(2010) 3 RCR(Criminal) 207

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Star India Pvt. Ltd.		APPELLANT
	Vs	
State of Punjab and Another		RESPONDENT

Date of Decision: April 29, 2010

Acts Referred:

- Constitution of India, 1950 - Article 19, 226
- Criminal Procedure Code, 1973 (CrPC) - Section 155, 156, 173, 482
- Penal Code, 1860 (IPC) - Section 295A

Citation: (2010) 3 RCR(Criminal) 207

Hon'ble Judges: Rajive Bhalla, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Rajive Bhalla, J.
The petitioner, a commercial television channel, prays that FIR No. 322 dated 6.10.2009 registered at P.S. Division No. 4, Jalandhar and all proceedings emanating therefrom be quashed.

2. Before proceeding to adjudicate the matter on merits, it would be appropriate to reproduce a relevant extract of the FIR, as translated by counsel for the petitioner:

To SHO, Division No. 4, Jallandhar City. Subject : In regard to legal action against a bad character who has spoken bad words against Lord Valmiki in STAR Plus Channel''s serial Bidai. Sir, it is submitted that I am Navvikas (Simpu), Caste Balmiki, resident of 650, Rishi Nagar, Model Town, Jallandhar. Today on dated 6.10.2009, in the serial Bidai which is being telecast by Channel STAR Plus, in this serial the bad words have been uttered against Bhagwan Balmiki Ji and I am eye witness to the same. I was watching this serial at my house when the entire country was also watching this serial. Upon watching this

serial the entire Valmiki community gathered at the Valmiki Temple Ali Mohalla and held an agitation. We on behalf of the entire society demand legal action against this Serial and this Channel (Star Plus). Strict action be taken against the accused so that no untoward incident happens in the City. In the event, the Police Administration fails to take any strict action then they shall be responsible for it. Legal action should be taken against the accused for hurting the religious sentiments. Thanking you, yours faithfully, Navvikas (Simpy) Bhagwan ValmikiSener (PB) Sd/-Navvikas 98723-26274 Sd/- Sunit Dutt Bobby District President S.C. Morcha Jal., Jatinder Niklka, Rajeev Gora. Police Action : Today I, SI alongwith HC Bhagwant Singh 2113, HC Gurjeet Singh 2406, PHG Sanjeev Kumar 14469, was present at Jyoti Chowk, that Navvikas (Sindhu) resident of Rishi Nagar submitted a complaint to me, on perusal whereof an offence u/s 295-A I.P.C. found to have been committed as such the complaint is being sent through HC Gurjeet Singh 2406 for registration of case to Police Station. After registering the case Number of the case should be informed. I alongwith companions is proceeding to the spot. SHO be informed on mobile. Place : Jyoti Chowk at 11 PM Sd/- Devinder Parshad SI PS Div. No. 4 Jalandhar. 6.10.2009. Police Station : Upon receipt of the above complaint in Police Station this First Information u/s 295-A I.P.C. is registered and original complaint alongwith copy of FIR is being sent to the concerned SI through HC who has brought the complaint for investigation. Report No. 35 dated 6.10.2009 Time : 11.50 PM.

3. The complainant alleges that during the telecast of a television serial, a character used derogatory words to describe Lord Valmiki that have led to the commission of an offence u/s 295-A of the I.P.C. The police registered an FIR and commenced investigation.

4. Counsel for the petitioner submits that the allegations levelled in the FIR, even if accepted as true, do not disclose the commission of any offence, much less an offence u/s 295-A of the IPC. A perusal of the script discloses that a character in this serial, asked a question, whether Lord Valmiki was a thief before he became a sadhu and if true can a man undergo such a great change. In response, the other character made laudatory references to Lord Valmiki. It is argued that the words used by the characters do not fall within the mischief of Section 295-A of the IPC. An offence u/s 295-A of the IPC, inhers a deliberate and malicious intent to outrage religious feelings and beliefs. The dialogue is devoid of any insult or intention to outrage the religious feelings of any class, religion or community. It is further argued that ancient religious texts clearly refer to Lord Valmiki as a robber before he became a saint. Whether these texts are historically accurate or not, cannot be vouchsafed but as the tele serial merely recounts a widely held belief that Lord Valmiki was a robber, before he became a saint, no offence is made out. This widely held belief finds mention in a large number of judgements of the Hon''ble Supreme Court and, therefore, to prosecute the petitioner is a misuse of the process of law.

5. Another argument pressed into service is that the petitioner is protected by Article 19(1)(a) of the Constitution. The primary role of the press and the electronic media is to educate, mould public opinion and become an instrument of social change. A free press and a free electronic media that encourages public debate, on sensitive matters, within

the confines of civility, is the sine qua non of a mature democracy. The petitioner, therefore, cannot be prosecuted for an offence u/s 295-A of the Penal Code. Reliance for the latter arguments is placed upon Ramji Lal Modi Vs. The State of U.P., ; Sakal Papers (P) Ltd. and Others Vs. The Union of India (UOI), ; Sri Baragur Ramachandrappa and Others Vs. State of Karnataka and Others, .

6. It is further argued that Section 295-A of the IPC does not criminalize any and every act of insult or attempt to insult, but only such acts or insults which are perpetrated with a deliberate and malicious intent to outrage the religious feelings of a particular class. It is argued that perceived insults that are unwittingly or carelessly made without any deliberate or malicious intent, cannot form the basis for registration and investigation of an FIR u/s 295-A of the IPC. The petitioner has not committed any offence, much less an offence u/s 295-A of the IPC. The present petition should, therefore, be allowed and the FIR should be quashed.

7. Counsel for the complainant submits that the petitioner channel is guilty of repeated acts of denigrating the reputation of Lord Valmiki, by referring to him as a "Daku". The petitioner channel produced a tele serial called "Kum-Kum - Ek Piara Bandhan", where Lord Valmiki was referred to as a "Daku". BAG Films Limited, the producers of the serial tendered an unconditional apology on 28.12.2003. The petitioner also tendered an apology. Despite this apology, the petitioner has once again telecast a serial where Lord Valmiki is referred to as a "Daku"/thief, thereby committing an offence u/s 295-A of the IPC. Counsel for the complainant further submits that the District Manager, Jalandhar, banned the telecast of a serial "Sapna Babul Ka - Bidai" for two months from 12.10.2009 for referring to Maharishi Valmiki as a robber. A publication known as "Parag" was banned by the Government of Punjab for using a similar expression. It is further submitted that an offence u/s 295-A of the IPC has to be examined in the context of the religious sentiments of the aggrieved and even if the derogatory statement is followed by laudatory references, the FIR cannot be quashed, as the key to an offence u/s 295-A of the IPC is intentional, deliberate and malicious acts intended to outrage religious feelings. Intention, by its very nature is a matter of inference, to be drawn from the material collected by the prosecution. This court, therefore, must desist in the exercise of its inherent jurisdiction u/s 482 of the Criminal Procedure Code or Article 226 of the Constitution, from recording an opinion in favour of the petitioner. It is further submitted that the argument based upon the freedom of expression or the freedom of the media is a mere smoke screen. Freedom of expression does not confer the right to repeat slanderous and defamatory words or acts, particularly when the accused has already tendered an apology for a similar act. The petitioner is, therefore, not entitled to the protection of Article 19(2) of the Constitution and must participate in the investigation and face proceedings, in accordance with law.

8. It is further argued that it has been repeatedly held by the Hon''ble Supreme Court and by this Court that the power u/s 482 can not be exercised, at the stage of investigation, as it is no part of the jurisdiction u/s 482 or Article 226 of the Constitution, to appraise facts,

weigh material on record and proceed to record an opinion for and against the allegations. Furthermore, as the right to investigate an offence is statutorily conferred upon the police, interference when the police seeks to investigate an offence, is not warranted. The question, whether the allegations are incorrect or malicious is a matter to be considered by the investigating agency during investigation. Reliance is placed upon a Judgment of the Hon''ble Supreme Court in State of Karnataka and Another Vs. Pastor P. Raju, .

9. Another argument pressed into service is that ancient literature, both religious and secular do not refer to Lord Valmiki as a dacoit. The Ramayan attributed to various scholars and saints, does not refer to Lord Valmiki as a highway robber. The first reference to Lord Valmiki as a highway man appears in the Skand Puran, which as per scholars, on the subject, was penned during the 10th century A.D. This derogatory story gained currency without basis in history or in mythology. during the bhakti movement that led to the glorification of Lord Ram as an incarnation of Lord Vishnu. It is further submitted that these arguments are based upon the research by Dr. Manjula Sehdev, a retired professor and head of the Maharishi Valmiki Chair at Punjabi University, Patiala.

10. I have heard counsel for the parties, perused the FIR and carefully considered the arguments raised by counsel for the parties. Admittedly, investigation is in progress. But for the present petition, investigation may have concluded by now.

11. Admittedly, a character in the tele serial asks another character, whether Maharishi Valmiki was a dacoit before he became a saint. The other character, while not denying this fact makes laudatory references to Maharishi Valmiki. A debate rages on amongst scholars both religious and academic about the authenticity of the story, whether Maharshi Valmiki was a dacoit. The actual facts appear to be lost in the mists of antiquity. Dr. Manjula Sehdev, one such scholar kindly consented to address this court. She has carried out a detailed research into the origin and authenticity of this story and if her work is to be accepted as correct, there may be force in the argument raised by counsel for the respondent that there is no historical or mythological basis for the story that Maharishi Valmiki was a dacoit before he became a sage. It would, therefore, be relevant to reproduce a few salient features of her research.

1. From Vedic literature upto 9th Century A.D. there is no reference as such that Maharishi Valmiki led a life of a dacoit or a Highwayman.

2. Even upto 9th Century A.D. the etymology of the word Valmiki (a person born from an Ant-hill) is not available.

3. In his own work "Ramayana", he is called Bhagwan, Muni, Rishi and Maharishi. No reference of his Highwaymanship is available there.

4. First reference regarding Rishi Valmiki as a Highwayman is mentioned in the Skand - Purana. The time of this Purana is considered 10th Century A.D.

5. The First reference of the mantra "Mara-Mara" has been mentioned in the Adhyatma Ramayana (Ayodhya-Kanda, 6.80-81). The time of Adhyatma Ramayana has been considered 15th Century A.D. by the Scholars. In the same way we find Mantra "Mara-Mara" in Ananda Ramayana (Rajya-Kanda, 14.141). This work has been considered of 16th Century A.D.

6. The Bhakti movement was started in the South part of India about 8th & 9th Century A.D. by Alwaras. When this movement came at its peak from13th to 16th Centuries A.D. many stories were woven around the personality of Rishi Valmiki keeping in view the importance of Sri Rama as an incarnation of Vishnu.

12. The salient features of this research appear to cast a doubt about the authenticity of the story that Maharishi Valmiki was a dacoit. The question, however, is not the origin of story or whether this story is correct or not but whether in the facts and circumstances of the present case, the FIR should be quashed at the stage of investigation.

13. Section 482 of the Code of Criminal Procedure reiterates the inherent powers of a High Court and enables a High Court in the exercise of its inherent jurisdiction to (a) to give effect to an order under the Code (b) to prevent abuse of the process of court and (c) to otherwise secure the ends of justice. The power as enumerated by Section 482 of the Code though wide in its amplitude is not unbridled in its application. The discretion conferred by Section 482 of the Code has to be exercised judiciously and inconsonance with the well established principles set out by the Hon''ble Supreme Court. While exercising powers u/s 482 of the Code, the High Court does not act as a court of appeal or revision and only appraises facts for the limited purpose of ascertaining, whether the allegations contained in the FIR or the complaint make out any criminal case.

14. In R.P. Kapur Vs. The State of Punjab, the Hon''ble Supreme Court set out the categories of cases where inherent power can and should be exercised as follows:

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

15. These principles were reiterated and elaborated in State of Haryana and others Vs. Ch. Bhajan Lal and others, in the following terms:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a Police Officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

16. The principles enumerated above were reiterated by the Hon''ble Supreme Court in its Judgment reported as The State of Andhra Pradesh Vs. Aravapally Venkanna and Another, .

17. The power to quash an FIR though wide in its amplitude cannot be invoked to stifle a bonafide prosecution. While exercising inherent power, a High Court cannot weigh probabilities and possibilities, as an FIR is but a skeletal narrative of preliminary facts, upon which investigation commences. To quash a nascent investigation, particularly when the petitioner tendered an apology for an earlier similar remarks would, in my considered opinion, be a travesty of justice.

18. A cautionary principle that governs the exercise of inherent power is that inherent powers should not be invoked to interfere with the statutory power of the police to investigate a cognizable offence, except where the allegations are blatantly malafide, malicious or do not disclose the commission of any offence. The question whether inherent powers should be invoked when a bonafide investigation is in progress was examined in detail in Union of India v. Parkash P. Hinduja and Ors. 2003 (3) RCR (Cri.) 556 where after referring to AIR 1945 18 (Privy Council); H.N. Rishbud and Inder Singh Vs. The State of Delhi, ; State of West Bengal Vs. S.N. Basak, ; Abhinandan Jha and

Others Vs. Dinesh Mishra, and State of Bihar and Another Vs. J.A.C. Saldanha and Others, it was observed as under in para 20 of the report:

20. Thus the legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the First Information Report till the submission of the report by the officer in charge of police station in court u/s 173(2) Cr.P.C., this field being exclusively reserved for the investigating agency.

19. In order to further fortify the above precedent, a reference would also have to be made to an extract from the Judgment in State of Andhra Pradesh v. Aravapally Venkanna (supra), which reads as follows:

Whether the material already in existence or to be collected during investigation would be sufficient for holding the concerned accused persons guilty has to be considered at the time of trial. At the time of framing the charge it can be decided whether prima facie case has been made out showing commission of an offence and involvement of the charged persons. At that stage also evidence cannot be gone into meticulously. It is immaterial whether the case is based on direct or circumstantial evidence. Charge can be framed, if there are materials showing possibility about the commission of the crime as against certainty. That being so, the interference at the threshold with the F.I.R. is to be in very exceptional circumstances as held in R.P. Kapoor''s case supra.

20. This being a settled position in law, it would not be appropriate for this court, to express any opinion as to the nature of the offence or the nature of the investigation leaving it open to the police to examine the script and form a considered opinion, whether any offence is made out.

21. Another factor that dissuades me from holding in favour of the petitioner is its earlier conduct. For similar remarks in another serial, the petitioner admittedly tendered an unqualified apology. The petitioner was, therefore, aware that this remark, if telecast again, would hurt the complainant''s sentiments. The petitioner was, therefore, required to exercise a degree of care and caution while telecasting those remarks.

22. Before parting with the judgement, it would be appropriate to make a reference to the petitioner''s argument based upon Article 19(1)(a) of the Constitution. The freedom to speak one''s mind is inherent in any democracy and is, therefore, protected by the Constitution. The freedom is not absolute and is subject to provisions like of the Indian Penal Code. Freedom of speech must therefore, take into consideration the sentiments of communities, likely to be affected. Television channels, like the print media should be careful in the choice of words and expressions and should show a degree of sensitivity to religious sentiments of their audience. The electronic media with its immense power and reach must pause, reflect and exercise a greater degree of restraint and responsibility, particularly when it seeks to disseminate religious information likely to affect the

sensibility of its audience.

23. Another argument that the complaint does not disclose the commission of any offence, as the words spoken by the characters in the serial are not malicious or intended to outrage the religious sentiments of any community, cannot be considered at this stage and are best left to be determined by the investigating agency or by the trial court. For this Court to raise an inference in favour of either party at this nascent stage of investigation would be a travesty of justice.

24. In view of what has been stated herein above, the petition is dismissed leaving it to the petitioner to appear before the Investigating Officer for further investigation.