

CWP 9048 of 2017

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CWP 9048 of 2017

Date of Decision: May 1, 2017

Aash Mohammad

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. M.D. Khan, Advocate and
Ms. Rosi, Advocate for the petitioner.

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M.M.S. BEDI, J. (ORAL)

Pursuant to the following tweets by respondent No. 4:

"1. Sonu Nigam @sonunigam.6h

God bless everyone. I'm not a Muslim and I have to be woken up by the Azaan in the morning. When will this forced religiousness end in India

2. Sonu Nigam @sonunigam. 6h

And by the way Mohammed did not have electricity when he made Islam. Why do I have to have this cacophony after Edison?

3. Sonu Nigam @sonunigam.5h

I don't believe in any temple or gurudwara using electricity to wake up people who don't follow the religion. Why then? Honest? True?

4. Sonu Nigam @sonunigam.5h

Gundagardi hai bus:"

The petitioner filed a representation to SHO, Police Station Ganaur District Sonapat claiming that the above said twitter has violated the fundamental right of the petitioner who is a Muslim.

Through instant writ petition, a writ in the nature of mandamus has sought for direction to the State to register FIR as a cognisable offence is alleged to have been committed by respondent No. 4.

Learned counsel for the petitioner has submitted that above said twitter not only violates the freedom of conscious and fundamental right to manage religious affairs under Articles 25 and 26 of the Constitution of India but also constitute an offence under Section 295-A IPC.

Mr. M.D. Khan and Ms. Rosi, Advocates for the petitioner have attributed mala fide to Sonu Nigam, respondent No. 4 claiming that he being a playback singer and a celebrity, is required to act with responsibility and to ensure that the rights of freedom of religion and conscious is not infringed.

I have heard counsel for the petitioner at length and find that the following points have arisen for consideration:-

i) Whether the above said tweets if read together would violate any fundamental right or the freedom of right of religion of the petitioner under Articles 25 & 26 of the Constitution of India; and

ii) Whether the twitter has been issued in context to the religion or it is meant to be a protest to use of electricity and the microphone? And

iii) Whether the opinion of respondent No. 4 as expressed in the twitter is within the ambit of his right of speech and expression of opinion under Article 19 (1) a of the Constitution of India? And

iv) Whether any offence under Section 295 A IPC stands committed qua the petitioner by the above said act?

v) Whether the SHO, Police Station, Ganaur, District Sonapat can be directed to look into the complaint and to take cognisance?

vi) Whether the present petition is bona fide or the act of publicity stunt.

A perusal of tweet Nos. 1, 2 and 3 indicate that respondent No.4 has made it public through his messages which are meant to be read by others that he was not a Muslim and had to be woken up by the Azaan in the morning. The second tweet clarifies that in the morning, respondent No.4 is woken up and an indirect reference is made to electricity which is used for loudspeaker which produces cacophony which is a harsh discordant mixture of sounds. A reference has been made to Edison who is considered to be a pioneer in the Science of inventing electric equipment like 'electric bulb'.

The tweet No. 3 refers to the belief of respondent No.4 as a citizen that he was not in favour of waking up people by use of loudspeaker (electricity) by Temple or Gurudwara. Tweet No. 4 if read along with first three tweets is an expression of opinion that enforcing loud noise by believers of any religion was not appreciable and if one is forced to hear the loud sound, this will be a mischief.

The grievance of the petitioner is that our country is a secular country and there is right of freedom of religion and the said constitutional right cannot be interfered with by any person. The petitioner believes that respondent No.4 has got no right to oppose the religious rights of the petitioner and any such action would be punishable under Section 295 A IPC. At the same time, another plea has been taken that Articles 29 and 30 of the Constitution of India provide for guarantee for protection of interest of minority community but anti-social elements like respondent No.4 are trying to create serious problem for Muslims in the country and the local police of Karnal is hand in glove with respondent No.4 as the police has not taken any action on representation annexure P-3 submitted to SHO, Police Station, Ghanaur, District Sonapat.

Counsel for the petitioner has tried to connect the word 'gundagardi' with 'Azaan' from Mosque and claimed that it will tantamount to a speech which would raise hatred and fear in the Muslims community.

I have carefully considered the contentions of counsel for the petitioner in context to the constitutional provisions and the relevant law on the subject. In **Ramji Lal Modi Vs. State of UP**, AIR 1957 SC 620 constitutional validity of Section 295 A IPC was challenged on the ground that it is violative of Article 19 (1) (a) of the Constitution of India. The Apex Court had considered the scope of Section 295 A IPC and observed that Section 295 A IPC makes an Act of a person who deliberately and maliciously outrages the religious feeling of any class of citizens by words either spoken or written or by any visual representation or intends to insult any religion or religious belief of that particular class. It was observed that since Section 295 A IPC provides punishment in aggravated form of insult to religion when it is perpetrated with deliberate and malicious intention of outraging the religious feeling of a particular class and it does not violate the fundamental right of citizens under Article 19 (1) (a) of the Constitution of India which is a freedom of speech and expression. A dispute pertaining to the loudspeakers came up for consideration before Calcutta High Court in **Om Birangana Religious**

Society through Kalipada Das Vs. The State and others, 1997 (1) ICC 652 and **Acharaya Maharajshri Narandraprasadji Anandprasadji Maharaj etc. Vs. The State of Gujarat & Ors.**, (1975) 2 SCR 317, wherein it was held that right under Article 25 of the Constitution of India is subject to the right under Article 19 (1) (a) of the Constitution of India. A specific controversy pertaining to user of microphones for purpose of 'Azaan' came up before Calcutta High Court in **Moulana Mufti Syed Md. Noorpur Rehman Barkati and others Vs. State of W.B. and others**, AIR 1999 (Calcutta) 15, wherein it was held that 'Azaan' is definitely an integral and essential part of the Muslims religion. It was observed that 'Azaan' is a morning call in high pitch to join others for prayers. The use of microphone is a practice developed by someone not by the prophet or his main disciples and this was not there in the past. In the said judgement referring to the judgement of **Om Birangana's** case (supra), it was held that no doubt, 'Azaan' is integral and essential part of Muslims but use of microphones is certainly not an integral part of 'Azaan'. It was held that Article 25 of the Constitution of India is subject to Article 19 (1) (a) of the Constitution of India. A similar question had come up before Delhi High Court in **Free Legal Aid Cell Shri Sugan Chand Aggarwal @ Bhagatji Vs. Government of NCT of Delhi and others**, AIR 2001 (Delhi) 455, wherein the dispute regarding use of amplifiers at religious places was considered and it was held that the rights under Article 25 of the Constitution of India of freedom of conscious and practice and propagation of any religion and freedom of managing religious affairs is subject to Article 19 (1) (a) of the Constitution of India and is subject to the public order, morality and health. Noise was considered to be health hazard and the practice of user of loudspeakers for religious purpose which goes to the extent of disturbing the public peace was held to be not permissible under law. Similarly, in a matter regarding permission to the temples to use microphones and loudspeakers for religious purposes came up for consideration in **M. Veerateswaran Vs. The Deputy Collector-cum-Sub Divisional Executive Magistrate and others**, 2003 (3) RCR (Civil) 605, decided on March 18, 2003, wherein taking into consideration the number of cases and the statutory provisions regarding freedom of religion and freedom of preaching it in context to the user of loudspeakers and amplifiers were considered and it was observed that no religion prescribes that prayer should be through voice-amplifiers. Nobody can be permitted to add noise pollution. The affect of noise caused bio-chemical changes in man and other sounds were considered in the said judgement. Referring to the judgements of Supreme Court pertaining to the right of a citizen of safe environment i.e. safe air quality and safe from noise, observations of the Supreme Court in **Appa Rao Vs. Government of Tamil Nadu**, 1995 (1) LW 319 and **Church of God in India Vs. K.K.R. Majestic Colony Welfare Association**, 2004 (40 RCR (Civil) 312 (SC) were followed. In the said judgement the parameters have been laid down by the Supreme Court regarding user of loudspeaker specifically observing that loudspeaker should not be allowed to be installed on towers and temple walls, churches and mosques, so as to face the surrounding streets and areas, should be installed within the precincts and turned inwards so that the music is audible only within the precincts of the temple/ church/ mosque.

In view of the above said decisions, I am of the considered opinion that 'Azaan' is no doubt an essential part of the Muslim religion but the use of microphones is certainly not an integral part of 'Azaan' and a combined reading of the tweet Nos. 1 to 4 are meant to criticize the use of electricity / microphones for religious purposes. There is no violation of Articles 25 and 26 of the Constitution of India curtailing the freedom of conscious practice and propagation of religion or to manage religious affairs. A fair interpretation of the words used by respondent No.4 clearly indicate that the word 'gundagardi' in tweet No.4 is not addressed in context to the 'Azaan' from Mosque but it is meant to the user of loudspeakers and amplifiers which is clear from tweet No.2 expressing an opinion that by the way Mohammed did not have electricity when he made Islam. "Azaan' is a morning prayer to attract Muslims for getting together at a particular place for morning namaz. The expression reflected in tweets are apparently within the Article 19 (1) (a) of the Constitution of India and are in consonance with the well settled principles of law mentioned herein above in various judgements of the Supreme Court.

If the contents of complaint are seen in context to the provisions of Section 295 A IPC, the words attributed to the petitioner in the tweet are not meant to insult any religion or religious belief of any class of citizens of India and are not apparently deliberate or malicious. The contents of the complainant annexure P-3 does not reflect commission of any offence under Section 295 A IPC as such no direction is warranted to launch criminal prosecution against respondent No. 4.

After considering the above said provisions of law and the sensitive issue which has been sought to be exaggerated, I am of the opinion that the present petition is a cheap mode of attaining publicity by making a well-known singer scapegoat in the name of religion. Such a practice deserves to be deprecated to secure the spirit of preamble and to perform our fundamental duties to uphold and protect the sovereignty, unity and integrity of India and to promote harmony and the spirit of common brotherhood amongst all the people of India, as mentioned in Article 50 of the Constitution of India.

No ground is made out to issue direction to the police of Sonapat to take cognisance on the basis of vague allegations.

Dismissed.

May 1, 2017

(M.M.S.BEDI)

Sanjay

JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/ No.