

\* HIGH COURT OF DELHI

Crl.M(M) 420/2001

% Date of Decision: April, 8, 2004

Maqbool Fida Hussain

16  
...Petitioner

through Mr.Kapil Sibal, Sr.Adv with  
Ms.Radha Rangaswamy, Mr.Akhil  
Sibal and Ms.Ranjeeta Rohtagi,  
Advocates

Versus

State of Bihar & anr.

...Respondent

through Mr.Arvind Gupta, APP  
Mr.Anil Kumar Mishra, Adv.

CORAM:

HON'BLE MR. JUSTICE J.D.KAPOOR

- 1.Whether the reporters of local papers may be allowed *yes*  
to see the judgment?
- 2.To be referred to the reporter or not? *yes*
- 3.Whether the judgment should be referred in the Digest? *yes*

J.D.KAPOOR, J

For order see Crl.M(M) 4115/2000.

April 8, 2004  
ssb

*SK*  
(J.D.KAPOOR)  
JUDGE

~~Admitted to be Filed~~  
*SK*  
~~Registrar Judicial Department~~  
High Court of Delhi  
~~Registered Under Section~~  
~~of the Evidence Act~~



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HIGH COURT OF DELHI

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Crl.M(M)s 4115/2000, 4467/2000, 416/2001,  
417/2001, 418/2001, 419/2001, 420/2001,  
390/2003,

%

Date of Decision: April, 8, 2004

1. Crl.M(M) 4115/2000

Maqbool Fida Hussain

...Petitioner

through Mr.Kapil Sibal, Sr.Adv with  
Ms.Radha Rangaswamy, Mr.Akhil  
Sibal and Ms.Ranjeeta Rohtagi,  
Advocates

Versus

Garjana Rashtravadi Yuvak Chalval

...Respondent

through Mr.Arvind Gupta, APP  
Mr.Anil Kumar Mishra, Adv.

2. Crl.M(M) 4467/2000

Maqbool Fida Hussain

...Petitioner

through Mr.Kapil Sibal, Sr.Adv with  
Ms.Radha Rangaswamy, Mr.Akhil  
Sibal and Ms.Ranjeeta Rohtagi,  
Advocates

Versus

Shailendra Dwivedi

...Respondent

through Mr.Arvind Gupta, APP  
Mr.Anil Kumar Mishra, Adv.

3. Crl.M(M) 416/2001

Maqbool Fida Hussain ...Petitioner  
through Mr.Kapil Sibal, Sr.Adv with  
Ms.Radha Rangaswamy, Mr.Akhil  
Sibal and Ms.Ranjeeta Rohtagi,  
Advocates

Versus

State of Madhya Pradesh ...Respondent  
through Mr.Arvind Gupta, APP  
Mr.Anil Kumar Mishra, Adv.

4. Crl.M(M) 417/2001

Maqbool Fida Hussain ...Petitioner  
through Mr.Kapil Sibal, Sr.Adv with  
Ms.Radha Rangaswamy, Mr.Akhil  
Sibal and Ms.Ranjeeta Rohtagi,  
Advocates

Versus

State of Madhya Pradesh & Ors ...Respondents  
through Mr.Arvind Gupta, APP  
Mr.Anil Kumar Mishra, Adv.

5. Crl.M(M) 418/2001

Maqbool Fida Hussain ...Petitioner  
through Mr.Kapil Sibal, Sr.Adv with  
Ms.Radha Rangaswamy, Mr.Akhil  
Sibal and Ms.Ranjeeta Rohtagi,

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**Judicial Department**  
**Court of Sessions**

Advocates

Versus

State of Bihar & anr.

...Respondents

through Mr.Arvind Gupta, APP  
Mr.Anil Kumar Mishra, Adv.

6. CrI.M(M) 419/2001

Maqbool Fida Hussain

...Petitioner

through Mr.Kapil Sibal, Sr.Adv with  
Ms.Radha Rangaswamy, Mr.Akhil  
Sibal and Ms.Ranjeeta Rohtagi,  
Advocates

Versus

State of Bihar & anr.

...Respondents

through Mr.Arvind Gupta, APP  
Mr.Anil Kumar Mishra, Adv.

7. CrI.M(M) 420/2001

Maqbool Fida Hussain

...Petitioner

through Mr.Kapil Sibal, Sr.Adv with  
Ms.Radha Rangaswamy, Mr.Akhil  
Sibal and Ms.Ranjeeta Rohtagi,  
Advocates

Versus

State of Bihar & anr

...Respondents

through Mr.Arvind Gupta, APP  
Mr.Anil Kumar Mishra, Adv.

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STATE SECRET OF BIHAR

8. CrI.M(M) 390/2003

Maqbool Fida Hussain

...Petitioner  
through Mr.Kapil Sibal, Sr.Adv with  
Ms.Radha Rangaswamy, Mr.Akhil  
Sibal and Ms.Ranjeeta Rohtagi,  
Advocates

Versus

State of Madhya Pradesh & anr.

...Respondent  
through Mr.Arvind Gupta, APP  
Mr.Anil Kumar Mishra, Adv.

CORAM:  
HON'BLE MR. JUSTICE J.D.KAPOOR

1. Whether the reporters of local papers may be allowed to see the judgment? *Y*
2. To be referred to the reporter or not? *Y*
3. Whether the judgment should be referred in the Digest? *Yes*

J.D.KAPOOR, J

1. Petitioner is internationally known painter. He goes by the name of Maqbool Fida Hussain. Way back in the year 1970 he had drawn nude sketches of Hindu Goddesses Saraswati and Durga which were published in an issue of September, 1996 of a magazine 'Vichar Mimansa' under the title "MF Hussain, the Painter or a Butcher" along with a special report. This is a monthly magazine and distributed all over India. It was through special report that the fact of some of very

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Official Report  
State of M.P.

objectionable paintings prepared by the petitioner was revealed. There are two prints of goddess Saraswati and goddess Durga that have shown them in their nudity.

2. The publication of these paintings in the aforesaid magazine raised uproar in the country and as many as eight criminal complaints were filed against the petitioner for various offences including the offence of obscene paintings and indecent representation of women besides the offences under sections 153A and 295A of the Indian Penal Code. Offence under Section 153A relates to promoting enmity between different groups on grounds of religion and doing acts prejudicial to maintenance of harmony. Offence under 295A pertains to deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.

3. Since in all the complaints petitioner was summoned as an accused, he approached the Supreme Court for transfer of all these cases to Delhi. While allowing the prayer of the petitioner the Hon'ble Supreme Court transferred all the criminal cases to be tried by the court of Addl. Chief Metropolitan Magistrate, Patiala House, New Delhi.

4. According to the complainants these paintings have hurt the feelings of large sections of Hindu Society and crores of people as for them these Goddesses are symbol of knowledge and power respectively

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and are being worshiped by them since time immemorial and nude drawings of these deities have caused a severe feeling of bitterness and rage in Hindu community whose religious beliefs are outraged by the petitioner and tend to disturb the public tranquility as such paintings are clearly prejudicial to the maintenance of harmony amongst Hindus and Muslims particularly when accused himself belongs to Muslim Community.

5. Through instant petitions moved under Section 482 IPC quashing of complaints as well as summoning order has been sought as according to the petitioner the sketches/paintings are a piece of art and he had no malicious or malafide intention to project these mythological deities either in poor light or to hurt the feelings of crores of Hindu who worship them as goddesses.

6. Since in all the eight complaints the petitioner was also summoned for the offences under sections 153A and 295A IPC, Mr. Kapil Sibal, learned senior counsel for the petitioner has mainly challenged the maintainability of the complaints as provisions of section 196 Cr.P.C prohibits from taking cognizance of these offences except with the previous sanction of Central Government or State Government. Section 196 Cr.P.C provides as under

**196. Prosecution for offences against the State and for criminal conspiracy to commit such offence.-(1) No**

**STATE**  
**Attorney General**  
**Ministry of Law**

court shall take cognizance of-

- (a) any offence punishable under Chapter VI or under section 153A (section 295A or sub-section (1) of section 505) of the Indian Penal Code (45 of 1860), or
- (b) a criminal conspiracy to commit such offence, or
- © any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860)

except with the previous sanction of the Central Government or of the State Government.

(No court shall take cognizance of-

- (a) any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or
- (b) a criminal conspiracy to commit such offence,

except with the previous sanction of the Central Government or of the State Government or of the District Magistrate)

(2) No court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal Code (45 of 1860), other than a criminal conspiracy to commit (an offence) punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceeding:

Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.

(3) The Central Government or the State Government may, before according sanction (under sub-section (1) or sub-section (1A) and the District Magistrate

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may, before according sanction under sub-section (1A) and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub-section (3) of section 155.

7. There is no denying the fact that crores of Hindus have unflinching faith in godliness and divinity of these goddess, one of whom is goddess of knowledge while the other is goddess of power i.e. 'Shakti'. To paint or draw them in total nudity is to outrage religious feelings of Hindus by insulting their religion as well as their religious feelings.

8. Freedom of expression or speech by way of words, paintings, sketches, caricatures is a fundamental right and, is therefore a very precious and valuable right. Any Artist or a Painter can express human sensibilities, feelings in many ways. There is no limit of human mind or intellect to depict one's ideas and feelings through these mediums. But one cannot be unmindful and oblivious of the fact that greater the freedom higher the responsibility. If one has been granted unlimited freedom one is required or expected to use it for good purpose and not with malicious intention to defame or degrade religious deities may be mythological as these immortals are held in highest esteem and over a period become part of one's day to day religious life to such an extent that anything adverse said or printed or painted hurts the religious feelings immensely. Any

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**Govt. of India**

objectionable, demeaning caricature or painting of religious deities or gods or goddesses of any particular religion creates disharmony and ill will amongst different communities.

9. Even if it is presumed that such a painting is a piece of art still one cannot be oblivious of the fact that depiction of these deities or goddesses in full nudity comes within the mischief of deliberate and malicious act intended to outrage religious feelings of concerned religion as these goddesses are worshiped by crores of people. Even if the goddesses or deities are mythological and are not mortals still the religious feelings always get hurt whenever they are depicted or painted in such a light.

10. Under the garb of freedom of expression no person can be allowed to hurt the religious feelings of any class of people. This should be known more to the petitioner who belongs to a different religion. If the petitioner wants to gauge the depth and the unflinching nature of religious feelings he may venture and try his hand at his own or any other religion and see how sensitive religious feelings and beliefs are. Such acts promote enmity between different groups on grounds of religion and are prejudicial to maintenance of harmony. It is the effect that is guiding and determining criteria.

11. The petitioner has also painted Draupdi, a character of

**ACCEPTED**  
**State Judicial Department**  
**High Court of P.W.**

Mahabharat being held in high esteem by Hindus having been fully stripped though she was never and her depiction in the paintings show malicious and deliberate act to outrage religious feelings and his clear intentions to hurt the religious feelings and create hatred among the Hindus against these goddess and character of Mahabharat.

12. However, as regards painting of a woman who has been identified as Film Actress Madhuri Dixit and one bull it is alleged to be clearly indicative of a bestial act. Picture indicates that the petitioner has posed himself as a bull and has mentioned his name on the painting in a distorted and indicative form as "Mcbull". On seeing the sketch or drawing of the lady with a bull one finds that it has been drawn in such a manner that it appears to be a piece of art and creative imagination and in no way falls within the mischief of obscenity nor does it come within the mischief of word or gesture or an act intending to hurt the modesty of a woman. Therefore the offences alleged to be arising out of this sketch or drawing are not made out as these are neither lascivious nor deprave the minds of people who are likely to see it.. Such type of paintings or sketches or drawings by renowned Artists are displayed in exhibitions. Until and unless any painting or sketch is so predominately lascivious or vulgar that it is likely to deprave the mind or is visually of suggestive nature it may not fall within the ambit of obscenity or indecent

**ACCEPTED**  
**Official Representative**  
**State of India**

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representation of a woman.

13. However, in view of the prohibition of Section 196 Cr.P.C from taking cognizance of the offence under sections 153A and 295A I.P.C. i.e insulting the religious and hurting the religious feelings and creating disharmony, enmity and hatred between different groups or groups of religion except with the previous sanction of the Central Government or State Government there is no option left with this court than to dismiss the complaints for want of sanction either by the Central Government or by the State Government.

14. In the result, petitions are allowed and the complaints are dismissed only for want of mandatory requirement under Section 196 Cr.P.C for prosecuting a person for the offences under Section 153A and 295A IPC as this provision prohibits the court from taking cognizance without the previous sanction of Central Government or State Government.

April 8, 2004  
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sdh  
(J.D.KAPOOR)  
JUDGE



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