

Sada Nand and Others Vs State (Delhi Administration)

Court: Delhi High Court

Date of Decision: March 20, 1986

Citation: (1986) 2 Crimes 474 : (1986) ILR Delhi 81 : (1986) RLR 394

Hon'ble Judges: J.D. Jain, J

Bench: Single Bench

Advocate: Mohan Pungliya, J.L. Bhasin and R.P. Lao, for the Appellant;

Judgement

J.D. Jain, J.

(1) All the petitioners, namely, Sada Nand, Vinod Mehta, Mahinder Pal and Jasbir Singh, are common to all the above mentioned petitions u/s

482, Code of Criminal Procedure (hereinafter referred to as "the Code"). Since common questions of law and fact are involved in all these

petitions, I dispose of the same by this consolidated order.

(2) The facts giving rise to these petitions succinctly are that M/s. Debonair Publications Private Limited, Bombay (for short "the Company"),

publishes a monthly magazine entitled "Debonair" in English from Bombay. At the relevant time, namely, June and July 1977, Sada Nand, petitioner

No. 1, was employed with the Company and was working as printer and publisher of the magazine "Debonair". The second petitioner Vinod

Mehta was editor of the said magazine while Mahinder Pal and Jasbir Singh, petitioners 3 & 4, were partners of a firm called Mis. News Centre

situated at Delhi which was doing the business of selling the newspapers and magazines including "Debonair".

(3) On 28th June 1977, Sadar Bazar Police seized a copy of the magazine "Debonair", June 1977 issue, from the shop of one Chiranji Lal at

Chowk Baratooti on the ground that the said magazine contained obscene matter viz. photos of naked women and a case u/s 292, Indian Penal

Code (for short "IPC"). being Fir No. 390177 was registered against the petitioners on its basis.

(4) On 13th July 1977, Connaught Place Police visited the shop of M/s. News Centre at Baba Khark Singh Marg and seized 68 copies of the

magazine "Debonair". June & July 1977 issues, on the ground that they contained obscene matter viz. photographs of nude women. A case u/s

292 IPC being Fir No. 691/77 was thereupon registered against the petitioners.

(5) Still later, on 20th August 1977, Mandir Marg Police seized two copies of the magazine ""Debonair"", July 1977 issue, from the shop of M/s.

News Centre and a case u/s B 292 Indian Penal Code being Fir No. 289177 was registered against the petitioners on its basis.

(6) Subsequently, the police put in separate challans against the petitioners in all the three-above-mentioned cases and the petitioners were

summoned by the court of concerned Metropolitan Magistrate. Hence, they have filed these petitions for quashing and setting aside the police

reports as also their prosecution for the said offence.

(7) The submission of the learned counsel for the petitioners in brief is that the magazine ""Debonair"" primarily caters to the needs of educated and

supplicated readers in the society and as such it has acquired a reputation as a magazine of high standard. It publishes articles, views, reviews,

features and photographs of high quality on various subjects like politics, economies, business management, cinema, sports. etc. together with

some light leading material. It also publishes a large number of photographs in its every issue which are of topical as well as artistic value. It

contains a centrally spread page and one or two other photographs of semi-nude and nude female forms in surroundings of natural beauty. The

photographs are works of eminent and highly skilled photographers and are of high artistic value. The photographs exhibit the creativity of the artist

and are of great aesthetic value. Further they are designed to promote art of photography. So, the mere fact that the photographs are of nude men

nude women would not render them obscene or pornographic. They assert that the photographic features when examined would show that the

emphasis is not on the nudeness of the female but is rather on beauty as conceived and unfolded by the artist. In short, their submission is that the

photographs of nude women which are alleged to be obscene are not so and their prosecution for offence u/s 292 Indian Penal Code is totally

misconceived and not warranted by law.

(8) Section 292(1) Indian Penal Code lays down that :

FOR the purposes of sub-section (2), a book pamphlet, paper, writing, drawing, painting, representation, figure or any other object, shall be

deemed to be obscene, if it is lascivious or appeals to the prurient interest or if its effect, or : (where it comprises two or more distinct items) the

effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant

circumstances, to read, see or hear the matter contained or embodied in it."".

SUB-SECTION(2) thereof provides punishment for selling, distributing, publicly exhibiting or in any manner circulating for the purpose of sale, hire

etc. any obscene book, pamphlet, paper and any other obscene object whatsoever. However, publication of any such book, pamphlet, writing,

drawing, painting etc. is exempted provided it is in the interest of science, literature, art or learning or other objects of general concern. Books

kept or used bonafide for religious purposes are also exempted.

(9) On a bare reading of sub-section (1) of Section 292 it is obvious that a book etc. shall be deemed to be obscene (i) if it is lascivious; (ii) it

appeals to the prurient interest, and (iii) it tends to deprave and corrupt persons who are likely to read, see or hear the matter alleged to be

obscene. The aforesaid definition of obscenity was introduced by the Amendment Act 36 of 1969. Earlier there was no definition of the word

obscene". However, the courts in India had been uniformly applying the following test of obscenity which was formulated by Cockburn, C.J. in

Queen v. Hicklin, 1868 Lr 3 Qb 360 : (1)

.... I think the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are

open to such immoral influences, and into whose hands a publication of this sort may fall.....it is quite certain that it would suggest to the minds of

the young of either sex, or even to persons of more advanced years, thoughts of a most impure and libidinous character.

(10) In Ranjit D. Udeshi Vs. State of Maharashtra, the Supreme Court had an occasion to consider whether the famous book of Lady

Chatterley's Lover. unexpurgated edition written by D. H. Lawrence contained obscene and pornographic matter or not. Hidayatullah, J.

(AS his Lordship then was) considered the above test and also the test laid down in certain other American cases. Said his Lordship:

NONE has so far attempted a definition of obscenity because the meaning can be laid bare without attempting a definition by describing what

must be looked for. It may, however, be said at once that treating with sex and nudity in art and literature cannot be regarded as evidence of

obscenity without something more. It is not necessary that the angels and saints of Michael Angelo should be made to wear breeches before they

can be viewed. If the rigid test of treating with sex as the minimum ingredient were accepted hardly any writer of fiction today would escape the

fate Lawrence had in his days. Half the book-shop would close and the other half would deal in nothing but moral and religious books which Lord

Campbell boasted was the effect of his Act.

HIS Lordship further observed:

AN overall view of the obscene matter in the setting of the whole work would, of course, be necessary, but the obscene matter must be

considered by itself and separately to find out whether it is so gross and its obscenity so decided that it is likely to deprave and corrupt those

whose minds are open to influences of this sort and into whose hands the book is likely to fall. In this connection the interests of our contemporary

society and particularly the influence of the book etc. on it must not be overlooked....- where obscenity and art are mixed, art must be so

preponderating as to throw the obscenity into a shadow or the obscenity so trivial and insignificant that it can have no effect and may be

overlooked. In other words, treating with sex in a manner offensive to public decency and morality (and these are the words of our Fundamental

Law), judged of by our National standards and considered likely to pander to lascivious, prurient or sexually precocious minds, must determine the

result. We need not attempt to bowdlerize all literature and thus rob speech and expression of freedom. A balance should be maintained between

freedom of speech and expression and public decency and morality but when the latter is substantially transgressed the former must give way.

HIS Lordship further observed that it is not necessary to compare one book with another to find the extent of permissible action and the court

should bear in mind the words of Lord Goddard Chief Justice in R. v. Reiter, (1954) 2 Qb 16: (3)

THE character of other books is a collateral issue, the exploration of which would be endless and futile. If the books produced by the prosecution

are indecent or obscene, their quality in that respect cannot be made any better by examining other books.... ..

(11) The above observations were quoted in extenso and followed by the Supreme Court in its later decision in Shri Chandrakant Kalyandas

Kakodkar Vs. The State of Maharashtra and Others, . The Supreme Court, inter alia, emphasised that:

THE concept of obscenity would differ from country to country depending on the standards of morals of contemporary society. What is

considered as a piece of literature in France may be obscene in England and what is considered in both countries as not harmful to public order

and morals may be obscene in our country..... The standards of contemporary society in India are also fast changing. The adults and adolescents

have available to them a large number of classics, novels, stories and pieces of literature which have a content of sex. love and romance. As

observed in Udeshi's case, if a reference to sex by itself is considered obscene, no books can be sold except those which are purely religious. In

the field of art and cinema also the adolescent is shown situations which even a quarter of a century ago would be considered derogatory to public

morality, but having regard to changed conditions are more taken for granted without in anyway tending to debase or debauch the mind. What we

have to see is that whether a class, not an isolated case, into whose hands the book, article or story falls suffer in their moral outlook or become

depraved by leading it or might have impure and lecherous thoughts aroused in their minds. The charge of obscenity must, Therefore, be judged

from this aspect

(12) The question of obscenity of a book within the meaning of Section 292 Indian Penal Code again fell for consideration before the Supreme

Court in its recent decision in *Samaresh Bose and Another Vs. Amal Mitra and Another*, . This time the book in question was a novel styled

Prajapati written by a reputed writer of Bengali novels and stories. The Supreme Court adverted to both the above mentioned decisions and also

noticed the amendment made in Section 292 by Act 36 of 1969. Their Lordships observed that the amended Section did not appear to be any

material consequence in deciding the case before their Lordships. Said their Lordships :

THE amended provision seeks to clarify what may be deemed to be obscene within the meaning of the section, as the word "obscene" appearing

in the section has not been defined in the section, or in any provision in the Act. "The amended provision embodies to an extent in the section itself

the import, effect and meaning of the word "obscene" as given by courts on interpretation of the word "obscene".

THEIR Lordships further said that:

IN deciding the question of obscenity of any book, story or article the court whose responsibility it is to adjudge the question may, if the court

considers it necessary, rely to an extent on evidence and views of leading literary personage, if available, for its own appreciation and assessment

and for satisfaction of its own conscience. The decision of the court must necessarily be on an objective assessment of the book or story or article

as a whole and with particular reference to the passages complained of in the book, story or article.

(13) It is thus well recognized principle that the concept of obscenity is moulded to a very great extent by the social outlook of the people who are

generally expected to read the book or article. Keeping these guidelines in view, I have carefully glanced through both the June and July 1977

issues of the magazine "*Debonair*", There are pictures of nude or seminude women at pages 8, 9, 18, 39, 58 & 68 of June 1977 issue of the

magazine". Likewise there are pictures of nude/semi-nude women at pages 40, 64 & 66. of July 1977 issue of the said magazine. Generally

speaking pictures of a nude/semi-nude women cannot per se be called obscene unless the same are suggestive of deprave mind and are designed

to excite sexual passion in ties persons who are likely to look at them or see them. This will naturally depend on the particular posture and the

background in which a nude semi-nude women is shown. in Sreeram Saksena v. Emperor, Air 1940 Calcutta 290, some postcards of women in

the nude were said to be obscene. These pictures had been reproduced from some of the photographs contained in the picture books named "Sun

Bothers", "Eve in the Sunlight", "Perfect Womanhood", and "Health and Efficiency" which were being sold in the market. It was held by their

Lordships that :

A picture of a woman in the nude is not per se obscene. unless there is something in it which would shock or offend the taste of any ordinary or

decent-minded person. When there is nothing in it to offend an ordinary decent person it is impossible to say that it is obscene. Unless the pictures

c.f nude female forms are incentive to sensuality and excite impure thoughts in the minds of ordinary persons of normal temperament who may

happen to look at them, they cannot be regarded as obscene within the meaning of S. 292. For the purpose of deciding whether a picture is

obscene or not one has to consider to a great extent the surrounding circumstances, the pose, the posture, the suggestive element in the picture, the

person into whose hands it is likely to fall, etc.

Likewise, was held by a Division Bench of Allahabad High Court in State Vs. Thakur Prasad and Others, , that : .

A picture of a woman in the nude is not per se obscene. For the purpose of deciding whether a picture is obscene or not one has to consider to a

great extent the surrounding circumstances, the pose, the posture, the suggestive element in -the picture, and the person or persons in whose hands

it is likely to fall."-

(14) Applying this test. the nude pictures cannot be termed as obscene i.e. which will have a tendency to deprave and corrupt the minds of people

in whose hands the magazine in question is likely to fall. The magazine is published in English language. It contains articles on topical subjects which

may be categorised as political, economic book reviews etc. It also contains some really decent pictures in the background of nature scenery.

However, a .look at the impugned pictures would show beyond a shadow of doubt that they can hardly be said to have any aesthetic or artistic

touch, rather they seem to have been taken with the sole purpose of attracting readers who may have a prurient mind. The women in nude have

been just made to lie on e grassy plot or sit on some stool etc. and pose for a photograph in the nude. So they play well be said to be vulgar and

indecent but all the same it may be difficult to term them obscene within the meaning of Section 292 Indian Penal Code . As observed by the

Supreme Court in Samareesh Bose:-

A vulgar writing is not necessarily obscene. Vulgarly arouses a feeling of disgust and revulsion and also boredom but does not have the effect of

depraving, debasing and corrupting the morals of any reader of the novel, whereas obscenity has the tendency to deprave and corrupt those whose

minds are open to such immoral influences.

(15) So even though these photographs may appear to be vulgar and indecent to people of cultured and refined taste and they may have a sense of

shock and disgust, it cannot be held by any stretch of reasoning that these nude/semi-nude pictures would on that account fall within the purview

of obscenity. It may be noticed here that in the book "Prajapati" which their Lordships were concerned in Samresh Bose had references to kissing

and narrations in slang and vulgar language of various affairs and episodes with emphasis on sex. However, their Lordships observed :

WE are not satisfied on reading the book that it could be considered to be obscene. Reference to kissing, description of the body and the figures

of the female characters in the book and suggestions of acts of sex by themselves may not have the effect of depraving, debasing and encouraging

the readers of any age to lasciviousness and the novel on these counts, may not be considered to be obscene. It true that slang and various

unconventional words have been used in the book. Though there is no description of any overt act of sex, there can be no doubt that there are

suggestions of sex acts and that a great deal of emphasis on the aspect of sex in the lives of persons in various spheres of society and amongst

various classes of people, is to be found in the novel. Because of the language used, the episodes in relation to sex life narrated in the novel, appear

vulgar and may create a feeling of disgust and revulsion. The mere fact that the various affairs and episodes with emphasis on sex have been

narrated in slang and vulgar language may shock a reader who may feel disgusted by the book does not resolve the question of obscenity.

(16) So, even though the impugned pictures of nude /semi-nude women in the two issues of the magazine, averted to above, are apparently vulgar

and indecent having no artistic or aesthetic value, being designed simply to pander to the lustful eyes of a section of readers, who may be attracted

to purchase the magazine, cannot be said to have the effect of depraving and corrupting the minds of the readers who are likely to go through them.

It may also be noticed that at page 8 of the June 1977 issue of the magazine there is a caricature of a nude man and a woman and the lustful eyes

of the man are well set on the breasts of the woman who is sitting in his lap. Below it there is the following legend:

THEE yes Have It : The sexiest part of the human body is the eyes, according to students at Oregon State University. Men listed the sexiest parts

of a girl as eyes, breasts, waist, bottom. Girls listed eyes, shoulders, chest muscular arms, hair and mouth.

CERTAINLY this picture excels in vulgarity and indecency the other nude /semi-nude pictures of women in the two issues of the magazines.

However, it is in the form of a caricature. So even though it is repulsive and disgusting it would not possibly fall within the category of the term

obscene"" although it borders on obscenity. Anyhow, the impugned pictures are not of the type which would prima facie warrant trial of the

petitioners for offence u/s 292 Indian Penal Code . All I may say is that it is high time that the petitioners improve their standard of photographs

and pictures of nude women so as to impart a really artistic and aesthetic touch to the same without, in any manner, over-stepping the standards of

contemporary sexual morality.

(17) The learned counsel for the petitioner also showed some magazines and book? which contained sheer rubbish and filthy stuff not only in the

form of nude and semi-nude pictures of women but also pornographic stories relating to incestuous and promiscuous love affairs which have a

clear tendency to excite sexual passions and generate impure and deprave thoughts in one"s mind. But as already said the question whether a

particular story, book or photograph etc. is obscene or not has to be judged objectively on its own without reference to other cheap and vulgar

stuff which is being sold in the market for the consumption of prurient mind.

(18) To sum up, Therefore, I find that no prima facie case for prosecution of the petitioners for an offence u/s 292 Indian Penal Code is made out.

Their prosecution for the said offence in all the above mentioned cases is, Therefore, quashed.