

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL WRIT PETITION NO. 2713 OF 2009**

Mr. Vineet Kacker )  
An adult Indian Inhabitant, )  
Age 44 years, Residing at F 60, )  
Green Park Main, )  
New Delhi – 110 016 ) .....Petitioner

versus

1) The State of Maharashtra )  
Colaba Police Station, )  
Mumbai – 400 001. )  
2) Mr. Arvind Gawde, )  
18, Modi Street, 3<sup>rd</sup> Floor, )  
Fort, Mumbai – 400 001. ) .....Respondents

Dr. Abhinav Chandrachud along with Ms. Netaji Gawade and Mr. Akshay Udeshi i/b. Sanjay Udeshi and Co., advocates for the petitioner.  
Mr. A. R. Kapadnis, APP for the State.

**CORAM : RANJIT MORE &  
SMT.SADHANA JADHAV, JJ.**

**DATE : 21<sup>st</sup> SEPTEMBER, 2017.**

**Oral Judgment : (Per Ranjit More, J.)**

The petition was placed before the learned Single Judge of this Court on 20<sup>th</sup> April, 2010 when this Court admitted the petition and granted interim relief in terms of prayer clause (ii) thereby staying the investigation of the subject FIR. In due course, the petition is now placed for final hearing before this Bench.

2. Heard Dr.Chandrachud, learned counsel for the petitioner and Mr. Kapadnis, learned APP for the State. None appeared on behalf of the respondent No.2/complainant despite service. Learned counsel for the petitioner tendered affidavit of service dated 21<sup>st</sup> September, 2017. The same is taken on record.

3. The petitioner by invoking jurisdiction of this Court under Article 226 of the Constitution of India read with Section 482 of the Code of the Criminal Procedure, 1973, approached this Court for seeking quashment of FIR bearing CR No.185 of 2008 registered with Colaba Police Station, at the instance of respondent No.2 against the petitioner and one Jeetu Hinduja for the offences punishable under Sections 295-A and 34 of the Indian Penal Code, 1860 (for short "the IPC").

4. In the said FIR, the respondent No.2/complainant alleged that the petitioner in collusion with the said Jeetu Hinduja, organiser of the exhibition, organised the Exhibition at Museum Art Gallery conducted by Chhatrapati Shivaji Maharaj Museum and exhibited the "Kharaus" (slippers) made from ceramic stone whereupon the images of Hindu Gods and Goddesses were sketched and have thereby hurt the religious feelings.

5. Dr. Chandrachud, learned counsel for the petitioner, took us

through the copy of the FIR and submitted that the same does not disclose deliberate and malicious intention on the part of the petitioner to outrage the religious feelings of any class of Citizens and, therefore, the offence under Section 295-A of the IPC is not made out. He relied upon a decision of the Constitutional Bench of the Apex Court in **Ramji Lal Modi versus State of U.P., 1957 SCR 860**, a decision of three Bench Judge in **Mahendra Singh Dhoni versus Yerraguntla Shyamsunder and anr. (2017) 7 SCC** and a decision of Division Bench of this Court in **Bhau Shankarrao Suradkar and anr. versus State of Maharashtra and ors. 1999 (2) Mh.L.J.**

6. Mr. Kapadnis, learned APP, per contra opposed the petition. He submitted that the FIR does disclose commission of cognizable offence under Section 295-A of the IPC. He also stated that from the reading of the FIR, it is clear that the petitioner deliberately and maliciously with the intention of outraging the religious feelings of the public at large depicted the images of the Hindu Gods and Goddesses on "Kharaus" (slippers).

7. Having considered the rival submissions and having perused the allegations made in the FIR, we find merit in the petition. Before advertng to the facts of the present case, we must deal with the decisions cited across the Bar by the learned counsel for the petitioner.

In **Ramji Lal Modi (supra)**, the constitutional validity of the provisions of Section 295-A of the IPC was challenged on the ground that it is ultra -vires and unconstitutional. The Apex Court upheld the validity of the said Section. For our purpose, the observations made in paragraph 9 are relevant. In the said paragraph, the Constitutional Bench of the Supreme Court held that Section 295-A 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. It was further observed that 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 purview of the said section.

Recently, the scope and purview of Section 295-A fell for consideration before the three Judge Bench of the Apex Court in **Mahendra Singh Dhoni versus Yerraguntla Shyamsundar and anr. (2017) 7 SCC 760**. The Apex Court relied upon the decision of the Constitutional Bench in **Ramji Lal Modi (supra)** and made following observations in paragraph (6) which reads as under :

*"6. On a perusal of the aforesaid passages, it is clear as crystal that Section 295A 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."*

Reading of the ratio of the above two decisions, makes it abundantly clear that Section 295-A does not penalise any or every act of insult but it penalises only those acts of insults which are perpetrated with the deliberate and malicious intention of outraging the religious feeling of that class.

8. In the light of the ratio laid down by the Apex Court in the above two decisions, let us consider the allegations made in the FIR. On the date of the incident, the respondent No.2 along with his friend Avinash Avati had gone to see the open exhibition at Museum Art Gallery

conducted by Chhatrapati Shivaji Maharaj Museum at Colaba. At the said place, the exhibition of (R)evolution, a solo exhibition of New Ceramic by the petitioner on behalf of the Fine Art Company had been organised. Another accused viz. Jeetu Hinduja appears to be an organiser of the said exhibition. The respondent No.2 and his friend while watching the said artworks found replicas of three pairs of "Kharaus" (slippers) made from ceramic stones kept on the table in one corner of the Museum Art Gallery and next to the table, four more replicas of "Kharaus" (slippers) were kept on the floor. On close observation, he found that images of various Hindu Gods and Goddesses were sketched on the said replicas. He further alleged in the FIR that his and his friend's religious feelings were hurt and, therefore, he lodged the subject FIR.

The reading of the FIR makes two things clear. Firstly, the "Kharaus" (slippers) made from the ceramic stones **were kept on the table in one corner** and secondly, only **on minute observation**, the petitioner found the images of various Hindu gods and goddesses sketched on them. The FIR also shows that the religious feelings of the respondent No.2 and his friend were hurt.

From the above, it is clear to our mind that the said ceramic "Kharaus" (slippers), on which, the images of Hindu Gods and Goddesses were sketched **were not displayed prominently**. It is also

clear that the respondent No.2 came to know about the said images only after observing the said "Kharaus" (slippers) **minutely**. These two things makes it clear that it was not the petitioner or the organiser's intention to outrage the religious feeling of any class of citizens. At the most, it can be said that the religious feeling of the respondent No.2 and his friend who had visited the said exhibition were hurt. However, that cannot come within the purview of Section 295-A of the IPC. At this stage, it must also be taken into consideration that the "Kharaus" (slippers), on which, the images of Hindu Gods and Goddesses **were sketched were not meant to be worn by anyone** and, therefore, there is no question of outraging or hurting the religious feelings of any class of citizens. It appears that the alleged offending work of art is an artistic expression of the petitioner and, a piece of skill, which demonstrates his vision and view point. It does not contain any deliberate malice and neither is it an attempt to insult the religion or the religious beliefs of people belonging to any class of society. If the ratio of the above Apex Court decisions is applied to the facts and circumstances of the present case, then, we are of the considered view that no cognizable offence punishable under Section 295-A of the IPC is made out or disclosed.

9. Before parting with this order, a reference must also be made to the decision of this Court in **Bhau Shankarro Suradkar and anr.**

**(supra)**. The petitioner, in this petition, by invoking the jurisdiction of the Court under Article 226 of the Constitution of India sought directions from the High Court that the manufacturers of the fire crackers need not affix photographs of Gods and Goddesses of Hindu religion on the fire crackers. The Division Bench observed that there was no intention of hurting anyone's feelings by selling such fire crackers or by bursting such fire crackers and, ultimately dismissed the petition. This decision is also applicable to the facts and circumstances of the present case as there was no malicious intention on the part of the petitioner.

10. In the light of the above, in our considered view, the continuation of the criminal proceedings against the petitioner is an abuse of process of law. The subject FIR deserves to be quashed and set-aside as against the petitioner and co-accused viz. Jeetu Hinduja. Rule is, accordingly, made absolute in terms of prayer clause (i) and the petition is disposed off as such.

11. The petitioner is at liberty to apply for return of the articles viz. "Kharaus" (slippers) which were seized by the police during investigation of the subject FIR, if not already returned to the petitioner.

**[SMT. SADHANA JADHAV, J.]**

**[RANJIT MORE, J.]**