

**Case Commentary - DEVIDAS RAMACHANDRA
TULJAPURKAR VS STATE OF MAHARASHTRA &
ORS**

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ABSTRACT

“The relation between reality and relativity must haunt the Court’s evaluation of Obscenity, expressed in society’s pervasive humanity, not law’s penal perspective”

- Krishna Iyer J²⁴

The Supreme Court issued a ruling in May 2015 that upheld a filthy poem about Gandhi, setting a new standard for obscenity when the subject is related to historical figures. The Hicklin Test, which was widely used to test obscenity, and more than 50 decisions from various jurisdictions addressing issues ranging from the appropriateness of tests to the right to freedom of speech and expression²⁵ were also examined by the court in this decision.

Devidas Tuljapurkar, editorial director and publisher of a magazine for the All India Bank Association, filed an appeal in this matter. He has fought the charges against him for publishing a poetry by Marathi author Vasant Dattatray Gujjar in 1994. The sonnet “GANDHI MALA BHETLA” is said to have insulted Gandhi using vulgar and rude language, and its author was found responsible by the court. Three main areas of interest are covered by the case. It first brings up the shortcomings of the in-court examination of decency. Next considers the court's clarifications regarding historically reputable figures and raises some relevant issues. The case concludes by advocating a better

²⁴ Raj Kapoor and Ors. vs. State and Ors. (1980) 1 SCC 43

²⁵ Section 19(1)(a)

methodology and making arguments for dissecting the issue in light of its particular circumstances and the intended interest group.

Keywords: Obscenity, Article 19(1)(a), Historically esteemed personality, Section 292 IPC,

Case Title	DEVIDAS RAMACHANDRA TULJAPURKAR VS STATE OF MAHARASHTRA & ORS
Case No.	CRIMINAL APPEAL NO. 1179 OF 2010
Date Of The Order	18/02/2015
Jurisdiction	Supreme Court of India
Quorum	Hon’ble Justice Dipak Misra Hon’ble Justice Prafulla C. Pant
Author of the Judgement	Hon’ble Justice Dipak Misra
Appellant	Devidas Ramachandra Tuljapurkar
Respondent	State of Maharashtra & Ors.
Counsel for Appellant	Advocate Gopal Subramaniam
Counsel for Respondent	Advocate Pravin H. Parekh
Amicus Curiae	Advocate Fali S. Nariman
Acts and Sections Involved	I. CONSTITUTION OF INDIA A. Article 14 B. Article 19(1)(a) C. Article 19(2) D. Article 21 II. INDIAN PENAL CODE A. Section 292 B. Section 34

	III. CRIMINAL PROCEDURE CODE A. Section 482
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The publisher of the poem appealed the Bombay High Court's ruling to the Supreme Court of India despite the author's decision not to do so. However, the Hon'ble Supreme Court sent the case back to trial, refusing to interfere with the original charges filed against the accused.

I. INTRODUCTION

Obscenity is publication or utterance of any act(s) or word(s) that strongly violates the morality of the times. The word 'Obscenity' must be taken in its ordinary and literal meaning, that is, 'repulsive', 'filthy', 'loathsome', 'indecent' and 'lewd'²⁶. This case deals with the question of Obscenity of the Poem – "GANDHI MALA BHETLA" (I MET GANDHI) written by Vasant Dattatraya Gujar. The act of obscenity is an offense in India under Section 292 of The Indian Penal Code (IPC). This section was added by the Obscene Publications Act, 1925 to give effect to Article 1 of the International Convention for the Suppression of the Circulation of and Traffic in Obscene Publications, 1923. Though Article 19(1)(a) of The Indian Constitution provides every citizen Freedom of Speech and Expression, they are accompanied by reasonable restrictions imposed on it, so as to maintain the inter-country relations with the foreign nations and to maintain decency and morality of the nation as well as to safeguard other people's dignity. However, in this case, was this restriction justified?

II. FACTS OF THE CASE

The case arose as a result of the poem for private circulation amongst the All India Bank Association Union members. The complainant, V.V. Anaskar, who is a member of 'Patit Pawan Sangthan' felt that this poem talks negatively about Gandhiji. An FIR was filed against the poet under sections 153-A, 153-B and 292 read with section 34 of IPC. The court felt that the case was not maintainable under section 153-A and 153-B of IPC. Later a revision petition was filed. The accused tried to invoke the jurisdiction of the court under section 482 of Criminal Procedure Code. However, the court took over the matter as a Special Leave.

III. CONTENTIONS OF APPELLANT

- A. The Learned Counsel appearing for the Appellant had broken down his arguments in 05 parts:
1. Whether there could be a reference to a historically respected personality?
 2. Could such reference be by way of symbols or allusions?
 3. Could such allusions be resorted to in a way of poem or any kind of write-ups?
 4. Whether an allusion can be adopted for conceptions and concept of poetic license?
 5. Whether any of the above may contain attribution to historically prominent figures of words or actions that may appear obscene to the reader?
- B. The following were the arguments put forth by the Appellant:
1. The poem that is written is a part of Freedom of Speech and expression under Article 19(1)(a) on the Indian Constitution. It is to be noted that except for the phrase 'poetic license', it is not a conception or a concept as the idea of the freedom of poetry is a guaranteed and enforceable Fundamental Right. It should thus, not convert this right into a permissive license
 2. The words 'permissible' and 'liberty of expression' have opposite connotations and so does the terms 'Fundamental freedom of expression' and 'poetic license'. These terms are incompatible with the sacrosanct fundamental freedom, which is essential to human dignity, thought, feeling, behaviour, expression, and all legal concepts of human

²⁶ Public Prosecutor vs. A.D. Sabapathy AIR 1958 Mad. 210 ; R. vs. Beaver (1905), 9 O.L.R. 418

freedom and is protected by the Constitution as well as by international covenants. Thus, one should not curtail this Fundamental Right with a restriction on it, which is not reasonable.

3. The learned counsel referred to a famous foreign judgement²⁷ that said: "If there is no abstract definition, should not the 'obscene' be allowed to indicate the present critical point in the compromise between candor and shame at which the community may have arrived here and now?"
4. They argued, while referring to various precedents²⁸, that the poetry does not contain obscene terms and thus does not fall under section 292 of IPC.

IV. CONTENTIONS OF RESPONDENT

- A. The following were the issues that were argued by the Respondents:
 1. Whether to focus on the message of the poem and be appreciated in its entirety or not?
 2. Whether the poem agitated a larger group of people?
 3. If such a person is deceased, can it be a justification to become someone's figment of their imagination?
- B. The following were the arguments put forth:
 1. The poem written by the poet indicates the intention of the poet to agitate the readers. The phrases used in the poem are of offensive nature and very clearly tries to defame Gandhi.
 2. The court must view and appreciate the poem by reading and extracting its whole meaning. The phrases used must not be interpreted as a mere sentence rather it should view the meaning of the

sentence as a whole and hence, the court should focus on the message delivered by the poem.

3. The fundamental right guaranteed under Article 19(1) of the Indian Constitution has been limited by reasonable restrictions under Article 19(2).²⁹
4. The poem might not be obscene or offensive if the poem was about any other ordinary individual but the poem has to be considered offensive because it clearly indicates the "verifiably esteemed figures" such as Gandhi.³⁰

V. JUDGMENT OF THE COURT

- A. The appellant Mr. Devidas Ramchandra Tuljapurkar was convicted with the offence of Sale of obscene books under Section 292 of the IPC. The Hon'ble Court applied the contemporary community standards test conditionally and through the application of the test decided that the poem falls under the ambit of obscenity.
- B. The view of the court is that any person cannot take the shelter of freedom of speech and expression to utilize vulgar and indecent language for "verifiable regarded characters", and in particular Gandhi.
- C. The Supreme Court is of the view that the right to freedom of speech and expression is not an absolute right³¹ rather is a right with reasonable restrictions which are clearly given under Article 19(2). Hence, the Apex Court through this judgment tries to provide a sensible message that every person has the right to freedom of speech and expression but the right is not absolute.³²
- D. The Supreme Court has upheld the Bombay High Court's decision not to dismiss the charge brought against Mr. Devidas Ramchandra Tuljapurkar for printing and distributing obscene and vulgar books. The court has dismissed the point of the appellant that the right to freedom of speech and expression do not allow any individual to write or to publish anything which defames

²⁷ United States vs. Kennerly 209 F. 119, 121 (S.D.N.Y.1913)

²⁸ Kamla Kant Singh vs. Chairman/ Managing Director, Bennetta Colman And Co. Ltd & Ors ; R. vs. Claytone and Hasley (1963) 1 QB 163 ; R. vs. Anderson (1972) 1 QB 304 ; John Calder Publications vs. Powell (1965) 1 QB 509 ; Public Prosecutor vs. A.D. Sabapathy

²⁹ In RE: Ramlila Maidan Incident (2012) 5 SCC 1

³⁰ Muller and Others v. Switzerland 13 EHHR 12

³¹ People's Union for Civil Liberties (PUCL) vs. Union of India AIR 1997 SC 568

³² Chintaman Rao v State of Madhya Pradesh AIR 1951 SC 633

historically identified esteemed personalities and in this case Gandhi.

E. The court discharged the charges laid on the appellant as the appellant had been continuously seeking apology for his act. Further, the author was not the party to the present case and hence the ruling will not apply to him.

VI. CONCLUSION

Right to freedom of speech and expression are guaranteed under Article 19 of the Indian Constitution. But as no right is absolute thus the same applies to this fundamental right as well. Article 19(1)(a) has reasonable restriction under Article 19(2). When a thought is expressed about a historically distinguished person then the owner of such thought must be very careful regarding the same. A thought, symbol, speaking, expressing or using obscene words must be normal when used in a context of an ordinary individual but the same might not be true when used for some historical figure in this case Gandhi. Thus, no right is absolute in a sense and the reasonable restriction must be kept into consideration when anyone tries to symbolize or express a thought about anything or anyone who is “verifiably esteemed personality.”

VII. RELATED CASE LAWS

1. Marvin Miller vs. State of California
2. Dalip Singh Vs. State of U.P. and Ors.
3. T.N. Godavarman Thirumulpad v. Union of India
4. Public Prosecutor v. A.D. Sabapathy
5. Regina v. Hicklin
6. R. v. Penguin Books Ltd.
7. Roth v. United States
8. United States v. Various Articles of Obscene Merch
9. Ranjit D. Udeshi v. State of Maharashtra
10. Chandrakant Kalyandas Kakodkar v. State of Maharashtra
11. Raj Kapoor and Others v. State and Others

12. Director General, Directorate General of Doordarshan and others v. Anand Patwardhan and another
13. State of Bihar v. Shailabala Devi

VIII. REFERENCE

1. <https://main.sci.gov.in/judgment/judis/42692.pdf>
2. <https://www.juscorpus.com/devidas-ramachandra-tuljapurkarv-state-of-maharashtra/>
3. <https://indiankanoon.org/doc/69910146/>