

(1993) 05 MAD CK 0002

In the Madras High Court

Case No : Writ Petition No. 13473 of 1988

V. Alphonse Vaz and others

APPELLANT

Vs

Tamil Nadu State Government and others

RESPONDENT

Date of Decision : 18-05-1993

Acts Referred:

Penal Code, 1860 (IPC) — Section 295A

Citation : (1993) LW(Cri) 299

Hon'ble Judges : Janarthanam, J

Bench : Single Bench

Advocate : K.P. Krishna Shetty, for the Appellant; V. Raghupathy, Addl. Govt. Pleader for Respondents 1 to 3, Mr. T. Martin and Mr. Joseph Thattheus Jeron for Respondents 4 and Mr. P. Peppin Fernando and Mr. S. William for Respondents 5 to 7, for the Respondent

Judgement

Janarthanam, J.—A Tamil monthly magazine, going by the name "THEN OLI" it is said, is regularly published from Nagercoil. Its office is

situate at Assisi Press, Nagercoil 620 001. Its owner is Arch Bishop M. Arokiasamy (fourth Respondent). Its editor is Rev. Pt. Maria Alphonse

(fifth Respondent). Its printer and publisher is Rev. Fr. Andrew Selvaraj (sixth Respondent). The Manager of the Assisi Press is one Colestine

(seventh Respondent).

2. The said journal, it is said, in its 1985 December issue caused publication of certain disparaging and scurrilous statements about mother Mary

and Jesus Christ in Tamil, a translated version in English of which is reflected as below:

That Jesus was born in a working class of Nazareth. To those who think that his birth is a strange one, it does not appear so. That birth is not a

virgin birth. On the one side, there were a few classes which look at Jesus as God, and on the other side, there were disciples of Jesus, who

attempted to propagate the idea that Jesus is superior to John the Baptist. The portions of the Bible which state that Jesus's birth was virgin birth

were interpolated in the Bible only in later period with the object of showing his birth as an extraordinary one. (THEN OLI December, 1985 - at page 14).

Jesus lived as an ordinary man from the beginning of his birth and until his death, during the 33 years of his life, he did not possess any magical or

divine power. He lived with divine thought. He wished to reform the others in that right path. Alas: the Bible, because of his clear thinking and best

knowledge, has imagined him as the incarnation of God having the divine power ("THEN OLI", December, 1985 - at Page 5).

3. In January, 1986 issue of THEN OLI, a clarificatory statement has been issued to the effect that what had been expressed or stated in so-called

offending article previously published was not the teaching of the Church and it was only an expression of opinion entertained by certain

theologians.

4. V. Alphonse Vaz, A. Sirumalar Lawrence and X. Soosai Alexander (Petitioners) and Respondents 4 to 7 profess Roman Catholicism. The

publication in the said journal about Mother Mary and Jesus Christ was stated to have outraged the religious sentiments and beliefs of the

Petitioners and other like-minded people professing Roman Catholicism. The Petitioners were, therefore, stated to have requested Respondents 4

to 7 to withdraw the 1985 December issue of the magazine from circulation and publish as amended statement, which should be in consonance

with the Christian belief and repeated requests made therefore were not paid heed to by them. They therefore caused a lawyer's notice sent to

them on 27.6.1986 calling upon them to tender unconditional apology and to withdraw from circulation, the said monthly magazine and to issue a

fresh publication amending the impertinent statement within seven days from the date of receipt of the notice. But the Respondents 4 to 7 were

stated to have sent a reply through their lawyer on 24.7.1986 reiterating their stand and refusing to publish any regret in the subsequent issue of the

journal.

5. Consequently, Sirumalar Lawrence (second Petitioner) filed a criminal complaint before the Chief Judicial Magistrate, Kanniyakumari at

Nagercoil on 27.11.1986 for alleged offence u/s 295-A of the Indian Penal Code (for short IPC), impleading Respondents 4 to 6 as accused. The

complaint so presented had been returned on the same day of presentation for want of sanction u/s 196 of the Code of Criminal Procedure, 1974

(for short CrI.P.C).

6. Thereafter, second Petitioner presented a petition for necessary sanction to the Home Secretary, Government of Tamil Nadu, Madras-9 on

22.12.1986, while first petitioner also presented a petition, on 3.10.1987 to the Chief Secretary to the Government, Government of Tamil Nadu,

Madras-9 (first Respondent) and the third Petitioner on 12.10.1987 to the District Magistrate (Collector), Kanniyakumri at Nagercoil (third

Respondent).

7. The Government directed a preliminary enquiry to be made by the Inspector of Police through the Superintendent of Police, Nagercoil. On

receipt of a report, the trial Government, after due consideration of all relevant materials considered that "this is not fit case to accord sanction for

prosecution" and the Deputy Secretary to Government, Public (Law and Order-E) Department, Government of Tamil Nadu, Madras-9 (second

Respondent) communicated the decision of the Government by his letter No. 29/87-12 dated 19.9.1988 to the Petitioners 1 and 2. Likewise, the

third Petitioner about such decision of the Government by his Memo K. Dis(C4) 76931/87 dated 6.10.1988. Aggrieved by the aforesaid order of

the Government, the Petitioners came forward with the present action for issue of a Writ of Certiorarified Mandamus to quash the said order and

to direct the first Respondent to accord necessary sanction to the Petitioners.

8. Dr. K.P. Krishna Shetty, learned Counsel appearing for the Petitioners, while assailing the impugned order, would press into service, the

following contentions:

(1) The order impugned is bad for want of penning down the reasons for refusal to accord sanction as prayed for; and

(2) It is per se illegal and consequently not sustainable in law, inasmuch as no opportunity had been provided to the complainants before ever the

same was passed.

9. Mr. T. Martin, learned Counsel appearing for the fourth Respondent would, however, repel such submissions and resort to state that the exercise of power by the Government either to accord or refuse to accord sanction u/s 196, Code of Criminal Procedure is, in its very nature an executive or administrative one and such being the position, to say that the order impugned ex facie not revealing the reasons is bad in law cannot at all be countenanced and what is required to be assessed is as to whether there was application of mind to all relevant factors before ever an order according or refusing sanction is passed.

10. Mr. V. Raghupathy, learned Additional Government Pleader appearing for Respondents 1 to 3 would also tread on the path chosen by learned Counsel for fourth Respondent, in the sense of endorsing his submissions, besides stating that there was due application of mind to all relevant factors by the Government, before ever the impugned order was passed and such an admirable feat undertaken by the Government would be getting revealed, if a cursory perusal of the file produced before this Court is made.

11. Mr. S. William, representing Mr. P. Peppin Fernando, learned Counsel for Respondents 5 to 7 would submit that Section 295-A IPC does not penalise any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens but it penalises only those acts of insults to or those varieties of attempts to insult the religion or the religious beliefs of a class of citizens, which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class and that insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the section and that the facts of the instant case, if viewed in that perspective, there can be no escape from the conclusion that the materials available on record, in the shape of the statements said to have been published about Jesus Christ and Mother Mary in 1985 December issues and the subsequent clarificatory statement published in 1986 January issue of the journal THEN OLI cannot prima facie make out ingredients constituting an offence u/s 295-A-A, IPC.

12. The tenability or otherwise of the submissions of learned Counsel for the Petitioner and learned Counsel for the respective Respondents may

now fall for consideration in the arena of discussion, in the light of the background facts getting revealed by the file produced before Court for

perusal by all concerned, justifying the attraction or otherwise of Section 295-A , IPC enabling the Government to pass necessary and requisite

order u/s 196, CrI.P.C.

13. A perusal of the alleged offending passages in the journal THEN OLI 1985 December issue about Jesus Christ and Mother Mary, coupled

with the clarificatory statement issued in the very next issue of the said journal do not at all prima facie reveal that the Church entertained such

views about Jesus Christ and Mother Mary and consequently the same cannot at all be said to be teachings of the Church and if at all, the views

contained in those passages can be construed to be nothing but the reflection of the views of certain theologians. In such state of affairs, it cannot

be stated that such publication had been made with a deliberate or malicious intention of wounding the religious feelings of a section of people

professing Roman Catholicism. Such being the case, it cannot be stated that the so-called offending passages would prima facie constitute

ingredients of an offence u/s 295-A, IPC.

14. The Government took all steps in gathering the required materials for formation of an opinion, before ever an order was to be passed, in

exercise of its power u/s 196, CrI.P.C, in the sense of ordering a preliminary investigation by a police officer, not below the rank of an Inspector of

Police. The report of the Inspector of Police, Nagercoil, who conducted preliminary investigation, of course, contains an opinion that the alleged

offending passages had been deliberately published with a view to outrage the religious feelings and sentiments of people professing Roman

Catholicism and the Government if so desired may accord sanction for prosecution of the persons responsible for causing such offending

publications for alleged offence u/s 295-A IPC.

15. The Government also was not rest content in receiving such a report and acting upon the same. But what the Government had done was, it

called for the report of the Assistant Public Prosecutor of the district and he also, in turn, endorsed the opinion of the Inspector of Police, who

conducted the preliminary investigation and, submitted a report. The preliminary report of the said Inspector of Police as well as the opinion of

Assistant Public Prosecutor and other relevant material had been taken into consideration in a threadbare fashion by the Government, which finally passed the impugned order, by forming an opinion that the facts and circumstances revealed by the instant case do not make out the requisite mens rea for constituting an offence u/s 295-A, IPC. In such state of affairs, it cannot be stated that there was no due application of mind by the Government before ever the impugned order was passed.

16. The next question that crops up for consideration is as to whether the impugned order is bad on the ground of providing no opportunity to the complainant before ever it was passed. Opportunity to represent one's point of views may be provided either by way of written representation or by personal hearing or by both. Opportunity of representation in any one of the forms, as above, if given, cannot be stated to offend the principles of natural justice. In the case on hand, no doubt true it is that no opportunity of personal hearing had been given, before passing the impugned order. On that ground alone, it cannot be stated that there was no opportunity provided for making an effective representation praying to accord sanction for prosecution u/s 196, Code of Criminal Procedure. Sordid a fact it is that the complainant had made an effective written representation to the Government praying to accord sanction for intended prosecution. Representation made therefore had been duly taken into account, along with other relevant materials by the Government before ever the impugned order was passed. As such, it cannot be stated that the impugned order is bad on the ground of violation of the principles of natural justice, in the sense of not providing any opportunity of representation to the complainant before ever it was passed.

17. The other question that is left out of consideration revolves on the question of the impugned order not containing the reasons for refusal to accord sanction. Such a question came to be considered in the case of Inguva Mallikarjuna Sharma Vs. The State of Andhra Pradesh and Another, wherein Madhava Reddy and Madhusudan Rao, JJ said in paragraph 5, the relevant portion of which reads thus;

The object of Section 196, Code of Criminal Procedure is to ensure prosecution only after due consideration by the appropriate authority so that frivolous or needless prosecutions are avoided. Sanction of a prosecution must

be expressed with sufficient particularity to indicate clearly the matter which is to be the subject of the proceeding and it should be apparent from the order of sanction that the authority applied its mind to the facts constituting the offence or offences. In according or withholding sanction under the Section, Government acts purely in an executive capacity and not in a judicial capacity. The sanction need not be based on any legal evidence nor is it necessary that the authority should give reasons for sanctioning the prosecution or for withholding the prosecution.

I respectfully agree with such a view.

18. For the reasons, as above, the impugned order, viewed from any angle, is unassailable. The Writ Petition therefore deserves dismissal and is accordingly dismissed. Rule Nisi issued shall stand discharged. No costs.