Section 153A and 153B of the Indian Penal Code (for short IPC) issued a notification dated 19th August, 2009 ordering to forfeit and prohibit the book named Jinnah-India, Partition, Independence written by Shri Jashwant Singh and also its display, sale and distribution and any kind of its use in the State of Gujarat. Notification states that the Government of Gujarat has come to know of the publication of that book and finds that its contents are `highly objectionable" and `against the national

interest". Further, it is stated in the notification that the Government of Gujarat is of the opinion that the contents of the book are `misleading to the public and are against public tranquility" and `against the interest of the State", and hence, the book be forfeited and prohibited in the interest of the State.

4. The first applicant claims to be a distinguished poet, a writer and a freelance documentary film maker and was a syndicate member of Gujarat University. First applicant has stated that he was the leader of Navnirman movement of 1974. Second applicant is a Political Scientist and was a Lecturer in political science in the H.K. College of Arts, Ahmedabad and he is senior journalist, author and at present editor of a journal called Nirikshak and was also an Editor of Gujarati daily Jansatta and thereafter the Times of India, Gujarati edition and was Advisor of Divyabhaskar, a widely read Gujarati daily newspaper.

5. Petitioners have submitted that the notification banning display, sale and distribution and any kind of use of the book in the State of Gujarat has made an inroad to their fundamental rights to read, comprehend and criticize its contents. Petitioners submit that they may not perhaps agree with the contents of the book and the views of the author about the role played by Sardar Vallabhbhai Patel, the Iron Man of India and Pandit Jawaharlal Nehru. Further, it is also stated that they may not agree with the views expressed in the book about the role played by Jinnah during partition, but they have a right to read, understand and express their free opinion on the book. Further, they state, they hold Sardar Vallabhbhai Patel and Jawaharlal Nehru in high esteem and that the role played by them in India's independence is history. Petitioners also state that they do not support any denigration of Sardar Vallabhbhai Patel and Jawaharlal Nehru but they have right to know contents of the book and express their free opinion for and against which is a fundamental right guaranteed to them under the Indian Constitution.

6. Learned Counsel Shri A.J. Yagnik appearing for the applicants submitted that the Government have not expressed any opinion on the contents of the book and have not explained as to how the contents of the book are `misleading to the public", and `against public tranquility" and `against the interest of the State". Learned Counsel submitted that the Government have not stated as to how Section 153A and 153B of IPC have been attracted, and their violation would result imprisonment in jail. Learned Counsel submitted that formation of an opinion and the grounds for such formation are sine qua non for the validity of the notification and the notification which does not satisfy those requirements, would be not in conformity with law, hence, the same is liable to be set aside. In support of the above contentions, learned Counsel placed reliance on the decisions of the Hon'ble Supreme Court in the case of Harnam Das Vs. State of Uttar Pradesh, ; Narayan Dass Indurakhya Vs. State of Madhya Pradesh, and The State of Uttar Pradesh Vs. Lalai Singh Yadav, Learned Counsel also referred to scope and ambit of Section 153A and 153B of IPC placing reliance on the judgment of the Hon'ble Supreme Court in the case of Manzar Sayeed Khan Vs.

State of Maharashtra and Another, Learned Counsel also submitted that the gist of offences u/s 153A is the action to promote enmity or hatred between different groups on the ground of religion, race, place of birth etc. Section 153B speaks of imputations, assertions prejudicial to national-integration. Learned Counsel submits that apart from quoting the Sections, the notification is silent on those aspects. Learned Counsel submitted that nothing is discernible from the notification as to how and in what manner the contents of the book are offensive and punishable u/s 153A and 153B of IPC. Learned Counsel submitted that by forfeiting and prohibiting publication of book, the enlightened people of Gujarat are put to a disadvantage, compared to the people residing out side the State. Petitioners submit that freedom of the people of the State of Gujarat to know and dissent about book has been effectively curtailed.

7. Learned Additional Advocate General Shri Tushar Mehta appearing for the State tried to justify the notification and submitted that the State is not expected to disclose its opinion or the grounds in the notification, in the event of which, the purpose for which the notification has been issued would be frustrated. Detailed affidavit has been filed by Additional Secretary to the Government in Home Department stating that perusal of the book in a right context by the State Government clearly revealed that the contents thereof, if read in totality, portrays the image of Sardar Vallabhbhai Patel in a very derogatory manner and contain direct and indirect conclusions of the author, neither true nor warranted and are not acceptable to the people of Gujarat as well as the State Government. Further, contents of the book, if read as a whole, is likely to disturb public tranquility. Further, it is stated that the book contains several material passages which promote and attempt to promote or has potentiality to create disharmony or feelings of enmity, hatred or ill-will between Hindus and Muslims. Affidavit further stated that the Government proposes to issue another notification superseding the impugned notification recording grounds for formation of its opinion in the event the present notification is found fall short of the requirements provided under the law. Learned AAG, therefore, prays for some reasonable time to place a new notification recording the grounds of its opinion which forms part of Noting on the file so as to assist this Court on facts as well as law to correctly decide the present application.

8. Learned Counsel for the applicants, however, opposed the request made the learned AAG seeking time to place the new notification stating that the notification makes a serious inroad into the fundamental rights guaranteed to the petitioners and prayed for a decision on merits.

9. We are at present concerned only with the legality of the notification issued by the State Government and whether the impugned notification satisfies the ingredients contained in Section 95 of Cr.P.C. read with Section 153A and 153B of IPC. We may refer to the relevant portions of the notification. The first paragraph of the notification reads as follows.

WHEREAS Government of Gujarat has come to know that a book named Jinnah-

India, Partition, Independence written by Shri Jaswant Singh has been published.

10. Language of the opening portion of the notification denotes that it has come to the notice of the Government of Gujarat about publication of the book. Government have therefore noticed only about the publication of the Book and not what the book contains. Rest of the paragraphs of the notification have to be understood in light of the above-mentioned paragraph. If so understood, it is difficult to believe that the author of the notification has really read or comprehended what the author of the book has to say. Notification further says that contents of the books are "highly objectionable and against the national interest" and in what manner the contents are objectionable and against the national interest, is not discernible from the text of the notification. Further, it is stated that contents of the books are "misleading to the public and are against public tranquility and against interests of the State". Notification is silent as to how the contents of the books would affect and disturb public tranquility or interest of the State. No opinion has been expressed by the State in the notification. Lack of opinion means lack of thinking. Lack of thinking means lack of understanding. Remember, the State is dealing with the fundamental rights of its citizens and therefore, great amount of caution, prudence and care is expected. Further, notification refers to Section 153A and 153B of IPC. Nothing is discernible from the notification as to how the contents of the book would promote enmity between different groups on the grounds of religion, race, place of birth, residence, language etc., and result ill-feeling amongst them. Law is settled that when the Government is exercising the powers u/s 95 of the Cr.P.C., the government has to form an opinion and those opinion will give rise to the grounds and grounds have to be stated in the notification issued in exercise of the powers u/s 95 of the Cr.P.C....

11. We may in this respect refer to few decisions of the Apex Court as well as decisions rendered by various High Courts. Apex Court in the case of Harnam Das Vs. State of Uttar Pradesh, had occasion to consider the scope of Section 99A of the Old Act and few other related provisions. In that case, the Government of Uttar Pradesh had passed the order in exercise of the powers u/s 99A of Cr.P.C. forfeiting two books in Hindi called "Sikh Mat Khandan Part I" and "Bhoomika Nazam Sikh Mat Khandan" which were published in April, 1953. Notification issued by the Government provided that "in exercise of its powers conferred by Section 99-A of the Code of Criminal Procedure...the Government is pleased to declare the books.... forfeited to Government on the ground that the said book contain matter, the publication of which is punishable u/s 153-A of the Indian Penal Code". Looking to the above-mentioned notification, the Apex Court has opined as under:

4. Two things appear clearly from the terms of this Section. The first thing is that an order under it can be made only when the Government forms a certain opinion. That opinion is that the document concerning which the order is proposed to be made, contains any matter the publication of which is punishable

u/s 124-A or Section 153-A or Section 295-A of the Penal Code. Section 124-A deals with seditious matters, Section 153-A with matters promoting enmity between different classes of India citizens and Section 295-A with matters insulting the religion or religious beliefs of any class of such citizens. The other thing that appears from the section is that the Government has to state the grounds of its opinion. The order made in this case, no doubt, stated that in the Government's opinion the books contained matters the publication of which was punishable under Sections 153-A and 295-A of the Penal Code. It did not, however, state, as it should have, the grounds of that opinion. So it is not known which communities were alienated from each other or whose religious beliefs had been wounded according to the Government, nor why the Government thought that such alienation or offence to religion had been caused.

12. Apex Court then concluded that Section 99-A requires the Government to state the grounds of its opinion, so as to enable the High Court to set aside the order of forfeiture if it had not satisfied of the propriety of those grounds. If it were not so, the grounds of the Government's opinion would serve no purpose at all. This would specifically be so as Section 99G provides that an order of forfeiture cannot be called in question except in accordance with the provisions of Section 99B. Apex Court held that if the order could be upheld, as the High Court seems to have thought, on grounds other than those on which the Government based its opinion, there would have been no need to provide that the grounds of the Government's opinion should be stated, such grounds would then have been wholly irrelevant in judging the validity of the order. Apex Court set aside the order of Government of forfeiture after noticing that the Government have not stated its opinion in the order as well as grounds of the Government's opinion.

13. Apex Court in the case of Narayan Dass Indurakhya Vs. State of Madhya Pradesh, had occasion to examine the legality of the order of the Government issued u/s 5 of the Criminal Law Amendment Act (Act of XXIII of 1961) forfeiting the copies of a book published by the appellant. Contention was raised that the order did not disclose the grounds of the opinion formed by the State Government. Apex Court 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, religious 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. Grounds 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 the case of The State of Uttar Pradesh Vs. Lalai Singh Yadav, That case was relating to forfeiture of a 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. 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. Court examined whether the notification fulfills statutory requirements. Upholding the judgment of the High Court, the Apex Court concluded that where there is a statutory duty to speak, silence is a lethal sin for a good reason disclosed by the scheme of the fasciculus of sections. Court held, Section 99C enables the aggrieved party to apply to the High Court to set aside the prohibitory order and the Court has to examine the grounds of Government given in the order and may affirm or upset it. It was held Court cannot make a roving enquiry beyond the grounds set forth in the order. Reference may also be made to the decision of the Full Bench (Jaipur Bench) of Rajasthan High Court in the case of Virendra Bandhu Vs. State of Rajasthan, where the Full Bench of Rajasthan High Court has examined the scope of Section 95 of Cr.P.C. and other related provisions and the Court held that total absence of grounds for the opinion of the Government in the order of forfeiture would render such an order invalid and void. Similar view is taken by the Allahabad High Court in the case of Lalai Singh Yadav v. State of U.P. : 1971 Cri.L.J. 1519. Full Bench of Delhi High Court in the case of The Trustee of Safdar Hashmi Memorial Trust v. Govt of NCT of Delhi 2001 Cri.L.J. has also taken the same view. Special Bench of Bombay High Court in the case of Varsha Publications Pvt. Ltd. and Another Vs. State of Maharashtra and Others, has also taken the similar view.

14. Above being the law on the point, we are of the view that notification issued by the State Government u/s 95 of the Code of Criminal Procedure falls short of statutory requirements of that Section and consequently, it cannot stand in the eyes of law.

15. Learned AAG submitted that the Government is free to issue fresh notification provided any infirmity has crept in the notification. In support of his above contention, reliance was placed on the decision of the Bombay High Court in the case of Gopal Vinayak Godse Vs. The Union of India and Others, wherein the Bombay High Court has permitted the petitioners to amend the writ petition challenging the notification subsequently issued by the Government. Learned AAG submitted that the Government is proposing to issue fresh notification, and hence some reasonable time be granted. Learned Counsel for the petitioners opposed that request and prayed for a decision at the earliest on merits contending that there is a serious inroad to the fundamental rights guaranteed to them under the Constitution of India. We find no justification to accede to prayer since in the instant case, we are only concerned with the validity and legality of the notification impugned in this application.

16. Under the circumstances, we are inclined to allow the application and set aside the impugned notification issued by the State Government dated 19th August, 2009 forfeiting and prohibiting the book named Jinnah-India, Partition, Independence written by Shri Jashwant Singh and also its display, sale and

distribution and any kind of its use in the State of Gujarat.

17. Misc. Criminal Application stands allowed accordingly.