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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1721 OF 2004

1. Sangharaj Damodar Rupawate,
Indian Inhabitant, residing at
Kapilvastu, 4, Kaki Court,
Cumballa Hill Road, Kemps Corner,
Mumbai 400 036.
2. Anand Patwardhan, Indian
Inhabitant, residing at
22, Lokmanya Tilak Colony,
Marg No. 2, Dadar,
Mumbai 400014.
3. Kunda, Pramila, Indian
Inhabitant, residing at Nilkantha,
22 B/602, Bimbisar Nagar,
MHADA Complex, Near Mahendra Dairy,
Goregaon (East),
Bombay 65. ... Petitioners

Versus

1. Nitin Gadre, Joint Secretary
to the Government of Maharashtra,
Mantralaya, Mumbai 400 032.
2. The State of Maharashtra,
Government Pleader,
High Court, Mumbai 400032.
3. Manisha Mhaiskar,
Joint Secretary to the
Government of Maharashtra,
Mantralaya, Mumbai 400032. ... Respondents

Mr. P.A. Sebastian with Ms.M.Adenwala for
Petitioners.

Mr. A.A. Kumbhakoni, Associate Advocate General
with Mr. K.R. Belosey, Government Pleader and Mr.
Vishal Kanade for R. No. 2.

**CORAM: F.I. REBELLO,
SMT.V.K. TAHILRAMANI &
A.S.OKA,JJJ.**

DATED: 26TH APRIL 2007.

ORAL JUDGMENT (Per F.I. Rebello,J.):

. This Petition is an application under Section 96 of the Code of Criminal Procedure, 1973. It is also filed as a Petition under Article 226 of the Constitution of India. We however, propose to treat it and dispose it off as an application under Section 96 of the Code of Criminal Procedure, 1973. The State of Maharashtra on 15.1.2004 issued a notification under Section 95 of the Code of Criminal Procedure, forfeiting every copy of the book captioned "Shivaji-Hindu King in Islamic India", written by one Mr. James W. Laine and was first published in the year 2003 at Oxford University Press, New York and Delhi. The matter was heard and posted for judgment on December, 21, 2006. On that date, the State Government filed an affidavit dated 17th January, 2006 setting out that notification dated 15.01.2004 had been withdrawn forthwith. Another notification dated 28th December, 2006 was produced which has the same effect as the original impugned notification.

. Considering the judgment of the Special Bench of this court, in the case of Gopal Vinayak Godse Versus The Union of India and Ors. AIR 1971 Bombay 56 we permitted the Petitioners to amend the Petition to challenge the Notification dated 28th December, 2006 and carry out all consequential amendments.

. On March 07, 2007, when the matter came up for hearing, the Associate Advocate General handed over an additional affidavit dated 7.3.2007. One of the objections raised therein was to the locus standi of the Petitioners to maintain the present petition considering Section 96 of the Code of Criminal Procedure, 1973.

2. Before going into the merits of the matter, we wish to deal with the contention as urged on behalf of the Respondents in their oral arguments as also in the written submissions, that the Petitioners have no locus standi to file and maintain the present petition. It is submitted that the Petitioners cannot be said to be a "person having any interest" in the book in issue. "A person aggrieved", "a person having any interest" and "a person merely affected" it is submitted, must be clearly distinguished from each other for the purpose of Section 96 of Cr.P.C. This distinction is required to be drawn in the light of the nature of the book and the rights, if any, claimed in that regard by the Petitioner. A reader of a book cannot claim that he is "a person having any interest" in terms of Section 96. Reliance for that is placed in Ramlal Puri Vs. State of Madhya Pradesh, 1971 AIR 1971 M.P.152.

. On the other hand, on behalf of the Petitioners,

their learned counsel draws our attention to the pleadings. Petitioner No. 1 is a well known Lawyer practicing in this court since the year 1984 and has been a public activist in the Ambedkarite movement and other movements intended to mobilize the deprived sections of the society. The Second Petitioner, it is averred is well known film Maker, whose documentaries are known all over the world for the artistic finesse and the democratic and secular message which they so effectively convey. The third petitioner as per the pleadings, is a social activist in different fields where the voiceless are given a voice. It is the contention of the Petitioners, that it is indispensable for the advancement of human civilization that historians should have untrammelled freedom to inquire, discover and disclose facts and events of the past. It is further submitted that the freedom of information and knowledge is guaranteed by the Indian Constitution as well as the international documents to which India is a signatory. Those who rule this country do not have the monopoly of wisdom and they can not decide what the sovereign people of India should know or should not know. It is further submitted that the Petitioners and other citizens of India have a constitutionally guaranteed right to read the book and to know the contents of the said book irrespective of whether they agree with the book or not. The State it is submitted, should not be

allowed to take advantage of the activities of some trouble makers and to negate the basic right of the Indian Citizens to acquire knowledge and to express their views which is an indispensable part of the parliamentary democracy. The objection now raised was not raised when the petition was first heard and as such the Respondents should be estopped from now raising this technical plea.

3. The question therefore, is whether the Petitioners considering the language of Section 96 of the Code of Criminal Procedure, are entitled to maintain this application/Petition. The relevant provisions of Section 96(1) of the Code of Criminal Procedure, 1973 read as under :

"96. Application to High Court to set aside declaration of forfeiture :- (1) Any person having any interest in any newspaper, book or other document, in respect of which a declaration of forfeiture has been made under section 95, may, within two months from the date of publication in the Official Gazette of such declaration, apply to the High Court to set aside such declaration on the ground that the issue of the newspaper, or the book or other document, in respect of which the declaration was made, did not contain any such matter as is referred to in

sub section (1) of section 95."

. Does the expression "any person having any interest" merely means, proprietary or pecuniary interest and excludes persons like the Petitioners who claim a fundamental right of speech and expression to purchase and read the book, the copies of which have been forfeited under Section 95 of the Code of Criminal Procedure.

4. We may firstly, consider the judgment of the Supreme Court in K. Anbazhagan Versus Superintendent of Police and Others, (2004) 3 Supreme Court Cases 767. The Hon'ble Supreme Court was considering the expression "Party interested" under Section 406 of the Code of Criminal Procedure. In that case, transfer was sought of criminal proceedings from one state to another state by a person who was not the complainant. The Hon'ble Supreme Court was pleased to hold that a Petition is maintainable at the instance of the "party interested". It was argued that the expression used was "party interested" and not "person interested" and as such apart from the Attorney General, it was a party interested who has locus standi to file their application. The Petitioner, not being party to the proceedings, was not "party interested" and has no locus standi. Rejecting the argument, the Supreme Court observed as

under:

"..... It will be noticed that the "party interested" has not been defined under Cr.P.C. The words "party interested" are of a wide import and therefore, they have to be given a wider meaning. If it was the intendment of the legislature to give restricted meaning then it would have used words to the effect "party to the proceedings". In this behalf the wordings of Article 139-A of the Constitution of India may be looked at. Under Article 139-A the transfer can be if "the Supreme Court is satisfied on its own motion or on an application made by the Attorney General of India or by a party to any such case" (emphasis supplied). Also if the provisions of Chapter XXIX of the Criminal Procedure Code are looked at, it is seen that when the legislature intended a "party to the proceedings" to have a right of appeal it specifically so stated. The legislature, therefore, keeping in view the larger public interest involved in a criminal justice system, purposely used words of a wider import in Section 406. Also, it is a well settled principle of law that statutes must be interpreted to advance the cause of statute and not to defeat it. The Petitioner being a political opponent, is vitally interested in the

administration of justice in the State and is a "party interested" within the meaning of sub section (2) of Section 406 Cr.P.C."

. In our case, the expression used is "person having any interest in any newspaper, book or other document".

. We shall next, refer to the judgment of the Supreme Court in D.C. Wadhwa Vs. State of Bihar, 1987 (1) Supreme Court Cases 379.

"The rule of law constitutes the core of our Constitution and it is the essence of the rule of law that the exercise of the power by the State whether it be the legislature or the executive or any other authority should be within the constitutional limitations and if any practice, is adopted by the executive which is in flagrant and systematic violation of its constitutional limitations, petitioner 1 as a member of the public would have sufficient interest to challenge such practice by filing a writ petition and it would be the constitutional duty of this Court to entertain the writ petition and adjudicate upon the validity of such practice. We must therefore, reject the preliminary contention raised on behalf of the respondents

challenging the locus of the petitioners to maintain these writ petitions."

. In Ramlal Puri Versus State of Madhya Pradesh (supra), is a case, where a religious book was forfeited by the Government under Section 99(A) of the then Criminal Procedure Code. The Court was considering the expression "person having an interest". The court observed that the book is a religious book on one aspect of an incident on the Ramayana. The Petitioner there the publisher was held to have enough interest. Another petitioner who had sponsored the publisher of the Book was also held to be a person interested and in so far as the Petitioner in the third petition, it was held that any person owing allegiance to a particular sect of the said cult would certainly be a person interested in seeing that his religious book ought not to be forfeited on untenable grounds. The Special Bench of the Madhya Pradesh High Court was pleased to hold as under :

"We may observe that this test may not be applicable to many other kinds of books, say where a work of literary art is written and published, every reader can not claim that he has a personal interest. But the interest in our opinion, ought to be substantial, which is

present in case of followers of the particular sect of a particular cult."

5. In our opinion it will not be possible to place such restricted meaning to the expression 'any person having an interest'. The right of a citizen to be informed is a part of our cherished fundamental right of freedom of speech and expression. Even if Section 95 amounts to a reasonable restriction, yet the Government must satisfy that the act of forfeiture was according to law. A citizen therefore, having an interest in the right to be informed, as a larger part of his right of freedom of speech and expression, will be a person having any interest. Even otherwise after the judgment in *Anbazhgan* (supra) the right of these petitioners as "persons having an interest" cannot be denied. Our fundamental freedoms contained in Part III, should not be kept in wraps by using the outdated tool of "locus standi". The Supreme Court has unwrapped the expression locus standi, beginning *Kamgar Union, Fertilizers Corporation of Union of India*, (1981) 1 S.C.C. 568. At any rate, the Code having not defined the term, the Legislature had left it to the wisdom and understanding of the times. Law is never captive, it grows with the times. We therefore, have no difficulty in rejecting the contention urged on behalf of the Respondents by the learned Associate

Advocate General.

6. In so far as the challenge on merits is concerned, on account of subsequent events, it is not necessary to deal with the various challenges. The requirement of passing an order of forfeiture of a book, presupposes that the book contains any matter the publication of which is punishable under Sections 124-A or 153(A) or 153(B) or 292 or 293 or 295A of the I.P.C., for the State Government to declare that every copy of such book be forfeited to the Government. In other words the power can only be exercised and the notification can only be issued if the Government forms an opinion that the publication contains matter which is in an offence under any of the sections of the I.P.C. as aforesaid.

. In the instant case, the notification issued on dated 15.1.2004 has been withdrawn and the subsequent notification of 28.12.2006, proceeds on the footing that the publication of the Book was punishable under Section 153A of the Indian Penal Code. After the Petition was heard and posted for judgment the learned counsel for the Petitioner as also the learned Associate Advocate General informed the court of the judgment passed by the Supreme Court in Manzar Sayeed Khan Vs. State of Maharashtra and Others in Appeal (Criminal) No. 491 of 2007 decided on 5.4.2007. The

Respondent State has been directed not to proceed with the criminal proceedings against Professor Laine, the Author of the Book including under Section 153A of the I.P.C. Whilst so holding, the court was pleased to observe that the gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153A of IPC and the prosecution has to prove prima facie the existence of mens rea on the part of the accused. The F.I.R. filed against Professor Laine was under Section 153, 153A and 34 of the Indian Penal Code. The Supreme Court held that the writings in the Book, "Shivaji, Hindu King in Islamic India" does not constitute an offence under Section 153A of the I.P.C. Once that be the case, the impugned notification cannot stand and has to be struck down.

7. Apart from that, from the language of Section 153A of the Indian Penal Code, requires that the words must promote or attempt to promote on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities. The first notification issued by the State Government

stated that the publication with reference to material in the Book, has severely affected the sentiments of the people, not only in the State of Maharashtra, but in the entire country as Shree Chhatrapati Shivaji Maharaj is held in high esteem as a Rashtriya Purush and is revered by all and sundry in the country irrespective of his own religion, race, caste etc. This would indicate that it was the opinion of the State itself that Chhatrapati Shivaji Maharaj was revered by all persons in the country and there was no group not holding him in high esteem. This notification was withdrawn, and the second notification came to be issued on 28th December, 2006. In this notification it is stated as under :

"AND WHEREAS. for the reasons aforesaid, the Government of Maharashtra is of the opinion that the circulation of the said Book containing scurrilous and derogatory references against Shri. Chhatrapati Shivaji Maharaj has resulted in causing enmity between various communities and has led to acts of violence and disharmony and that any further circulation of the said Book is likely to result in breach of peace and public tranquillity and in particular between those who revere Shri. Chhatrapati Shivaji Maharaj and those who may not and cause disturbances to public tranquillity and maintenance of harmony

between such groups and as such the said Book should be forfeited."

. We called upon the learned Associate Advocate General to show us any material in their possession which would indicate, that the publication of the book is causing enmity between various communities and which were those communities. The learned Associate Advocate General was unable to produce or disclose any such material or which were the groups based on religion, race, language or religion or caste or communities who do not revere Shree Chhatrapati Shivaji Maharaj. The only answer was, that the order is based upon the grounds set out in the notification. In our opinion, to make a legal order under Section 95 of the Code of Criminal procedure, apart from the fact that offence as set out therein must be indicated, the notification must disclose the grounds based on which the State has formed an opinion, that the author by his publication sought to promote or attempted to promote disharmony or feeling of enmity between various groups as set out therein. All that is pointed out to us is, that subsequent to the publication of the book, there was an agitation against Bhandarkar Oriental Research Institute, Pune by members of an Association called as "Sambhaji Brigade" and certain other people revering Shree Chhatrapati Shivaji Maharaj. We pointedly asked the

learned Associate Advocate General whether the employees of the Bhandarkar Institute Pune constituted that group or class. It was fairly conceded before us that it was not so. Whether a group of employees would constitute a group is not required to be answered. In other words, there is nothing on record to show that the publication was likely to promote disharmony or feeling of enmity between various groups, as likely to cause disturbance to public tranquillity and maintenance of harmony between various groups. Bhandarkar Oriental Research Institute Pune, enjoys an international reputation as a research institute in the State of Maharashtra. It was unfortunate that for whatever reasons the said institute was vandalized and precious documents destroyed History is the loser.

9. We are, therefore, clearly of the opinion that the impugned notification has to be quashed, both on the ground that the publication does not disclose any offence under Section 153A of the Code of Criminal Procedure and also as there was no material to show that the publication has resulted in disturbance of public tranquillity or maintenance of harmony between various groups as set out therein. Various authorities were cited before us. In our opinion, considering the subsequent events, and the Hon'ble Supreme Court directing the State not to proceed

against the author of the Book Shri. James W. Lane. We need not discuss those judgments. The application/Petition filed by the Petitioner must be allowed.

10. In fact after the judgment of the Supreme Court holding that no offence was disclosed under Section 153-A of the I.P.C, the very basis on which the Notification was issued no longer survived. In these circumstances as a Government bound by the rule of law, the State Government itself ought to have withdrawn the Notification. That would have been the proper constitutional course.

11. In the light of our discussion the impugned notification dated 28.12.2006 is quashed and set aside. The respondents are directed to forthwith release all the books which were forfeited and seized by the respondents.

(A.S.OKA,J.)(MRS.V.K.TAHILRAMANI,J.)(F.I.REBELLO, J.)