

M/s. Banwar Lal-Sham Lal v. Registrar of Trade Marks, Bombay and another

Indian Fans case, this proviso will be applicable, and even though Landra is taken to be a geographical name, evidence of acquired distinctiveness, which the Registrar had accepted and had discretion to accept, is sufficient to support the registration of the mark.

Kapur, J.

It is not a case of a mere dispute between the petitioner and respondent No. 2, the Registrar is also a party and I am asked to interfere with the discretion used by the Registrar which according to the case relied upon by the petitioner, the *Indian Electric Works Limited case* (1), cannot be lightly interfered with by the Court unless it has been shown that the Registrar has misdirected himself or has acted on wrong principles which has not been shown in the present case.

I would, therefore, dismiss this petition but in the circumstances of this case parties will bear their own costs.

I may here express my appreciation of the help that I got from counsel for the parties appearing in the case.

FULL BENCH
CRIMINAL ORIGINAL

Before Bhandari, C.J., Harnam Singh and Falshaw, JJ.,

SHRI SHIV RAM DASS UDASI CHAKARVARTI,—
Petitioner

versus

THE PUNJAB STATE,—Respondent

Criminal Original No. 35 of 1952

1954

Indian Penal Code (Act XLV of 1860)—Section 295-A—Essentials of—Defence to charge under—Propriety of.

April 5th

Held, that in order to bring the case within section 295-A of the Indian Penal Code it is not so much the matter of discourse as the manner of it. The words used should be such as are bound to be regarded by any reasonable man as grossly offensive and provocative and maliciously and deliberately intended to outrage the feelings of any class of citizens of India.

(1) 49 C. W. N. 425.

Held also, that it is no defence to a charge under section 295-A of the Indian Penal Code for any one to plead that he was writing a book in reply to the one written by one professing another religion who has attacked his own religion.

Petition under section 99-B Cr. P. Code, praying as under :—

That the order of confiscation of the book entitled 'Gurmat Vichar Suraj arthat Bhagmal Updesak de Baney Gurmat Darhsan da Uttar, Hissa Pehla, in Gurmukhi', dated the 25th April 1952, be set aside.

C. RAI and S. V. KESAR, for Petitioner.

K. S. CHAWLA, Assistant Advocate-General, for Respondent.

JUDGMENT

HARNAM SINGH, J. In Criminal Original No. 35 of 1952 Shri Shivram Das Udasi applies under section 99-B of the Code of Criminal Procedure, hereinafter referred to as the Code, that the order passed by the State Government under section 99-A of the Code, forfeiting to the Government every copy of the book called 'Gurmat Vichar Suraj' and all the documents containing copies, reprints and translations of or extracts from that book may be set aside. Harnam Singh, J.

In Criminal Original No. 35 of 1952 the point for consideration is whether the book called 'Gurmat Vichar Suraj' contains any matter the publication of which is punishable under section 124-A or section 153-A or section 295-A of the Indian Penal Code.

Section 99-D of the Code provides that the Special Bench shall, if it is not satisfied that the book contains matter punishable under section 124-A or section 153-A or section 295-A of the Indian Penal Code, set aside the order of forfeiture.

In these proceedings it is common ground that the book does not contain any seditious matter punishable under section 124-A or any matter

Shri Shiv Ram which promotes or is intended to promote
 Dass Udasi feelings of enmity or hatred between different
 Chakarvarti classes of citizens of India punishable under sec-
 v. tion 153-A of the Indian Penal Code. That being
 The Punjab the position of matters, the question that arises
 State for decision is whether the book contains matter
 ——— which is deliberately and maliciously intended to
 Harnam Singh, outrage the feelings of any class of citizens of
 J. India by insulting the religion or the religious
 beliefs of that class.

In 1898 Bhai Kahan Singh published the book called '*Ham Hindu Nahin*' wherein he stressed the points of difference on religious matters between the Hindus and the Sikhs.

In 1937-38 Shri Shivram Das Udasi wrote the book called '*Gurmat Darpan*'. In that book Shri Shivram Das Udasi maintained, *inter alia*, that inasmuch as the Sikh Gurus had made supreme sacrifices for the protection of Hindu culture the Gurus were Hindus. That book was published by Sardar Bulaqi Singh and Sardar Amar Singh of Gujrat, Punjab.

In April, 1939, Shri Bhag Mal Udasi published book called '*Gurmat Darshan*' wherein he made an attempt to show that the point of view expressed by Shri Shivram Das Udasi in the book called '*Gurmat Darpan*' was erroneous.

In February, 1951, Shri Shivram Das Udasi published book called '*Gurmat Vichar Suraj*' wherein he dealt with points raised by Shri Bhag Mal Udasi in '*Gurmat Darshan*' and Bhai Kahan Singh in '*Ham Hindu Nahin*'.

By order passed on the 29th of February 1952, the State Government has declared to be forfeited to Government every copy of the book called '*Gurmat Vichar Suraj*' and all the documents containing copies, reprints and translations of or extracts from '*Gurmat Vichar Suraj*'. In passing orders under Section 99-A of the Code the State

Government thought that the passages appearing at pages 184, 246, 248, 259, 272, 291, 302 and 312 of the book called '*Gurmat Vichar Suraj*' were punishable under section 295-A of the Indian Penal Code.

Shri Shiv Ram
Dass Udasi
Chakarvarti
v.
The Punjab
State

Indisputably, it is no defence to a charge under section 295-A of the Indian Penal Code for one to plead that he was writing a book in reply to the one written by one professing another religion who has attacked his own religion.

Harnam Singh
J.

In arguments it was conceded that the publication of passages appearing at pages 259, 272, 302 and 312 of the book do not fall within section 295-A of the Indian Penal Code. Indeed, it was said that the objectionable passages in the books were those to be found at pages 184, 246, 248 and 291 of the book.

Shri Bhag Mal maintained in the book called '*Gurmat Darshan*' that God is not in the guise of the Hindu deity, Vishnu. In that book Shri Bhag Mal prefaced his discussion by his own poetic composition. In the passage appearing at page 184 of the book called '*Gurmat Vichar Suraj*' Shri Shivram Das Udasi has criticised the passage from the poetic composition of Shri Bhag Mal reading :—

"Ram Krishan Avtar Asur Sangharan Karne
Sirje Sirjanhar."

Plainly, Shri Bhag Mal in the passage cited above maintained that God created Ram and Krishan Avtars for destroying demons. If so, there was nothing offensive in that passage.

In "The Opening" of the *Sri Guru Granth Sahib* Guru Nanak describes God to be "One Supreme Being, the true-and-eternal Name, the Creative Person, fearless and without enmity, the timeless Form, *unborn* and self-existing, the Enlightener known through grace; true in the beginning, true in the night of ages, true even now

Shri Shiv Ram and true eternally." In the hymns of the Gurus
 Dass Udasi the 'Incarnations' are stated to be men sent by God
 Chakarvarti to do His work of saving the world age after age.
 v. That is the Sikh belief about the mission of the
 The Punjab Gurus.
 State

_____ In justifying the married life of Hindu deities
 Harnam Singh, Shri Shivram Das Udasi makes reference to the
 J. life of Guru Har Rai. In considering that matter
 the author maintains that the Sikh Gurus having
 married, no objection can be made to the ten in-
 carnations of Vishnu on the ground that they
 were married. In *Raj Magh* Guru Arjan says
 that "the devotion of the house-holder is superior
 to that of the anchoret."

Again, in the passage under consideration it
 is said that the ten incarnations of Vishnu
 cannot be said to be full of anger for the reason
 that they destroyed the demons. In discussing
 that matter Shri Shivram Das Udasi cited with
 approval the battles fought by Guru Har Gobind
 and Guru Gobind Singh against tyranny and op-
 pression and the punishment imposed upon the
Masands by Guru Gobind Singh.

In the passage appearing at page 184 of the
 book the author refers to collection of *tithes*
 ordered by the Gurus and maintains that the
 mere possession of wealth is no evidence of
 greed.

From what I have said above, it is plain that
 in the passage appearing at page 184 of the book
 the author seems to accept the conduct of the
 Gurus to be the Ideal Conduct and on that basis
 seeks to justify the conduct of the ten incarnations
 of Vishnu.

In the passage appearing at page 246 of the
 book Shri Shivram Das Udasi seems to think that
 Guru Teg Bahadur thought that the soul was

perishable. In this connection he cites the *Slok* of Guru Teg Bahadur which reads :—

“What is born dieth today, tomorrow or
the next day;

Nanak, sing God's praises and lay aside all
entanglements.”

Plainly, in this *Slok* Guru Teg Bahadur emphasises the eternal truth that death is certain for all. In the hymns of the Gurus the soul is described to be *unborn, undying, deathless and birthless.*

In *Rag* Devgandhari Guru Teg Bahadur sang :—

“All thy relations are only for life:

Thy mother, father, brothers, sons, kinsmen
and the wife of thy house,

*When the soul parteth from thy body, cry
out and call thee a ghost;*

Nobody keepeth thee even half a ghari,
they expel thee from the house.”

In numerous hymns to be found in the *Sri Guru Granth Sahib* bodies are said to die but the soul which possesses the body is stated to be eternal.

In *Rag* Asa Guru Arjan sang—

“ * * * * *

The soul neither dieth nor is born;
* * * * *

In *Akal Ustat* Guru Gobind Singh described the Sikh conception of the manner in which souls emanate from God and are again absorbed in Him in these words :—

“As from one fire millions of sparks arise;
though arising separately, they unite
again in the fire;

Shri Shiv Ram
Dass Udasi
Chakarvarti

v.
The Punjab
State

Harnam Singh
J.

Shri Shiv Ram
Dass Udasi
Chakarvarti
v.
The Punjab
State
Harnam Singh,
J.

As from one heap of dust several particles of dust fill the air, and on filling it again blend with the dust;

As in one stream millions of waves are produced; the waves being made of water all become water;

So from God's form non-sentient and sentient things are manifested, and, springing from Him shall all be united in Him again."

Shri Shivram Das Udasi seems to think that the immortality of soul conflicts with the Gurus' teaching that God is without a 'second'. In the noble words of Guru Gobind Singh cited above the soul comes forth from God and is always really in Him as a partial expression of His Will.

In considering the matter Shri Shivram Das Udasi thought that the basic teaching of the Gurus being that there is no vicarious atonement the thought expressed by Guru Teg Bahadur in the *Slok* cited above conflicts with that doctrine. In expressing that view Shri Shivram Das Udasi thought that the soul was perishable.

In *Sri Rag* Guru Amar Das said:—

"The *pandits* induced by worldly gain read, and read, and recite the *Vedas*,

The fool who in his love of mammon forgetteth God's Name, shall be punished therefor."

In commenting upon that thought Shri Shivram Das Udasi expresses the opinion that the *Granthis* induced by worldly gain read and read and recite *Sri Guru Granth Sahib* and shall also be punished.

In the passage appearing at page 248 of the *Shri Shiv Ram* book the author comments upon the *Kabit* of *Dass Udasi Chakarvarti* Bhai Gur Das reading :—

“As a virtuous woman ever thinketh on her husband and desireth not to behold another man;

v.
The Punjab
State

As the *chatrik* never longeth for lakes, rivers, or seas, but for cloud-drops and singeth the praises of the Beloved;

Harnam Singh,
J.

As the *chakor* in no way desireth to behold the sun, but in every way longeth for the moon, which is dearer to it than life;

so do the Guru's Sikhs naturally refrain from worshipping other gods, but not insultingly or disdainfully.”

In numerous passages appearing in the *Sri Guru Granth Sahib* the Gurus have emphasised that worship is due to God alone. In the days when the Sikh Gurus lived they were not worshipped by the Sikhs and the *Sri Guru Granth Sahib* being the embodiment of the ten Gurus is not the object of worship with the Sikhs.

In the passage appearing at page 291 of the book *Shri Shivram Das Udasi* expresses the opinion that the Sikh Gurus did not repudiate the institution of caste system. That he was wrong in so thinking is plain from what Guru Nanak said in *Sri Rag Ki War* :—

“Castes are folly, names are folly”.

In *Rag Bhairo* Guru Amar Das said :—

“Let none be proud of his caste, He who knoweth God is a Brahman. O Stupid fool, be not proud of thy caste; From such pride many sins result. Everybody saith there are four castes, But they all proceeded from God's seed. The world is all made out of one clay, But the Potter fashioned it into vessels of many sorts.

Shri Shiv Ram
Dass Udasi
Chakarvarti

The body is formed from the union of five elements;

v.
The Punjab
State

Let any one consider *if he hath* less or more *in his composition.*

Harnam Singh,
J.

Saith Nanak, the soul is fettered by its acts, Without meeting the true Guru salvation is not obtained."

In writing about the mission of Guru Nanak Bhai Gurdas said that Guru Nanak established *Avarn Asharam* in India.

From what I have said above, it is plain that the passages to which objection is taken in the order of forfeiture there seems to be some misconception of thought.

In order to bring the case within section 295-A of the Code it is not so much the matter of discourse as the manner of it. In other words, the words used, should be such as are bound to be regarded by any reasonable man as grossly offensive and provocative and maliciously and deliberately intended to outrage the feelings of any class of citizens of India. In no part of the book called '*Gurmat Vichar Suraj*' is there any passage showing disrespect to the Sikh Gurus or the *Sri Guru Granth Sahib*. From what I have seen in the book it is plain that the author professes to accept the message of the Gurus as contained in the *Sri Guru Granth Sahib* but seeks to place his own interpretation on that message. That being the position of matters, I do not think that the publication falls within section 295-A of the Indian Penal Code.

For the foregoing reasons, I set aside the order of forfeiture passed by the State Government on the 29th of February 1952, forfeiting to Government every copy of the book called '*Gurmat Vichar Suraj*' and all the documents containing copies, reprints, and translations of or extracts from that book.

Finding, however, that Shri Shivram Das Udasi was ill-advised to write the book called '*Gurmat Vichar Suraj*' in 1951 I leave the parties to bear their own costs.

Shri Shiv Ram
Das Udasi
Chakarvarti
v.
The Punjab
State

BHANDARI, C.J. I agree with my learned brother that the book does not contain any matter punishable under section 124-A or section 153-A or section 295-A of the Penal Code and consequently that the order of forfeiture must be set aside. I would have the parties to bear their own costs.

Bhandari, C.J.

FALSHAW, J.—I agree.

Falshaw, J.

CIVIL REFERENCE

Before Bhandari, C.J. and Khosla, J.

THAN SINGH AND OTHERS,—*Petitioners*

versus

UNION OF INDIA,—*Respondent*

Civil Reference No. 1-D of 1954

1954

Resettlement of Displaced Persons (Land Acquisition) Act (LX of 1948)—Whether ultra vires wholly or in part—Notifications issued under section 3—Whether illegal and ultra vires—Section 3—Use of the word “expedient”—Whether makes the Act ultra vires.

April 28th

Held, that the whole of the Resettlement of Displaced Persons (Land Acquisition) Act, 1948, is valid with the exception of the latter part of the first proviso and the whole of the second proviso to section 7 (1) (e). The first part of the first proviso, namely “Provided that the market value referred to in clause first of subsection (1) of section 23 of the said Act shall be deemed to be the market value of such land on the date of publication of the notice under section 3” is valid and does not offend against the provisions of the Constitution. The remaining part of this proviso and the whole of the second proviso are declared *ultra vires* and their provisions cannot be given effect to in a Court of law.