

(1968) 02 AHC CK 0011
In the Allahabad High Court
Case No : Spl. Appeal No. 321 of 1966

Sant Das Maheshwari

APPELLANT

Vs

Babu Ram Jodoun and Others

RESPONDENT

Date of Decision : 06-02-1968

Acts Referred:

Constitution of India, 1950 — Article 226, 25, 25(1), 26
Criminal Procedure Code, 1898 (CrPC) — Section 96
Penal Code, 1860 (IPC) — Section 295A

Citation : AIR 1969 All 436 : (1969) CriLJ 1097

Hon'ble Judges : W. Broome, J; S.D. Singh, J

Bench : Division Bench

Advocate : K.B. Mathur, for the Appellant; Swami Dayal, for the Respondent

Final Decision : Dismissed

Judgement

S.D. Singh, J.—There are two branches of the Radhasoami faith at Agra, one going by the name of Dayal Bagh and the other, Swami Bagh. Sri Sant Das Maheshwari, the appellant in this appeal, belongs to the Swami Bagh section and is the author of two books "Correspondence with certain Americans" and "Radhasoami Faith, History and Tenets". The writ petition moved by the appellant invoking the jurisdiction of this Court under Article 226 of the Constitution traces the history of Radhasoami faith and how it was split up into two branches, but we are hardly concerned with the same in the disposal of this appeal.

The two books were alleged by those belonging to the Dayal Bagh section to have been written in a manner so as to outrage their religious feelings and the allegation on behalf of Radhasoami Satsang Sabha, Dayal Bagh, was that there was a deliberate and malicious intention to do so in bringing out these two books. It was with these allegations that Radhasoami Satsang Sabha, acting through its Secretary, Sri Babu Ram Jadoun, approached the State Government and secured its sanction for the prosecution of Sri Sant Das Maheshwari u/s 196 of the Code of Criminal Procedure.

The sanction having been obtained, a complaint was filed by "Sri Babu Ram Jadoun (Secretary, Radhasoami Satsang Sabha, Dayal Bagh)" against Sri Sant Das Maheshwari and Sri Dharam Chand Bhargava, who was described as the Manager, and Printer of Amrit Electric Press, Agra, where these books were alleged to have been printed, u/s 295-A of the Indian Penal Code.

2. While the case was pending, an application was moved u/s 96 of the Code of Criminal Procedure for a search of the premises of the appellant and seizure of such materials connected with the publication and printing of the two books as may be found there. The Magistrate was also requested to give a direction to the police to prepare an inventory of the things taken in possession and to place them in the custody of some impartial supurdar and in case no such person was found, to take the entire material in their possession and deposit the same in the police Malkhana. The application having been allowed, warrants were issued as prayed,

Sant Das Maheshwari went up in revision to the Additional District Magistrate (J) against this order, but without any success. By the time the revision application was heard the search had already taken place and the stock of books, registers and other documents were taken possession of by the police. The applicant pressed before the Additional District Magistrate that these books and records should be returned to him but he did not accept this request, observing that release orders could not be passed by him though it was open to the applicant before him to make such a request to the trial court which might "in its discretion pass such suitable orders as it deems fit according to the circumstances of the case."

3. The appellant then moved the writ petition under Article 226 of the Constitution and prayed for the issue of a suitable order, direction or writ in the nature of certiorari, quashing the order of the State Government dated 27th March, 1961, sanctioning the prosecution of Sri Sant Das Maheshwari and the printer of the two books, the complaint filed by Sri Babu Ram Jadoun on 5th April, 1961, the order of the Magistrate dated 5th April, 1961, passed u/s 96 of the Code of Criminal Procedure and the order of the Additional District Magistrate (J) under which the revision application of the appellant was dismissed. The petition having been dismissed by our brother Dwivedi, J. the appellant has come up in appeal.

4. The following five points were summarised, by the learned Single Judge in his judgment, which were argued before him:

1. Section 295-A offends against Article 25 of the Constitution and is accordingly void.
2. The sanction u/s 196 of the Code of Criminal Procedure is invalid for various reasons.
3. The complaint was filed by a person who was not authorised by the State

Government to do so u/s 196 of the Code of Criminal Procedure.

4. The order of the Magistrate passed u/s 96 of the Code of Criminal Procedure regarding the search of the premises is illegal,

5. As the books complained of were written as a matter of history, no offence was committed u/s 295-A of the Indian Penal Code.

5. The learned Single Judge came to the conclusion that Section 295-A of the Indian Penal Code was not violative of Article 25(1) of the Constitution. The sanction u/s 196 of the Code of Criminal Procedure, the validity of which was challenged on various grounds, was found to be in accordance with law.

In respect of the third point the learned Judge expressed his opinion that the Radhasoami Satsang Sabha, Dayal Bagh, was in fact the true complainant in the case and consequently, therefore, the complaint was filed by the person authorised by the State Government u/s 196 of the Code of Criminal Procedure, but observed in the subsequent portion of his judgment:

"Accordingly, even if it is held that the complaint, in substance, is not by the Radhasoami Satsang Sabha, Dayal Bagh, the defect can now be removed by impleading the Radhasoami Satsang Sabha as a complainant,"

6. Regarding the materials which were alleged to have been seized by the police and which are covered by the fourth point, it was observed:

"All that need be said at present is that these materials do not prima facie appear to have no bearing on the enquiry. In this situation it is difficult for this Court to interfere with the discretion of the Magistrate."

7. The learned Judge also observed In connection with the fourth point that the search and seizure did not violate Article 20(3) of the Constitution. In respect of the last point it was pointed out that it relates to the merits of the case and that the same would not be gone into in the writ proceedings, and it would be for the Sessions Judge to express the final opinion in respect of the same,

8. Sri Gopi Nath Kunzru, learned counsel for the appellant, pressed before us to almost all the points which were stressed before the learned Single Judge, but having taken into consideration the arguments advanced by him, we are of opinion that it is not open to the appellant to seek the extraordinary Jurisdiction of this Court under Article 226 of the Constitution so far as the last four points are concerned. They are all matters which are within the exclusive jurisdiction of the Magistrate at the present stage of the enquiry which is pending before him. These points should in the normal course come up for decision by him and even If he comes to the conclusion that a prima facie case is, having regard to all the questions which are raised before him made out against the appellant the Sessions Judge before whom the Sessions Trial may come up for hearing, would have jurisdiction to decide these points and, in fact, some of them are such in respect of which no final decision can be given without evidence relating to the

questions of fact having been first produced in the court concerned. Even though the learned Single Judge has expressed his opinion in respect of some of the points, we do not propose to deal with them in this appeal. They will come up for hearing before the Magistrate or the Sessions Judge and will be decided by them, if and when necessary. We would only make it clear that the observations of the learned Single Judge to the extent they have a bearing on the facts of the case will not, in any way, fetter the discretion of the Magistrate or the Sessions Judge and the points will be decided by them as if there are no observations on the merits of these points in the judgment of this Court

9. In respect of the seizure it was urged that the entire stock of books and other materials have been taken possession of by the police and they might as well have been rotting in police godowns probably even destroyed by white ants and that, therefore, these books and other materials should, in any case, be released from the seizure. This point was also raised before the Additional District Magistrate (J) in the revision which was filed in his court against the order passed by the Magistrate u/s 96 of the Code of Criminal Procedure and, as has been pointed out by us earlier, the Additional District Magistrate indicated to the appellant that an application for the purpose should be moved in the court of the Magistrate concerned and it would be In his discretion to pass such suitable orders as he deems fit according to the circumstances of the case. No such application was moved by the appellant in the court of the Magistrate himself. It may be noted that even the complainant did not request the Magistrate to take the entire stocks in his possession. All what was prayed for by him was that an inventory of the entire stocks may be prepared and the stock of books, registers etc. given In the custody of some impartial supurdar. It may be that when the stock of books etc. was seized no impartial supurdar was available. If so, it is open to the appellant even, now to move an application with that request in the court of the Magistrate in whose court the case is pending and it is not necessary for us to consider this question even from the point of view urged by the learned counsel for the appellant

10. The only point which" could legitimately be raised by the appellant during the hearing of this writ petition is the one relating to the validity of section 295-A of the Indian Penal Code. The contention of Sri Gopi Nath Kunzru Is that this section violates the provisions of Articles 25 and 26 of the Constitution. We find it difficult, however, to accept this contention. Clause (1) of Article 25 of the Constitution does, no doubt guarantee freedom of conscience to all persons and a right "freely to profess, practise and propagate religion" and Article 26 gives opportunity to every religious denomination in the country--

- "(a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in the matters of religions;
- (c) to own and acquire movable and Immovable property; and
- (d) to administer such property in accordance with law."

But both these provisions are "subject to public order, morality and health." This exception in favour of "public order, morality and health" restricts to some extent the freedom of conscience or a right freely to profess, practise and propagate religion guaranteed under Clause (1) of Article 25 and also the right given under Article 26 of the Constitution to establish and maintain institutions etc.

11. It is in this light that we have to examine the provisions of Section 295-A of the Indian Penal Code. This section does not, in any way prohibit or make punishable anything which is mere profession, practice or propagation of a religion or any of the things specified in Article 26 of the Constitution. What is made punishable is "deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, if there is any such deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, then whether that intention is expressed by words either spoken or written or by signs or by visible representations or otherwise, it is made punishable under this section. But "deliberate and malicious intention of outraging the religious feelings" of others is not the same thing as professing, practising or propagating one's own religion. One may with complete liberty profess, practise or propagate his religion without any obstacle or hindrance and nothing what he may do can possibly be treated or considered as an intention to outrage the religious feelings of any class of people, much less would it amount to a "deliberate and malicious" intention to do so. There would be a deliberate and malicious intention of outraging the religious feelings of others only if a person does something which has a tinge of intention to outrage the feelings of others and even that intention is not merely deliberate but also malicious. A person who may be found to be covered by all these ingredients of Section 295A of the Indian Penal Code would not be merely "professing, practising or propagating religion, but going very much beyond the scope of those words. If he merely professes, practises or propagates his own religion, an intention to outrage the religious feelings of others would be wanting completely and as has been pointed out earlier, the intention would not, even if it could possibly be inferred on the basis of surrounding circumstances, be deliberate or malicious. This Section 295A of the Indian Penal Code does not at all, therefore, come in conflict with either Article 25 or Article 26 of the Constitution and cannot." by any stretch of imagination, be said to be violative of those provisions. If it does impose any restriction, it is within the four corners of the expression "subject to public order, morality and health".

12. If any authority is needed in support of the view we have taken, it is provided by the decision of their Lordships of the Supreme Court in *Ramji Lal Modi Vs. The State of U.P.*, . A similar question was raised before their Lordships in respect of Section 295A of the Indian Penal Code in relation to the freedoms guaranteed under Articles 19, 25 and 26 of the Constitution, and it was observed;

"A reference to Articles 25 and 26 of the Constitution, which guarantee the right to freedom of religion, will show that the argument is utterly untenable. The right

to freedom of religion assured by those articles is expressly made subject to public order, morality and health. Therefore, it cannot be predicated that freedom of religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion cannot under any circumstances be said to have been enacted in the interests of public order. Those two Articles in terms contemplate that restrictions may be imposed on the rights guaranteed by them in the interests of public order."

It is clear "from the observations of their Lordships of the Supreme Court that restrictions may be imposed even against the freedom guaranteed under Articles 25 and 26 of the Constitution in the interest of public order, morality or health. We are clearly of opinion, therefore, that Section 295-A of the Indian Penal Code is not violative of Article 25 of the Constitution.

13. The appeal is dismissed with costs with this observation, however, that the questions which we have left undetermined in this appeal will be decided by the courts concerned during the course of the trial in accordance with the provisions of law, unfettered by what may be found in the observations of the learned Single Judge aforesaid.