

(1980) 01 GUJ CK 0015
In the Gujarat High Court

Shalibhadra Shah and Others

APPELLANT

Vs

Swami Krishna Bharati and Another

RESPONDENT

Date of Decision : 18-01-1980

Acts Referred:

Constitution of India, 1950 — Article 14, 25, 26
Criminal Procedure Code, 1973 (CrPC) — Section 196, 198
Penal Code, 1860 (IPC) — Section 153A, 153B, 295A, 298, 505

Citation : (1981) CriLJ 113 : (1980) GLR 881

Hon'ble Judges : S.H. Sheth, J;A.M. Ahmadi, J

Bench : Division Bench

Judgement

A.M. Ahmadi, J.—The petitioner in both these applications is the editor, printer and publisher of a Gujarati Weekly "AASPASS". In the issue of 31st July, 1977, of his Weekly, an article appeared under the caption "why Acharya Rajnishji leaves Pune?" which contained remarks concerning the said religious leader which are stated to be of a scurrilous and defamatory nature, Respondent No. 1 in both the petitions are the devotees of the said Acharya Rajnishji whom they worship as Bhagwan (God). Respondent No. 1 of Miscellaneous Criminal Application No. 786 of 1978, filed a private complaint in the Court of the learned Judicial Magistrate, First Class, Karjan, alleging that the petitioner had by publishing the said article in his Weekly committed offences punishable under Sections 295A and 298 of the Indian Penal Code. Respondent No. 1 of the other Miscellaneous Criminal Application filed a similar complaint No. 425 of 1978 in the Court of the learned Judicial Magistrate, First Class, Baroda, (Fourth Court) alleging that the petitioner had committed offences punishable under Sections 295A and 298 of the Indian Penal Code. The learned Magistrates before whom these two complaints were filed, issued process against the petitioner of the present two applications for the commission of offences punishable under the aforesaid two provisions of the Indian Penal Code. The petitioner, has therefore, filed the present two petitions for quashing the process issued against him in the aforesaid two criminal proceedings. The process is sought to be quashed on two grounds, namely, (1)

that the prosecution for the offence u/s 295A of the Indian Penal Code could not be commenced without a prior sanction from the Government u/s 196(1) of the Code of Criminal Procedure, 1973; and (2) that the prosecution in respect of the offence u/s 298 of the Indian Penal Code is bad in law inasmuch as it does not apply to any written article appearing in a Weekly but merely applies to wounding of religious feelings by utterance of oral words, making of any sound in the hearing of that person, making a gesture in the sight of that person or placing any object in the sight of that person. We will deal with these two submissions made by the petitioner in the order in which we have set them out.

2. Section 295A of the Indian Penal Code lays down that whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, insults or attempts to insult the religion or religious beliefs of that class, shall be punished with imprisonment up to two years or fine or both. Section 196(1) of the Code of Criminal Procedure inter alia provides that no Court shall take cognizance of any offence punishable u/s 295A of the Indian Penal Code except with the previous sanction of the Central Government or of the State Government. Obviously, therefore, under Sub-section (1) of Section 196, in the absence of a sanction from the concerned Government, no Court can take cognizance of an offence punishable u/s 295A of the Indian Penal Code. It is, therefore, obligatory on a person who proposes to move the criminal law u/s 295A of the Indian Penal Code, to obtain the necessary sanction from the concerned Government before doing so. The obtaining of a sanction is, therefore, a sine qua non and no Magistrate can take cognizance of the complaint u/s 295A of the Indian Penal Code unless the order granting sanction is produced. In these two cases, as it is common ground that no such prior sanction of the concerned Government was obtained, the learned Magistrates were not entitled to take cognizance of the offence punishable u/s 295A of the Indian Penal Code.

3. Mr. H.M. Mehta, the learned advocate appearing on behalf of respondent No. 1 in both the applications, however, contended that Sub-section (1) of Section 196 of the Code of Criminal Procedure which makes it imperative for a person who desires to move the criminal law u/s 295A of the Indian Penal Code to obtain prior sanction of the concerned Government is unconstitutional as it violates Article 14 inasmuch as it permits arbitrary discrimination between complainants who complain of the commission of an offence u/s 295A of the Indian Penal Code and the other complainants who complain about the commission of an offence u/s 298 of the Indian Penal Code. In the first place it is necessary to bear in mind that the offence punishable u/s 295A of the Indian Penal Code is far more serious than the offence punishable u/s 298. u/s 298 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, is liable to be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both. The Section speaks of the deliberate

intention of wounding the religious feelings of "any person" whereas Section 295A speaks of deliberate and malicious intention of outraging the religious feelings of "any class of citizens of India". The use of the word "wounding" and the use of the word "outraging" also shows that the offence u/s 295A is far more serious than the offence punishable u/s 298 of the Indian Penal Code and this becomes further clear if we bear in mind the punishment provided for the commission of the said two offences. Therefore, there can be little doubt that those who complain of the commission of the offence punishable u/s 298 stand on a different footing from those who complain of the commission of an offence u/s 295A of the Indian Penal Code. It is, therefore, difficult to understand the contention of the learned advocate that Section 196(1) of the Code of Criminal Procedure discriminates between complainants who complain about an offence punishable u/s 295A by imposing a letter on their right to move the criminal law by providing that previous sanction of the concerned Government shall be a sine qua non to the Court taking cognizance of an offence alleged to have been committed under the said provision and those complainants who complain about the commission of an offence punishable u/s 298 of the Indian Penal Code.

4. The offences enumerated in Section 196(1) of the Code of Criminal Procedure are of a serious and exceptional nature. It is, therefore, provided that previous sanction of the Government shall be required so that prosecutions which may by themselves generate class feelings can be avoided, Section 153A of the Indian Penal Code makes it an offence to promote enmity between different groups on grounds of religion, etc., which may be prejudicial to the maintenance of peace and harmony between such groups of persons. Section 153B makes it an offence to make or publish imputations, assertions, etc., prejudicial to national integration. Section 505 makes it an offence to make, publish or circulate any statement conducing to public mischief. Therefore, the offences enumerated in Section 196(1) of the Code of Criminal Procedure in respect of which prior sanction has been made mandatory deal with matters relating to public peace and tranquillity with which the State Government is concerned. It is, therefore, that provision is made for obtaining prior sanction of the Government before cognizance is taken in respect of the commission of any of the offences enumerated therein, it is quite possible that in a given case the very filing of a prosecution after tempers have cooled down may generate class feelings which could well be avoided by the Government by refusing to accord sanction u/s 196(1) of the Code of Criminal Procedure. It may equally be possible that the article complained of pertains to a matter falling within the area of social reform and attacks certain dogmas in a general way without intending to outrage the religious feelings of any class of citizens. In such a case if the Government is of the opinion that the author of the article has on an objective basis attacked certain religious or social dogmas with a view to bringing about social reform, the Government may in its discretion refuse to accord sanction because a prosecution based on such an article would throttle free discussion on the subject. It is, therefore, clear that there is an underlying policy which is clearly

discernible on a reading of the offences enumerated in Section 196(1) of the Code of Criminal Procedure in respect of which prior sanction is a must before cognizance of the offence under any of those provisions can be taken. We are, therefore, unable to agree with the learned advocate for the first respondent in both the matters that the provision in Sub-section (1) of Section 196 of the Code of Criminal Procedure, in so far as it relates to the obtaining of a prior sanction is ultra vires Article 14 of the Constitution.

5. It was next contended by Mr. Mehta that Sub-section (1) of Section 196 confers unguided and arbitrary powers on the Government in the matter of according or refusing sanction for launching a prosecution in respect of offences enumerated in that Sub-section. If the Government withholds sanction arbitrarily, such an act of the Government can always be challenged in an appropriate proceeding. We have already pointed out earlier that there is a policy underlying Section 196(1) of the Code of Criminal Procedure and it would guide the Govt. in deciding the question of granting or refusing of sanction. If the Government without any rhyme or reason refuses to grant sanction, the party aggrieved is not without a remedy because such an order can always be challenged in an appropriate proceeding. The Government being an independent party not connected with dispute between a complainant and the accused is expected to act fairly and to take an objective decision in the matter whenever it is called upon to grant sanction under Sub-section (1) of Section 196 of the Code of Criminal Procedure. We are, therefore, of the opinion that the second ground of challenge is devoid of merit.

6. It was lastly contended by Mr. Mehta that the provision in Sub-section (1) of Section 196 of the Code of Criminal Procedure which makes prior sanction of the concerned Government mandatory is violative of Article 25 of the Constitution inasmuch as it creates an obstacle in the path of the person who is keen to protect his religious beliefs because freedom of religion, urges counsel, includes freedom to protect his religion and religious beliefs. We have already pointed out earlier that the offences enumerated in Sub-section (1) of Section 198 of the Code of Criminal Procedure concern maintenance of public order. Article 25(1) begins with the words "subject to public order..." which make it clear that the freedom of conscience and the freedom to practise and propagate religion is subject to public order. Since we are of the view that Sub-section (1) of Section 196 of the Code of Criminal Procedure deals with offences which concern public order and tranquillity, the provision therein, in so far as it relates to the obtaining of prior sanction of the concerned Government, cannot be held to be violative of Article 25 of the Constitution. Suffice it to quote the observations of the Supreme Court in *Ramji Lal Modi Vs. The State of U.P.*, wherein the challenge to the vires of Section 295A was answered thus:

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.

We, therefore, do not find any merit in this last submission made before us by Mr. Mehta.

7. There is no dispute before us that the averments made in the complaint relate to an article which appeared in the issue of "AASPASS" dated 31st July, 1977. Both the complaints are based on the remarks made against Acharya Rajnishji in the said article. It is nobody's case that the said article was written in the presence of the first respondents in the two applications or anyone else. Section 298 makes it an offence if anyone 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. It is, therefore, obvious that it relates to oral words uttered in the presence of a person with the intention of wounding his religious feelings, and, therefore, it can have no application, as in the instant cases, the grievance relates to a written article which was published in the weekly of the petitioner. Therefore, Section 298 of the Indian Penal Code cannot be attracted and the process issued by the learned Magistrates dealing with the two complaints in question u/s 298 of the Indian Penal Code cannot be sustained. Similarly, the process issued by the learned Magistrates for the commission of an offence punishable u/s 295A of the Indian Penal Code cannot be sustained as no prior sanction of the concerned Government was obtained as required by Sub-section (1) of Section 196 of the Code of Criminal Procedure.

8. In the result, therefore, both these applications are allowed. The process issued by the concerned learned Magistrates in respect of these two applications for the commission of offences punishable under Sections 295A and 298 of the Indian Penal Code must, therefore, be quashed. The rule is made absolute accordingly. The two complaints shall therefore, stand dismissed.