Priyanka Bharti vs State Of U.P. And 3 Others on 28 February, 2025

Author: Vivek Kumar Birla

Bench: Vivek Kumar Birla

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:28282-DB

AFR

Court No. - 43

Case :- CRIMINAL MISC. WRIT PETITION No. - 3924 of 2025

Petitioner :- Priyanka Bharti

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Ashutosh Mishra,Syed Abid Ali Naqvi

Counsel for Respondent :- G.A.

Hon'ble Vivek Kumar Birla,J.

Hon'ble Anish Kumar Gupta,J.

1. Heard Syed Abid Ali Naqvi, learned counsel for the petitioner and Shri Amit Sinha, learned AGA-I for the State-Respondents.

2. Present petition has been filed seeking to quash the impugned FIR dated 29.12.2024, registered as Case Crime No.518 of 2024, under Section 299 of Bhartiya Nyaya Sanhita, 2023 (hereinafter referred to as "BNS"), Police Station Roravar, District Aligarh and further not to arrest the petitioner pursuant to said FIR.

3. Submission of the learned counsel for the petitioner is that no offence under section 299 BNS has been committed. It is submitted that the petitioner is a highly qualified and a brilliant student of Jawaharlal Nehru University, New Delhi and has been registered in the Ph.D. Programme during the academic year 2024-25. It is further submitted that the petitioner is politically active lady, who is the active member of Rastriya Janta Dal (RJD) Party and she was appointed as spokesperson of the Rashtriya Janta Dal (RJD) Party alongwith three others spokespersons and the alleged incident had taken place when she was participating in the debate organized by the news channel "India TV" and "TV9 Bharatvarsh" as the spokesperson of the Rastriya Janta Dal (RJD) Party. During debate when she was being asked certain questions, the alleged incident had taken place and there was no intention or deliberate attempt knowingly or unknowingly to insult the sentiments and feelings of any person or religion and in any case it does not amount to affect the public order. It is next submitted that she had torn two pages of holy book 'Manusmriti' to which she had objection and the allegation that this was done intentionally for getting publicity is not correct but the real fact is that the petitioner had not done this act intentionally and therefore, would not attract Section 299 BNS. It is submitted that the petitioner is a law abiding citizen.

4. In support of his argument learned counsel for the petitioner has placed reliance upon the judgment of Hon'ble Apex Court in the case of Mahendra Singh Dhoni vs. Yerraguntla Shyamsundar and Another, (2017) 7 SCC 760, to contend that any insult to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings do not come within section 295-A of Indian Penal Code, 1860 (hereinafter referred to as "IPC"), which stood substituted with Section 299 BNS. Submission, therefore, is that no offence as alleged has been committed and the impugned FIR is liable to be quashed.

5. Per contra, Shri Amit Sinha, learned AGA-I has opposed the prayer and submitted that a bare reading of FIR discloses cognizable offence, hence no interference is warranted.

6. We have carefully gone through the impugned FIR. We find that the admitted case is that few pages of "Manusmriti" holy book of a particular religion were torn in the live debate organized by the news channels "India TV" and "TV9 Bharatvarsh" and the First Information Report has been lodged under Section 299 BNS.

7. It would be relevant to take note of Section 295-A IPC as well as Section 299 BNS which are quoted as under:-

> "295-A. 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 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.]
> "299. 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 through electronic means 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."

8. A bare perusal of Section 299 BNS would clearly disclose 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, or by signs or by visible representations or through electronic means or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished.

9. In the present case the act of tearing the "Manusmriti", holy book of a particular religion, may be few pages, in live TV debate by a spokesperson of a political party, prima facie, reveals that a cognizable offence has been committed.

10. We may also take note of paragraphs 5 and 6 of the judgment of Mahendra Singh Dhoni (supra), which are quoted as under:-

> "5. Be it noted, the constitutional validity of Section 295-A was assailed before this Court in Ramji Lal Modi v. State of U.P. AIR 1957 SC 620 : 1957 Cri LJ 1006, which was eventually decided by a Constitution Bench. The Constitution Bench, adverting to the multiple aspects and various facets of Section 295-A IPC, held as follows:
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> "8. It is pointed out that Section 295-A has been included in chapter XV of the Indian Penal Code which deals with offence relating to religion and not in chapter VIII which deals with offences against the public tranquility 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 tranquillity 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 clause (2) of Article 19. A reference to Articles 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.
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> 9. The 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 clause (2) of Article 19, but insofar 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 clause (2) of Article 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 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. 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 Article 19 as being a law imposing reasonable restrictions on the exercise of the right to freedom of speech and expression guaranteed by Article 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 Article 19(1)(a) and consequently, the question of severability does not arise and the decisions relied upon by the learned Counsel for the Petitioner have no application to this case.

6. On a perusal of the aforesaid passages, it is clear as crystal 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 class of citizens. It penalise only those acts of insults to 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. The Constitution Bench has further clarified that the said provision 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. Emphasis has been laid on the calculated tendency of the said aggravated form of insult and also to disrupt the public order to invite the penalty."

(emphasis supplied)

11. In paragraph 5, two paragraphs of Ramji Lal Modi vs. State of U.P., AIR 1957 SC 620, decided by Constitutional Bench of Hon'ble Apex Court have been taken note, which are in respect of the interpretation of Section 295-A IPC.

12. In paragraph 6, three Judges Bench of Hon'ble Apex Court has clearly laid down that every act would tantamount to insult or attempt to insult the religion or the religious beliefs of class of citizens. It penalise only those acts of insults to 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. It has also taken note that the Constitution Bench of Ramji Lal Modi (supra) has clarified that the said provisions 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.

13.The words 'deliberate' and 'malicious' as used in section 295-A IPC have been considered by the Three Judges Full Bench of Calcutta High Court in the case of Sujato Bhadra vs. State of West Bengal, (2005) 4 CHN 601. Paragraph 8 of the said judgment is quoted as under:

> "Deliberate and Malicious
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> 8. Now we may examine the scope of the expression 'deliberate and malicious qualifying the intention in section 295A. The word 'deliberate is defined in Black's Law Dictionary, 6th Edition, pages 426-427 as:
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> Well-advised; carefully considered; not sudden or rash; circumspect; slow in determining; willful rather than merely intentional. Formed, arrived at or determined upon as a result of careful thought and weighing of considerations, as a deliberate judgment or plan. "By the use of this word, in describing a crime, the idea is conveyed that the perpetrator weights the motives for the act and its consequences, the nature of the crime, or other things connected with his intentions, with a view to a decision thereon; that he carefully considers all these, and that the act is not suddenly committed". The word "malicious" has been defined in Black's Law Dictionary, 6th Edition, page 958 as "characterized by, or involving, malice, having, or done with. wicked, evil or mischievous intentions or motives".' 8.1. In order to find out the

meaning of the word 'malicious', we may fall back on the passage by Bayley, J., in Bromage vs. Prosser, 1825(4) B & C 247 at page 255 viz., "Malice in common acceptance means ill will against a person, but in its legal sense it means a wrongful act, done intentionally, without just cause or excuse." The man acts maliciously when he willfully and without lawful excuse does that which he knows will injure another person or his property. The term 'malicious' means wicked, perverse and incorrigible disposition. It means and implies an intention to do an act, which is wrongful, to the detrimental of another where any person willfully does any act injurious to another without lawful excuse he does it 'maliciously'. Whether a person has acted maliciously is a question of fact to be proved.

8.2. In order to establish malice as contemplated by section 295A, it is not necessary to prove that the accused bore ill will or enmity against specific persons. If the injurious act was done voluntarily without a lawful excuse, melis may be presumed. Malice is often not capable of direct and tangible proof and in almost all cases has to be inferred from the surrounding circumstances having regard to the setting, background and connected facts in relation to the offending article. The Select Committee in their report published in Gazette of India dated 17th September, 1927 stated that the essence of the offence is "that the insult to religion or the outrage to religious feelings must be the sole, or, primary, or at least deliberate and conscious intention. We have accordingly decided to adopt the phraseology of section 298 which requires deliberate intention in order to constitute the offence with which it deals."

8.3. In State of A. P. & Ors. vs. Goverdhanlal Pitti, 2003(4) SCC 739, it was held that the legal meaning of malice is "ill-will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact". "Legal malice" or "malice in law" means "something done without lawful excuse". In other words, "it is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard of the rights of others". (See Words and Phrases Legally Defined, 3rd Edn., London Butterworths, 1989).

8.4. In S. R. Venkataraman vs. Union of India & Anr., AIR 1979 SC 49, the , 1989) Apex Court held that malice in law is, however, quite different from malice in fact. Thus malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause. Viscount Haldane described it as follows in Shearer vs. Shields, (1914) AC 808 at p. 813:

"A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of his mind is concerned. he acts ignorantly, and in that sense innocently."

(emphasis supplied)

14. A reference may also be made to the judgment of Hon'ble Apex Court in the case of Amish Devgan vs. Union of India and Others, reported in (2021) 1 SCC 1. In the aforesaid case the petitioner has filed petition seeking quashing of the various complaints/FIRs lodged against him or any other FIRs or complaints which may be filed relating to the telecast in question dated 15.06.2021. A further prayer was made in alternative that all the FIRs lodged at different places may be transferred and clubbed together with the first FIRs and that no coercive action has been taken against the petitioner in the FIRs so lodged. In paragraph 3 of the said judgment reference to seven FIRs has been given. Suffice to note that such FIRs includes the allegation in respect of Section 295-A IPC.

15. We may also take note that in paragraph 120 of Amish Devgan (supra) it has been held by the Hon'ble Apex Court that having given our careful and in-depth consideration, we do not think it would be appropriate at this stage to quash the FIRs and thus stall the investigation into all the relevant aspects. Therefore, suffice to note that quashing of the FIRs on the allegation, which involve allegation of hate speech, the telecast of live show on 15.06.2020 hosted and anchored by the petitioner was refused by the Hon'ble Apex Court after detailed consideration, particularly of Article 19 of the Constitution of India. For the purpose of the present petition suffice to note the contents of paragraphs 75 and 76 of the judgment, which are quoted as under:-

> 75. The 'context', as indicated above, has a certain key variable, namely, 'who' and 'what' is involved and 'where' and the 'occasion, time and under what circumstances' the case arises. The 'who' is always plural for it encompasses the speaker who utters the statement that constitutes 'hate speech' and also the audience to whom the statement is addressed which includes both the target and the others. Variable context review recognises that all speeches are not alike. This is not only because of group affiliations, but in the context of dominant group hate speech against a vulnerable and discriminated group, and also the impact of hate speech depends on the person who has uttered the words.96 The variable recognises that a speech by 'a person of influence' such as a top government or executive functionary, opposition leader, political or social leader of following, or a credible anchor on a T.V. show carries a far more credibility and impact than a statement made by a common person on the street. Latter may be driven by anger, emotions, wrong perceptions or mis-information. This may affect their intent. Impact of their speech Hate Speech in Constitutional Jurisprudence: A Comparative Analysis by Michel Rosenfeld, 24 Cardozo L. Rev. 1523 2002-2003 would be mere indifference, meet correction/criticism by peers, or sometimes negligible to warrant attention and hold that they were likely to incite or had attempted to promote hatred, enmity etc. between different religious, racial, language or regional groups. Further, certain categories of speakers may be granted a degree of latitude in terms of the State response to their speech. Communities with a history of deprivation, oppression, and persecution may sometimes speak in relation to their lived experiences, resulting in the words and tone being harsher and more critical than usual. Their historical

> experience often comes to be accepted by the society as the rule, resulting in their words losing the gravity that they otherwise deserve. In such a situation, it is likely for persons from these communities to reject the tenet of civility, as polemical speech and symbols that capture the emotional loading can play a strong role in mobilising. 97 Such speech should be viewed not from the position of a person of privilege or a community without such a historical experience, but rather, the courts should be more circumspect when penalising such speech. This is recognition of the denial of dignity in the past, and the effort should be reconciliatory. Nevertheless, such speech Myra Mrx Ferree, William A. Gamson, Jurgen Gerhards and Dieter Rucht, 'Four Models of the Public Sphere in Modern Democracies,' published in THEORY AND SOCIETY, Vol. 31, No. 3 (June, 2002), pp. 289-324 should not provoke and 'incite' - as distinguished from discussion or advocacy - 'hatred' and violence towards the targeted group. Likelihood or similar statutory mandate to violence, public disorder or 'hatred' when satisfied would result in penal action as per law. Every right and indulgence has a limit. Further, when the offending act creates public disorder and violence, whether alone or with others, then the aspect of 'who' and question of indulgence would lose significance and may be of little consequence.
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> 76. Persons of influence, keeping in view their reach, impact and authority they yield on general public or the specific class to which they belong, owe a duty and have to be more responsible. They are expected to know and perceive the meaning conveyed by the words spoken or written, including the possible meaning that is likely to be conveyed. With experience and knowledge, they are expected to have a higher level of communication skills. It is reasonable to hold that they would be careful in using the words that convey their intent. The reasonable-man's test would always take into consideration the maker. In other words, the expression 'reasonable man' would take into account the impact a particular person would have and accordingly apply the standard, just like we substitute the reasonable man's test to that of the reasonable professional when we apply the test of professional negligence. 98 This is not to say that persons of influence like journalists do not enjoy the same freedom of speech and expression as other citizens, as this would be grossly incorrect understanding of what has been stated above. This is not to dilute satisfaction of the three elements, albeit to accept importance of 'who' when we examine 'harm or impact element' and in a given case even 'intent' and/or 'content element'. (emphasis supplied)

16. It is pertinent to note that in paragraph 65 the Hon'ble Apex Court has noted that the variable recognises that a speech by 'a person of influence' such as a top government or executive functionary, opposition leader, political or social leader of following, or a credible anchor on a T.V. show carries a far more credibility and impact than a statement made by a common person on the street. It was also observed that such speech should not provoke and "incite"-as distinguished from discussion or advocacy-"hatred" and violence towards the targeted group.

17. In paragraph 76 it was also observed that persons of influence, keeping in view their reach, impact and authority they yield on general public or the specific class to which they belong, owe a

duty and have to be more responsible. They are expected to know and perceive the meaning conveyed by the words spoken or written, including the possible meaning that is likely to be conveyed. With experience and knowledge, they are expected to have a higher level of communication skills. It is reasonable to hold that they would be careful in using the words that convey their intent. The reasonable-man's test would always take into consideration the maker.

18. The above quoted paragraphs are in reference to speech made by a person whereas in the present case tearing of few pages of holy book "Manusmriti" which is a clear cut visible act apart from whatever may have transpired orally during live TV show is also involved.

19. At the cost of repetition we may take note that prayer for quashing of the FIRs/complaints involving section 295-A IPC was refused by the Hon'ble Apex Court and only prayer for clubbing the FIRs lodged at different places was allowed. We may, however, take note that in this case the judgment of Hon'ble Court rendered in Arnab Ranjan Goswami v. Union of India and Others, (2020) 14 SCC 12 was also considered. The law that freedom of speech and expression as provided in Article 19 of the Constitution of India is subject to reasonable restriction . Paragraphs 8 and 9 of Ramji Lal Modi (supra) as quoted above in Mahendra Singh Dhoni (supra) may be referred to. We need not burden our judgment any further on this issue.

20. We now proceed to test the present case on the parameters as set out in the above quoted paragraphs.

21. We find that the act of tearing pages of "Manusmriti" holy book of a particular religion in a live TV debate which was being organized by the two TV channels "India TV" and "TV9 Bharatvarsh" was nothing but prima facie, reflection of a malicious and deliberate intention of the petitioner and is an act done without any lawful excuse or without any just cause. We cannot ignore the fact that the petitioner is a highly qualified person and was taking part as a spokesperson of a political party and thus, it can not be pleaded that the act was done ignorantly. Therefore, in our opinion, prima facie a cognizable offence is made out.

22. Therefore, in view of the law laid down by Hon'ble Supreme Court in the case of State of Haryana and others vs. Bhajan Lal and others, 1992 Supp. (1) SCC 335 and M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra, AIR 2021 SC 1918 and in Special Leave to Appeal (Crl.) No.3262/2021 (Leelavati Devi @ Leelawati & another vs. the State of Uttar Pradesh) decided on 07.10.2021, no case has been made out for interference with the impugned first information report.

23. The writ petition is accordingly dismissed.

Order Date :- 28.2.2025 Nitendra