
(1997) 07 KAR CK 0083

Karnataka High Court

Case No: Writ Appeal No. 631 of 1995

G. Jairaj and Others

APPELLANT

Vs

State of Karnataka and
Others

RESPONDENT

Date of Decision: July 25, 1997

Acts Referred:

- Constitution of India, 1950 - Article 19 (1), 19 (2)
- Criminal Procedure Code, 1973 (CrPC) - Section 95

Citation: (1997) ILR (Kar) 2227 : (1999) 1 RCR(Criminal) 43

Hon'ble Judges: S. Rajendra Babu, J; Kumar Rajaratnam, J

Bench: Division Bench

Advocate: Sri M.T. Nanaiah, for the Appellant; Sri S. Rangavittalachar, Government Advocate, Sri V.T. Rayareddi and Sri Ashok R. Kalyanshetty, for the Respondent

Judgement

Rajendra Babu, J.

A play titled "MAHACHAITRA" was published in the year 1986. The said book underwent three editions having been again published in 1991 and 1994. The Gulbarga University and the Kuvempu University prescribed the same as textbook for the I year B.A. The Sahithya Academy gave an award to the book in the year 1986.

2. It is contended by the appellants that the book contains scandalous and mischievous references to Basavanna --Founder of Veerashaiva system of religion and other sharanas, with a deliberate total distortion of historical facts so as to impeach his character. A write-up questioning whether "Mahachaitra" can be a textbook was produced at Annexure-B, wherein it is set-out that the book contains -- (i) defamation of Basavanna by Jangamas; (ii) allegation of misappropriation of the treasury; (iii) Departure of Vishwaguru Basavanna; (iv) final salvation of Basavanna; (v) historical defects; (vi) role of Neelambika; (vii) Channabasavanna's character; (viii) role of Madivala Machideva under the sub-heading "Greatness of Machideva"; (ix) Movements of Sharanas; (x) about

Hadapada Appanna; (xi) about Sharanas; (xii) attempt to sow seeds of communal hatred between Jangamas and Brahmins; Lingavantas and Jangamas; upper and lower castes; (xiii) about Jangamas; (xiv) newly created doubts; (xv) obscenity and; (xvi) usage of vulgar words/language.

3. On that basis, a writ petition was filed for the reliefs of directing respondents 1 to 4 to withdraw the book "Mahachaitra" from the course of study for I year B.A. in the respondents 3 and 4 Institutions; (ii) to issue a direction to withdraw the Sahitya Academy award given to the book in the year 1986; (iii) for a direction to respondent 1 to ban all kinds of propagation and sales of the book all over the State including exhibition of Dramas; and (iv) other incidental reliefs.

4. The learned Single Judge stated that he does not propose to review the book to find out as to whether it deserves to be prescribed as a textbook or as a piece of literature deserving the prize from the Sahitya Academy. The learned Single Judge found that prescription of a textbook is within the province of the academicians connected with the University. Similarly, the prize to be given by the Sahitya Academy was a matter for the opinion of those proficient in the field and therefore, declined to give the first two directions sought for in the petition. The next contention was also rejected by the learned Single Judge by stating that no material was forthcoming except the statement of the petitioners. On that basis, he rejected the entire petition. Aggrieved by that order, this appeal is preferred before us reiterating the same grounds.

5. The State Government has already issued a notification dated 5-11-1994, directing the Gulbarga and Kuvempu Universities to withdraw "the said book as a textbook and the book had been prescribed as a textbook only for a particular year or period. Since steps have been taken to withdraw the same by Gulbarga University and the period for which the book had been prescribed as a textbook by Kuvempu University having expired and no material has been placed to show that for further period it has been extended as a textbook, the first relief does not survive for consideration.

6. So far as the second relief is concerned, it is clear that the award had been given in the year 1986, when the book was first published. If really the petitioners had been aggrieved by that action, they would not have approached this Court in the year 1994, seeking this Court to appraise literary merit of the book, eight years after publication.

7. Freedom of speech is one of the most cherished rights under the Constitution of India. Any restriction to be imposed upon this freedom is prima facie unconstitutional unless the same could be justified in terms of the limitations set forth in Article 19(2) of the Constitution. A restriction could be placed upon the freedom of speech and expression on the ground of--(i) interests of the sovereignty and integrity of India; (ii) the security of the State; (iii) friendly relations with foreign State; (iv) public order; (v) decency or morality; (vi) contempt of Court; (vii) defamation and (viii) incitement to an offence. In the present case, the question raised in the petition pertains only to items (iv), (v) and (vii). Ordinary

or local breaches of public order are no grounds to restrict the freedom of speech guaranteed by the Constitution. Public order implies absence of violence and orderly state of affairs in which citizens can peacefully pursue their normal avocation of life. Anything which disturbs public tranquility disturbs public order. This expression includes public safety in its relation to maintenance of public order. Public order is synonymous with public peace, safety and tranquility. No legislation has been enacted, except as what is contained in Section 95 of the Code of Criminal Procedure. This section is conceived in the interest of public order or morality or decency and the restrictions placed is held to be reasonable and is not hit by Article 19 of the Constitution. As held in the [The State of Uttar Pradesh Vs. Lalai Singh Yadav](#), the three facts which attract the provisions of Section 95, Cr. P.C. are (i) that the book contains any matter; (ii) such matter promotes or is intended to promote feelings of enmity or hatred between different classes of citizens and; (iii) a statement of the grounds of Government opinion. Section 95 does not generalise any doctrine propogated through a book however extreme it may be, but only when such right directly promotes feelings of hatred or enmity. It is not sufficient to state that the book is intended to outrage the religious feelings of a class of citizens of India. The particular class must be specified and such propogation must be clearly spelt out. The intention of the writer must be judged primarily by the language of the book itself, though external evidence is permissible either to prove or to rebut the meaning ascribed to it. Therefore, lot of thought and deliberation is required before any action could be taken u/s 95 of the Cr. P.C.

8. When the book has been published in the year 1986, for over eight years now, if there is no disturbance of public order, peace or tranquility, we fail to understand as to how the same would arise now. So far as the aspects of decency, defamation or morality to which references are alluded to in the book are concerned, it cannot be read torn out of context and the entire book will have to be read and understood as to the impact of the same. Merely because a person possesses certain opinion or if any fiction is created on the basis of historical facts, though facts as such may not have been distorted but merely subjected to interpretation, those circumstances themselves cannot be termed as inaccurate tending to hurt the feeling of any sections of the community. We are not in a position to state whether the said book affects public order or decency or morality or amounts to defamation. It is only on coming to a conclusion that such situation has arisen or the references made which amount to the acts to which we have referred to, provisions of Section 95, Cr. P.C. can be invoked either to confiscate the book or to take any steps to prevent the propogation of the same. The test of obscenity is whether the publication, read as a whole, has a tendency to deprave and corrupt those whose minds are open to such immoral influence and into whose hands such a publication of this sort may fall. Each work must be examined by itself and a comparison with other works may not improve the quality of a book which is indecent or obscene. A balance should be maintained between freedom of speech and expression and public decency and morality. It is only when the latter is substantially transgressed, the former must give way. Unless it can be shown that the book is published only with an intention to pandering to sex in a

manner appealing to the carnal side of human nature, the same cannot be termed as obscene. Courts cannot act as censor or authority of public morality or decency. On the question whether the book would amount to defamation or not also, the material put forth by the appellants before the Court is not sufficient.

9. In the circumstances, we think the view taken by the learned Single Judge is in order and calls for no interference.

10. Writ appeal is therefore dismissed in limine.