

CRL.O.P.(MD)NO. 20560 OF 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.12.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.O.P.(MD)No.20560 of 2021
and
CRL.MP(MD)No.11714 of 2021

Maridhas

... Petitioner / Sole Accused

Vs.

1. State: Rep. By,
The Inspector of Police,
Melapalayam police station,
Tirunelveli, Tirunelveli District.
(Crime No.136 of 2020)

... 1st Respondent

2. Mohammed Kader Meeran

... 2nd Respondent /
Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records relating to First Information Report in Crime No.136 of 2020 on the file of the first respondent and quash the same.

For Petitioner : Mr.Anantha Padmanabhan,
Mr.K.Govindarajan,
Mr.M.Karthikeyavenkatachalapathy.

For R-1 : Mr.R.Shunmugasundaram,
Advocate General, assisted by,
Mr.T.Senthilkumar,
Additional Public Prosecutor.

For R-2 : Mr.A.Raja



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ORDER

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2.The defacto complainant is the second respondent herein. He is a member of Tamil Nadu Muslim Munnetra Kazhagam. After watching the video uploaded by the petitioner on the YouTube platform on 03.04.2020 at 11.00 PM, he lodged information before the first respondent on the next day leading to registration of the impugned FIR. In his complaint, the second respondent alleged that the petitioner had falsely spoken that the attendees of Tablighi Jamaat conference held in March 2020 at New Delhi were spreading Covid-19 ; he also insulted Islam with an intention to create ill-will and discord between Muslims and non-Muslims.

3.The learned counsel appearing for the petitioner reiterated the contentions set out in the memorandum of grounds and contended that the petitioner as a responsible YouTuber and commentator on current affairs had merely exercised his right to free speech. According to him, the petitioner had not committed any of the offences set out in the FIR.



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4.The learned Advocate General called upon this Court to bear in mind the conduct of the petitioner. The petitioner after obtaining anticipatory bail from the Principal Sessions Court, Tirunelveli, did not surrender and execute sureties. That is why, he has been arrested. The first respondent had filed an application for taking the petitioner to police custody. The jurisdictional magistrate is actively seized of the petition. Investigation commenced only recently. This Court may therefore allow the legal process to take its normal course. The petitioner is a prominent social media personality. He ought to have been responsible while putting out his views. The video presentation runs to twenty seven minutes. The petitioner has used potentially provocative expressions. It is not necessary that public tranquility must have been actually disturbed as a result of the petitioner's act. It is enough if it is shown that there was a likelihood of breach of peace. He relied on the decision of the Hon'ble Supreme Court reported in **(2021) 1 SCC 1 (Amish Devgan vs. Union of India)**.

5.The learned counsel appearing for the defacto complainant apart from adopting the stand of the learned Advocate General added that the complaint makes out the offences under Section 153 A of IPC and Section 54 of the Disaster Management Act, 2005. According to



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him, the petitioner had conducted himself with scant regard for truth.

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He tried to create a false alarm as if because of the attendees of the aforesaid conference, the pandemic would sweep the entire country. The presentation of the petitioner was replete with references to Islam and terrorism. Any normal person watching the video would develop feelings of ill-will and hatred towards Muslims. The Constitution of India imposes a duty on the citizens to uphold the pluralistic character of the society. The defacto complainant had only fulfilled this duty by lodging the impugned complaint. He called for dismissal of the quash petition.

6.I carefully considered the rival contentions and went through the materials on record.

7.Only in the second half of March, 2020, the nation became aware of the attack of Covid-19 pandemic. The Government of India announced stiff lock down measures. Life came to a complete standstill. Congregations and meetings were totally banned. When it became known that a huge conference was held at Nizamuddin Markaz, New Delhi in March 2020 and that it was attended by delegates from all over the world and that many of them were still staying huddled in the Markaz campus and elsewhere, there was a hysterical reaction all over



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the country including the media. Delegates from across India including

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Tamil Nadu had attended the conference and returned to their respective states. The desperate state governments and local administrations made fervent appeals to the returnees to report before the nearest health centres for testing. I can take judicial notice of the fact that many such returnees did test positive and were quarantined.

8.The Tablighi event was uniformly characterized as a super-spreader. As a prominent commentator dealing with current affairs, the petitioner in his YouTube channel spoke on the subject. It is this that has given rise to the impugned prosecution. The transcript of the entire video has been made available. I carefully went through the same. I am now called upon to determine whether the content constitutes the offences set out in the complaint.

9.Section 292A of IPC is as follows :

“292-A. Printing, etc., of grossly indecent or scurrilous matter or matter intended for blackmail.

- Whoever, -

(a) prints or causes to be printed in any newspaper, periodical or circular, or exhibits or causes to be exhibited, to public view or distributes or causes



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to be distributed or in any manner puts into circulation any picture or any printed or written document which is grossly indecent, or in scurrilous or intended for blackmail; or

(b) sells or lets for hire, or for purposes of sale or hire makes, produces or has in his possession, any picture or any printed or written document which is grossly indecent or is scurrilous or intended for blackmail; or

(c) conveys any picture or any printed or written document which is grossly indecent or is scurrilous or intended for blackmail knowing or having reason to believe that such picture or document will be printed, sold, let for hire distributed or publicly exhibited or in any manner put into circulation; or

(d) takes part in, or receives profits from, any business in the course of which he knows or has reason to believe that any such newspaper, periodical, circular, picture or other printed or written document is printed, exhibited, distributed, circulated, sold, let for hire, made, produced, kept, conveyed or purchased; or

(e) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such newspaper, periodical, circular, picture or other printed or written document



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which is grossly indecent or is scurrilous or intended for blackmail, can be procured from or through any person; or

(f) offers or attempts to do any act which is an offence under this section, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both:

Provided that for a second or any subsequent offence under this section, he shall be punished with imprisonment of either description for a term which shall not be less than six months and not more than two years.

Explanation I - For the purposes of this section, the word "scurrilous" shall be deemed to include any matter which is likely to be injurious to morality or is calculated to injure any person:

Provided that it is not scurrilous to express in good faith anything whatever respecting the conduct of-

(i) a public servant in the discharge of his public functions or respecting his character so far as his character appears in that conduct and no further; or

(ii) any person touching any public question, and respecting his character, so far as his character appears in that conduct and no further.



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Explanation II – In deciding whether any person has committed an offence under this section, the court shall have regard, inter alia, to the following considerations-

(a) The general character of the person charged, and where relevant, the nature of his business;

(b) the general character and dominant effect of the matter alleged to be grossly indecent or scurrilous or intended for blackmail;

(c) any evidence offered or called by or on behalf of the accused person as to his intention in committing any of the acts specified in this section. - Tamil Nadu Act 25 of 1960, Section 3 (w.e.f. 9.11.1960). Substituted by Tamil Nadu Act 30 of 1984. Inserted *ibid.*”

This provision will be attracted only if the offending video contains statements or materials which are grossly indecent, or scurrilous or intended for blackmail. “Indecent” relates to something morally offensive because it involves sex or being naked. “Scurrilous” means something that is very rude and insulting and intended to damage somebody's reputation. “Blackmail” refers to the crime of demanding money from a person by threatening to make a revelation about him. I have relied on the meanings assigned to the said expressions in



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Oxford Advanced Learner's Dictionary. One can very easily come to the

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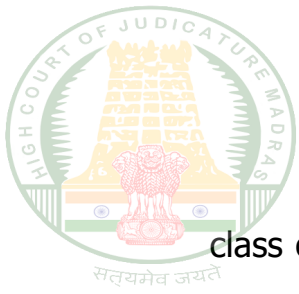
conclusion that the primary object of Section 292A of IPC is to come down heavily on what is known in common parlance as "Yellow Journalism". Bona fide expressions of opinions on public questions or issues of public importance cannot be construed as scurrilous. I fail to understand as to how such a provision can be invoked in this case.

10. Section 295A of IPC is as follows :

"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."

The constitutionality of this Section was considered in the decision reported in AIR 1957 SC 620 (Ramji Lal Modi vs. State of U.P). It was held therein that the provision does not penalize any and every act of insult to or attempt to insult the religion or the religious beliefs of a



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class of citizens but it penalizes only those of 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. 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.

In the case on hand, the petitioner has nowhere targeted Islam or the religious beliefs of Muslims as a class. In fact, the petitioner has given several disclaimers in his video. He repeatedly cautioned the viewers that his presentation should not be misconstrued as criticism of Muslims. There is no reference to religion even in the remotest sense of the term in the video in question. By no stretch of imagination could Section 295A of IPC have been invoked.

11.The next question that falls for consideration is whether the ingredients of Section 505 (2) of IPC are present. The said provision reads as follows :

***“Statements creating or promoting enmity,
hatred or ill-will between classes —***



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Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both."

The counsel for the defacto complainant wanted to invoke Section 153A. The said provision is as follows :

"Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony —

(1) Whoever— (a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or (b) commits any act which is prejudicial to the maintenance of harmony between different religious,



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racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

In ***Manzar Sayeed Khan and Ors. vs. State of Maharashtra and Ors (2007) 5 SCC 1***, the Hon'ble Supreme Court held as follows :

"16.Section 153A of IPC, as extracted hereinabove, covers a case where a person by words, either spoken or written, or by signs or by visible



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representations or otherwise, promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities or acts prejudicial to the maintenance of harmony or is likely to disturb the public tranquility. The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153A of IPC and the prosecution has to prove prima facie the existence of mens rea on the part of the accused. The intention has to be judged primarily by the language of the book and the circumstances in which the book was written and published. The matter complained of within the ambit of Section 153A must be read as a whole. One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning.

17. In Ramesh Chotalal Dalal v. Union of India and : [1988]2SCR1011 , this Court held that TV serial "Tamas" did not depict communal tension and violence and the provisions of Section 153A of IPC would not apply to it. It was also not prejudicial to the



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national integration falling under Section 153B of IPC. Approving the observations of Vivian Bose, J. in Bhagvati Charan Shukla v. Provincial Government AIR 1947 Nagpur 1, the Court observed that the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. It is the standard of ordinary reasonable man or as they say in English Law, "the man on the top of a clapham omnibus.

18.Again in Bilal Ahmed Kaloo v. State of A.P. 1997CriLJ4091, it is held that the common feature in both the Sections, viz., Sections 153A and 505(2), being promotion of feeling of enmity, hatred or ill-will "between different" religious or racial or linguistic or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved. Further, it was observed that merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two Sections."

The petitioner's video does not involve two groups at all. There is no reference to religion, race, place of birth, residence, language, caste or



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community. The Hon'ble Supreme Court had clearly held that unless

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one group is sought to be pitted against the other on the aforementioned grounds, the penal provisions are not at all attracted.

It is on this ground Amish Devgan case relied on by the respondents is distinguishable. The religious element was so obvious in the said case.

Even in Amish Devgan, the Hon'ble Supreme Court held that the question of intent would be relevant. The petitioner's intention was that

the spread of the pandemic must be stopped. He wanted the persons who attended the conference to co-operate with the administration and

the health workers. "Contact tracing" was then a new addition to the national vocabulary. The cyber cell of the state police was effectively

deployed to trace not only the attendees of the conference but also everyone else who came in contact with them. The petitioner nowhere

spoke in a divisive manner. In fact, he did not even challenge the ideology of Tablighi Jamaat which has now been proscribed as a

terrorist organization by Saudi Arabian Government. He was directing his criticism only at a section of the attendees. One cannot lose sight of

the fact that India is seen as a soft target by global terror networks. That a number of persons have been misled in the name of religion and

turned terrorists is a reality. Terrorism can take any form. When pandemic struck, it was seen as another form of bio-warfare. Such



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reports were very much made even in the mainstream media.

Therefore, the petitioner cannot be blamed or faulted for having voiced his apprehensions. The petitioner held aloft icons such as Shri.Azim Premji. This shows that the petitioner never intended to cause any feeling of alienation in the Muslim community. A reading of the entire transcript of the video in question gives an impression that the petitioner wanted everyone to stand together with the administration in a time of grave health emergency.

12.The petitioner as a YouTuber actively commenting on current issues is entitled to the protection of Article 19(1)(a) of the Constitution. The petitioner has relied solely on the news resources then available in the public domain. Criticism of an organization cannot be taken as a criticism of a community. Tablighi Jamaat cannot be equated with Islam. It is a religious organization professing particular goals. No one can deny that Tablighi Jamaat came under severe and harsh criticism for its reckless and irresponsible conduct during March 2020. There are established reports that its puritanical and revivalistic project prepares the ground for islamic radication. Probably that is why even Saudi Arabia has recently banned it as a terrorist organization.



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13.In ***Vinod Dua vs. Union of India (UOI) and Ors. AIR***

WEB CO2021 SC 3239, the Hon'ble Supreme Court clarified that every journalist will be entitled to protection in terms of Kedar Nath Singh as every prosecution under Section 124A IPC and 505 IPC must be in strict conformity with the scope and ambit of the said Sections as explained in, and completely in tune with the law laid down therein. After so holding, the Hon'ble Supreme Court quashed the FIR registered against the petitioner by invoking Article 32 of the Constitution of India.

14.The petitioner was granted anticipatory bail in this case. Due to the pandemic-induced lockdown, the petitioner did not surrender and execute sureties. This has been taken advantage of by the state police. The petitioner is under arrest. In these circumstances, since the liberty of the petitioner was involved, the quash petition was taken up for disposal. The prosecution was sought to be sustained by none other than the learned Advocate General of the State. The counsel for the defacto complainant also argued elaborately. After a careful consideration of the rival submissions, I come to the conclusion that none of the ingredients of any of the offences are present in this case. The very registration of the impugned FIR is illegal and it stands quashed.



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15.The criminal original petition stands allowed. Connected

miscellaneous petition is closed.

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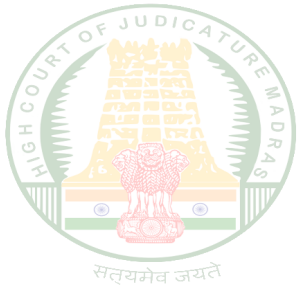
Index : Yes / No
Internet : Yes/ No
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Note : Issue order copy today.

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1.The Inspector of Police,
Melapalayam police station,
Tirunelveli, Tirunelveli District.
- 2.The Additional Public Prosecutor,
Madurai Bench of the Madras High Court, Madurai.



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