



Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 50 OF 2024



... Petitioner

Ms. 'S'

V e r s u s

1. The State of Goa, As represented by
Officer in charge, Panaji Police Station,
Panaji, Goa.

2. The Public Prosecutor, High Court of
Bombay at Goa, Porvorim, Goa.

...Respondents

3. Mr. Amit Anant Gaonkar, age 38 years,
r/o. Manaswado, Shirgao, Bicholim, Goa.

Ms. Caroline Collasso, Advocate for the Petitioner.

**Mr. Pravin Faldessai, Additional Public Prosecutor for
the Respondent nos. 1 and 2.**

**CORAM: M. S. KARNIK &
VALMIKI MENEZES, JJ**

**RESERVED ON : 25th September 2024
PRONOUNCED ON: 3rd October 2024**

JUDGMENT (*Per M. S. Karnik, J.*)

1. In this petition under Article 226 of the Constitution of India and Section 482 of Cr.P.C., the petitioner prays for quashing and setting aside FIR no. 77/2024 dated 14.05.2024, for offence

punishable under Section 295-A of the Indian Penal Code (IPC), registered at the Mapusa Police Station.

2. The FIR was lodged against the petitioner allegedly for *“posting and circulating the derogatory comment on social media in respect of religious rituals performed at Shirgao Bicholim Goa and thereby outraging the religious sentiments of the complainant and others.”* The petitioner is 18 years old and a student of St Xavier's College at Mapusa. She is a bright student who passed 12th standard with distinction. On 12.05.2024, the petitioner came across a post/reel uploaded by “ingoa24x7”, which showcased the emission of smoke in huge wall of smog along with sights of flame bursts before the crowd. The petitioner reposted the same post/reel on her private Instagram account through her story, expressing her concerns regarding the pollution that could be seen in that post/reel. The petitioner commented thus :

“I don't know how you can call it a culture or a tradition and praise anybody while you cause harm to the environment in such a manner. I might not be the best person at taking care of the environment but at least I don't cause harm to such an extent.

No cause of hatred but be mindful with your acts and take a stand respectful cultures and traditions

can be taken forward with respect and mindfulness.”

3. The petitioner learnt that on 14.05.2024, a complaint was made against her by some persons for posting the alleged derogative comment. Following the complaint, the respondent no.2 lodged the FIR for offence under Section 295-A of IPC registered at Mapusa Police Station.

4. Shri Faldessai, learned Additional Public Prosecutor appearing for the respondent nos. 1 and 2, vehemently opposed the petition. It is submitted that this is a fit case where the investigation must proceed as the petitioner with deliberate and malicious intention of outraging the religious feelings of the complainant has insulted their religious beliefs. Shri Faldessai urged that the petition be dismissed.

5. We had issued notice to the complainant. There is no appearance on behalf of the complainant though the notice has been duly served through the concerned police station.

6. Having heard learned Counsel Ms. Caroline Collasso for the petitioner and Shri Faldessai, learned Additional Public Prosecutor for respondent no. 1 and 2, we are of the considered view that the present petition deserves to be allowed for the following reasons :

The petitioner re-posted the reel on her private Instagram account through her story expressing her concerns regarding the pollution that could be seen in her post/reel. A plain reading of her comments would indicate that the same even if taken at its face value are in the context of causing harm to the environment and in fact has in so many words stated that there is no cause of hatred, but a personal opinion was expressed that respectful cultures and traditions can be taken forward with respect and mindfulness.

7. According to us, the comment was only her perception on environmental impact based on the contents of the post/reel and she had no intention of outraging the religious feelings of any class through the said post. She did not intend to outrage the religious feelings of any class of citizens by reposting the reel or for that matter insulting or attempting to insult the religion or religious beliefs of the complainant. The petitioner is 18 years old and has submitted that she was not aware of the nature of the post/reel and the religiosity aspect. It is the petitioner's case that she merely raised her concerns regarding the pollution that could be seen from the post/reel and that she is a concerned citizen about environmental pollution. The petitioner has posted her concerns with regards to environment on her Instagram previously on issues such as Forest Fire, stagnant water as a breeding ground for mosquitoes etc. The petitioner has also participated in multiple awareness campaigns through her

school/college pertaining to measures for safeguarding the environment and actively participated in environment protection drives that involved planting of trees, distribution of paper and cloth bags, etc. The petitioner recently participated in a National level essay writing competition organized by Heartfulness Education Trust, where she had expressed her concerns regarding how human beings are harming the beauty of the nature of earth.

8. In the petition it is stated that she has utmost respect for all religions and has been brought up with good morals about respect for all religions. After the FIR was registered, the petitioner immediately put out her public apology on her Instagram stating “*I sincerely apologize. There was no intention on my behalf to harm or hurt anybody's religious sentiments.*”

9. In our opinion, in the facts and circumstances of the present case, even if the comments made by the petitioner are taken at its face value, they do not disclose any intention of outraging the religious feelings of any class or citizens or that the same amounts to insulting or attempting to insult the religion or the religious beliefs of that class, much less there being deliberate or malicious intention.

10. To arrive at the aforesaid conclusion, we draw support from the decision of the Supreme Court in **Ramji Lal Modi vs. State of U.**

P.¹ Their Lordships observed that section 295-A does not penalise any and every act of insult to or attempts to insult the religion or the religious beliefs of a class of citizens, but it penalises only those acts of insults to or 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. 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.

11. We also find it significant to make a profitable reference to the observations of the Supreme Court in **Mahendra Singh Dhoni vs. Yerraguntla Shyamsundar and anr.**² Their Lordships held that Section 295-A does not stipulate everything to be penalised and any and every act would tantamount to insult or attempt to insult the religion or the religious beliefs of a class of citizens. The Supreme Court observed that the said provision only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate

1 1957 AIR 620

2 2017 SCC (7) 760

and malicious intention of outraging the religious feelings of that class.

12. In the facts and circumstances of the present case, we are more than satisfied that the petitioner was in no way trying to hurt the religious sentiments of the complainant and that the comment was made only in the context of her concern for causing harm to the environment.

13. The petition is accordingly allowed in terms of prayer clause (A), which reads thus :

“(A) For a writ of certiorari or any other writ, direction, order in the nature of certiorari or any other appropriate writ direction order under Article 226 of the Constitution of India quashing and setting aside the FIR No 77/2024 dated 14/05/2024 under sections 295-A, 153 and 153A of IPC of the Mapusa Police Station.”

VALMIKI MENEZES, J

M. S. KARNIK, J