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2026:GUJHC:62863

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC. APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 854 of 2018

FOR APPROVAL AND SIGNATURE:
HONOURABLE MR.JUSTICE P. M. RAVAL

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Approved for Reporting	Yes	No
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BHARATBHAI HIRJIBHAI SHANKAR
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR RAJESH K KANANI(2157) for the Applicant(s) No. 1
MR NK MAJMUDAR(430) for the Respondent(s) No. 2
MR KM ANTANI, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR.JUSTICE P. M. RAVAL**

Date : 07/10/2026

ORAL JUDGMENT

1. This application under Section 482 of the Criminal Procedure Code, 1973 (the Code) is filed by the applicant praying to quash and set aside the FIR being C.R. No. II-1169 of 2017, dated 21.12.2017, registered with Salabatpura Police Station, District: Surat for the offence punishable under Sections 295A r/w. 114 of

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the Indian Penal Code, 1860 (IPC).

2. Facts of the case are that the *de facto* complainant was serving as the President of the Samast Yuva Ambedkar Samaj. About two to three days prior to lodging of the FIR in question, Akash Ashok Gaikwad, Prakash Naval Baviskar, and Sunil Madhu Rupvante, members of his Ambedkar Community, visited the office of the *de facto* complainant and informed that Sarees and Textile material bearing printed images of Lord Gautam Buddha, were being offered for sale at several premises in the Textile Market and other shops. Being community representatives, they inspected the said shops and verified that Sarees and other Textile fabrics bearing printed impressions of Lord Gautam Buddha were indeed being sold. The said images of Lord Gautam Buddha were positioned such that they fall toward the lower portion of the garment (the feet/border/pallu area). The said act calculated to degrade the deity and intentionally wounded the religious feelings and sentiments of their community. Thus, on the said facts, FIR in question came to be registered.

3. Heard, learned advocates for the respective parties.

3.1 The learned advocate for the applicant would submit that no *prima facie* case is made out even if the FIR in question it taken at face value. It is submitted that false and baseless allegations with ulterior motive with false implication of the present applicant have

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been made in the FIR.

3.2 The learned advocate for the applicant would further submit that the applicant is not involved, directly or indirectly, in the crime in question and no ingredients of the offence alleged *i.e.* 295A IPC are satisfied so far as the present applicant is concerned.

3.3 It is further submitted that incident in question is dated 19.12.2017 whereas, the FIR in question is lodged on 21.12.2017 i.e. almost two days after, for which, no plausible explanation is forthcoming on record and it creates serious doubts about the credibility of the FIR.

3.4 The learned advocate submitted that present FIR is nothing but a case of suppression of true and correct facts. He submitted that the applicant is a reputed businessman of Surat and dealing in Sarees and dress material under the name of Shivam Textiles. The applicant procures goods from some manufacturers as per the latest designs in trend and sells it in market as per requirement. There was no objectionable prints/material was being sold by the applicant and that, the prints were not of the God as alleged by the complainant.

3.5 The learned advocate for the applicant moreover, submitted that there was no intention on the part of the applicant to hurt the religious feelings of any class of people and there was no

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deliberate attempt on the part of the applicant to do so and outrage the religious feelings of any class of people by insulting religious belief or feelings nor any direct or indirect malicious act committed by the present applicant so as to attract the provisions of Section 295A IPC. It is submitted that in fact the *de facto* complainant is into the same business and therefore out of business rivalry and competition, with a view to exert pressure false FIR has been filed and accordingly, it is urged that this application may be allowed.

4. *Conversely*, the learned advocate for the *de facto* complainant as well as the learned Additional Public Prosecutor would submit that from the photographs annexed with the application themselves it is evident that the allegations levelled in the impugned FIR are correct and a strong *prima facie* case is made out against the present applicant.

4.1 It is submitted that at the stage of quashing application, this Court may not conduct a mini trial. The learned advocate for the respondent No. 2 as well as the learned Additional Public Prosecutor for the respondent – State submitted that as per the settled law, inherent powers under Section 482 of the Code should be used sparingly and with a view to curb the abuse of process of law. It is submitted that in the case on hand, a *prima facie* case is made out against the applicant and hence, they requested that it is ultimately a matter of trial after which, the truth could be churned

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out and hence, it is requested not to entertain this application.

5. Heard, learned advocates for the respective parties and perused the papers available on record.

6. Prior to assessing the factual matrix on the touchstone of criminal jurisprudence, it is apposite to reinforce the settled legal position governing the scope, ambit, and limits of the inherent jurisdiction vested under Section 482 of the Code. The jurisprudential parameters regulating the exercise of this extraordinary power have been authoritatively catalogued by Hon'ble Supreme Court in a long line of precedents, chief among them being the authoritative in the case of ***State of Haryana v. Bhajan Lal [AIR 1992 SC 604]***. Therein, Hon'ble Supreme Court crystallized seven distinct, illustrative categories of cases where judicial intervention under Section 482 of the Code or Article 226 of the Constitution is necessitated to secure the ends of justice and clip any abuse of the process of Court. The relevant portion of Paragraph 102 of the said judgment is extracted below:

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be*

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possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a

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> *specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
>
> *(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

6.1 Evaluating the present application on the anvil of the principles enunciated in ***Bhajan Lal (supra)***, this Court has to determine whether the allegations in the FIR, even when accepted at face value, satisfy the essential statutory ingredients of Section 295A of the IPC. This Court must ensure that criminal machinery is not permitted to degenerate into an engine of harassment where liability under criminal law is completely absent.

6.2 At the outset, it is apt to refer to a decision of the Apex Court in ***Mahendra Singh Dhoni v. Yerraguntla Shyamsundar, (2017) 7 SCC 760 = 2017 (0) AIJEL-SC 60295***, wherein, reference was made to a decision in ***Ramji Lal Modi v. State of U.P., AIR 1957 SC 620***, and observed:

> *"6. Be it noted, the constitutional validity of Section 295A was assailed before this Court in Ramji Lal Modi v. State of U.P., AIR 1957 SC 620 which was eventually decided by a Constitution Bench. The Constitution Bench, adverting to the multiple aspects and various facets of Section 295A IPC held as follows :-*
>
> > *"8. It is pointed out that section 295A has been included*

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> *in chapter XV of the Indian Penal Code which deals with offences against the public tranquility and from this circumstance it is faintly sought to be urged, therefore, that offences relating to religion have no bearing on the maintenance of public order, or tranquility and, consequently, a law creating an offence relating to religion and imposing restrictions on the right to freedom of speech and expression cannot claim the protection of clause (2) of Article 19. A reference to Articles 25 and 26 of the Constitution, which guarantee the right to freedom of religion, will show that the argument is utterly untenable. The right to freedom of religion assured by those Articles is expressly made subject to public order, morality and health. Therefore, it cannot be predicated that freedom of religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion cannot under any circumstances be said to have been enacted in the interests of public order. These two Articles in terms contemplate that restrictions may be imposed on the rights guaranteed by them in the interests of public order."*

6.3 Tested on the anvil of the afore-stated principles, if the facts of the case on hand are considered, it is amply clear that Section 295A IPC does not contemplate each and every act to be penalised 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. Insults to religion offered carelessly or without any deliberate or malicious intention of outraging the religious feelings of that class do not come within the section. Thus, when an insult to a religion without any deliberate or

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malicious intention of outraging the religion feelings does not fall within the purview of that section. However, as held by the Constitutional Bench in the decision in ***Ramji Lal Modi (supra)***, 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. What is emphasized is the calculated tendency of this aggravated form of insult is clearly to disrupt the public order would invite the penalty under the provisions of Section 295A IPC.

6.4 From a perusal of the photographs on record which are even not disputed by the learned advocate for the respondent No. 2 and from a Report of the Police Inspector Salabatpura Police Station, Surat dated 07.08.2024, placed on record by the learned Additional Public Prosecutor, it appears that the applicant, allegedly, got printed the Saree and other cloth (material) with image of God and Gautam Buddha face, which covers the lower portion of the garment (the feet/border/pallu area) and thus, committed the offence as alleged. However, it appears from the said Report that such material was also sold by some other persons in the city of Surat. Be that as it may, from a perusal of the photographs produced on record, in the considered opinion of the Court, there appears nothing so as to suggest insult or attempts to insult the religion or the religious beliefs of a particular class, that too, deliberate and malicious, intending to outrage religious feelings of any class by insulting its religion or religious beliefs, so as to

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attract the provisions of Section 295A IPC.

7. The High Court of Punjab and Haryana at Chandigarh, in **Misc. No. M-31988 of 2012 (O&M)**, in the case of ***Maninder Singh and Another v. State of Punjab and Another*** held as follows:

> *"The word "deliberate" has the following meanings : Carefully weighed or considered; intentional (New Websters Dictionary of the English Language, Delux Encyclopaedic Edition Page 264). To weigh, ponder, discuss (Blacks Law Dictionary). The word "intend" means to decide, resolve, purpose (Blacks Law Dictionary). "Intended" means intentional or designed; as to produce the intended effect (New Websters' Dictionary).*
>
> *While interpreting the words "deliberate and malicious intention" occurring in Section 295A of the Penal code, the Allahabad High Court in Kali Charan Sharma v. King Emperor AIR 1927 Allahabad 649 (SB) held that:*
>
> > *"This matter must be judged primarily by the language of the book itself though it is permissible to receive and consider external evidence either to prove or to rebut the meaning ascribed to it in the order of forfeiture.*
> >
> > *If the language is of a nature calculated to produce or to promote feelings of enmity or hatred the writer must be presumed to intend that which his act was likely to produce....*
> >
> > *I have sought, therefore, to judge the intention of the writer from his own declarations in the book, from the nature of the language he has used and from the circumstances in which the book was published and I cannot entertain any doubt, in spite of the author's protestation to the contrary, that the book was conceived and written with the deliberate intention not only of exciting odium against the founder of the*

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Mahomedan religion, but of promoting in Hindus feelings of hatred or enmity against their Muslim fellow-subjects. I pay no attention to the plea that the statements contained in the book are supported by authority; in cases like these the truth of the language can neither be pleaded nor proved; it is immaterial....."

It may be observed that the word "malicious" does not occur in the definition of the words "objectionable performance" in the Act."

……..

While examining the validity of the order passed by the Uttar Pradesh Government forfeiting a book which was a compilation of speeches made by the late Dr. Ambedkar, exhorting the scheduled castes to throw off the shackles of caste tyranny by repudiating the Hindu religion and adopting Buddhism instead, a Full Bench of the Allahabad High Court in Lalai Singh v. State of U.P. 1971 Cri LJ 1773 observed as follows :

"Rational criticism of religious tenets, couched in restrained language, cannot amount to an offence either under Section 153-A or under Section 195-A of the Penal Code. And criticism of the Hindu religion for its inculcation of the doctrine of untouchability and for the sanction which it has given to reprehensible treatment meted out to the lower castes has of recent years been considered perfectly legitimate, having been sponsored by no less a person than Mahatma Gandhi himself".

The Supreme Court while confirming the said judgement in State of Uttar Pradesh v. Lalai Singh Yadav (1976) 4 SCC 213: (AIR 1977 SC 202) quoted with approval the following observation of Holmes, J. in Schenck v. U.S. (1918) 249 US 47: 63 Law Ed 470:

"We admit that in many places and in ordinary times the defendants, in saying all that was said in the circular, would have been within their constitutional rights. But the

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character of every act depends upon the circumstances in which it is done..... The law's stringent protection of free speech, would not protect a man in falsely shouting 'fire' in a theatre, and causing panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force..... The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."

The Supreme Court finally held as follows:

"Government has the power and responsibility to preserve societal peace and to forfeit publications which endanger it. But what is thereby prevented is freedom of expression, that promoter of the permanent interests of human progress. Therefore, the law (S. 99A) fixes the mind of the Administration to the obligation to reflect on the need to restrict and to state the grounds which ignite its action. To fail here is to fault the order. That is about all."

In State of Mysore v. Henry Rodrigues 1962 (2) Cri LJ 564 a Division Bench of the Mysore High Court considered the scope of Section 295-A of the Penal Code. The 1st accused was the editor and publisher of a monthly magazine and the 2nd accused was the printer of the said magazine. The complaint was to the effect that in certain issues of the magazine there were articles which were insulting to the religion and religious beliefs of the Roman Catholics and that the accused acted with a malicious intention in publishing and printing the same and therefore they committed offence publishable under Section 295A of the Indian Penal Code The 1st accused claimed to have made a deep study of the Holy Bible and became convinced that the Bible does not sanction the worship of Virgin Mary. So also it was stated that the Institution of Papacy was not the one sanctioned by the Bible. The Court held as follows:

"Having regard to the purpose for which Section 295-A of

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> *the Indian Penal Code has been enacted, we find ourselves unable to accept the view that a statement which would otherwise fall within the mischief of Section 295-A, can be taken out of it merely because it happens to be a true statement, As contended by the learned Advocate-General, if the language used transgresses the limit of decency and is designed to vex, annoy and outrage the religious feelings of others, then, the malicious intention of the writer can be inferred from the language employed by him*".

8. Applying the settled legal principles enunciated by the Hon'ble Supreme Court and the High Court of Punjab and Haryana in *Maninder Singh, (supra)* to the facts of the present case, it becomes abundantly clear that the foundational ingredients of Section 295A of the IPC—specifically, a "deliberate and malicious intention" to outrage religious feelings—are completely absent. The applicant is a commercial merchant engaged in the routine business of trading Sarees and dress materials based on prevailing market trends and designs. Mere printing or selling of textile materials containing artistic depictions of a deity or revered icon, even if appearing on portions of a garment near the lower border or *Pallu*, cannot automatically be presumed to be an act driven by deliberate malice or calculated to disrupt public order. Commercial activity involving religious motifs, undertaken without any overt act, inflammatory rhetoric, or demonstrable intent to denigrate a religious belief, does not cross the threshold into a criminally punishable insult under Section 295A. To hold otherwise would expand the criminal statute beyond its intended constitutional parameters and penalize commercial practices

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absent any criminal *mens rea*. Thus, the uncontroverted facts set out in the FIR, even when taken at face value, fail to establish a *prima facie* case of an aggravated insult to religion against the present applicant.

9. On a careful consideration of the FIR and the material on record *vis-a-vis* the argument of both the sides, this Court finds that continuing the criminal prosecution against the applicant would constitute a clear abuse of the process of law. The present case falls within parameters (1), (3), (5), and (7) laid down by the Hon'ble Supreme Court in *Bhajan Lal's* case.

10. *In fine*, this application succeeds and is accordingly, allowed. The First Information Report registered against the applicant, referred in Paragraph 1 above, with all consequential criminal proceedings emanating therefrom, are hereby quashed and set aside *qua* the applicant.

10.1 Rule is made absolute, accordingly. **Direct service** is permitted.

[P. M. Raval, J.]

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