

(2010) 08 UK CK 0001

Uttarakhand High Court

Case No: C-482 No. 346 of 2006

Dr. Bharam Singh

APPELLANT

Vs

State of Uttaranchal and Others

RESPONDENT

Date of Decision: Aug. 18, 2010**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 196, 482
- Penal Code, 1860 (IPC) - Section 108A, 120B, 153A, 153B, 155(3)

Citation: (2011) 1 NCC 9**Hon'ble Judges:** Sudhanshu Dhulia, J**Bench:** Single Bench**Advocate:** Parikshit Saini, for the Appellant; Nandan Arya, Assistant Government Advocate for State of Uttarakhand and Manish Arora, for the Respondent**Final Decision:** Allowed

Judgement

Sudhanshu Dhulia, J.

Heard learned Counsels for the applicant as well as the Respondents.

2. This Criminal Misc. Application u/s 482 of Code of Criminal Procedure has been filed by the applicant challenging the order dated 4.9.2004 passed by the Judicial Magistrate, Laksar, District Haridwar in Criminal Complaint Case No. 828 of 2004 Sunita Wilson v. Dr. Bharam Singh and order dated 20.12.2005 passed by the District and Sessions Judge, Haridwar in Criminal Revision No. 320 of 2004 Sunita Wilson v. Dr. Bharam Singh.

3. A complaint was filed before the Judicial Magistrate, Laksar, District Haridwar by Respondent No. 4 stating that her husband, namely, Maxwell Wilson is a "Chowkidar" (peon) at Community Health Centre, Laksar (District Haridwar). The accused person (which is the present applicant before this Court) is a Medical Officer in this hospital. The complaint further states that the complainant and her husband are followers of Christian faith. It is alleged in the complaint that the accused person

always calls the husband of the complainant as "foreigner" and "Angarej" apart from calling him by other names. On this complaint where other averments were made as well but need not be stated at this present juncture, the fact of the matter is that cognizance was taken by the learned Magistrate and summons were issued to the present applicant u/s 295A of the Indian Penal Code. Section 295A of the Indian Penal Code reads as under:

295A. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs. -Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of [citizens of India], [by words, either spoken or written, or by signs or by visible representations or otherwise], insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to [three years], or with fine, or with both.]

4. The short controversy in the present application is that cognizance has been taken in this case and summons have been issued to the applicant u/s 295A of I.P.C. without there being previous sanction of the State Government in this regard as envisaged u/s 196 Code of Criminal Procedure It is an admitted case that there has been no previous sanction of the State Government prior to taking cognizance by the court. Section 196 Code of Criminal Procedure reads as under:

196. Prosecution for offences against the State and for criminal conspiracy to commit such offence.- (1) No Court shall take cognizance of-(a) any offence punishable under Chapter VI or u/s 153A, Section 153B, Section 295A or Section 505 of the Indian Penal Code, (45 of 1860) or (b) a criminal conspiracy to commit such offence, or (c) any such abetment, as is described in Section 108A of the Indian Penal Code, (45 of 1860) except with the previous sanction of the Central Government or of the State Government.

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable u/s 120B of the Indian Penal Code, (45 of 1860) other than a criminal conspiracy to commit a cognizable offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings:

Provided that where the criminal conspiracy is one to which the provisions of Section 195 apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction under Sub-section (1) and the State Government or the District Magistrate may, before giving consent under Sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in Sub-section (3) of Section 155.

5. Learned Counsel for the applicant Sri Parikshit Saini has relied upon two judgments, one by the Gujarat High Court ([Shalibhadra Shah and Others Vs. Swami Krishna Bharati and Another](#),) and another by the Jharkhand High Court (Swaraj Thackeray alias Raj Thackeray v. State of Jharkhand and Ors. 2008 (2) AIR Jhar R 869) to press his point home and submits that a prior sanction of the government is must in such cases.

6. Learned Counsel for the complainant i.e. Respondent No. 4, Mr. Manish Arora on the other hand states that this provision will not apply in a complaint case.

7. The argument of the complainant seems to be entirely misconceived inasmuch as prior sanction of the State Government before taking cognizance in the offence u/s 295A of the I.P.C. goes to the very root of the matter and without this sanction no cognizance can be taken by the court, irrespective of the case being a State case or a complaint case. The offences mentioned in Section 196 Code of Criminal Procedure for which a prior sanction has been made necessary because these offences relate to public peace, tranquility and communal harmony. These offences are not only of a serious nature but have a fallout on public peace, therefore a prior sanction of the government has been made mandatory, as sometimes mere prosecution itself may generate communal disharmony. Offence relating to Section 295A I.P.C. is of such a nature.

8. The law therefore rightly imposes a fetter on a right to move the criminal law by providing a prior government sanction. This aspect has been clearly explained in the Gujarat High Court judgment relied upon (supra) by the counsel for the applicant, with which this Court is totally in agreement. Since, admittedly no prior sanction of the State Government as envisaged u/s 196 Code of Criminal Procedure has been taken prior to taking cognizance u/s 295A I.P.C, the order 4.9.2004 passed by the Civil Judge (J.D.)/J.M., Laksar, District Haridwarin Criminal Complaint Case No. 828 of 2004 Sunita Wilson v. Dr. Bharam Singh and order dated 20.12.2005 passed by the District and Sessions Judge, Haridwarin Criminal Revision No. 320 of 2004 Sunita Wilson v. Dr. Bharam Singh are liable to be set aside and are hereby set aside. The present C-482 application is accordingly allowed.

9. No order as to costs.

10. The Registry is directed to send a copy of this order to the court concerned for necessary compliance.