

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-1036-2024

Decided on 13.06.2024

Harjinder Singh @ Jinda & Ors. ... Petitioners
VS.

State of Punjab & Ors. ... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr Ramandeep Singh Gill, Advocate and
Mr. Jatin Bansal Kotshamir, Advocate for petitioners

Mr. ADS Sukhija, Addl. AG Punjab and
Mr. JS Rattu, DAG Punjab

Sandeep Moudgil, J.

- (1). This criminal revision petition has been preferred by the petitioners with a prayer for setting aside the order dated 29.11.2022 vide which the cancellation report filed by respondent No.2 has been accepted as well as the order dated 22.02.2024 whereby the SDJM, Nakodar has dismissed the complaint/protest petition which was filed by the petitioners against acceptance of the cancellation report.
- (2). Brief facts of the case are that a video went viral in which the accused Gurdas Maan who, while performing in one of the Programmes/Mela, stated that Laddi Shah is the descendant of Sri Guru Amar Dass. Such an act of accused, being actually and historically false, offended the religious sentiments of Sikh masses and a complaint for commission of offence punishable under Section 295-A IPC was filed by the petitioners. Thereafter, the instant FIR was lodged against the accused.

However, cancellation report was filed in the FIR as a result of which the petitioner moved protest petition/complaint before SDJM, who vide impugned order dated 22.02.2024 has dismissed the same prompting the petitioners to approach this Court.

- (3). It is averred that it was the duty of respondents No.1 and 2 to investigate the matter fairly as per law and submit the final report under Section 173 (2) CrPC within the limitation period prescribed in the Code but eventually, after the filing of the complaint under Section 156(3) CrPC on 09.02.2022, notice was issued to the State to which respondent No.1 appeared before the Court and requested for filing cancellation report without even giving any intimation/notice to the petitioners which is unlawful and illegally done so as to save the skin of the accused Gurdas Maan moreso, when the evidence was readily available with the police and the complaint was lodged on the basis of a video.
- (4). It is vehemently urged that the accused Gurdass Mann while addressing a large crowd of thousands of people stated that Laddi Shah is a descendant of Sri Guru Amardass Ji and he is four times more powerful than Sh. Guru Amardas Ji as is evident from Ex.C6 wherein the accused Gurdass Mann deliberately and intentionally insulted the Gurus of Sikhs community (Sikh Panth) and also Sri Guru Granth Sahib Ji gravely hurting their religious sentiments.

- (5). Learned counsel for the petitioner also emphasized the fact that Laddi Shah is known to consume intoxicants and he also promotes the same to his followers which is directly against the Sikh's religious principles ("*Sikh Sidhant atte Sikh Rahet Maryada de ulat ja kar ke ek deredar nashedi ate dehtari manukh nu guru sahib to uppar darshon di koshis kiti*") and further in the last lines of the video the same is mentioned in Ex.C6 (transcription) wherein accused Gurdass Mann has stated that "*Amb da butta jithe lugga hove uthe dujja butta nahi lug sakda, par eh butta osse ghar vich lugga osse ansh-vansh vich luga atte bhalla nu satkaar ditta*" in this way he stated that Laddi Shah is a descendant of Sri Guru Amardas Ji. Also Gurdas Mann while addressing such crowd recited "*pehli pori of Anand Sahib Bani*" which is "*anand bheya meri maye satguru mai paya*" while stating this he pointed towards Dera Mukhi whereas in Gurbani the word Satguru is used to refer one pious God whereas Laddi Shah is a person who publicly consumed intoxicants, remained unclothed which is against the Sikh principles and as such his referral of Dera Mukhi as Satguru gravely hurt the religious sentiments.
- (6). On the other hand, learned State counsel submits that after the alleged video went viral, the accused Gurdas Mann, on his facebook page, uploaded a video in which he gave an explanation while apologizing for the alleged video. The trial court has rightly dismissed the protest petition of the petitioners

inasmuch as the trial court found no material on record to suggest that the accused had intended to hurt the religious feelings of any class of society and therefore, the present petition deserves to be dismissed.

- (7). Heard learned counsel for the parties and gone through the record
- (8). The allegations in the FIR is that the accused Gurdas Mann hurt the religious sentiments of Sikh community which by and large revolves around a video which went viral wherein the Punjabi Singer Gurdas Mann while performing in one of the programme/Mela gave a statement that Laddi Shah is a descendant of Sri Guru Amar Dass which fact is asserted to be factually and historically incorrect. It is on that account, the religious sentiments of Sikh Community have been stated to be hurt and such offence is therefore, punishable under Section 295-A IPC. However, the police upon investigation found no incriminating material and proceeded to file cancellation report which was accepted vide impugned order dated 29.11.2022.
- (9). This Court to satisfy itself has posted anxious consideration and examination to the allegations emerging out of the FIR and has taken note of the submissions made by the learned counsel for the parties.
- (10). Before proceeding further it is pertinent to note the essential ingredients to constitute an offence under [Section 295-A](#) IPC which needs to be looked at as envisaged therein:-

"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.

(11). A perusal of the aforesaid provision identifies four essentials

as:-

- (i) malicious & deliberate intention,
- (ii) outrage,
- (iii) insult or attempts to insult,
- (iv) the religion or the religious belief of that class

(12). [Section 295A](#) of the Indian Penal Code lays down that whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, insults or attempts to insult the religion or religious beliefs of that class, shall be punished with imprisonment upto two years or fine or both. Further, [Section 196\(1\)](#) of the Code of Criminal Procedure inter alia provides that no Court shall take cognizance of any offence punishable under [Section 295A](#) of the Indian Penal Code except with the previous sanction of the Central Government or of the State Government. Obviously, therefore, under Sub-section (1)

of [Section 196](#), in the absence of a sanction from the concerned Government, no Court can take cognizance of an offence punishable under [Section 295A](#) of the Indian Penal Code. It is, therefore, obligatory on a person who proposes to move the criminal law under [Section 295A](#) of the Indian Penal Code, to obtain the necessary sanction from the concerned Government before doing so. The obtaining of a sanction is, therefore, a sine qua non and no Magistrate can take cognizance of the complaint under [Section 295A](#) of the Indian Penal Code unless the order granting sanction is produced.

- (13). It is worthy to note here that the constitutional validity of the said provision was assailed before this Court and a Constitution Bench in ***Ramji Lal Modi vs. State of UP, AIR 1987 SC 620***, spoke thus:-

“8. It is pointed out that Section 295A has been included in chap. 15, Penal Code which deals with offence relating to religion and not in chap. 8 which deals with offences against the public tranquillity and from this circumstance it is faintly sought to be urged, therefore, that offences relating to religion have no bearing on the maintenance of public order or tranquility and consequently a law creating an offence relating to religion and imposing restrictions on the right to freedom of speech and expression cannot claim the protection of cl. (2) of Art. 19. A reference to arts. 25 and 26 of the Constitution, which guarantee the right to freedom of religion, will show that the argument is utterly untenable. The right to freedom of religion assured by those Articles is expressly made subject to public order, morality and health. Therefore, it cannot be predicated that freedom of religion can have no bearing whatever on the maintenance of

public order or that a law creating an offence relating to religion cannot under any circumstances be said to have been enacted in the interests of public order. Those two Articles in terms contemplate that restrictions may be imposed on the rights guaranteed by them in the interests of public order.

9. Learned counsel then shifted his ground and formulated his objection in a slightly different way. Insults to the religion or the religious beliefs of a class of citizens of India, may, says learned counsel, lead to public disorders in some cases, but in many cases they may not do so and, therefore, a law which imposes restrictions on the citizens' freedom of speech and expression by simply making insult to religion an offence will cover both varieties of insults, i.e., those which may lead to public disorders as well as those which may not. The law in so far as it covers the first variety may be said to have been enacted in the interests of public order within the meaning of cl. (2) of Art. 19, but in so far as it covers the remaining variety will not fall within that clause. The argument then concludes that so long as the possibility of the law being applied for purposes not sanctioned by the Constitution cannot be ruled out, the entire law should be held to be unconstitutional and void. We are unable, in view of the language used in the impugned section, to accede to this argument. In the first place cl. (2) of Art. 19 protects a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression "in the interests of public order," which is much wider than "for maintenance of" public order. If, therefore, certain activities have a tendency to cause public disorder, a law penalising such activities as an offence cannot but be held to be a law imposing reasonable restriction "in the interests of public order" although in some cases those activities may not actually lead to a breach of public order. In the next place section 295A does not penalise any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens but

it penalises only those 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 sanction. It only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class. The calculated tendency of this aggravated form of insult is clearly to disrupt the public order and the section, which penalises such activities, is well within the protection of clause (2) of Art. 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Art. 19(1)(a). Having regard to the ingredients of the offence created by the impugned section, there cannot, in our opinion, be any possibility of this law being applied for purposes not sanctioned by the Constitution. In other words, the language employed in the section is not wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting the fundamental right guaranteed by Art. 19 (1) (a) and consequently the question of severability does not arise and the decisions relied upon by learned counsel for the petitioner have no application to this case.”

- (14). If the ratio of the Constitution Bench is appropriately appreciated, the said provision was saved with certain riders, inasmuch as the larger Bench had observed that the language employed in the section is not wide enough to cover restrictions, both within and without the limits of constitutionally permissible legislative action affecting the fundamental right

guaranteed by Article 19(1)(a) of the Constitution. The emphasis was laid on the aggravated form of insult to religion when it is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class.

- (15). Apart from the misuse, Section 295A further faces a challenge with respect to the unreasonable restrictions it imposes upon the constitutionally guaranteed freedom of speech under Article 19(1) (a). The Section's susceptibility to misuse is often justified by critics citing the communally volatile nature of Indian society, which necessitates criminalization of anything which may be deemed to be remotely religious. This defense of Section 295A is afforded further veracity in light of the fundamental rights pertaining to religious freedom enshrined within Articles 25 to 28 of the Constitution.
- (16). In *Secy. Ministry of Information and Broadcasting v. Cricket Assn. of Bengal (1995) 2 SCC 161*, the Supreme Court widened the scope of the fundamental right of speech and expression to include the right to educate, inform and entertain and to the right to be educated, informed, and entertained. The Court opined that the former is the right of the telecaster and the latter of the viewers.
- (17). In '*Mahendra Singh Dhoni v. Yerraguntla Shyamsundar*', *(2017) 7 SCC 760*, the Supreme Court quashed an FIR filed against Mahendra Singh Dhoni for allegedly hurting the religious sentiments of people when an image of him being

portrayed as Lord Vishnu was published in a magazine with a caption “God of Big Deals.” The Court held that Section 295A IPC penalizes only those acts of insults or those varieties of attempts to insult the religion or religious belief of a class of citizens which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class of citizens. 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. Emphasis was laid on the calculated tendency of the said aggravated form of insult and to disrupt the public order to invite the penalty.

(18). Free speech enables individual autonomy, respect and well-being through self-expression.

(19). In fact, this Court is also cautious to the sensitivity but the same time has to look at the things rationally. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of [Sections 295-A and 504](#) are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that

the accused hurled such religiously-compromised expressions to directly hurt the sentiments of the Sikh community, as such, is not sufficient by itself for this Court to direct the Magistrate to take cognizance of the same.

(20). Even otherwise, there is a thin distinction between the two terms i.e. religion and religious belief, of which no interpretation so far is available except to understand that religious belief is a matter of subjective acceptance as the same may be believed by one individual but not by the others.

(21). Here, it would be also worth mentioning of a command made by Shri Gobind Singh Ji in the year 1708 i.e.,:-

"Agya Bhai Akal Ki Tabhi Chalayo Panth.

Sabh Sikhan Ko Hukum Hai Guru Manyo Granth Guru Granth Ji Manyo Pargat Guran Ki Deh"

(22). A bare reading of the aforesaid verse clearly demonstrates that Sri Guru Granth Sahib Ji is to be considered as Guru by the Sikhs or followers of Sikh religion, but it is not in so many terms restricting the belief only to accept Sri Guru Granth Sahib Ji alone as their Guru. In such circumstance, the religious belief would weigh more in the mind, which is a matter of subjective acceptance.

(23). In this context if the act of the accused-Gurdas Mann is looked at and contested, it could not be established that the said person is forcing any person or a group of persons or a community as a whole imposing upon them to accept him to be a Guru or a

reincarnation of Sri Guru Amar Dass Ji and in that eventuality, it will be purely a matter of individual's belief to accept his claim or not. Even on previous occasions, different Courts have always preferred to leave the construction or defining the term "religious belief" to the person concerned, who are followers or professors of that religion giving it a constitutional protection to hold it to be a 'belief' unless it is against a public policy or any statutory or constitutional provisions. Even otherwise, [Articles 25 & 26](#) of the Constitution of India, bestows the right of freedom to religion and conscience with the opening language "subject to public order, morality and health".

- (24). On factual foundation, the trial court has categorically returned a finding that on perusal of the pendrive containing the video footage of Gurdas Maan and even the transcript in Punjabi of the same, it cannot be stated that the accused Gurdas Mann has done any malicious act, intentionally and deliberately, to outrage the religious sentiments and feelings of the petitioner or of any class of community inasmuch as the key ingredient of "Intention" is missing which can be gathered from the circumstances and demeanor of the accused. It has also been recorded that the accused-singer has apologized and transcript of his apology has also been placed on record.
- (25). Even otherwise, if the said apology is taken to be an 'acceptance' or 'admission' of the guilt by the accused-Gurdas Mass, one should not forget that the religion and religious belief

also tell us not to be triggered, affected or moved by these figment of imagination spewed by such self-proclaimed 'mystical personalities' who themselves, though, are tied in the chains of *avaa gaman* (birth and re-birth of souls) from this material world but boast that they have established their connection with the 'Uncontactable One' with this putrifiable body. Forget about getting wounded or outraged by any insult by such megalomaniacs. In fact, it would be belittling the religious belief and reducing its sanctity to even think that they can be insulted. Whatever thinnest distinction can be edged out between the two i.e., religion and religious belief, one thing is common i.e. both are supposed to make life morally worth enduring and are not so brittle or fragile that they can be outraged or insulted by anyone. All religion preach compassion and forgiveness. As a matter of record, certain quotes from Shri Guru Granth Sahib Ji, also tell us the importance of forgiveness even to the person, who cause us hurts. Some of such verses is read as under:-

"ਫਰੀਦਾ ਬੁਰੇ ਦਾ ਭਲਾ ਕਿਰ ਗੁ ਸਾ ਮਿਨ ਨ ਹਢਾਇ ॥

1381 Farid, answer evil with goodness; do not fill your mind with anger. Forgiveness is a gift from Waheguru. We can also consider it a precious gift from a generous heart. Forgiveness is not a reward; it is not something that we give to someone based on her/his good behaviour.

Rather, it is something that you give whether he/she has deserved it or not. Forgiveness is also not based on whether the person has asked for it or not.

ਜਹਾ ਲੋ ਭੁ ਤਹ ਕਾਲੁ ਹੈ ਜਹਾ ਿਖਮਾ ਤਹ ਆਪ ॥੧੫੫॥

Where there is greed, there is death. Where there is forgiveness, there is God himself - Guru Granth Sahib, 1372.

ਿਖਮਾ ਗਹੀ ਸਚੁ ਸੰਚਿਓ ਖਾਇਓ ਅੰਮਿ 4 ਤੁ ਨਾਮ ॥

Adopting an attitude of tolerance and gathering truth partake of the ambrosial nectar of the name - Guru Granth Sahib. 261 We cannot embrace Waheguru's forgiveness if we are so busy clinging to past wounds and nursing old grudges. Consider a dank, dark room with

closed windows and curtains, keeping the breeze and sunshine at bay. In order to get that fresh air, you have to get up and open the window and curtains. We need to open ourselves up to the possibility of forgiveness and inner peace. One of the secrets of a long and fruitful life is to forgive everybody, everything, every night before you go to bed.

ਤੁ ਮ 5 ਼੍ਹ ਸਾਚੁ ਿਧਆਵਹੁ ਮੁਗਧ ਮਨਾ ॥:

O (my) foolish mind! Contemplate the eternal God (sggs 1176).

ਅਸੰਖ ਮੂਰਖ ਅੰਧ ਘੋਰ ॥ :

(In this world) there are countless fools who act in thick ignorance. (sggs 4). One should do self-analysis of one's own deeds. When we are not to remain in this world for ever, they why indulge in pride or ego? None is to be considered worthy of condemnation: Wisdom (Enlightenment) brings such realization. Do not struggle (or pass life) in foolishness (Un-Enlightened State).

- (26). Having said so, this Court does not find any valid or justifiable reason to interfere in the order of the trial court terming it to be illegal or not based on facts inasmuch as none of the essential ingredients to make out a case under Section 295-A IPC viz. (i) malicious & deliberate intention, (ii) outrage, (iii) insult or attempts to insult, (iv) the religion or the religious belief of that class are shown to have been made out against the accused-Gurdas Mann and therefore, in this backdrop, the acceptance of cancellation report dated 29.11.2022 in respect of FIR No.141 dated 26.08.2021 under Section 295-A IPC, registered at Police Station Nakodar, District Jalandhar cannot be interfered with.
- (27). The finding of the fact returned by the Court below by accepting the cancellation report categorically to the effect that there is no *prima facie* evidence or any other incriminating material available to establish offence under Sections 295-A and 504 of IPC that is to demonstrate intentional insult of such a degree that should provoke a person to break the public peace or any kind of such act to say that the respondent-accused hurled such

religiously compromised expressions to directly hurt the sentiments of a particular community. There is no iota of evidence directly or indirectly suggesting that accused-Gurdas Maan forced any person or group of particular community as a whole forcing upon them to accept Laddi Shah as a descendant of Shri Guru Amar Das ji.

(28). Even otherwise, preaching and believing a religion is subjective to its followers or professors and no such malicious act intentionally and deliberately is established on examination of the report submitted by the Inverstigating Agency and on minute and clinical scrutiny of material available before it which could be considered to say that the act of accused-Gurdas Maan is enough to outrage the religious sentiments of any other class or community as a whole.

(29). In the light of above discussion, this Court is of the considered view that the order passed by the Court below dated 22.02.2024 and 29.11.2022 is just, legal and fair which do not suffer from any illegality, infirmity and perversity to warrant intereference of this Court in revisional jurisdiction.

(30). Hence, the petition is dismissed being devoid of merits.

13.06.2024

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No