

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

CRL. MISC. NO.05-Q OF 2015

ZULFIQAR ALI RAJA

VERSUS

RAJA GUL ZAMAN & OTHERS

Date of hearing: - 14th october, 2015.

Petitioner by: - Raja Ikraam Amin Minhas, learned ASC.

Respondents by: - Mr. Asif Ali Tamboli Advocate,
Mian Abdur Rauaf, learned Advocate General along
with Javed SI.

ORDER

MUHAMMAD ANWAR KHAN KASI, CJ:

Brief facts of the case are that petitioner got registered FIR against respondents 1 to 6 with the allegation that accused persons entered the shrine of Sakhi Mehmood Badshah while equipped with building demolishing instruments. They uprooted, burnt and took along the 'alams' whereupon name of the Holy Prophet [PBU] & Ahl-e-Bait was written and by this act, they committed blasphemy and defiling of the shrine. The FIR No. 158, dated 20.4.2014 was registered at P.S Aabpara, Islamabad initially Under Section 295-C, 295/295-A/506/427/148/149 PPC.

2. The local police submitted report Under Section 173 Cr.PC where after the complainant-petitioner moved an application to the learned Magistrate for sending the case to the Court of learned Sessions Judge for trial as FIR included Section 295-C PPC which is triable by the Court of learned Sessions Judge. The said application was allowed vide order dated 17.10.2014, however, respondent/accused challenged the same through Crl. Revision before learned Sessions Court which culminated upon the impugned order dated 2.2.2015 whereby the learned Sessions Judge-West arrived at the conclusion that 295-C PPC was not

found in the allegations and the matter could not be referred to the Court of Sessions. The revision was accepted vide impugned order dated 2.2.2015. Petitioner/complainant being dis-satisfied has preferred this petition Under Section 561-A Cr.PC to assail the order dated 2.2.2015.

3. Learned counsel for petitioner argued that the local police deleted Section 295-C PPC despite the fact that it spelled out from contents of the application for registration of FIR had spelled it out and the mandate of investigation agency was limited to collection of evidence.

4. Learned counsel next submits that Under Section 227 Cr.PC charge can be amended at any time during the Trial, but the learned Sessions Judge seized with the criminal revision travelled beyond the scope of Sections 435, 439 & 439-A Cr.PC which is narrow and whole evidence could not be thrashed out by the Revisional Court as only the prima facie can be looked into. He added that Section 6 of Anti-Terrorism Act is made out from the allegations contained in application as the accused persons took over mosque to achieve their nefarious designs. Learned counsel for petitioner has placed reliance on case laws titled as "Ghulam Sarwar Vs The State" [2008 YLR 704], "JEO Vs. Ali Nawaz, etc" [2005 P Cr.LJ 560], "Haji Jamil Hussain Vs. Illaqa Magistrate Section 30, Multan, etc" [2012 P Cr.LJ 159], " Raja Khushbakhtur Rehman , etc Vs. The State" [1985 SCMR 1314] & " Mehar Khan Vs Yaqub Khan and another" [1981 SCMR 267].

5. Learned counsel for respondents vehemently opposed the petition by submitting that the bone of contention between the parties is allotment of land which is situated between the shrine belonging to jafria sect and seminary belonging to another sect. He alleged that complainant of the case is a known land grabber who wants to occupy the land through harassment. He added that several FIRs have been registered against the complainant who keeps association with banned terrorist outfit in FIR No. 159, dated 20.4.2012 registered Under Section 7 ATA, the complainant has been specifically alleged to have murder the persons from adverse party while they were present near Police Station, Aabpara in connection with investigation of FIR which is subject matter of the present petition.

6. Learned counsel next submitted that complaint Under Section 295-C PPC could not have been registered as the

government sanction Under Section 196 Cr.PC had not been obtained which is sine qua non and said irregularity cannot be cured.

7. Learned counsel concluded that through the letter dated 28.7.2009 and 7.12.2009 Director Auqaf and Town Planner of CDA respectively accorded permission for extension of the masque adjacent to the shrine of Sakhi Mehmood Badshah, but complainant merely due to religious rivalry, carried out a campaign to get cancelled the permission of authorities and for this purpose he moved application dated 17.2.2010 to the Chairman CDA, for cancellation of mosque extension permission, however, the CDA Planning Wing vide letter dated 22.2.2010 verified that no illegal construction is being undertaken. He added that desecration of a holy place constitutes an offence Under Section 295-A PPC and not the Section 295-C PPC. Learned counsel for respondent has placed reliance on case laws titled as "Muhammad Sharif Vs The State" [2008 YLR 1386], "Qari Muhammad Younis Vs The State" [2001 YLR 484], "Bashir Ahmad Vs The State" [2000 P Cr.LJ 902], "Muhammad Mahboob alias Booba Vs The State" [PLD 2002 Lahore 587], & "Noor Uddin Vs The State" [2014 P Cr. LJ 113].

8. Learned counsel for petitioner responding to the objection with regard to government sanction contended that no such requirement arises Under Section 196 Cr.PC as Section 295-C PPC has not been mentioned in the referred Section of Cr.PC.

9. Learned Attorney-General while supporting the impugned order submits that challan has been submitted and the charge is to be framed on the basis of evidence, while the investigating officer Under Section 173 Cr.PC submits that the prosecution story could not be verified and 295-C PPC or any other offence is not made out of the investigation. He added that in fact, respondent/accused moved application Under Section 249-A Cr.PC and as a counterblast, the petitioner-complainant moved application for addition of offence Under Section 295-C PPC which was accepted by learned Magistrate, but learned Sessions Court rightly dislodged the order through revisional jurisdiction.

10. Heard & record perused.

11. It would be appropriate to go through the contents of application moved by the petitioner for registration of FIR which is reproduced hereunder;

محببت جناب SH. مہلبہ کھانہ آبیاری، اسلام آباد
جنا علی!

گذشتہ ہفتہ میں تحفظ حریت مزارات کمیٹی کا چیرمین بنوں قبل ازیں مہلبہ
مٹی اور ڈیڑھی ڈالر کنڈر اتفاق کی صدارت میں مزار کی مسجد کے خطیب مودن اور کمیٹی ممبران
کی سنگت ہوئی طے شدہ فیصلے کے مطابق چہنے دربار کے اندر تجویز کردہ جگہ پر علم
رہنما کا علم بر اللہ اور رسول اور پختن پکٹ حضرت علی، حضرت فاطمہ، حضرت
حسن، اور حضرت حسین اور عماری عباس کے اسماء مبارک تحریر تھے۔ درختم ۱۳۱۶
کی دربار مزارات کو علم نہ کوہ کا دسواں حقہ جلا سوا یا گیا جس پر تحریر کی درخواست پر
انکوائری سوری تھی کہ امرور توجہ ۱۳۱۶ کو وقت قریب ۴۰۳۰ بجے شام
حضرت خطیب مصلحان، مودن، فارکشیہ، ڈاکٹر امیر عرف دوست، فہرہ شاہ
سمیرا، ایک شاہ، گل رحمان، سبحان، علامہ شاہ اور وادی حسین پور ۸۰/۱۰۰
استحاضہ کئے اور دربار حضرت سخی محمود بادشاہ کی کراہت گاہ پر لہفہ ۱۴۰۰ عدد علم
کوہین آسٹریلے سے تیار کر کے، اور نعرہ بازی کرتے ہوئے دربار کے اندر داخل
ہوئے، جس کے پاس سنگت ٹوڑنے کے اوزار تھے۔ علم کو بے حرمتی سے ٹوڑا اور اٹھاڑ
لے لے۔ تمام علموں کو بے حرمتی کرتے ہوئے لئے ساتھ لے گئے، ان تمام ملزمان نے قریبی
مناقرت کھداتے اور رسول اور آل رسول کی نفی کی ہے، اور مزار کے بعد میں کو
ڈال دیا ہے، ان سب کو نفی یا میں شکل سے جانتا ہوں۔ ان کے خلاف قانونی
کارروائی کے جاؤ نے اور سفیر کردار تک پہنچایا جائے۔

العارف

ذوالفقار علی راجہ ولد عبداللہ حسین
چیرمین تحفظ حریت مزارات کمیٹی، دربار حضرت سخی محمود بادشاہ
فاطمی، آبیاری، اسلام آباد

12. Plea for insertion of Section 295-C is not tenable because apart from general and marginal reference to incitement of religious emotions neither any allegation with regard to causing threat or fear in the general public has been mentioned nor any circumstances entailing the consequence of blasphemy has been alleged in the Complaint due to which conditions mentioned in Section 295-C are not fulfilled.

13. The core of controversy relates to insertion of Section 295-C PPC by way of order dated 17.10.2014 passed by learned Judicial Magistrate by allowing application moved by the petitioner under Section 190(3) Cr.P.C while the said Order was reversed by learned Sessions Judge (WEST) Islamabad vide order dated 02.02.2015. Examination of the Order passed by learned Magistrate reveals that it was passed without appraising the material available on record because there had been two distinct phases of events which were reported by the petitioner/Complainant. The first part of allegation pertained to incident during the night spread over 13th & 14 of April 2012. During this incident allegations contained description of the '*Alam*' containing Holy names as well as its place of installations, with the mentioning of the Shrine boundary and that tenth part of it was found burnt. It is pertinent to mention that none has been specifically attributed for burning of the '*Alam*'. The Second part of allegation pertains to incident on 20.04.2012. In this incident allegation pertains to defiling of some fourteen '*Alams*' while no description of said Alams had been mentioned such as whether those '*Alams*' contained the holy name of the Prophet Muhammad [SAWAW], moreover the place of those '*Alams*' has been mentioned as '*KaramatGah*' which prima facie shows a place separate from the Shrine\Darbar boundary. The bare perusal of the complaint shows that no circumstances for insertion of Section 295-C PPC existed. Similarly, learned Magistrate paid no attention to the investigation report which admittedly not only favoured deletion of Section 295-C PPC but also concluded that no such occurrence as reported through complaint had taken place. Undoubtedly, *ipsi dixit* of police is not binding on the Court but such opinion cannot be rendered futile by ignoring them altogether because in the face of such opinions and recommendations it was most necessary for the learned Judicial Magistrate to have referred to or pointed out the evidence, material on record and circumstance which in his opinion prima facie indicate the

commission of Section 295-C PPC. In this connection reference can be invited to similar case of “Muhammad Ghazan Vs The State” where in the Hon’ble Sindh High Court held as follows;

“This Court had made an elaborate pronouncement that an application Under Section 190 (3), Cr.P.C, either for including the name of a person as an accused or addition/insertion for an offence/section in the charge-sheet was not to be decided mechanically but was required to be decided after taking into consideration the evidence and other material aspects of the case. It is an admitted fact that by virtue of the original charge-sheet the applicants were required to face trial before the Judicial Magistrate as they were not charged with an offence which was punishable with imprisonment exceeding seven years. After insertion of Section 395, PPC, the case against the applicants has assumed more gravity and severity as they are now facing trial for an offence punishable with imprisonment for life or ten years and shall also be liable to fine and at the same time as pointed out by Mr. Nooruddin Sarki, they are facing trial in a higher forum thereby they would be losing one right of appeal.

14. The above discussion leads to the conclusion that learned Judicial Magistrate allowed application of petitioner on incorrect premises, therefore, the said order is not sustainable in the eye of law while learned Revisional Court had rightly excluded offence Under Section 295-C PPC.

15. Another aspect of the case which emerged during the hearing is that while recording FIR in question the pre-requisites of Section 196 Cr.PC have not been followed in letter and spirit whereby it was mandatory that an FIR Under Section 295-A PPC could be registered only under authority of the government or through an authorised person of the government, but no such sanction has been obtained in the present case, therefore, to the extent of said offence the FIR is not sustainable in the eye of law. Resultantly both the Sections 295-C & 295-A PPC are omitted from the FIR. Before parting with the order, it is clarified that offence Under Section 295-C PPC can be inserted if sufficient evidence emerges on record during the course of Trial.

16. In view of above, present petition being meritless is dismissed in above terms. No order as to costs.

(Chief Justice)

Announced in open court, on this 1st day of December, 2015.

(Chief Justice)

Approved for Reporting.