

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 07.01.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI OP(MD)No.11021 of 2021

and

CrI MP(MD)No.5632 of 2021

Fr.P.George Ponnaiah

... Petitioner/Accused No.2

Vs.

1.The Inspector of Police,
Arumanai Police Station,
Kanyakumari District,
Kanyakumari.
(Crime No.377 of 2021)

... 1st respondent/complainant

2.Samuvel, Sub Inspector of Police,
Arumanai Police Station,
Kanyakumari District,
Kanyakumari.

...2nd respondent/defacto complainant

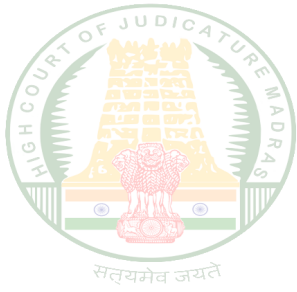
3.R.Kumerasadas
(3rd respondent was impleaded
vide court order dated 28.09.2021)

... 3rd respondent

4.Ilamparuthi
(4th respondent was impleaded
vide court order dated 05.01.2022)

...4th respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.Pc to call for the records pertaining to the First Information Report in Crime No. 377 of 2021 dated 20.07.2021 and quash the same as illegal as against the petitioner alone.



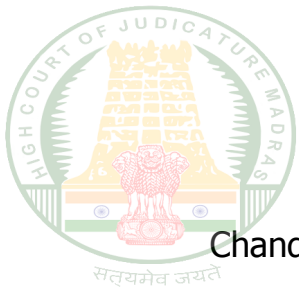
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For Petitioner : Mr.T.Lajapathi Roy
For Respondents : Mr.E.Antony Sahaya Prabhakar
Additional Public Prosecutor for R1 and R2
Ms.L.Victoria Gowri for Ms.D.Ramya for R3
Mr.Sricharan Rangarajan for
M/s.P.Sivachandran for R4

ORDER

“En Kadhala” in the album “Naatpadu Theral” is yet another Vairamuthu melody. The song celebrates the irrelevance of the age factor to a person in love. However, the visualization of the song carries a deeper undertone – the relationship between humans and nature. One sees a plant lovingly bowing down and touching the protagonist to comfort her.

2.To me, it is not a poetic fancy. It represents the age-old tradition of this nation and its people. The five elements of nature are venerated as divine entities-prithvi, akash, agni, vaayu and varuna. The earth (prithvi) is worshipped as Bhooma Devi. She is seen as a consort of the divine. The land is described as 'Punya Bhumi' in the works of the various seers. She takes the form of “Bharat Mata” in Bankim



Chandra Chattopadhyay's novel "Ananda Math". "Bande Mataram"

was composed in Her honour. The translation by Maharishi Aurobindo

reads as under :

"Mother, I bow to thee!
Rich with thy hurrying streams,
Bright with thy orchard gleams,
Cool with thy winds of delight,
Dark fields waving, Mother of might,
Mother free.
Glory of moonlight dreams
Over thy branches and lordly streams, -
Clad in thy blossoming trees,
Mother, giver of ease,
Laughing low and sweet!
Mother, I kiss thy feet,
Speaker sweet and low!
Mother, to thee I bow.

Who hath said thou art weak in thy lands,
When the swords flash out in twice seventy million hands
And seventy million voices roar
Thy dreadful name from shore to shore?
With many strengths who art mighty and stored,
To thee I call, Mother and Lord!
Thou who savest, arise and save!



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To her I cry who ever her foemen drave
Back from plain and sea
And shook herself free.

Thou art wisdom, thou art law,
Thou our heart, our soul, our breath,
Thou the love divine, the awe
In our hearts that conquers death.
Thine the strength that nerves the arm,
Thine the beauty, thine the charm.
Every image made divine
In our temples is but thine.

Thou art Durga, Lady and Queen,
With her hands that strike and her swords of sheen,
Thou art Lakshmi lotus-throned,
And the Muse a hundred-toned.
Pure and perfect without peer,
Mother, lend thine ear.
Rich with thy hurrying streams,
Bright with thy orchard gleams,
Dark of hue, O candid-fair
In thy soul, with jewelled hair
And thy glorious smile divine,
Loveliest of all earthly lands,
Showering wealth from well-stored hands!
Mother, mother mine!



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Mother sweet, I bow to thee,
Mother great and free!"

"Bande Mataram" became the warcry of the freedom movement. The nation became equated with the Mother Goddess. In the pictorial representation of Abanindranath Tagore, She is clad in saffron and dressed like a sadhvi, holding a book, sheaves of paddy, a piece of white cloth and a rudraksha garland (mala) in her four hands. Mahatma Gandhi, the father of the nation, inaugurated a Bharat Mata temple at Varanasi in 1936. Here, She is represented not in the form of an idol but in the form of the map representing undivided India. She has been installed as a Goddess in the precincts of many a Hindu Temple across the country. In Kanyakumari, one finds Her in the premises of Esakkiyamman (Devi) Temple. The legendary freedom fighter Shri.Subramaniya Siva wanted to erect one such temple at Papparapatti in Dharmapuri District. The Government of Tamil Nadu had agreed to fulfil this nearly century old dream.

3.Though She is identified as Durga or Kali and depicted in pictures as standing alone, Tamil Poet Mahakavi Subramaniya Bharathi saw Her as the consort of Lord Shiva in one of his many hymns sung in Her praise. She then becomes Parvathi and Ganesha becomes Her



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child. The noted intellectual and scholar, Shri.Aravindan Neelakandan, makes an interesting observation that this association was brought out beautifully in the painting of M.F.Husain made on the occasion of the 50th anniversary of Indian Independence. Bharat Mata is seen therein playing with Ganesha.

4. Shoaib Daniyal in his article in Scroll.in recounts a conversation between Shri.K.M.Munshi and Shri.Aurobindo Ghosh. To the question, "how can one become patriotic?", Shri.Ghosh replied pointing to the map of British India on the wall, *"Do you see this map? It is not a map but the portrait of Bharat Mata : its cities and mountains rivers and jungles form her physical body. All her children are her nerves, large and small.... Concentrate on Bharat as a living mother, worship her with nine-fold bhakti"*. In the same article, the author refers to an incident that took place in Maharashtra Assembly. When a Muslim MLA was challenged to chant "Bharat Mata Ki Jai", he refused.

5. It is true that after the tragic partition on the sole ground of religion, our founding fathers enacted and adopted a secular constitution which is premised and anchored on civic nationalism. The moment one speaks of civic nationalism, one has to concede that there



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exists its counter part, religious nationalism. To use Taoist imagery, they are Yin-Yang. The irrepressible Shashi Tharoor would probably comment that the religious nationalism represents the black "Yin" while civic nationalism represents the white "Yang". He may come out with an unheard of English expression too!. No one in his senses would suggest that only a religious nationalist can be called a patriot. While a civic nationalist believes in India as a secular conception with the Constitution as its guiding light, to a religious nationalist, India is Bharat Mata. Even to the latter, the Constitution has to be the foundational and guiding document. The difference between "Jai Hind" and "Bharat Mata Ki Jai" will be the difference between the two categories.

6.The petitioner herein is an ordained Catholic diocesan priest. A meeting was organized at Arumanai, a village in western Kanyakumari District, on 18th July, 2021 protesting the continued closure of churches in the District owing to pandemic-induced lockdown. The entire speech was video recorded and widely circulated in the social media. In the said video, the petitioner is seen and heard claiming that the network of Catholic priests was tapped by him and his associates to canvass votes in favour of the Dravida Munnetra Kazhagam which won the recently concluded Tamil Nadu Legislative Assembly election. He mocked the



Minister for Hindu Religious and Charitable Endowments Department in

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“It does not matter how many temples you renovate and consecrate. No Hindu, no devotee of Mandaikattu Amman is going to vote for you. If you won, then it is the alms we Christians and Muslims have thrown to you. You won not because of your talents”.

After such boast, he then directs his ire at Shri.M.R.Gandhi who was elected as MLA on a BJP ticket. Shri.M.R.Gandhi is known to walk barefoot out of respect for Mother Earth. The petitioner mocks him in the following words :

“But we wear shoes. Why? Because the filth of Bharat Mata should not contaminate us. The Tamil Nadu government has given us free footwear. This bhumadevi is dangerous, you could catch scabies from it.”

He then holds out the following warning :

“We are now majority (in the district) from 42 per cent we have crossed 62 per cent. Soon we would be 70 per cent. You cannot stop us. I am saying this as a warning to my Hindu brothers”.

He attacks the Hon'ble Prime Minister and the Hon'ble Home Minister by holding out a grim prophecy :



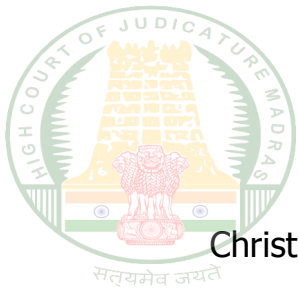
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“The last days of Modi are going to be pathetic. I give it in writing. If the God we worship is a true living God, the history should see Modi and Amit Shah being eaten by dogs and worms.”

7.The speech which went viral provoked considerable public outcry. The first respondent belatedly registered Crime No.377 of 2021 against the petitioner and another for the offences under Sections 143, 153A, 295A, 505(2), 506(1) and 269 of IPC and Section 3 of the Epidemic Diseases Act, 1897. To quash the FIR, this petition has been filed. Two public interested individuals have intervened to oppose the prayer made by the petitioner.

8.The learned counsel appearing for the petitioner at the outset pointed out that on 20.07.2021, the petitioner had circulated a video expressing his regret and clarifying that his words were not intended to hurt the religious sentiments of the Hindus. He submitted that the offending speech must be read in its entirety. If so done, one can conclude that the petitioner only wanted to voice his feelings in support of minority rights and interests and that he had no intention to create disharmony or enmity between two groups. The venue was a church ground which belonged to the first accused. The attendees were



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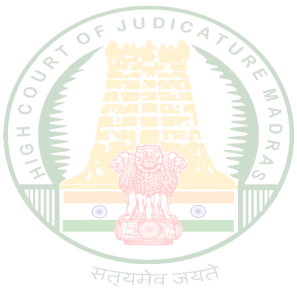
Christians and Muslims. Since the Churches continued to remain closed, the petitioner felt frustrated that the recently elected legislators were doing nothing in the matter. Three of the MLAs are Christians and the petitioner was only mocking them. The petitioner did not circulate the video containing the offending speech. The learned counsel would also contend that leaders like Dr.Ambedkar and Shri.E.V.Ramasamy had criticized and commented about Hindu religion in far harsher terms and that therefore, no exception can be taken to what the petitioner said. He added that Bharat Mata and Bhuma Devi are not legal entities. He relied on the decisions reported in ***AIR 1987 SC 748 (Bijoe Emmanuel and others v. State of Kerala and ors)***, ***1971 CrI.LJ 1773 (Lalai Singh Yadav and anr vs. State of U.P)***, ***1971 CrI.LJ 324 (Gopal Vinayak Godse vs. UOI)***, ***2007 CrI.LJ 1195 (Subal Kumar Dey v. State of Tripura and (2010) 5 SCC 600 (Kushboo v. Kaniammal)***. When it comes to protecting the fundamental right guaranteed under Article 19(1)(a) of the Constitution, the court should always lean in favour of free speech. He added that even if the words uttered by the petitioner may not be in good taste, they would not amount to an offence. He called upon this Court to quash the impugned FIR.



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9. The learned Additional Public Prosecutor as well as the learned counsel appearing for the intervenors submitted that the offences set out in the FIR have been clearly made out and that there is no merit in this petition.

10. Shri. Sricharan Rangarajan, the learned counsel appearing for one of the intervenors submitted that "the value of free speech in a particular case must be measured in specifics. Not all types of speech have an equal value" (***Lord Steyn in R v. Secretary of State for the Home Department, Ex parte SIMMS and another, (1999) 3 WLR 328***). One cannot be permitted to give vent to hate speech. He drew the court's attention to the recent decision of the Hon'ble Apex Court reported in ***(2021) 1 SCC 1 (Amish Devgan v. UOI)***. The court defined hate speech as a form of expression through which the speaker primarily intends to vilify, humiliate or incite hatred against the targets. Its content has more to do with the expression, language and message which should be to vilify, demean and incite psychosocial hatred or physical violence against the target group. The test "Who ? What ? and Where?" must be employed to determine the context. He submitted that applying the aforesaid yardstick, the speech in question would qualify as hate speech and hence, not entitled to protection under Article 19(1)(a) of the Constitution.



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11.Ms.Victoria Gowri, the learned counsel refuted the contention

of the petitioner's counsel that Bharat Mata is not a legal entity by referring to the verse occurring in Vishnupurana composed in 400 BCE..

"Uttaram yat Samudrasya, Himadreshchaiva dakshinam, Varsham tad Bharatam nama, Bharatee yatra santatihi" (meaning 'to the north of the ocean and to the south of the Himalayas, Bharat is the country and the people born there are the Bharatees') ; in Ramayana, Lord Ram exclaimed *"Janani Janma Bhumischa Svargadapi gariyasi"* (meaning *Mother and Motherland are more precious than the great heaven*) ; there is a daily prayer *Samudra-Vasane Devi Parvata-Stana-Mannddale Vissnu-Patni Namas-Tubhyam Paada-Sparsham Kssamasva-Me* (meaning- (*Oh Mother Earth*) *O Devi, You Who have the Ocean as Your Garments, and Mountains as Your Bosom, O Consort of Lord Vishnu, Salutations to You; Please Forgive the Touch of my Feet on Your Holy Body*). She insisted that the religious beliefs of the Hindus have been deliberately and maliciously outraged by the petitioner herein. She called for dismissal of the criminal original petition.

12.I carefully considered the rival contentions and went through the materials on record. Section 143 of IPC is obviously not attracted.

The meeting was held in a private place belonging to the first accused.



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It was convened to mourn the demise of Fr.Stan Swamy, a jesuit priest and a tribal activist who died in judicial custody, and to demand the opening of the places of worship. This cannot be an unlawful object. Therefore, the attendees including the speakers cannot be called as members of an unlawful assembly. Section 143 of IPC is obviously not attracted. None of them suffered from any infectious disease or contributed to its spread. Hence, Section 269 of IPC and Section 3 of Epidemic Diseases Act, 1897 also could not have been invoked against the accused. Section 506(1) of IPC will not also be attracted because the speech was made from a platform and no affected person had complained that he felt criminally intimidated.

13.Let me examine if the ingredients of the offence under Section 295A of IPC are present. The said provision reads as under :

"Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of [citizens of India], [by words, either spoken or written, or or by signs or by visible representations or otherwise], insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to [three years], or with fine, or with both.]



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This provision was considered by the Constitution Bench of the Hon'ble

Supreme Court in ***Ramji Lal Modi vs. State of U.P (AIR 1957 SC***

620) . It was held therein that this provision does not penalize any and every act of insult or attempt to insult the religion or the religious beliefs of a class of citizens but 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. On the petitioner's own showing, the meeting was convened for the twin purposes mentioned above. There was absolutely no need or necessity to mount a visceral attack on the religious beliefs of the Hindus. It was unwarranted and utterly unrelated to the occasion. That is what makes it deliberate and malicious. The petitioner poked fun at those who walk barefoot out of reverence for Mother Earth. He stated that Christians wear shoes so that they wont catch scabies. He painted Bhuma Devi and Bharat Mata as sources of infection and filth. Nothing can be more outrageous to the feelings of the believing Hindus. Section 295A IPC is attracted when there is attack on the religious feelings and beliefs of any class of citizens. It is not necessary that all the Hindus should feel outraged. If the offending words outrage the religious feelings or beliefs of even a section of Hindus, the penal provision would



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be attracted. Bhuma Devi is considered as a Goddess by all believing Hindus. I use the expression "believing" because, even materialists, rationalists and non-believers also can be counted as Hindus. I may add tongue-in-cheek that even the great iconoclast and rationalist Periyar did not cease to be a Hindu. Bharat Mata evokes a deeply emotional veneration in a very large number of Hindus. She is often portrayed carrying the national flag and riding a lion. She is to many Hindus a Goddess in her own right. By referring to Bharat Mata and Bhuma Devi in the most offensive terms, the petitioner has prima facie committed the offence under Section 295A of IPC.

14.Section 153A as well as Section 505 (2) of IPC are as follows :

"Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.-- (1) Whoever

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts 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 illwill between different religious,



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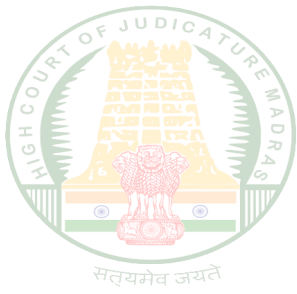
racials, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, [or]

[(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,]

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

“505(2)-Statements creating or promoting enmity, hatred or ill-will between classes - Whoever makes, publishes or circulates any statement or report



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containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or illwill between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.”

A reading of the petitioner's speech as a whole does not leave any one in doubt. His target is the Hindu community. He is putting them on one side and the Christians and Muslims on the other. He is clearly pitting one group against the other. The distinction is made solely on the ground of religion. The petitioner repeatedly demeans the Hindu community. He opened his speech as follows :

“I was born into a Hindu family. My grandfather was Hindu. Since he thought it fit that his daughter should leave this gutter, he gave her hands in marriage to my Christian father. If not for this marriage, I would have been a possessed man ringing bells at some “Sudalaimaadan Swamy” temple. The Christian faith gave us liberation. Hence, we shall continue to evangelise this faith.”



There is a Devi Temple known as "Mandaikkaadu Amman Kovil" in

WEB COPY Kanyakumari District. It recently witnessed an unfortunate fire accident.

The petitioner has this to say on the incident :

"Mandaikkaadu Amman (Devi) caught fire owing to deficiencies in "Mantra Puja". It is understandable. He (the Brahmin Priest) chants in Sanskrit. He chants the same Mantra at a wedding which he chants at a funeral. The fire breakout was bound to happen."

In several temples in the erstwhile Travancore region, the male devotees have to enter without wearing any upper garment. They wear the traditional Dhoti and wrap themselves with a towel. The petitioner mocks this traditional practice as follows :

"Manothangaraj goes to the Suseendiram temple. Can he not enter the temple wearing a shirt? Would we allow someone who looks like he's returned in a towel after bathing in a pond to enter our church? We would say "Get out, you tweak". Christianity has taught you to wear a shirt. But you go in without a shirt. Glad you atleast wore a Veshti (Dhoti)."

The words uttered by the petitioner are sufficiently provocative. They reek of malice and supremacism. The question is whether the State can ignore such incendiary statements as that of a lunatic fringe. The



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answer has to be in the negative. The petitioner is a charismatic catholic priest. He commands a large following. Also, Kanyakumari is not like any other District. Shri.Aravindan Neelakandan who is a native of Kanyakumari has this to say :

"Just out of curiosity I checked the religious demographics of Kanyakumari district in 2011 census. Hindus have sunk below the crucial 50 percent mark.

The demographic change in Kanyakumari district has lessons for entire India. Forget not that the present times and the recent past three decades of this district are in many ways the future of many districts throughout India.

I remember growing up in a Catholic dominated locality. We never discriminated. In fact, I never felt the Hindu-Christian distinction at all. During Christmas going and visiting nativity scenes had always been a happy memory that brings pleasantness to heart to this day. I had my first sense of betrayal when I was taken by my very loving Catholic neighbors for a drama, they enacted in a church festival. The drama was about St. Xavier. There St. Xavier would drag the wife of the priest from behind the idol of the Goddess. The priest was cheating the people telling them that the Goddess spoke. And St. Xavier asked everyone to shun the false Gods and Goddesses and worship the one true god – his Christian god. I felt so upset. It was traumatic then and it is traumatic to this day. My mother told that all people worship the one Truth in various names and to fight like this was wrong. My Christian neighbours told me that we were lost in the darkness of false Gods.



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Thus, the faultlines got set very early in life for me as it should have been for many thousands of Hindu children in our district.

The beginning of all these things go to the kings of Travancore who allowed missionary works for their political gains. They saved territory all right but they lost the souls. This is a point where Mahatma Gandhi and Veer Savarkar had converged – the lost territory could be gained from the enemy but the souls lost to the enemy, that is very difficult to recover.

The problem with the change in demography was that those who got converted got denationalized in the sense they lost a core national value – respect and reverence for theodiversity. They wanted to forge the expansionist monopolistic worldview on all. Those who fight against conversions do not regard Jesus as a false god or even a foreign god. They actually fight against the monopolistic claim that he is the only god and all other Gods and Goddesses are false. This monopolistic claim and not the spirituality that is the problem.

It created witch-hunts and burning at stake in the dark centuries in Europe and it launched the world's longest inquisition in India which was recommended to be imposed by 'St. Xavier. In Goa St. Xavier ruthlessly destroyed Hindu places of worship and harassed Hindus while in Kanyakumari district he is hailed as a saint by the people of very same nation his recommended inquisition would burn at stake – not just Hindus but also Jews and Muslims – all Indians.

Okay that is all history and cannot we just see celebrations as celebrations? We can and we must. But if the



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same destructive impulse is still at work, then we cannot and if we do then it would be suicidal.

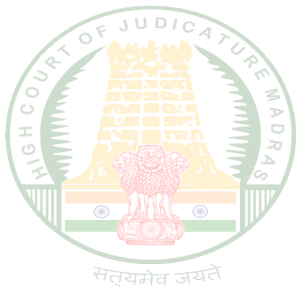
Demographic change also challenged the basic national values and the very sacred geometry of India. Justice Venu Gopal who inquired into the infamous 1982 Mandaikadu riots was shocked to see the kind of scheming that went with planned proselytizing. Place names were getting changed at village levels. Finally they even had the audacity to propose the change of name of the district from Kanyakumari to Kannimari and there was a plan to change Nagerkovil to (Yesu) Natharcoil. In fact there had been a partial success in that sometimes even in official communications Kanyakumari gets the spelling Kanyakumary and Nagerkovil is officially Nagercoil.

In those villages where Hindus have been reduced to minority their lives had been made miserable. From going to school to conducting their festivals they had to face verbal humiliations to physical assaults. At times women got molested. The places of worship were desecrated.

I remember how we spent the nights in fear each time a Church bell was ringing.

In postcard scenarios the ringing of a church bell meant joy and happiness but in Kanyakumari district of 1980s it meant for the Hindus a call for their destruction. We lived the way Jews lived in a pre-Holocaust German village.

When Hindus retaliated then with the strong media support only the retaliations and reactions were highlighted in vacuum. But the retaliation was surely forceful and nothing to be proud of.



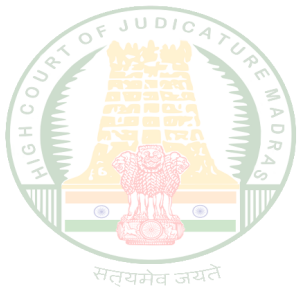
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Either way people of the district suffered. But remember the physical violence starts with psychological violence and psychological violence comes from the violence embedded in the propaganda. When one distributes a pamphlet in public space equating another person's way of worship -worshiping 'idols' in this case- with adultery, the gates of physical violence have been opened - either as the culmination and fulfilment of this propaganda or as a sequence of retaliation to this propaganda. Hate speech is not religious propaganda. Hate speech is a sin against any truly spiritual tradition.

During elections often evangelical and Islamist forces join hands to defeat any pro-nationalist political dispensation. This cuts across the parties. When the great Kamaraj contested the evangelical dispensation and Islamist politicians came together and a communal propaganda was launched to defeat one of the greatest leaders of Tamil society. It continued since then even with Hindu majority and non-Hindu population having crossed the 35 percent mark. Now the combined non-Hindu population had crossed the 50 percent mark and Hindus though are the single largest religious groups are still powerless.

But remember one thing. This is not about religion. This is about theo-diversity. Hindu majority is the protection of all minorities.

Imagine Catholics of Ireland under the protestant UK – think of their troubled history. Imagine Ahmadiyas in a Sunni dominated Pakistan. They cannot even call themselves Muslims. Imagine Protestants in a Catholic majority society. Then imagine all these minorities in a Hindu majority society.



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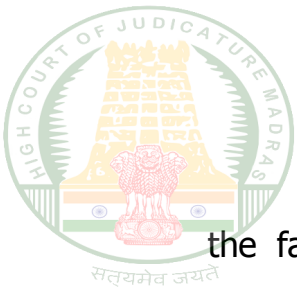
You will understand what I am saying. Hindus are not a religious community. They by their very presence guard the minorities and their diverse ways.

Destroy that demography because of some perverse delight of destroying a pagan religion and culture, then dear minorities you are destroying your real protection, your sustained protection and you are cutting the very trunk on which you are sitting.

All a Hindu asks is that let there be mutual respect and let us live peacefully without proselytizing. In reality that is what every nation builder of India has said. Destroy that civilizational harmony and equilibrium – you are actually destroying yourself.”

The thoughts expressed by Shri.Aravindan Neelakandan are not new. They rather echo the recommendations made by Hon'ble Mr.Justice P.Venugopal Commission which was constituted following the communal riots that took place in the year 1982 at Mandaikkaadu in Kanyakumari District.

15.The demographic profile of Kanyakumari in terms of religion has seen an inversion. Hindus became a minority in the District since 1980. Though the 2011 census gives an impression that Hindus are the largest religious group with their number pegged at 48.5 per cent, that may not represent the ground reality. One can take judicial notice of



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the fact a large number of Scheduled Caste Hindus, though having converted to Christianity and professing the said religion, call themselves Hindus on record for the purpose of availing reservation. Such persons are called as crypto-christians. There was even a motion picture based on this theme (Rudra Thandavam). Out of courtesy, I refrain from mentioning the name of a Judge who belonged to such a category. There was even a writ petition challenging his status. Everyone pretended as if they did not know the truth. But when he died, he was buried as per Christian rites in a cemetery. That is why, notwithstanding the census figures, the petitioner boasts that the Christians have crossed 62 per cent in Kanyakumari District. He foresees that they would soon reach the figure of 72 per cent. His triumphalism is evident when he says "I warn the Hindus" and claims that nothing can stop their growth.

16.India was partitioned on the ground of religion. Millions died in the ensuing riots. That is why, our founding fathers consciously adopted secularism as the guiding principle of the new republic. There is something truly enchanting about the idea of India propounded by them. Equality, liberty, fraternity and egalitarianism were real promises meant to be fulfilled. Freedom of conscience and the right to freely



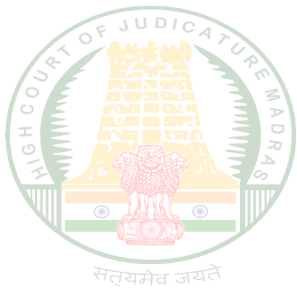
profess and propagate one's religion was made a fundamental right.

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But the tryst with destiny can be achieved only if the multicultural character of the Indian society continues to remain. In other words, the status quo in the matter of religious demography has to be maintained. If there is a serious subversion of the status quo, calamitous consequences may follow. State is there to maintain and uphold the rule of law. But if the tipping point is reached, things may become irreversible. This is in fact the essence of the report of Justice Venugopal Commission.

17.Our Constitution guarantees freedom of conscience as a fundamental right. If an individual out of personal conviction wants to change his religion, his choice must be respected. Let me quote from the autobiography of B.Sen, a great lawyer who practiced in the privy council and was one of the earliest members of the Supreme Court Bar. In his book, I find the following passage :

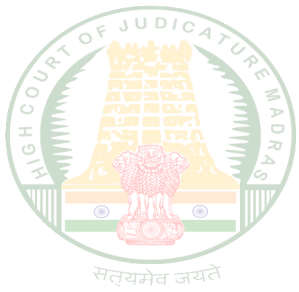
"I had been drawn towards Christianity from my childhood days but was somewhat put off when I saw how some of the missionaries in the name of discipline practiced such abject cruelty on the little charges in the schools run by them. I had often asked myself where was that love; the compassion and forgiveness which one



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found in the Bible times out of number? Some years later, I had found the answer in the east of London amidst the bombed out houses. Then I knew what Christianity really meant to be. I had gone along with Rev.Dempster, a Methodist Priest on a tour of the devastated areas, visiting bereaved families and bringing succour to the sick and wounded; people had flocked around him in profound respect for that love of his humanity. From that time, I started reading the Bible on a daily basis and saying the Lord's Prayer every morning, but I knew that I had to wait for the call from Him. I felt that call had come within the encircling gloom of that dilapidated Church at Srinagar.”

The change of religion by such a person cannot be and ought not to be objected to. Dileep Kumar became A.R.Rahman. Yuvan Shankar Raja is now a Muslim. One of the sons of T.Rajendar has embraced Islam. These are perfectly understandable and no exception can be taken. But religious conversions cannot be a group agenda. Our Constitution speaks of composite culture. This character has to be maintained. The clock of history can never be put back. But the status quo that obtains in the year 2022 as regards religious demographic profile may have to be maintained.



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18.Of course, I must deal with one major contention of the petitioner's counsel. He referred to the writings of Dr.Ambedkar who had condemned Hindu religion and society in the strongest possible terms. This contention is liable to be rejected in light of the following observations in ***Amish Devgan*** :

“...Communities with a history of deprivation, oppression, and persecution may sometimes speak in relation to their lived experiences, resulting in the words and tone being harsher and more critical than usual. Their historical experience often comes to be accepted by the society as the rule, resulting in their words losing the gravity that they otherwise deserve. In such a situation, it is likely for persons from these communities to reject the tenet of civility, as polemical speech and symbols that capture the emotional loading can play a strong role in mobilising. Such speech should be viewed not from the position of a person of privilege or a community without such a historical experience, but rather, the courts should be more circumspect when penalising such speech. This is recognition of the denial of dignity in the past, and the effort should be reconciliatory.”

It is too much for the petitioner to be compared with revered leaders like Dr.Ambedkar. For that matter, a critical or even a harsh statement pertaining to religion or religious beliefs coming from a rationalist or a



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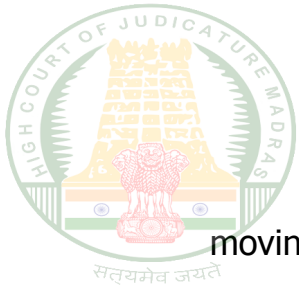
reformist or an academic or an artist would stand on a different footing altogether. The shield of fundamental right guaranteed under the Constitution under Article 19(1)(a) would be available to them. We need Charles Darwin, Christopher Hitchens, Richard Dawkins, Narendra Dabholkar, M.M.Kalburgi and many such others in public life and discourse. Dr.Abraham T Koor, who wrote the book "**Begone Godmen! Encounters with Spiritual Frauds**", cannot be said to have outraged the religious beliefs of Hindus. He was speaking as a rationalist. The fact that he belonged to Christianity is utterly irrelevant. When stand-up comedians Munawar Faruqui or Alexander Babu perform on stage, they are exercising their fundamental right to poke fun at others. Again, their religious identity is irrelevant. It is here, the "Who?" and "Where?" tests matter. Section 295A of IPC cannot be invoked in such cases because the element of malice is wholly absent. The persons concerned voice their opinions or give vent to their expressions in their capacity as satirists. On the other hand, an evangelist like the petitioner cannot claim a similar privilege. He cannot insult or outrage others' religion or their religious beliefs and still claim immunity from the application of Section 295A/153A/505(2) of IPC. This is because he views the other religionists as a constituency to be poached. He cannot be called a disinterested or neutral commentator. The targeted



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religionists are bound to take offence as they fear potential harm to their interests and well-being. In such an ambience, the Newton's third law, "every action has an equal and opposite reaction", may start operating. The State cannot remain a mute spectator in such situations. To uphold the sanctity of the Constitution and maintain public order, the strong arm of law will have to come down heavily on those who seek to disrupt communal peace and amity. The offending speech of the petitioner prima facie attracts the offences under Sections 153A, 295A and 505(2) of IPC. However, the offences under Section 143, 269 and 506(1) of IPC and Section 3 of Epidemic Diseases Act, 1897 are not made out. The impugned FIR is quashed to this limited extent as far as the petitioner is concerned. This criminal original petition is partly allowed. Connected miscellaneous petition is closed.

19.After reading Paul Johnson's book which he describes as "A *Biography from a Believer*", I must say that I fell in love with Lord Jesus Christ. Did he not say "***Beloved, let us love one another, because love comes from God. Everyone who loves has been born of God and knows God***"?. Recently, the world became poorer on account of the sad demise of Rev.Desmond Tutu, the great South African anti-apartheid leader. I only wish that the petitioner reads the



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moving tribute paid by Shri.Gopalkrishna Gandhi. I am certain that on the Judgment Day, God shall admonish the petitioner for having committed an un-Christian act.

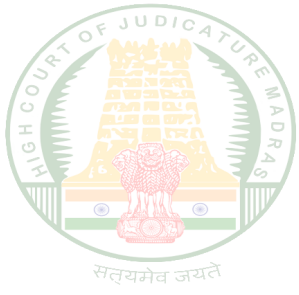
07.01.2022

Index : Yes / No
Internet : Yes/ No
skm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1.The Inspector of Police,
Arumanai Police Station,
Kanyakumari District, Kanyakumari.
- 2.The Additional Public Prosecutor,
Madurai Bench of the Madras High Court, Madurai.



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G.R.SWAMINATHAN, J.

SKM

Cri OP(MD)No.11021 of 2021
and
Cri MP(MD)No.5632 of 2021

07.01.2022