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SRI BARAGUR RAMACHANDRAPPA AND ORS.

v.

STATE OF KARNATAKA AND ORS.

MAY 2, 2007

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[B.P. SINGH AND H.S. BEDI, JJ.]

Code of Criminal Procedure, 1973: Sections 95 and 96.

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Forfeiture of certain publications—Novel “Dharmakaarana”—Forfeiture of copies of—Petitioner published a novel entitled “Dharmakaarana” portraying the story of a great saint of the 12th Century narrated in first person, the narrator being the saint himself—The family of the saint consisted of individuals of progressive thought who sought to promote social reform in Hindu society and for that purpose preached that

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all were equal—The novel was selected by the Karnataka Sahitya Academy for its annual award as the best novel for the year 1995—Some eminent figures in the field of literature and otherwise, including a former Vice President of India, wrote to the State Government that some of the statements made therein were objectionable, inflammatory, hurtful and insulting to the sentiments and feelings of the followers of the said saint and suggested that

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the novel should be forfeited—The State Government issued a Notification under S. 95 Cr.P.C. ordering forfeiture of the novel—A petition under S.96 Cr.P.C. was filed by the petitioner on which the matter was referred for decision to a Bench of 3—Judges of the High Court—The Judges examined the matter in extenso and dismissed the petition—The High Court held that

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an order under S. 95 Cr.P.C. was justified if it appeared to the State Government that the published material contained objectionable matter and that such a matter was maliciously intended to promote feelings of enmity and hatred between different classes of the citizens of India—Correctness of—Held: India is a country with vast disparities in language, culture and religion and unwarranted and malicious criticism or interference in the fait of others

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cannot be accepted—The Government, thus, has the power of nullify a publication which endangers public order—The State Government had applied its mind to the contents of the novel and the allegations made therein and taken a balanced and reasoned decision on the matter—Section 95 of the Code is not violative of Article 19(1)(a)—Chapter 12 is not in sync with the

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rest of the novel and has been deliberately designed to be hurtful and to bring the family of the saint to shame—Hence, but justified—Constitution of India, 1950, Arts, 19(1)(a) and 51-A(h)—Penal Code, 1860, Ss. 124-A, 153-A, 153-B, 292, 293 and 295-A. A

Petitioner No. 11 published a novel entitled “Dharmakaarana” portraying the story of a great saint of the 12th Century narrated in first person, the narrator being the saint himself. The family of the saint consisted of individuals of progressive thought who sought to promote social reform in Hindu society and for that purpose preached that all were equal. The book was selected by the Karnataka Sahitya Academy for its annual award as the best novel for the year 1995. Some eminent figures in the field of literature and otherwise, including a former Vice President of India, wrote to the State Government that some of the statements made therein were objectionable, inflammatory, hurtful and insulting to the sentiments and feelings of the followers of the said saint and suggested that the novel should be forfeited. B C

The State Government issued a Notification under Section 95 of the Code of Criminal Procedure, 1973 ordering forfeiture of the book. A petition under Section 96 of the Code was filed by petitioner No. 11 on which the matter was referred for decision to a Bench of 3-Judges of the High Court. The Judges examined the matter in extenso and dismissed the petition. D

The High Court held that an order under Section 95 of the Code was justified if it appeared to the State Government that the published material contained objectionable matter and that such a matter was maliciously intended to promote feelings of enmity and hatred between different classes of the citizens of India. Hence the appeal. E

Dismissing the appeal, the Court F

HELD: 1. It is true that the inclusion of a scientific temperament and a spirit of enquiry is essential for human development and is a *sine qua non* for progress and for social change and Article 51-A(h) of the Constitution clearly recognizes this principle. Likewise, Article 19(1)(a) of the Constitution gives every citizen the right to freedom of speech and expression and this freedom is yet another vehicle towards the same direction and goal. G

[Para 7] [1093-A, B]

Indian Express Newspapers (Bombay) Pvt. Ltd. v. Union of India, [1985] 1 SCC 641, referred to. H

A 2. It is, however, clear that the freedom of speech and expression is not unfettered and Section 95 of the Code of Criminal Procedure, 1973 exemplifies this principle on the understanding that this freedom must be available to all and no person has a right to impinge on the feelings of others on the premise that his right to freedom of speech remains unrestricted and unfettered. It cannot be ignored that India is a country with vast disparities in language, culture and religion and unwarranted and malicious criticism or interference in the faith of others cannot be accepted. [Para 8] [1093-E, F]

State of Uttar Pradesh v. Lalai Singh Yadav, [1976] 4 SCC 213, followed.

S. Rangarajan v. P. Jagjivan Ram, [1989] 2 SCC 574, referred to.

C 3. The Government, thus, has the power to nullify a publication which endangers public order, although the freedom of expression in this situation is undoubtedly restricted even though such freedom “is an indicator of the permanent address of human progress”. It must also be noted that it would be difficult to examine all publications on a common yardstick and what may be a laughable allegation to a progressive people could appear as sheer heresy to a conservative or sensitive one. [Para 11] [1095-C, D]

E 4. Merely because some eminent personalities or group of persons had taken it upon themselves to bring to the notice of the State Government as to the inflammatory and baseless statements that had been made, it would not amount to an abdication of the State of its functions. The impugned Notification shows that the State Government had applied its mind to the contents of the novel and the allegations made therein and taken a balanced and reasoned decision on the matter. [Para 12] [1095-E, F]

F 5. It will be seen that Section 95 and Section 96 of the Code when read together are clearly preventive in nature and are designed to preempt any disturbance to public order. At the same time, Section 95 does not by itself create a criminal offence and the reference to the various Sections of the Penal Code, 1860 are merely descriptive of the kind of offences which need to be prevented by a declaration under Section 95. In this view of the matter, the contention of the appellant that the onus of proof would lie on the State Government is not acceptable as the intention has, to some extent, to be inferred from the nature of the publication. It is true that a forfeiture of a newspaper or book or a document is a serious encroachment on the right of a citizen, but if forfeiture is called for in the public interest it must without a doubt have preeminence over any individual interest.

H [Para 15] [1097-G; 1098-A, B]

State of Uttar Pradesh v. Latai Singh Yadav, [1976] 4 SCC 213 and *Nand Kishore Singh v. State of Bihar*, AIR (1986) Pat 98, referred to. A

6. Section 95 of the Code is not violative of Article 19(1)(a) of the Constitution, as the action taken thereunder is of a preventive nature and that an extremely efficacious remedy under Section 96 of the Code is available to an aggrieved party or a person. It is significant, and it is clear from the very large number of judgments, that most of the matters pertain to attacks on minorities or religious and social groups or individuals who are perceived as being prodigals or heretics and, therefore, unacceptable to the conservatives amongst the mainstream. It cannot be overemphasized that India is a country with huge diversities in language and religion and the weaker amongst them must be shown extra care and consideration. [Para 18] [1099-B, C, D] B C

Bobby Art International v. Om Pal Singh Hoon, [1996] 4 SCC 1, referred to.

7. Chapter 12 is not in sync with the rest of the novel and has been deliberately designed to be hurtful and to bring the family of the saint to shame. The novel with its complimentary passages in favour of the saint is merely a camouflage to spin and introduce a particularly sordid and puerile story in Chapter 12. [Para 23] [1104-G; 1105-A] D

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1228 of 1998. E

From the Final Judgment and Order dated 16.04.1998 of the High Court of Karnataka at Bangalore in Criminal Petition No. 2081 of 1997.

Raju Ramachandran, Lalit Mohini Bhat, Naveen R. Nath and Anitha Shenoy for the Appellants. F

S.S. Javali, Anil K. Mishra, Vikrant Yadav, R. Hedge, Gurdutt Ankolekar, Naresh Kaushik, B.S. Methaila, Amita Kalkal, Anish Dhingra and Lalita Kaushik for the Respondents. G

The Judgment of the Court was delivered by

HARJIT SINGH BEDI, J. 1. This appeal by special leave arises out of the judgment of the Karnataka High Court whereby the petition made by the tenth petitioner under Section 96 of the Code of Criminal Procedure for setting H

A aside of the Notification dated 27th June 1997, forfeiting all copies of the novel "Dharmakaarana" under Section 95 of the Code, has been dismissed.

2. The matter arises out of the following facts :

B Basaveshwara, a great saint of the 12th Century, also known as "Basavanna" was born in Bagewadi in Bijapur District, Karnataka State. His elder sister Akkanagamma was a saintly woman. Her son Channabasaveshwara too grew up to be a great social reformer and a preacher of Veerashaivism, a religious sect, and of the Basava Philosophy. The family consisted of individuals of progressive thought who sought to promote social reform in Hindu society and for that purpose preached that all were equal.

C 3. Petitioner No.11 Dr. P.V. Narayanna published a novel in 1995 entitled "Dharmakaarana" portraying the story of Basaveshwara, Akkanagamma and Channabasaveshwara narrated in first person, the narrator being Basaveshwara himself. The book was selected by the Karnataka Sahitya Academy for its annual award as the best novel for the year 1995. It appears that some eminent figures in the field of literature and otherwise, including Shri B.D. Jatti, the former Vice-President of India wrote to the State Government that some of the statements made therein were objectionable, inflammatory, hurtful and insulting to the sentiments and feelings of the Veerashaivas and the followers of Basaveshwara, and suggested that the novel should be forfeited. It also appears that the Akhila Bharat Veerashaiva Mahasabha filed a suit in the City Civil Court at Bangalore seeking an injunction restraining the Government from conferring the award on the Author and for an order banning the publication and sale of the book on which such an order was in fact made. Faced with this delicate situation, the State Government issued a Notification dated 27th March 1997 under Section 95 of the Code of Criminal Procedure (hereinafter called the 'Code'), ordering the forfeiture of the book. A petition was thereafter filed under Section 96 of the Code and while the matter was yet pending (and observing that the notification had not been issued by the competent authority) the State Government withdrew the said Notification and issued a fresh one on 27th June 1997. A petition under Section 96 of the Code was again filed by the Author Dr. P.V. Narayana, on which the matter was referred for decision to a Bench of 3-Judges under sub-Section (2) of Section 96 thereof. The Judges examined the matter in extenso and by their judgment & Order dated 16th April 1998 dismissed the petition. This judgment has been impugned before us after special leave. The Court relying on several judgments of this Court and High Courts held that an order under Section 95

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of the Code was justified if it appeared to the State Government that the published material contained objectionable matter and that such matter was maliciously intended to promote feelings of enmity and hatred between different classes of the citizens of India as envisaged under Sections 124-A, 153-A, 153-B, 292, 293 and 295-A of the Indian Penal Code, and that such a Notification could not be said to be *ultra-vires* of Article 19(1)(a) of the Constitution of India as it was a reasonable restriction imposable under the Article. It further observed that the onus to prove that the publication did not fall within the parameters of Section 95 of the Code rested on the person who challenged the Notification by filing a petition under Section 96. The Court then went on to examine the facts of the case in the background of the legal position and observed that the story projected by the author in Chapter 12 that Channabasaveshwara was the illegitimate son of Akkanagamma as he had been conceived out of wedlock was indeed hurtful. The Court further held that the allegation that it was the public odium that had followed the pregnancy that had compelled Basaveshwara and Akkanagamma to leave their home at Bagewadi and shift to Koondusama was again an unwarranted accusation and without any basis. The Court finally found that the explanation tendered by the author for the change of residence was the subject matter of a raging debate amongst historians and religious functionaries and he had merely adopted this story for the Novel, was unacceptable and without any foundation.

4. It is these circumstances that the matter has come before us.

5. We have heard the learned counsel for the parties and gone through the record carefully. At the very outset, Mr. Raju Ramachandran, the learned senior counsel for the appellants has pointed out that the entire matter would have to be examined in the backdrop of the philosophy and principles underlying sub-clause (h) of Article 51-A of the Constitution of India which envisaged the development of a scientific temperament, a feeling of humanism and a spirit of inquiry and reform and the fundamental right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution and the proscription or forfeiture of a publication by the issuance of a Notification under Section 95 of the Code must therefore strike a balance between the two and as the Notification appeared to have been issued by the State Government not on its own assessment or volition but under pressure from persons of high social and political standing, it was unsustainable. It has also been pleaded that from the book read as a whole it was clear that Basaveshwara, Chennabasaveshwara and Akkanagamma had been depicted

A as saintly persons and social reformists, who had visualized a new direction for society with the thesis that all men were equal and had attempted to remove the social and religious disparities not only by precept but by practice as well. It has finally been pleaded that there was no malicious intention in the publication of the book as it had the character of a novel with a historical background in as much that the circumstances leading to the birth of
B Chennabasaveshwara and the departure of Basaveshwara and Akkanagamma from Bagewadi was a matter of much debate and discussion amongst the Veerashaivas themselves as also well known authors belonging to the community and as such a fresh interpretation given to the controversy by the author did not justify the forfeiture of the book.

C 6. The learned Advocate General for the State of Karnataka has, however, pointed out that the freedom of speech and expression did not mean a licence to an author to spew invective and vitriol and that the contents of the Book which the author himself claimed to be a novel had to be scrutinized in the light of the circumstances of those who were likely to read it. He has urged
D that the attack on Akkanagamma was designed to portray her as of dubious character particularly in Chapter 12, and even assuming that the author had a right to his opinions, it did not justify baseless allegations against persons who were venerated and revered by millions in South India as the story that Channabasaveshwara was the illegitimate child of his mother was clearly a matter of deep concern. The learned Advocate General has also highlighted
E that the circumstances leading to the change of residence from Bagewadi to Koondusama was indeed a matter of debate, yet it had never been suggested till now that it was the ignominy of the pregnancy that had prompted the change. It has also been pleaded that in the light of the clear terminology of Section 96 of the Code the onus to show that the offensive publication did
F not violate Section 95 lay on the author himself more particularly as it appeared from a reading of Chapter 12, that the contents therein were *prima facie* intended to hurt the sentiments of a section of the community.

7. The arguments raised by the Advocate General have been supported by the learned counsel for the intervener, who added that a reading of the
G Novel showed that the attack (though veiled) was in essence an attack on Basaveshwara as he had objected to the ritualism promoted by the Brahmin and had preached that all men were equal, the cobbler and the king being cited as an example, which was in stark contrast to what had been preached earlier. In reply Shri Ramachandran has reiterated that the book was only a
H novel and it had to be assessed as such and as the forfeiture of the book

would enure for all time the satisfaction of the Government under Section 95 of the Code must be beyond doubt and without malice or outside influence. A

It is true that the inculcation of a scientific temperament and a spirit of enquiry is essential for human development and is a sine qua non for progress and for social change and Article 51-A (h) of the Constitution clearly recognizes this principle. Likewise Article 19 (1)(a) of the Constitution gives every citizen the right to freedom of speech and expression and this freedom is yet another vehicle towards the same direction and goal. This Court in *Indian Express Newspapers (Bombay) Pvt. Ltd. & Ors. v. Union of India & Ors.*, [1985] 1 SCC 641 held: B

“Freedom of expression, as learned writers have observed, has four broad social purposes to serve: (i) it helps and individual to attain self fulfillment, (ii) it assists in the discovery of truth, (iii) it strengthens the capacity of an individual in participating in decision-making and (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change. All members of society should be able to form their own beliefs and communicate them freely to others. In sum, the fundamental principle involved here is the people’s right to know. Freedom of speech and expression should, therefore receive a generous support from all those who believe in the participation of people in the administration.” C D

8. It is however clear that the freedom of speech and expression is not unfettered and Section 95 of the Code exemplifies this principle on the understanding that this freedom must be available to all and no person has a right to impinge on the feelings of others on the premise that his right to freedom of speech remains unrestricted and unfettered. It cannot be ignored that India is country with vast disparities in language, culture and religion and unwarranted and malicious criticism or interference in the faith of others cannot be accepted. This Court while discussing the scope of Section 99-A of the old Code (corresponding to Section 95 of the Code) in the Constitutional context in [1976] 4 SCC 213 *State of Uttar Pradesh v. Lalai Singh Yadav* observed as under: E F

“After all fundamental rights are fundamental in a free republic, except in times of national emergency, when rigorous restraints, constitutionally sanctioned, are clamped down. We are dealing with the Criminal Procedure Code and Penal Code and these laws operate at all times. We have therefore to interpret the law in such a manner G H

A that liberties have plenary play, subject of course to the security needs of the nation, as set out in the Constitution and the laws.”

B 9. It was also observed that it was the duty of the State, being a State based on secular principles, not to take sides with one religion or the other but to “create conditions where the sentiments and feelings of people of diverse or opposing beliefs and bigotries are not so molested by rigid writings or offensive publications as to provoke or outrage groups into possible violent action” and that a drastic restriction on the right of a citizen imposed by Section 99-A required that a strict construction be put on its applicability. It finally concluded that:

C “Construed in this condescend constitutional conspectus, bears out our interpretation. In the interests of public order and public peace, public power comes into play not because the heterodox few must be suppressed to placate the orthodox many but because everyone’s cranium must be saved from mayhem before his cerebrum can have chance to simmer. Hatred, outrage and like feelings of large groups may have crypto-violent proneness and the State, in its well-grounded judgment, may prefer to stop the circulation of the book to preserve safety and peace in society”.

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E “The State, in India, is secular and does not take sides with one religion or other prevalent in our pluralistic society. It has no direct concern with the faiths of the people but is deeply obligated not merely to preserve and protect society against breaches of the peace and violations of public order but also to create conditions where the sentiments and feelings of people of diverse or opposing beliefs and bigotries are not so molested by ribald writings or offence publications as to provoke or outrage groups into possible violent action. Essentially, good government necessitates peace and security and whoever violates by bombs or books societal tranquility will become target of legal interdict by the State.”

G 10. While further delineating the circumstances under which this provision could be applied this Court in [1989] 2 SCC 574 *S.Rangarajan v. P.Jagjivan Ram & Ors.*, observed:

H “The standard to be applied by the Board or Courts for judging the

film should be that of an ordinary man of common sense and prudence and not that of an out of the ordinary or hypersensitive man. We, however, wish to add a word more. The Censors Board should exercise considerable circumspection on movies affecting the morality or decency of our people and cultural heritage of the country. The moral values in particular, should not be allowed to be sacrificed in the guise of social change or cultural assimilation. Our country has had the distinction of giving birth to a galaxy of great sages and thinkers. The great thinkers and sages through their life and conduct provided principles for people to follow the path of right conduct. There have been continuous efforts at rediscovery and reiteration of those principles.”

11. The Government thus has the power to nullify a publication which endangers public order, although the freedom of expression in this situation is undoubtedly restricted even though such freedom “is an indicator of the permanent address of human progress”. It must also be noted that it would be difficult to examine all publications on a common yardstick and what may be a laughable allegation to a progressive people could appear as sheer heresy to a conservative or sensitive one.

12. Mr. Ramachandran’s arguments that the action taken by the State Government was not on its own volition and was therefore mala fide must also be rejected. We are of the opinion that merely because some eminent personalities or group of persons had taken it upon themselves to bring to the notice of the State Government as to the inflammatory and baseless statements that had been made, it would not amount to an abdication of the State of its functions. The impugned Notification shows that the State Government had applied its mind to the contents of the novel and the allegations made therein and taken a balanced and reasoned decision on the matter.

13. It has been argued by Mr. Ramachandran that as Section 95 of the Code dealt with what was in fact in the nature of a criminal offence, an opinion had to be recorded by the State Government that the novel was malicious and intended to outrage the feelings of a group or class of citizens and in the absence of either of these ingredients, no order under Section 95 of the Code could be justified. Elaborating his submission he has pointed out that the impugned Notification did not specifically state that the Novel had been written with a deliberate and malicious intention to outrage the feelings of the

- A followers of Basaveshwara. It has, on the contrary, been submitted by the learned Advocate General that Section 95 of the Code did not constitute a criminal offence as it was merely descriptive and designed to ensure that preventive action was taken before the offences referred to therein could actually be committed. He has emphasized that the word “appear” in Section 95 of the Code had to be read in this context and after the State Government had taken the decision that the offending publication did “appear” to be offensive, the onus shifted to the opposite party to show to the contrary as was discernible from a bare reading of Section 96 of the Code. The learned Advocate General has also placed reliance on the Full Bench judgment of Patna High Court reported in AIR (1986) Patna 98 *Nand Kishore Singh v. State of Bihar* in support of this argument.

14. It would be evident from what has been observed above, the matter would have to be examined in the light of the provisions of Section 95 and 96 of the Code. These Sections are reproduced hereunder:

- D Section 95 Power to declare certain publications forfeited and to issue search warrants for the same. (1) Where

- (a) any newspaper, or book, or
- (b) any document,

- E wherever printed appears to the State Government to contain any matter the publication of which is punishable under Section 124A or Section 153A or Section 153B or Section 292 or Section 293 or Section 295-A of the Indian Penal Code (45 of 1860), the State Government may, by notification, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to Government, and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorize any police officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be.

- G (2) In this section and in section 96, -
- (a) “newspaper” and “book” have the same meaning as in the Press and Registration of Books Act, 1867 (25 of 1867);
 - (b) “document” includes any painting, drawing or photograph, or

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other visible representation.

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(3) No order passed or action taken under this section shall be called in question in any Court otherwise than in accordance with the provisions of section 96.

Sec.96. Application to High Court to set aside declaration of forfeiture.

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(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.

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(2) Every such application shall, where the High Court consists of three or more Judges, be heard and determined by a Special Bench of the High Court composed of three Judges and where the High Court consists of less than three Judges, such Special Bench shall be composed of all the Judges of that High Court.

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(3) On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the declaration of forfeiture was made.

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(4) The High Court shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained any such matter as is referred to in sub-section(1) of section 95, set aside the declaration of forfeiture.

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(5) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.

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15. It will be seen that Section 95 and Section 96 of the Code when read together are clearly preventive in nature and are designed to pre-empt any disturbance to public order. At the same time, we find that Section 95 does not by itself create a criminal offence and the reference to the various sections

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A of the Penal Code are merely descriptive of the kind of offences which need to be prevented by a declaration under Section 95. In this view of the matter, Mr. Ramachandran's assertion that the onus of proof would lie on the State Government is not acceptable as the intention has, to some extent, to be inferred from the nature of the publication. It is true that a forfeiture of a newspaper or book or a document is a serious encroachment on the right of a citizen, but if forfeiture is called for in the public interest it must without a doubt have pre-eminence over any individual interest. We also endorse the argument of the learned Advocate General that the State Government must take a pragmatic approach in the matter as explained by this Court in *Lalai Singh Yadav's case* (supra):

C "The rule of human advance is free thought and expression but the survival of society enjoins reasonable curbs where public interest calls for it. *The balance is struck by governmental wisdom overseen by judicial review.* We speak not of emergency situations nor of constitutionally sanctified special prescriptions but of ordinary times and of ordinary laws." While dealing with somewhat similar issues, the Patna High Court in *Nand Kishore's case* (supra) observed:

E "It would be somewhat fallacious to mathematically equate the proceedings under Ss.95 and 96 of the Code with a trial under S.295-A of the Penal Code with the accused in the dock. The stringent requirements of the mens rea to be proved and established are for the purpose of a conviction under this offence which carries a sentence up to three years and fine and further went on to hold but indeed to require that a deliberate and malicious intention must first be proved at the threshold stage before the Government by evidence as a condition for acting under S.95(1), as if an accused person was in the dock, would, in effect, virtually frustrate the preventive purpose of the said section."

16. The Court then went on to elucidate that Section 95 did not require that it should be "proved" to the satisfaction of the State Government that all requirements of the punishing sections including mens rea were fully established and all that S.95(1) therefore required was that the ingredients of the offence(s) should "appear" to the Government to be present. The Court further opined that the general rule that a man was presumed to intend the natural consequences of his act would be attracted, and in conclusion observed:

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“The onus to dislodge and rebut the *prima facie* opinion of the Government that the offending publication comes within the ambit of the relevant offence including its requirements of intent is on the applicant and such intention has to be gathered from the language, contents and import thereof.” A

17. It must also be observed that Section 96 itself takes care of any misuse of the authority conferred under Section 95 and the right of an individual vis-a-vis the larger public interest can be put under scrutiny as the final decision is left to a High Court Bench of (if possible) three Judges. B

18. To sum up, Section 95 of the Code is not violative of Art.19(1)(a) of the Constitution, as the action taken thereunder is of a preventive nature and that a extremely efficacious remedy under Section 96 of the Code is available to an aggrieved party or person. It is significant, and it is clear from the very large number of judgments that have been cited before us, that most of the matters pertain to attacks on minorities or religious and social groups or individuals who are perceived as being prodigals or heretics and therefore unacceptable to the conservatives amongst the mainstream. It cannot ever be over emphasized that India is a country with huge diversities in language and religion and the weaker amongst them must be shown extra care and consideration. C D

19. It is in this background the facts of the case now need to be examined. It has been emphasized by Mr. Ramachandran that as per the judgment of this Court in *Bobby Art International and Ors. v. Om Pal Singh Hoon and Ors.*, [1996] 4 SCC 1 the book as a whole had to be looked at and a stray sentence here or there picked up out of context could not be taken into account and that assessed on this principle the impugned judgment and order was unjustified as almost the entire novel was in praise of Basaveshwara and his family. Elaborating his argument, Mr. Ramachandran has pointed out that even the story portrayed in Chapter 12 had not been revealed for the first time, as the circumstances leading to the birth of Channabasaveshwara and the reason for the change in residence from Bagewadi to Koondusama had been a matter of study, debate and speculation in the Veerashaiva community - for generations, and had found its echo not only in numerous books and articles but in lore and legend as well, and has in this connection, referred us to Annexure P7 and to four documents collectively appended as Annexure P8. E F G

20. The learned Advocate General has, on the contrary, submitted that H

A the author himself had identified “Dharmakaarana” as a Novel and it had therefore to be presumed that the story had no historical basis, and was a figment of the author’s imagination and Chapter 12 when viewed in this background was clearly an affront to the sentiments of the Veerashaivas.

B 21. As already mentioned above, the Novel is in the first person, the narrator being Basaveshwara himself. At the initial stage he talks very lovingly of his sister and the care that she had taken of him (as a mother would a child) recalling that his mother had died when he was very young. He further talks about his younger days and his absorption and study of the Hindu religion and his learning of Sanskrit Shalokas from a Brahmin. He then refers to a change in his outlook and his dislike for blind ritualism, and a re-examination of the ills afflicting Hindu Society, the complete dominance of the Brahmin over every facet of life, and of the inequities in the social order. He then narrates a story about a woman, Jabala by name, who was said to be a “debased one “ and goes on to state that when Jabala was questioned by her son as to the identity of his father, she had replied that she was unable to identify him as she had been with many men and when this story was narrated in all innocence by the boy to his teacher the teacher was greatly impressed by his honesty and courage to face the truth and accepted the boy as his disciple. With this background, the story of Nagakka’s pregnancy out of wedlock is now narrated and is, for reasons of authenticity and precision reproduced hereunder in extenso from the translation provided by the learned counsel for the appellant:

E “I was saying that Nagakka started looking after house-hold chores. The responsibility of kitchen was entirely hers-excepting the three days of her monthly period. I would have my food in Vishweshwara mama’s home; and some woman-folk of that house would bring food for akka, those three days. The life went on like this. But once, for a long time that three-day period never came to akka what could I know about all that? When they asked me about it, I expressed my ignorance. That day wife of Vishweshwara mama herself came to our house. She asked to keep out for some time, and I did so. Where else could I go; F I went to their house to play with boys of my age-group. G

H I was about fifteen years of age then. I felt as if I knew about certain things, and still had no clear idea. I had only a very vague idea of akka’s monthly three-day period, without certainly. After some moments, atte came to her house, where I was playing, with panting

breath; and explained something to mama, all in a hushing manner, and concluded saying, 'things seem to have gone wrong.' Though I could not get any definite idea of their talk, it was clear that something fussy had taken place. I came back home running; even though it was already evening, there seemed no light inside the house. A

When I entered the house, I heard sobs emitting from within thick darkness; I rushed towards the direction of that sound. I found akka sitting in a corner. 'What has happened, akka?' I asked, where upon the weeping became intense. I lit the lamp with anxiety; I saw akka sitting with her head on bent knees. I shook her body rigorously, when I felt her body burning like live-ember; I was not sure if she had been having fever since morning or she had caught it lately. Her face had beads of sweat all over; her face was like the corpse of full-moon floating across the day time sky, luster-less. I put many questions, compelled her to answer, I also wept, but not a word from her ; She was sitting as if petrified stabbing her eyes at nowhere. The words atte had uttered before mama-three-day-period, going wrong etcetera— were causing some amorphous ideas in me. But it was impossible for me to get angry with Nagakka, even if dissatisfied only mock-anger, never real. That whatever she had done, she could not have erred— was my firm belief. After trying long to make her speak in vain, I kept quiet. We were two in the house. It was pitch dark outside; and what else could be there inside as well? More than the gravity of her wrong-deed, I was worried about what these people could do to her. No food; no sleep. The long night was like the frightful mouth of a demon gaping at us. B C D E

The night passed by somehow. The next morning Vishweshvara mava came. And tried to elicit information from akka by putting several questions, but she was silent as if she had been mute. When he was unable to get any information, he turned to me in frustration and only said, what next?' I felt like weeping but was not able to speak. I only waved my head to signal that I did not know things either. Finally he declared: 'In what way can I help you? I shall arrange a meeting of the mahajanas at ten galiges after sun-rise. We would all be bound by the decision of the assembly.' He went away, instructing, 'You should come with your sister when sent for.' Though he had it in a low tone, it seemed to be tough. F G

We spent the time as we had the night. I was in utter confusion, H

A not knowing what to do. The neighbours started coming to our house, as if they came to know of the developments. The young ones tried to pep into the house with curiosity, while some elderly persons went directly into the house and heaped on her the oft-asked question, 'what happened?' Unhhum: Akka never parted her lips ! Whether she could not speak, or she had stubbornly decided not to speak, she was dumb to all queries. Silence was the only answer for all kinds of questions: slow and sympathetic ones, scolding, rough ones and sarcastic remarks. A few were fed up with her testing silence would cursingly say, 'to hell with you' and go. Some remarks, 'She would only reap what she has sown' I was helpless to the core, was only smouldering with anger at the remarks by the visitors. If my position was that, what should have been her state!

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Time passed somehow. We were sent for by Vishweshvara Somayaji, as told earlier. I made akka stand with difficulty, and got her walk with my support. The assembly was full with members; we were asked to stand in a corner. After all the important persons came, the volley of questions started from all sides. 'What is the matter?' was the summary of all questions. Nagakka was a personification of silence. She must have lost all her faculties. 'Give her a couple of thrashes, she would part her lips,' suggested someone. 'Tche tche, could we lift our hands on a girl?' Countered another. 'What else should be done with such bad characters?' 'Why should we beat? Only the parents are empowered to do that. We should only go according to the shastras.' A bundle of suggestions, strewn astray.

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Could all the hearing have happened so swiftly? It, I fact, took quite a long time. Only I do not have the details in my memory. Why should I remember all that now and bring irritation to myself? I shall come to the concluding part of the deliberations. The mahajanas consulted among themselves extensively, at the end of which, one of them said to me, 'Look, Basavaraja, it seems your sister has conceived before marriage, or we do not know definitely about it. But she has not kept regular period. She never utters a word in answer to our questions. So, we are compelled to conclude that she has erred.' This was an introduction before spelling out their verdict. I was not able to say anything, and I did not have anything to say, either. The same gentleman continued, 'Well, we are left with two options regarding this: One, she should subject herself to "ghatashradha", and you

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must disown her completely, let her get lost, and you can continue to stay in the Agrahara. What can you do, you are innocent. But, she has to take punishment.' My heart started throbbing swiftly. Should Nagakka be left to go away? Tears rolled down my cheeks in spate. I cast a tearful glance at akka. She was like a standing corpse, petrified without an iota of reaction. He went on to say, 'The second option is, in case you are ready to part ways with your akka, both of you would face excommunication from us. If that is what you choose, you should quit for ever the Agrahara by this evening.' 'Right' the assembly concurred with the verdict. Their life in the Agrahara would go on as usual, even if there would be two souls less there!

Nagakka was the same unmoving epitome of silence as she was since last night. She did not even look at me. She did not weep, not a drop of tear in her eyes! 'I cannot live without akka,' I said with my choking-voice. Everything had been settled; we had severed our connection with our native place for ever.

I came back to "our" house, again giving support to akka to keep her steps. I quickly made a bundle of a few of our clothes and got ready to leave, muttering, 'Let us be gone from here. No more of living with these demons.' I came out of the house forcefully pushing akka forward. Though we were walking with our heads bet, we were aware that innumerable pairs of eyes were fixed on us. After slowly taking a turn from our lane, we reached the outskirts of the village. Who can do us what, with their anger? What can the village do to us with its wrath? When we came to the parting road, I turned towards the Agrahara once and spat "thoo" with gusto and moved ahead without looking back."

22. A bare perusal of the above reveals that as a matter of fact Jabala has been equated with Nagakka in terms of being of low character and whereas the former had become pregnant, without a marriage the latter had been visited by so many men that she did not know who had fathered her son. As this story had been told by Basaveshwara himself in first person we note the insidious and inflammatory suggestion, that he like Jabala's son, did not shrink from facing the truth about his closest relative his sister with whom he shared a mother son relationship. It is true that if the allegations made in Chapter 12 were based in folk lore, tradition or history some thing in extenuation could perhaps be said for the author. In this connection, Mr. Ramachandran has referred us to Annexures P7 and P8 with the petition. Annexure P7 is the

- A translation of a blurb printed on the back cover of the Novel and while referring to the credentials of the author it reads that the 12th Century constituted an enlightened period in the history of the Kannada country and that Basaveshwara was the beacon of that period, and that the Novel had been written after delving deep into his personality and the traditions of the Veerashaiva Community. Annexure P7, thus, does not in any way advance the petitioner's case and is in fact neutral. Annexure P8 (Colly) is, however, material and we have therefore perused all the documents very carefully with the counsel for the parties. The first document referred to by Mr. Ramachandran is a translation of an Article by Dr. M.M. Kalburgi, Vice-Chancellor of the Kannada University at Hampi, in the magazine 'Marga'. It reads that Chennabasavanna was regarded as the son of Nagalambike, though the identity of the father was not known and several alternatives have thereafter been spelt out. We find however that there is no suggestion whatsoever that Akkanagamma had conceived out of wedlock. Reference has also been made to an Article written by Dr. B.V. Mallapur, Reader in Kannada, Karnataka University, Dharwad and published by the Department of Kannada and Culture, Bangalore, which refers to the speculation as to the circumstances leading to the birth of Channabasavanna and several theories have been mooted but again without any suggestion of illegitimacy. Our attention has then been drawn to an article by Dr. R.C. Hiremath, an expert in the history of the Veerashaivas, and he too refers to the speculation as to the birth of Channabasavanna, and to the belief amongst common folk of the region that if those who were childless were to sing a particular lullaby they would be endowed with children, and reference is made to the fact that Akkanagamma had inadvertently swallowed some 'prasada' and had become pregnant thereby, but there is again no suggestion as to her conception out of wedlock. The author has also cited the other instances, like those of Shankaracharya, Seeta and Jesus who are believed to have taken birth in unusual circumstances.

23. We notice from Annexure P8 that there is no indication in any of the articles that Akkanagamma was of low character to be equated with Jabala or the slightest hint that Akkanagamma had conceived Channabasaveshwara outside her marriage and had left Bagewadi in shame for that reason. We therefore endorse the suggestion made by the learned Advocate General and the counsel for the intervener that Chapter 12 is not in sync with the rest of the novel and has been deliberately designed to be hurtful and to bring the family to shame. We also have no hesitation in observing that the novel with its complimentary passages in favour of Basaveshwara is merely a camouflage

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to spin and introduce a particularly sordid and puerile story in Chapter 12. A

24. As the forfeiture of the novel would have the result of shutting out its publication and distribution for all time, we had requested Mr. Ramachandran to consult his client to find out if he could be persuaded to remove the portions which had been found to be offensive by the State Government. Mr. Ramachandran had however come back and informed us that the author was willing to remove only three or four references from the novel, which we have found on examination, would be only cosmetic changes and would not satisfy the need of the hour. We, accordingly, dismiss the appeal. B

V.S.S.

Appeal dismissed. C