

**IN THE COURT OF SHRI Z. S. LOHAT  
METROPOLITAN MAGISTRATE, DELHI**

**State,**

**Vs.**

*Inder Sain Sharma s/o Sh. Dewan Chand Sharma*

*r/o 90 Vino-Bha (Vinoba Puri), Lajpat Nagar, New Delhi*

*2. Raj Kumar s/o Ishwar Prasad c/o H. No. 67-South Ext., New Delhi*

**...Accused**

F.I.R. No. 237/83

u/s 295-A I.P.C.

P.S. Hauz Qazi

**ORDER**

By this order I shall dispose of an objection raised by Ld. Defence Counsel that no charge can be framed against the accused persons because the 'Ayats' were taken by the accused verbatim from the holy book of '*Quran Majeed*' translated in Hindi by a Mohammedan writer Mohd. Farookh Khan and are published in the same form without any addition or subtraction and it was effect which was produced before the public after taking the same from the holy book of Quran Majeed. The Ld. Defence Counsel has admitted that the accused published the disputed posters. The accused reproduced the same before the public not with any malice or bad intention nor he has given any bad opinion with regard to holy book of Quran Majeed and words

“उपरोक्त आयतों से स्पष्ट है कि इनमें ईर्ष्या, द्वेष, घृणा, छल, कपट, लड़ाई, झगड़ा, लूटमार और हत्या करने के आदेश मिलते हैं। जब तक कुरान से उपरोक्त तरह के आदेश देने वाली आयतें निकाली नहीं जाएंगी तब तक दंगों को रोक नहीं जा सकता।”

do not in any way tend to create any disharmony or injured the sentiments of any community, therefore no charge can be framed against any of the accused. The Aytes in the posters at serial No. 2, 5, 9, 11, 12 to 19 and 22 are available in the 'Quran Majeed' and are not distorted in any way. The Ld. Defence Counsel has relied upon the following authorities:-

1. 1977 Cr. L.J. 1606 (at page 1607 Para 4)
2. 1976 Cr. L.J. 98 (at page 112 Para 41)
3. A.I.R. 1957 Supreme Court 620 (at page 622)
4. A.I.R. 1964 Madras 258 (at page 259 Para-6)

APP for the State has argued to the contrary and has submitted that truth is no defence and the words:

“इन्ही कारणों से विश्व के मुस्लिमों और गैर मुस्लिमों के बीच दंगे हुआ करते हैं ।  
जब तक कुरान से उपरोक्त तरह के आदेश देने वाली आयतें निकाली नहीं जाएंगी  
तब तक दंगों को रोका नहीं जा सकता ”

[2]

have been incorporated in the poster to create the communal disharmony, to injure the sentiments of Mohammedan community and clearly come within the mischief of provisions contained in Section 295-A I.P.C. The intention of the accused persons was to create hatred between the Mohammedan and other community; therefore they cannot be exonerated from liability and at this stage of the case the Court cannot weigh the evidence meticulously and closely. There are strong suspicions that the accused have committed the offence and there are prima facie evidence which are sufficient to frame the charge against the accused. Hence the arguments advanced by Ld. Defence Counsel are not sustainable and hence merit rejection. The Ld. APP has also argued that 'Ayats' at serial No. 2, 5, 9, 11 to 19 and 22 are not available in the Quran Majeed and if *any of them are available they are published with their distorted version and appear to be malicious with intent to outrage the religious feelings of the persons having faith in Muslim religion which is clear on the face of it.* Ld. APP for the State has relied upon the following authorities:-

1. 1976 Cr. L.J. page 98
2. 1985 Cr. L.J. page 796
3. 1977 Cr. L.J. page 1606
4. 1960 Cr. L.J. page 1528

5. 1986 Cr. L.J. page 186.

I have heard Ld. APP for the State and Counsel of the accused and have gone through the relevant record on the file. The main thrust of the prosecution is that the above words in the disputed posters tend to create communal disharmony and is an act with deliberate and malicious intention of outraging the religious feeling of a particular class of citizens of India and is an attempt to insult the religion or the religious belief of the said class. It is also submitted that the Ayats in the form as published in the poster are not available or are distorted version of the same. The Ld. APP has particularly pointed out the 'Ayats' at serial No. 2, 5, 9, 11 to 19 and 22.

At this stage of the case the Court is required to see whether there is a prima facie case against the accused so as to frame a charge against them. The following observations were made in 1977 Cr. L.J. 1606.

*"If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by defence evidence, if any, cannot bold that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial."*

"If the scales of the pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order u/s 227 or 228, then in such a situation ordinarily and generally the order which has to be made will be one u/s 228 and not u/s 227 Cr. P.C."

The following observations were made in 1976 Cr. L.J. page 98 (page 112 Para-41).

*"The fair criticism is different from promoting enmity between classes or outraging religious feelings of any class by insulting its religion etc."*

In R. Vs. Boulter (1908)72 J.P. 188, the said Court observed that a man was free to speak and teach what he pleases as to the religious matter. Similarly in (1971) A.C. 406 the principle emerges that the gist of the offence lies not in objection raised but in the manner of attack made upon the substance of the doctrines promulgated of the Christian faith, and that it must be left to the jury to decide whether the terms used amount to such vilification, ridicule or scurrility, outraging public feelings and tend to cause a breach of peace.

IN AIR 1964 Madras 258 what was required to be looked into by the Court was the intention of the writer whether the same tends of outrage religious feelings of a particular community deliberately and maliciously. Similar observations were also made in AIR 1957 S.C. 620.

The essential ingredients of Section 153-A IPC are:

1. The accused promoted or attempted to promote feelings of enmity or hatred between different classes of citizens of India.

2. He did so by words, either spoken or written, or by signs or by visible representation or otherwise.

*Malicious is one of the important intergradients of offence u/s 295-A I.P.C. and it is necessary for the prosecution to establish that element by proper evidence.* But it being a state of mind is often not capable of direct and tangible proof and in almost all cases has to be inferred from the surrounding circumstances having due regard to the settled background and connected facts in relation to editing or publishing of offending articles.

Coming to the facts and circumstances of the case whether the words

“उपरोक्त आयतों से स्पष्ट है कि इनमें ईर्ष्या, द्वेष, घृणा, छल, कपट, लड़ाई, झगड़ा, लूटमार और हत्या करने के आदेश मिलते हैं। जब तक कुरान से उपरोक्त तरह के आदेश देने वाली आयतें निकाली नहीं जाएंगी तब तक दंगों को रोक नहीं जा सकता।”

[3]

as argued by the Ld. APP for the State tend to promote the communal disharmony or amount to outrage the religious feelings of the Mohammedan community, there is a dispute that the 24 'Ayats' published in the posters have not been taken from the 'Quran Majeed' translated by the Mohammedan writer. It is found that they are reproduced in the same form as are translated in the said 'Quran Majeed'. In my opinion the writer by writing the above words has expressed his opinion or suggestion and *at the most it can be branded as a fair criticism of what is contained in the holy book of Mohammedans. By no stretch of imagination the opinion expressed by writer that unless these 'Ayats' are removed from holy book of 'Quran Majeed' there will be no hope of stopping the communal disturbances in different parts of India, can be said to promote or attempt to promote feeling of enmity or hatred between different classes of citizens of India.* In my opinion it is a sort of suggestion to the readers or at the most a fair criticism and by publishing such

suggestion or criticism, the writer or publisher has not in any way outraged or attempted to outrage the religious feelings of Mohammedan community, nor it tends to create communal disharmony or hatred between two classes. With due regard to the Holy Book of 'Quran Majeed', a close perusal of the Ayats shows that the same are harmful and teach hatred and are likely to create differences between Mohammedans on one hand and the remaining communities on the other.

I have personally compared the disputed 'Aytes' with 'Quran Majeed' translated in Hindi with notes by one Mohd. Farookh Khan and have found that most of the 'Aytes' have been reproduced in the posters in its original form as is available in the 'Quran Majeed' except following:-

In Ayte No. 2 the word 'Murtipujak'<sup>4</sup> has been added in column, in Ayte No. 9 the word 'Germuslim',<sup>5</sup> in Ayte No. 12 and 13 the word 'Loot', has been incorporated, in Ayte No. 14 the word 'Urdhmuslim'<sup>6</sup> in Ayat No. 17 the word 'Musalmaano' and in Ayat No. 18 & 19 the words 'Urdhmuslim' and 'Musalmaano' respectively have been incorporated. A perusal of English translation in the same book by an English writer shows the words: Murtipujak, Germuslim, Loot, Urdhmuslim are the translation of Urdu words Mushrik, Fitnakar, Ganimat and Munafik etc. The close reading of all the Aytes published in the posters and read from the book do not in any way give different meanings nor suggest anything that the same were published with malicious intention. Therefore, I do not agree with the contention of the Ld. APP that Ayats No. 2, 5, 9, 11 to 19 and 22 are either not available in Quran Majeed or they are distorted version of the said Ayats.

Ld. APP contended that Ayats No. 2, 5, 9, 11 to 19 and 22 do not exist in the holy Quran Sharif in the form in which they have been published nor are available in the Quran Sharif at all and hence the same required comparison with Quran Sharif. Ld. Defence Counsel has produced Quran Majeed from which he has derived all the Ayats and the said book is followed by Muslims and translated by Muslim writer Mohd. Farookh Khan and being not challenged by anybody nor the same has been banned by any authority. Therefore I find no force in the contention of the APP for the State to compare those Ayats with Quran Sharif.

The authorities cited by the Ld. APP for the State are not applicable in the facts and circumstances of the present case.

In view of the above discussions, I am therefore of the view that there is no *prima facie* case against the accused as offences alleged against the accused do not fall *prima facie* within the four corners of Sections 153-A/295-A and hence both of the accused are discharged.

ANNOUNCED IN THE OPEN COURT TODAY

Dated: 31<sup>st</sup> July, 1986

Sd/-Z.S. LOHAT  
METROPOLITAN MAGISTRATE, DELHI.

31/7/86.

**Footnotes:**

1 Translation: *It is clear from the above mentioned verses that they carry commands for hostility, malice, hatred, deceit, backstabbing, war, conflict, plunder and murder. Unless the verses carrying this sort of commands are removed from the Quran, riots cannot be stopped.*

2 Translation: *These are the reasons for conflicts between Muslims and non-Muslims all over the world. Unless verses carrying this sort of commands are removed from the Quran, riots cannot be stopped.*

3 See footnote 1 for translation.

4 Idol worshipper

5 Non-Muslim

6 Hypocrite

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**REFERENCE**

**“Freedom Of Expression: Secular Theocracy Versus Liberal Democracy”**

Compiled And Edited By **Sita Ram Goel** (1998) and Published by **Voice Of India**, New Delhi