

Zac Poonen vs Hidden Treasure Literature ... on 27 July, 2001

Equivalent citations: 2002CRILJ481, 2002 CRI. L. J. 481, 2002 AIR - KANT. H. C. R. 33 (2002) 2 ALLCRILR 770, (2002) 2 ALLCRILR 770

Author: K.R. Prasada Rao

Bench: K.R. Prasada Rao

ORDER

K.R. Prasada Rao, J.

1. This petition is filed under Section 482, Cr. P. C, by the accused in C. C. No. 8355/1998 on the file of the Court of the IV Addl., Chief Metropolitan Magistrate, Bangalore seeking for' quashing the proceedings pending in the above case against him for the offences under Section 63 of Copyright Act, 1957 and under Sections 295, 295-A, 405, 406, 499, 500, 505 and 508, IPC.

2. On a private complaint filed jointly by the respondents, the learned Magistrate has registered the case against the petitioner for the above-referred offences after taking cognizance of the offences and after recording the sworn- statements of the complainants. It is at this stage, the petitioner approached this Court seeking for quashing the above proceedings pending against him.

3. Though the complaint runs to 72 pages, the sum and substance of the case of the complaint is as under :--

(a) That there is a Christian group that originated in Norway around 1905, popularly referred to as Smith's Friends (SF) with a worldwide following of about 30,000 members. This group, the SF has a distinct interpretation of the Holy Bibla on the "humanity" of Jesus Christ and it is on account of this interpetation that, they are distinguished from other Christian groups. Their distinct interpretation is sacred to them. While other Christian denominations preach Jesus Christ as true God and true man during his birth on Earth, SF preaches that Jesus came to Earth in a body of the seed of David and He did not come with all the fullness of God and being found in human form, He humbled himself and became obedient up to death, even death on a cross. SF believes that God became man in Jesus and that this man became God.

(b) The interpretation of the SF on the humanity of Jesus Christ is propagated through their writings that are in the form of songs, articles and books. Most of the writings are in Norwegian language. Norwegian authors have copyright over their works. The Norwegian Publishing House of the SF, by name " SKJULTE SKATTER

FORLAG" (SSF), publishes these writings. Some members of the SF have translated these works into the English language. The translators have copyright over their translations and are entitled to protection over their works as if they were first published within India, under Sections 14 and 40 of the Copyright Act and in accordance with the International Copyright Order, 1999.

(c) The 1st respondent/ complainant is the English Language Publishing House of the SF. It was also called "THE WAY PUBLICATIONS", later, "HIDDEN TREASURES, USA" and at present "HIDDEN TREASURE LITERATURE INC." CANADA. The translators have assigned their copyright over their works to the first complainant under the deeds of assignment, which are produced as Annexures 8 and 9 of the complaint. The constituted attorney of the 1st respondent, Mr. Sukumar N. Oommen, is a responsible member of the SF in India. The 2nd respondent/complainant, Dr. Fred Simon Oommen, is also a responsible member of the SF in India and one of the founding Members of the Society called "CHRISTIAN FELLOWSHIP CENTRE", that was formed to propagate the sacred doctrine of the SF in India.

(d) The petitioner/accused was an Officer in Indian Navy. He left the Navy in 1965 to do full time Christian work. After associating himself with different Christian groups from 1965 to 1975, he got associated with the SF. He went to Norway in 1971 along with his family at the cost of SF. In 1975, he wanted to start meetings similar to the meetings of SF, which he had seen in Norway. The meetings started in his house as meetings of the SF. The meeting house later came to be known as CHRISTIAN FELLOWSHIP CENTRE (CFC). The CFC was later registered under the Societies Act.

(e) The respondents further alleged that on the request of the petitioner, the SF entrusted their sacred writings about their distinct doctrine to him to enable him to propogate their Doctrine. At the instance of the petitioner, the society C.F.C. published around 1982 or so, a song book titled "NEW SONGS" reproducing some of the songs from the book of the SF called "SONGS OF THE WAY", which is produced along with the complaint, as Annexure 14. The petitioner next published around 1989, another book titled "NEW COVENANT SONGS" containing over 300 songs from the books of the SF. According to the respondents, these publications were without the approval of the copyright holders. The copyright holders did not object to the publications even though these did not disclose the names of the authors or the source, since these were faithful reproduction of the original works. There were no changes in the artistic or lyrical content and sanctity of the works and the sacred-ness of the doctrine had also been preserved. Besides these were stated to be for private circulation among the members of the SF in India. The petitioner was also permitted to reproduce faithfully articles of the SF, the copyright of which is held by the 1st respondent-company, in his monthly magazine. The SF permitted the petitioner to name this magazine as "HIDDEN TEASURE".

(f) In March 1997, the respondents came to know from the article written by the petitioner that to his instance, the sacred doctrine of the SF had been defined in an Indian publication of the book of the "BRIDE AND THE HARLOT", copy of "which is produced as Annexure 17 with the complaint. On further enquiry, the SF in India came to learn that the petitioner had got printed a song book also titled "NEW COVENANT' SONGS" (N.C.S.) through a printer in Srilanka. This book is substantially different from the earlier book "NEW COVENANT SONGS" that was published at the instance of the petitioner in 1989. This pirated book (NCS) contains about 279 songs from the works of the SF. There are mutilations in about 40 songs, which have been listed at Annexure 19 of the complaint. The respondents came to know from the printer that this book was published at the instance of the petitioner. A letter of the printer in this regard is produced as Annexure 21 with the complaint. Though the petitioner is fully aware of the distinct group called SF and its distinct doctrine and he is further aware that SF considers their interpretation as sacred, the petitioner has modified the writings and teachings of the SF and this fact is admitted by the petitioner. The petitioner has deliberately and maliciously mutilated the sacred writings that were entrusted to him. He changed the writings. The changes are not merely stylistic. They have the effect of defiling the distinct sacred doctrine of the SF. The petitioner has not disclosed the names of the authors and he conceals his name and the year of publication. Besides the publication of the song book, the petitioner deliberately published mutilated articles of the SF, some of which did not bear any resemblance to the originals. These articles are produced as Annexures 22 to 26 of the complaint. The book NCS published without the approval of the copyright holders, which is an infringement under Section 51 constitutes an offence under Section 63 of the Copyright Act, 1957. The mutilations of sacred writings in the book NCS amounts to an offence under Sections 295 and 406, IPC. According to the respondents, even the articles, Annexures 22 to 26 contain mutilations of sacred writings of the SF that were entrusted to the petitioner. These constitute an infringement under Section 51 and an offence under Section 63 of the Copyright Act. The writings are sacred objects as these propagate the distinct sacred doctrine of the SF. The mutilations amount to offences under Sections 295 and 406, IPC. The article at Annexure 17 contains defamatory references to the SF. This constitutes an offence under Section 499, IPC. The article at Annexure 17 contains statements insulting the religious beliefs of the SF and that also outrage the religious feelings of the SF, which constitutes an offence under Section 295-A of the IPC. The meeting hall called "Christian Fellowship Centre", located at # 40, Dacosta Square, which the place of worship of the SF has been used to defame the SF and to defile the sacred doctrine of the SF. This constitutes an offence under Section 295-A, IPC. With the above allegations, the respondents filed the joint complaint against the petitioner for the above-said offences and also for the offences under Sections 505 and 508, IPC.

4. I have heard the arguments advanced by the learned Counsel appearing on both Sides and they have also submitted their detailed written arguments.

5. The learned Counsel for the petitioner has mainly raised the following contentions :--

(i) The petitioner is not involved with the publishing and printing of the impugned book, NEW COVENANT SONGS (NCS).

(ii) The respondents are not the owners of copyright in the said book.

(iii) As a matter of law and custom, there is no copyright in evangelical songs and hymns.

(iv) The grievance of the respondents that the English translations of the songs in the impugned book go against the doctrine of the Smith's Friends and that they are not faithful reproductions, is a matter which is to be determined in a Civil Court. The respondents have filed a Civil Suit, O. S. No. 11256/1998 against the petitioner on identical issues and sought for the relief of permanent injunction to restrain the petitioner from interfering with the rights of the members of the SF from worshipping, expressing their religious sentiments and propagating the sacred doctrine of SF in the building, Christian Fellowship Centre (CFC), which was constructed for such purpose from the funds received from the members of the SF and to declare that the present petitioner has infringed the copyright of the 1st respondent with regard to the songs and articles shown in Annexures 19 and 22.

(v) The allegations made in paras 3 to 10, 13 to 19, 31, 32 and 34 to 52 in the complaint are same as the allegations in paras 10 to 17, 22 to 38, 41, 42, 45, 60, 64 in the plaint. Since the complaint is based on the alleged copyright of the 1st respondent in the very songs and articles, which is the subject-matter in the above suit without determination in the said suit, the question as to whether the respondents have copyright in the songs and articles in question, the criminal complaint is not maintainable for the alleged infringement of the provisions of Section 63 of the Copyright Act, 1957.

(vi) The respondents have no locus standi to represent Smith's Friends-.

(vii) The complaint is bad for mis-joinder of causes of action and of parties. The disputes raised are essentially of a civil nature, to be tried in a Civil suit filed by the respondents.

(viii) The allegations made in the complaint taken as they are, do not constitute any of the offences under Sections 295, 295-A, 405, 406, 499, 500, 505 and 508 of IPC. The Doctrinal disagreement will not constitute an offence of outraging or insulting any religious belief or religious spirit. No material is placed on record to show that the disagreement expressed by the petitioner with the Doctrine of Smith's Friends was with the deliberate and malicious intent of outraging the religious feelings.

6. In view of the above contentions taken by the petitioner, the 1st respondent has to prima facie show in the first instance that they are the original owners of the copyright in the songs and articles of which infringement is complained of. They have to further show that the translators and the translation editors have assigned their rights in the books, "Songs of the Way" and "New Songs" in favour of the complainant No. 1, by executing the deeds of assignment. It may be mentioned here that the translators and translation editors of the above works were Mr. R. C. Williams and Mrs. Jean Hunter respectively. According to the complainants a compilation of the English translation of some of the songs contained in Norwegian song book, "Herrean's Veier" was published and the authorised editors of the book were Mr. R. C. Williams and Mrs. Jean Hunter respectively. English translations of the writings of members of the Smith's Friends were earlier brought out in a journal called "Hidden Treasures" in about 1934. In the early 60s a journal by name, "The Way" was published by "The Way Publications", whose editor was Mr. R. C. Williams. The said Mr. Williams moved to Canada in the year 1968. Thereafter, the name of the journal was changed to "Hidden Treasures" and was published by a Norwegian Publishing House, "Hidden Treasures Literature" in Salem, U.S.A. The publications came under a member of the Smith's Friends in Canada under a Publishing House, Hidden Treasure Literature Incorporated, the 1st respondent herein.

7. Section 14 of the Copyright Act, 1957 defines " Copyright" in a literary work to include the right to reproduce the work, to translate it or to make an adaptation of the work, issue copies of the work to the public. Section 51 of the Act states that copyright in a work is infringed when the infringer does anything which violates the exclusive right conferred on the owner by the Act. It is pointed out by the learned Counsel for the petitioner that in the instant case, it is not the contention of the respondents that the petitioner has reproduced, translated or made an adaptation of the works and on the contrary, what is claimed is that the petitioner has mutilated the songs and these distortions have affected the artistic and lyrical content of the work. It is further pointed out by him that the respondents are themselves admitting that the content of the works has changed giving them a different meaning and import. So, according to him, the translations of the impugned songs giving them different meaning and import do not constitute an infringement of copyright. It is further pointed out by the learned Counsel for the petitioner that the book, "New Covenant-Songs" is neither printed nor published by the petitioner nor it was done at the instance of the petitioner and in fact, the said book has been printed and given free of cost to the Christian Fellowship Centre by the printers. To show this fact, letters from the printers of the book "New Life Literature, Srilanka" are produced as Annexures 'B' and 'C. Further this contention is that the songs and hymns used by the Christian groups are intended to be used freely and any claim for copyright protection in respect of the same is contrary to the object of their publication. It is also pointed out by him that the petitioner has produced letters of few heirs of the authors of the translations to show that the translations were made for the New Covenant Songs with the consent of the original authors, which are marked as Annexures 'E' to 'N' along with this petition. A perusal of these letters addressed to Christian Fellowship Centre clearly indicate that heirs of the authors of the impugned articles and songs have authorised C.F.C. to freely make use of them and granted permission to print copies, issue copies to the public, perform in public, disseminate through any means, including through Radio, Television and over the Internet and to generally use all the articles and songs in any way they desire including making video and audio recordings thereof. Further, these letters prima facie disclose that no assignment of copyright has been made in respect of these songs and articles in

favour of its publishers. It is also pointed out by the learned Counsel for the petitioner that the copyright registered in respect of the abovesaid works with the Canadian Intellectual Property office on 14-5-1998 only pertains to 'Music' that may have been composed in respect of that work and it does not pertain to the literary content of the work to which the present complaint pertains. This submission is also found to be correct. It is no doubt pointed out by the learned Counsel for the respondents that the works "New Songs" which are the subject-matter of the present proceedings, have been registered under the Copyright Laws of Canada. Under the Canadian law, the term 'Music' includes lyrics i.e., words set to music. But, the said submissions cannot be taken into consideration, since we have to see whether under the Copyright Act, 1957 the copyright in Music includes lyrics. Since this "Act does not define "Copyright in music" will include lyrics, it is not possible to hold that a prima facie case is made out against the petitioner for the offence under Section 63 of the Copyright Act, 1957 which is a relevant enactment in India on this subject. The question as to whether the English translation of the songs contained in the book, "New Covenant Songs" was a physical reproduction of the songs as contained in the book "New Songs" is a question to be decided in the Civil suit, which has already been filed by the respondents. It is also pointed out by the learned Counsel for the petitioner that no material is produced by the respondents to show that the translations alleged to have been made for the "New Songs", were made with the consent of their original authors. It is further pointed out by him that the book "New Songs" is published by "Hidden Treasures, U.S.A." and not by the 1st respondent herein. Even according to the respondents, the original works were contained in "Herrean's Veier". No material has been placed on record by the respondents to show devolution of interest or assignment of copyright from the original authors to the respondents herein. The petitioner has also taken a contention in the present petition that the book "New Covenant Songs" is neither printed nor published by him nor was it done at his instance and it was printed by some printing Company in Pune and published and paid for by a Church in Mumbai headed by John Falco and gifted to C.F.C. It is also pointed out by him that the respondents have not produced any document to show that the said book was printed and published by him. It is further pointed out by the petitioner that the articles referred to in the complaint were all published before 1989 at the time when the 1st respondent was not in existence and the articles contain nothing defamatory. It is also pointed out by the learned Counsel for the petitioner that R.C. Williams was the Editor of "The Way Publications" and has assigned his rights in certain songs in the first Edition, second Edition and third Edition to the 1st respondent and the said assignment is on 16th April, 1998, i.e., even-after the fourth Edition and fifth Edition of the book were published. For this reason also, it is contended by him that the 1st respondent had no right to publish the books and cannot claim violation thereon and in the alternative since no such permission was required, clearly the 1st complainant had no copyright in the works. Since copyright registration has been obtained only in 1998. It is contended by him that the 1st respondent/complainant has no locus standi to allege violation of the copyright when it had no rights at the time of alleged infringement. I find merit in all the above contentions of the learned Counsel for the petitioner since all the above facts alleged in support of the above contentions are undisputed. It is further contended by the learned Counsel for the petitioner that philosophical differences of the perception of Jesus Christ in a different way by the petitioner in English language translations of the songs in question does not constitute either an offence of infringement of copyright or any of the above-referred offence under IPC. It is further pointed out by him that the claim of the respondents that the perception of the Jesus Christ by the Christian group, SF (Smith's Friends) is the correct perception and it is their

sacred right is incapable of adjudication and even a civil suit would be incompetent to declare any such right and no Court can give a finding on the questions raised by the respondents. I do not find it necessary to go into the merits of these contentions at this stage and I find that unless the right claimed by the respondents regarding alleged infringement of copyright of the translations of the songs in their book, "New Songs" is determined by the Civil Court in the pending suit, it is not possible to hold in the above criminal proceedings that the facts alleged in the complaint prima facie make out an offence under Section 63 of the Copyright Act, 1957.

8. Apart from this fact, the affidavit of the joint editor of "New Songs", Stephen Craig Timmons, produced by the petitioner along with this petition marked as Annexure "D" discloses that the claim of the respondents that Jean Hunter is the sole editor of the "New Songs" is not true and that Jean Hunter was only involved in editing of the said publications and the translations were made by many persons in addition to Jean Hunter. In the said affidavit, Mr. Stephen Craig Timmons has also sworn to the effect that the present petitioner never joined SF and that he has even declared that he was not interested in joining a western movement and he did not wish to make the work in India, an appendage of SF and that he stood for the independence of Christian Fellowship Centre as a distinct Indian Church, with no official links to any group outside India. In para 4 of his affidavit, he asserted that the changes referred to in Annexure 19 of the complaint, which were made in the 1994 edition of "New Covenant Songs" are overwhelmingly minor in nature and are the very same kinds of changes that the SF's made in their own English song book and he could detect nothing sinister at work here. While editing their own song book they in SF book, took many liberties to improve the rhyme, re-ordered the content of entire verses and substituted words and phrases for the original ones in the interests of "singability", textual comprehension and flow and this was all done with the best intentions. It never occurred to them that they might be mutilating, an original author's exact words. Moreover, the sacredness of their songs and literature is not reflected in mechanical details, but, in the overall content of the message. Sincere attempts to render this message in an understandable and living manner is consistent with SF principles. Likewise, the notion that their Church literature is a kind of depository of sacred object that must be protected from desecration by going to Court if necessary -- is sheer non-sense. In the same paragraph, he clarified that having shared the editorial responsibility for the SF English song book "New Songs" 4th Edition, the song book mentioned in the complaint and having examined Annexure 19 of the complaint with its list of textual changes that were made in the 1994 edition of "New Covenant Songs", expressed the above opinion. Thus, he denied that the present petitioner has mutilated the SF songs and literature. In para 5 of the same affidavit, he made it clear that the 1st respondent/complainant, which is the Canadian Publishing Venture Hidden Treasures Literature (HTL) claimed that they own the Copyrights to all the SF songs and literature and their translations did not speak for any of those SF's (nor their respective song writers and authors), who no longer acknowledge their leadership, nor can SSF or H.T.L., claim to speak for the members of all SF's everywhere. Likewise, the claim by SSF and HTL to exclusive rights over all songs and translations is spurious in the light of the fact that many SF authors and song writers are deceased (the latter never having signed over the rights to their works to any one). SF songs and literature are part of a common SF heritage. All claims of "ownership" or "exclusive use" is foreign to SF doctrine and practice prior to the 1992 split in the movement. In para 8 of the affidavit, he also clarified that HTL, has never been a "subsidiary" of SSF in any legal sense and contrary to the plaintiffs misleading claim. The Way Publications and HTL,

were not established "for the sole purpose of propagating SF teachings". The spread of SF songs and literature was voluntary and informal, and was not subject to centralised control. The policy of translation supervision and approval is very recent and even ' then, has only been applied to a very limited section of key publications. In para 9, he asserted that the claim of the respondents that "translations in English" were undertaken only after approval had been obtained from the original authors or their assignees in Norway is outrageous; this is categorically untrue. This bogus claim is meant to suggest an official relationship of accountability to SSF that has simply not existed. In para 10 of the affidavit, he denied the claim of the respondents that the CFC's Meeting hall in Bangalore, has been constructed for use of the SF, representatives in Bangalore and with the funds provided by its members. In the same paragraph, he expressed his opinion that he does not feel that the petitioner has defamed their doctrine or the movement with which he remained associated. Thus, it is clear from the affidavit of Stephen Craig Timmons, who is one of the joint Editors of the SF English song book "New Songs", 4th Edition, which is produced a Annexure 'D' along with this petition, that they did not own copyright of the SF songs, literature and translations and they have no locus standi to represent any of the SF's, who translated the songs into English and the authors of those songs compiled in the book, "New Songs". It is further clear from the above affidavit that the said translators have not taken the approval of the original authors of those songs or their assignees in Norway to translate them into English. Thus, the contention of the petitioner that the changes made in the English translation of some of those songs printed in the book "New Covenant Songs" 1994 Edition, were minor in nature and do not amount to mutilations of the translations of the songs compiled in the book "New Songs" and that there is no violation of the alleged copyright by him and that there is no prima facie case for any of the offences alleged against him in the complaint and that he has not committed the alleged offence of defamation or defiling of the sacred works, finds support and acceptance by no less than a person who is one of the Joint Editors of the SF English song book, "New Songs" (4th Edition), who filed his affidavit.

9. The petitioner has also produced an affidavit and letter given by the Joseph Madsen, enclosed as Annexures "P" and "Q", to this petition in support of his contention that he was not entrusted with the books, Audio Cassettes, Tapes, to propagate the doctrine of the SF by the 1st respondent/ complainant, for the purpose of propagating the doctrine of the SF by him and that he has not committed any criminal breach of trust in respect of the said materials. In the affidavit, Annexure 'P', Joseph Madsen, who is a resident of Norway stated that he has supplied tapes to the petitioner on his own initiative and at his personal expense and these tapes were not solicited by CFC, or any of their representatives at any time. He further clarified in the same affidavit that at no time did he expected the petitioner to subscribe to a particular doctrine or declare their allegiance to the movement called "Smith's Friends" in order to qualify to continue receiving tapes. On the contrary, these tapes were given in faith for Christian edification, with no strings of any kind attached and with no expectation implicit or explicit of any return favours or financial obligation. The friends at CFC, understood that the tapes were a gift, given on the above terms. In the letter, Annexure 'Q' addressed to the friends of CFC, by the same person, made it clear that the tapes were sent free of charge. Thus, the petitioner has demonstrated that the allegations made in the complaint that he was entrusted with the tapes, books and other materials of SF to propagate the doctrine of SF and that he has committed criminal breach of trust, in respect of the same by utilizing them for his own use, is not proved. Thus, I find that no prima facie case is made out against the petitioner for the

offence under Sections 405 and 406 of IPC. It is also found that the provisions of Section 196(1) (a) and (1-A) Cr.P.C, make it clear that no Court shall take cognizance of the offence under Section 295-A, IPC and 505, IPC, without the previous sanction of the Central or State Government or of District Magistrate. Since the respondents have not obtained any such sanction, the trial Court ought not to have taken cognizance of the offence under Section 295-A of the IPC against the petitioner and that the complaint is not maintainable in respect of the said offence.

10. Learned Counsel for the petitioner has relied upon a decision of the Supreme Court in the case of G.R. Anand v. Delux Films, , wherein the following tests were laid down to determine as to whether there has been infringement of copyright :

3. One of the surest and safest tests to determine whether or not there has been violation of copyright is to see if the reason, spectator or viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.

4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.

5. Where, however, apart from the similarities appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are purely incidental no infringement of the copyright comes into existence.

6. As violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down by the case law discussed above.

In the instant case, on a perusal of Annexure 17, which is said to be the article containing defamatory imputations against the members of the SF, it is found that the said article only highlights ideological differences existing between the members of SF group and the petitioner and the members of Christian Fellowship Centre. The expression of the petitioner's view who is having a different religious belief, in my opinion, does not amount to defamation. While the group "Smith's Friends" perceives Jesus Christ as being human and that he did not come with all the fullness of the God, the belief of the petitioner and the members of the Christian Fellowship Centre is that the Jesus Christ is divine and is God himself. The article Annexure 17 written by the petitioner clearly explains the distinction between the teachings of the Smith's Friends and the Christian Fellowship Centre. As rightly pointed out by the learned Counsel for the petitioner, the expression of the opinion different from the opinion or views of the other religious group SF does not amount to defamation. Learned Counsel for the petitioner has also relied upon another decision of the Supreme Court, (G. Narasimhan v. T. Vendoorchhokappa), it was held that at page 2614 of AIR :-

The defamatory imputations against a collection of persons thus falls within the definition of defamation. The language of the explanation is wide, and therefore, besides a Company or an Association, any collection of persons would be covered by it. But such a collection of persons must be an identifiable body so that it is possible to say with definiteness that a group of particular persons as distinguished from the rest of the community, was defamed. Therefore, in a case where explanation (2) is resorted to, the identity of the company or the association or collection of persons must be established so as to be relatable to the defamatory words or imputations. Where a writing inveighs against mankind in a general or against a particular order of men e.g., men of gown, it is no libel. It must descend to particulars and individuals to make it a libel. If a well defined class is defamed every person of that class can file a complaint even if the defamatory imputation in question does not mention him by his name.

In the instant case, Smith's Friends is a indeterminate body of persons and this body of persons is not the complainant in this case. The complaint is not filed by an organised body representing the Smith's Friends. The 2nd respondent, who claims to be a member of the Smith's Friends has not produced any prima facie documentary evidence to show that he represents the interests of the Smith's Friends. Since the Smith's Friends is not an identifiable or determined body of persons, it is not possible to hold that a prima facie case of defamation is made out against the Smith's Friends in view of the law laid down by the Hon'ble Supreme Court in the above decision and AIR 1965 SC 451 : 1965 (2) Cri LJ 434 (Sahib Singh Mehra v. State of U. P.). The point to be noted here is that the 2nd respondent does not claim that he is personally defamed by the facts mentioned in the above article of the petitioner, Annexure 17. Even the group, Smith's Friends, cannot be said to have been defamed by the views expressed by the petitioner in the above article, Annexure 17, which only indicates that there are ideological differences as brought out in the said article published by the petitioner and further no material is placed on record to show that the disagreement expressed by the petitioner with the doctrine of the Smith's Friends was with a deliberate and malicious intention of outraging the religious feelings of the group, "Smith's Friends". Furthermore, in my view, a doctrinal disagreement will not constitute an act of outraging or insulting any religion or religious beliefs. No material is placed before the Court below to show that the petitioner has done anything which intend to create or promote enmity, hatred or ill-will against the members of the Smith's Friends. The article, Annexure 17 only brings to surface the distinguishing features between the beliefs of the petitioner and of the Smith's Friends group. Merely because the petitioner disagrees with the doctrine of the Smith's Friends, it cannot be said that it constitutes any offence under Section 505, IPC. It is also pointed out by the learned Counsel for the petitioner that no material is placed on record to demonstrate that any false representation is held out by the petitioner or any member of the Christian Fellowship Centre to the effect that they intend to propagate the doctrine of the Smith's Friends. It is in fact clarified by the petitioner that he never subscribed to their ideology which believes that "Jesus Christ

was not God on Earth", but as a "man became God". In para 24 of this petition, the petitioner explained that the books were intended to be used and have been used only by the brothers and sisters of the Christian Fellowship Centre in their prayers and the adaptation of songs and hymns to suit their understanding and beliefs does not derogate the beliefs that any other person may hold nor can it be described as an attempt to hurt any religious sentiment. It is also explained by the petitioner in para 23 of this petition that the prayer hall of the Christian Fellowship Centre was constructed with the contributions received from the vast majority of persons and at no point of time, have the Christian Fellowship Centre or the founder members identified themselves as the Smith's Friends. It is also pointed out by the petitioner that the 2nd respondent has resigned from the Centre as early as in the year 1988 and has stopped attending the activities of the Centre from February 1992. Thus, it is the contention of the petitioner that the group of Smith's Friends have no claim to the said prayer hall of the Christian Fellowship Centre. The petitioner produced a xerox copy of the resignation letter ' given by the 2nd respondent dated 29-5-1988 to show that he resigned from the Executive Committee of the Christian Fellowship Centre. It is also pointed out by the learned Counsel for the petitioner that since the 2nd respondent has resigned and left the Christian Fellowship Centre, the allegations made in the complaint that the petitioner has been constantly putting fear of divine wrath over the 2nd respondent if his orders are not complied with immediately without any reservations are not true and that no other member of SF complained in writing at any time that the petitioner has been indulging in any such acts. Thus, it is found that there is no prima facie case even in respect of the offence under Section 508, IPC. In fact, the 2nd respondent, who has given his sworn statement before the trial Court, has made no reference to the allegations made in the complaint in support of the offence under Section 508, IPC and he never stated that the petitioner has indulged in any such acts of constantly putting fear of divine wrath over the members of the SF including him. It is also pointed out by the learned Counsel for the petitioner that admittedly, the works contained in the " New Songs" are written by various authors and their English translations are done by many others, but, no material is placed on record to show that the 1st respondent has obtained such permission from all the translators of the songs and that they acquired copyright in respect of the English translations of all the songs published in the book "New Songs". It is also pointed out by him that out of those songs, two songs belong to the petitioner himself and no permission has been obtained from him in that regard. In the light of the above facts, I find that it is not prima facie shown that the 1st respondent acquired copyright in respect of the English translations of the songs published in the book "New Songs". It is further pointed out by the petitioner in this petition that both the respondents are his brothers-in-law and they are only seeking to vindicate their personal grudge against him. It is also pointed out by the petitioner that the 1st respondent, Mr. Sukumar N. Oommen has no authority to represent "Hidden Treasure Literature Incorporated" and the power of attorney executed in his favour by one Mr. Lothar W. Dreger, is the one executed in his personal capacity and the second power of attorney produced by him is taken from the Company SKJULTE

SKATTER FORLAG and the said Company cannot constitute the 1st respondent as an attorney for another Corporate entity even if it were to be assumed that "Hidden Treasures Literature Incorporated" is the subsidiary of SKJULTE SKATTER FORLAG. It is further pointed out by him that even assuming that the said Company is duly represented, they are not the publishers of the book, "New Songs" and hence, cannot complain of any copyright violation in the said book. On a perusal of the power of attorneys produced by the 1st respondent, the above submissions made are found to be correct. Thus, it is found that both the respondents have no locus standi to file the complaint. It is no doubt contended by the learned Counsel for the respondents that in the reply notices sent by the petitioner to the legal notices issued before the complaint was lodged, which are produced as Annexures 34-A and 36 along with the complaint, the petitioner admitted that he is fully aware of the existence of the distinct group called SF and it has distinguished doctrine and he has further admitted that he has modified the articles and teachings of SF with an intention to be better understood by Indian audiences by altering some of the words and expressions used in order to better express to an Indian reader the thoughts behind the passage and after due application of mind and after the exercise of requisite skill and effort, published the same in their publication, "The Hidden Treasures". It is further pointed out by him that these facts have also been confirmed on behalf of the petitioner in Annexure 29 of the complaint. It is, therefore, contended by him that by effecting the said changes, the petitioner deliberately and maliciously mutilated the sacred writings that were entrusted to him, which has the effect of defiling the distinct sacred doctrine of the SF and by not disclosing the names of the authors of the songs and by concealing his name as the translator of the songs in the book, "New Covenant Songs" and the year of publication and deliberately publishing the mutilated articles of SF, which are Annexures 22 to 26 of the complaint, the petitioner has violated the copyright and committed the other alleged offences under Sections 295, 295-A, 406, 500, 505 and 508, IPC. He relied upon a decision of the Supreme Court, (S. Veerabhadran Chettiyar v. E. Ramaswami Naicker) in support of his contention that the objects held sacred under Section 295, IPC includes the translated works in their book "New Songs". In the above decision, it was held that at page 1035 of AIR :--

Whether any object is held sacred by any class of persons, must depend upon the evidence in the case, so also the effect of the words in Section 295 "with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion.

Section 295 has been intended to respect the religious susceptibilities of persons of different religions persuasions or creeds. Courts have got to be very circumspect in such matters, and to pay due regard to the feelings and religious emotions of different classes of persons with different beliefs, irrespective of the consideration whether or not they share those beliefs, or whether they are rational or otherwise, in the opinion

of the Court.

Any object, however, trivial or destitute of real value in itself, if regarded as sacred by any class of persons would come within the meaning of the penal section, namely, Section 295. It is not absolutely necessary that the object, in order to be held sacred, should have been actually worshipped. An object may be held sacred by a class of persons without being worshipped by them .

In para 7 of the same decision, it is observed as follows :--

A sacred book, like the Bible, or the Koran, or the Granth Saheb, is clearly within the ambit of those general words.

But, in the instant case, even according to the respondents, the petitioner has translated the songs published by them, in their book "New Songs" in a different manner in English conveying different meaning and published them in his book "New Covenant" Songs" and thereby defiled the work in their book, "New Songs", which the SF group of Christians consider it as sacred. But, admittedly, the English translations of the Norwegian songs by different persons, published in the book "New Songs" are made without the consent or permission of the original authors of those songs. If the same songs are translated in a different manner by the petitioner, giving them a different meaning and impact in order to effectively convey his own theory of incarnation of the Jesus Christ, it cannot be said that the petitioner has mutilated the songs in the book, "New Songs" and defiled the said book, which is considered as the sacred object by the Christian group of SF. When the respondents themselves alleged that the content of the works has changed giving them a different meaning and import, it cannot be contended by them that the petitioner has violated the copyright by reproducing the same translated works to make any unlawful gain. It is not the case of the respondents that the original authors of the Norwegian songs have either accepted or approved the English translation of those songs made by different persons, published in the book "New Songs" as the correctly interpreted translations. So they cannot object if the same set of Norwegian songs consolidated by them in their book "New Songs" are translated in a different manner by the petitioner and contend that the petitioner has defiled the sacred object of them. Further according to the allegations made, in para 29 of the complaint, the petitioner had distorted about 40 songs printed in their book, "New Songs", which have affected the artistic and lyrical content of the songs and they have also the effect of negating the basic tenets of the doctrine of the SF. It is further alleged that the manipulations of the words and changes to idiomatic expressions resulted in nullifying the SF doctrine and it was so done to suit another interpretation. In other words, it is the case of the complainants that the petitioner has titled the theme differently and the changes introduced in the words and idiomatic expressions of songs are mainly to suit his own doctrine and interpretation of the life of Jesus Christ and to make use of them for his teachings. This does not amount to the infringement of copyright, since it is

clarified by the Hon'ble Supreme Court in the decision (R. G. Anand v. Delux Films) that at page 1627 :--

Where the theme Is the same but is presented and treated differently so that the subsequent work becomes completely new work, no question of violation of copyright arises.

Since the translated works of the petitioner in his book "New Covenant Songs" convey a different meaning and different interpretation, these dissimilarities negative the intention to copy the original and for this reason also, it is not possible to hold that there is any infringement of copyright. The alleged distortions of the words and expressions used in the 40 songs by the petitioner, in my view, take it away from the copyright infringement, particularly, when they convey a different, meaning and different interpretation. In fact, it is clearly explained by the petitioner in the reply notice dated 25-6-1998 sent to him through his lawyer, which is enclosed with the complaint as Annexure 36 that the petitioner has modified the articles and teachings to be better understood by Indian audience and altered some of the words and expressions in order to better express to an Indian reader the thoughts behind the passage and in doing so, they have utilised their literary skill and effort to make the said articles easier to comprehend by the average Indian and under no circumstances, these alterations are prejudicial to the reputation or honour of the respondent No. 2. It is further explained by the petitioner in para 3 of the same reply notice that the referenced article constitutes the expression of an honest opinion on a matter of faith that are inherently open to different, opinions. While the petitioner and the respondents may differ in their interpretation of the issues, the expression of an opinion by the petitioner could, under no circumstances be seen as being defamatory. Any averments made by the petitioner in the article referred would amount to fair comment in a matter of general interest and consequently would not constitute a defamatory remark. The petitioner also clarified in the said reply notice that they pointed out certain facts about the teachings of the Smith's Friends and indicated their honest opinion that these teachings were contrary to the scriptures and such a fair comment does not amount to defamatory remarks. It is further clarified in the same reply notice that the petitioner has not received any cassette tapes from the respondents. But, they received several cassette tapes from various groups including Smith's friends and they have never utilized any of the contents of the tape in any of their meetings, publications or Radio programs. It is further clarified that after due application of mind and after the exercise of requisite skill and effort, modified some of the articles to suit the Indian reading audience and published the same in their publication, "The Hidden Treasures". Thus, it is clear from all these facts that either a critical analysis of the teachings of Smith's Friends or the critical comment offered by the petitioner in respect of their doctrine or teachings does not constitute the offence of defamation. There is philosophical difference of perception in the teachings of the petitioner and in the teachings of a sub-group and it does not constitute the offence of defamation. It is pointed out by the learned

Counsel for the petitioner that dissent is a common factor in any religion and when there are different sub-sects, different interpretation of the faith by the publications of different sub-sects, does not constitute either the offence of defamation or the infringement of the copyright of the works of SF group. I agree with the above contention of the learned Counsel for the petitioner. According to the Oxford Dictionary, the word "Defiling" means :--

desecrate, make ceremoniously unclean, pollute, befoul, make dirty.

In the instant case, except alleging that the petitioner has defiled the works in "New Songs", which is considered as sacred object by the SF group, it is not alleged in the complaint as to the manner in which the said work has been desecrated. Since it is found that the changes of the words and idiomatic expressions made in the works of the said book in the other publication of the "New Covenant Songs" of the petitioner are for the purpose of treating the theme in a different manner, to suit the different doctrine propagated by the petitioner, it cannot be said that by so doing, the petitioner has defiled the said works of the "New Songs" group. Thus, on a close scrutiny of the averments made in the complaint and the documents produced along with the complaint in support of the case set up in the complaint, I find that no case is made out for any of the offences alleged in the complaint to proceed with the trial against the petitioner.

11. It is also contended by the learned Counsel for the petitioner that the joint complaint filed by the respondents is not maintainable and there is misjoinder of causes of action. It is pointed out by him that the allegations of infringement of copyright in the complaint under Section 63 of the Copyright Act, pertain to the 1st respondent and the other allegations in respect of the other offences under Sections 295, 295-A, 405, 406, 499, 500, 505 and 508 of IPC complained, pertain to the 2nd respondent and instead of filing separate complaints, they have filed a joint complaint, in respect of different causes of action and different offences though they are not common to both of them. In support of his contention, he relied upon two decisions of this Court reported in 1963 KLT 543 (C.S. Desai v. B. Paul Abrao) and . In both the above decisions, this Court has taken the view that joint complaint filed by two or more persons is not maintainable. In reply to these contentions, the learned Counsel for the respondents submitted that the offences alleged are inter-related in the complaint and even the interest of two complainants in the prosecution of the offences is inter-related and in such circumstances, a joint complaint is maintainable. In support of his contention, he relied upon a decision reported in AIR 1942 Oudh 407 and AIR 1969 Manipur 56. In the above judgments, the High Courts interpreted the word "complainant" to include the plural "complainants" by invoking Section 13, General Clauses Act.

12. Since this Court has taken a different view of the matter in the above-referred decisions, I am unable to accept the above contention of the learned Counsel for the respondents. However, as rightly pointed out by the learned Counsel for the respondents, one of the complainants can get himself deleted and the other complainant can proceed with the case to get over the said technical defect.

13. Since it is found that no prima facie case is made out against the petitioner for any of the offences alleged in the complaint, I find it necessary to quash the proceedings pending against the petitioner in C.C. No. 8355/1998.

14. In the result, this petition is allowed and the proceedings pending against the petitioner in C.C. No. 8355/1998 on the file of the Court of the IV Addl. Chief Metropolitan Magistrate, Bangalore are hereby quashed.