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section 295-a will



**ASSIGN
BUSTER**

The points requiring proof under Section 295A are: i) That the accused insulted or attempted to insult the religion or the religious beliefs of a class of citizens of India; ii) That he did so deliberately, and iii) Maliciously, and iv) With intent to outrage the religious feelings of any class, etc. Section 295-A deals with deliberate and malicious acts intended to outrage the religious feeling. The term ‘ maliciously’ means and implies an intention to do an act which is wrongful to the detriment of another.

Where any person willfully does an act injurious to another without lawful excuse, he does it maliciously. The term ‘ maliciously’ denotes wicked, perverse and incorrigible disposition. Where any unwitting or careless remark is made, which might have the effect of insulting the religious feelings of persons, but which is done without any deliberate or malicious intention to outrage the religious feelings of any class, then Section 295-A will not apply. Malice is a state of mind and very often it is not capable of direct and tangible proof. In most cases, it has to be inferred from the circumstances having due regard to the setting, background and connected facts. Malice can also be gathered from the language and behaviour of the accused. Malice, however, can be presumed on part of an individual if he has done an injurious act without any lawful and just excuse. The expression ‘ outraging religious feelings’ is used in Section 295-A.

The word ‘ outrage’ is somewhat stronger than the word ‘ would’. In a case under Section 295-A, the truth of the language of the writer can neither be pleaded nor proved. It will not suffice if the intention was merely to insult the religion without outraging the religious feelings of a community. Even the outraging of the religious feelings of some members of a class would not

suffice; since what the Section 295-A contemplates is that the feeling of ' the class' as a body should be outraged. ' Outraging' is a question of fact to be decided with due advertence to the facts of each case.

In Chandra Behara v. Balakrishna [AIR 1963 Orissa 23], it has been observed that the Quran being a sacred book and an object held sacred by a class of persons within the meaning of Section 295, IPC, against such book no action can be taken under Section 295-A. Consequently, banning or forfeiture of Quran cannot be ordered under Section 95 of the CrPC.

Section 295-A, IPC is not attracted in such a case. Section 295-A has no application in respect of a sacred book which is protected under Section 295, IPC. Any other interpretation would lead to absurdity.

If any offence within the meaning of this section is committed in respect of Quran, then it is punishable. Such book gets protection in view of Section 295. At the same time if it is open to take any such action under Section 295-A against such book, then the protection given under Section 295 IPC will become nugatory and meaningless.

In Sujata Bhadra v. State of West Bengal [2006 Cri LJ 368 (Cal)], the petitioner, a citizen of India filed a petition for setting aside order of forfeiture of book ' Dhikhandita' written by Taslima Nasreen of Bangladesh. It was held by the Calcutta High Court that the book does not reflect any intention of outraging religious feelings to insult religion or religious belief of that class of citizens in India. Intention of author is not deliberate and malicious for achieving any object of religious hatred. The order of forfeiture of the book was set aside.

It has to be read as a whole and cannot be read in piecemeal. It is well settled that the offending passage cannot be read out of context or central theme of the book. In *T. Parameswaran v.*

District Collectorate [AIR 1988 Ker. 175], it has been observed that where the arrangement of the scene and the script of the drama outraged the religious feelings of the Christian Community, an offence under Section 295-A was held to have been committed irrespective of the fact whether the beliefs which were made the subject-matter of the attack were rational or irrational. An attack on even an incredible belief may be capable of causing hurt to feelings. An offence under Section 295-A is cognizable and warrant should issue in the first instance. The offence is non-bailable and non-compoundable; it is triable by a Magistrate of the first class.

The State Government may search for, seize and forfeit any publication offending against Section 295-A.