IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1902 OF 2012

SAYALI DEEPAK UPASANI

Digitally signed by SAYALI DEEPAK UPASANI
Date: 2026.04.30 18:41:19 +0530

Shekhar Suman … Petitioners

V/s.

The State of Maharashtra and Others … Respondents

WITH
WRIT PETITION NO.1906 OF 2012

Bharati Singh … Petitioner

V/s.

The State of Maharashtra and Others … Respondents

Mr. Niteen Pradhan, Senior Advocate with P. D. Desai, for Petitioner.

Mrs. Megha Bajoria, APP for State.

Mr. N. T. More, PSI, Pydhonie Police Station Present.

CORAM : AMIT BORKAR, J.

DATED : APRIL 29, 2026

ORDER:

1. Inasmuch as both the present writ petitions emanate from an identical factual matrix and give rise to common questions of law, this Court considers it appropriate and expedient to dispose of the same by a common order.

::: Uploaded on - 30/04/2026 ::: Downloaded on - 04/05/2026 21:46:06 :::

2. The present Criminal Writ Petitions are instituted by the Petitioners laying challenge to the registration of First Information Reports bearing C.R. No. 265 of 2010 dated 27 November 2010, registered with Pydhonie Police Station, for the alleged offences punishable under Section 295-A read with Section 34 of the Indian Penal Code.

3. The factual background, giving rise to the present petitions, in brief, is thus. The impugned FIR came to be registered pursuant to a complaint lodged by one Mr. Mohd. Imran Dadani Rasabi, who claims to be the President of Raza Academy. The Petitioner in Writ Petition No. 1902 of 2012 was, at the relevant time, functioning as a Judge in a programme telecast on Sony Entertainment Television, hereinafter referred to as "SET". The Petitioner in Writ Petition No. 1906 of 2012 was participating as a performing artist in a programme broadcast on the said channel. The FIR further refers to Multi Screen Media Private Limited, hereinafter referred to as "MSM", as a company incorporated in India, having its registered office at Malad, Mumbai, which acts as the exclusive distributor within India of channels owned by MSM Satellite (Singapore) Pvt. Ltd., hereinafter referred to as "MSM Singapore", a company incorporated under the laws of Singapore and having its registered office therein. It is further stated that MSM Singapore owns and operates the television channel known as "Sony Entertainment Television", which is uplinked from Singapore and thereafter downlinked and exhibited in India as well as in other

::: Uploaded on - 30/04/2026 ::: Downloaded on - 04/05/2026 21:46:06 :::

jurisdictions. Various programmes broadcast on the said channel are produced by different production houses and are conceptualized, written and directed by different individuals. One such programme, titled “Comedy Circus Ka Jadoo”, was telecast on SET and is described as a family-oriented entertainment programme, having no nexus with real-life incidents or contemporary public affairs. The primary objective of the said channel is to provide general entertainment to viewers. The programme in question was telecast with effect from 4 September 2010 on every Friday and Saturday between 9.00 p.m. and 10.00 p.m., and consisted of comic performances rendered by various artists. It is asserted that the said programme was not intended to cause offence or hurt the sentiments of any religion, caste, community, or section of society.

4. It is further submitted that prior to September 2010, the programme “Comedy Circus Ka Jadoo” was telecast under the broader title “Comedy Circus”, which has been aired on SET since the year 2007 under various formats such as “Comedy Circus Ke Superstar”, “Comedy Circus Teen Ka Tadka”, and others, with certain modifications in presentation. The essential format of the programme consists of pairs or groups of performers, generally comprising two or three artists, who perform acts across episodes, which are then evaluated by judges appointed for that purpose. In that context, the Petitioners, being respectively a Judge and a performing artist, would participate in the programme by appreciating performances, awarding marks, and

::: Uploaded on - 30/04/2026 ::: Downloaded on - 04/05/2026 21:46:06 :::

offering comments to the contestants. It is further contended that the programme is intended to provide light-hearted entertainment and is not meant to be construed in a literal or serious manner. It has, over time, attained considerable popularity among diverse sections of viewers. The continued telecast of the programme under different titles over several years is relied upon as indicative of its acceptance and success. It is asserted that for a continuous period exceeding five years, the programme has enjoyed widespread viewership cutting across distinctions of religion, caste, class, and creed.

5. It is further stated that Episode No. 18 of the programme "Comedy Circus Ka Jadoo" was telecast on 20 November 2010 at about 9.30 p.m., and was produced by Optimystix Entertainment India Private Limited. The procedure followed in respect of such programmes is that production houses present or pitch their concepts to MSM Singapore, which thereafter evaluates and selects programmes for acquisition and telecast. On 29 November 2010, MSM received a notice from the Inspector of Police, Pydhonie Police Station, calling upon it to furnish details regarding the participants, writer, director, distributor, and other persons connected with the said programme, and also requiring their presence for the purpose of investigation.

6. In response to the said notice dated 29 November 2010, the concerned Company conveyed its willingness to cooperate with the investigating authorities. It was informed by the concerned

::: Uploaded on - 30/04/2026 ::: Downloaded on - 04/05/2026 21:46:06 :::

police officer that the complaint lodged by Mr. Mohd. Imran Dadani Rasabi alleged that a programme telecast on 20 November 2010 at about 9.00 p.m. contained certain expressions, including the words “Ya Allah! Rasgulla! Dahi Bhalla!”, which were perceived to have offended the religious sentiments of members of the Muslim community. On the basis of such complaint, the matter was forwarded to Pydhonie Police Station, which resulted in the registration of the impugned FIR.

7. It is further submitted that each episode of the programme is based on a specific theme. In the present instance, Episode No. 18 was themed around presenting humorous depictions of various professions in a light-hearted manner, solely for entertainment and without any intention to offend sentiments of any individual or community. In the said episode, a well-known television artist, Ms. Bharti Singh, performed a character styled as “Umrao Jaan”, inspired by a character from an earlier Hindi motion picture. The portrayal involved costume, dialogue, and mannerisms corresponding to the historical setting of the character. Since the original character spoke in Urdu, similar linguistic elements were incorporated in the performance. The co-performer enacted a character of a police officer inspired by a role from the Hindi film “Dabangg”.

8. It is further contended that the performance in the said episode comprised light-hearted exchanges and humorous dialogue between the artists, intended solely for entertainment.

::: Uploaded on - 30/04/2026 ::: Downloaded on - 04/05/2026 21:46:06 :::

The expressions “Ya Allah! Rasgulla! Dahi Bhalla!” were used merely as rhyming exclamations, without any intention to insult or offend any religion or community. The phrase “Hai Allah” is equated with commonly used expressions such as “Hey Ram” or “Oh my God”, and is submitted to be a colloquial expression. The references to “Dahi Bhalla” and “Rasgulla” are stated to have been used only to create a comic and rhyming effect. It is specifically asserted that there was no deliberate or malicious intention to outrage religious feelings or to promote enmity. The use of such expressions in a comedy programme, it is contended, would ordinarily be understood by viewers in its proper humorous context and could not reasonably give rise to religious animosity.

9. It is further submitted that the complaint in question was made by a person who, prima facie, does not appear to have personally viewed the programme, but acted on the basis of representations allegedly received by the Raza Academy from certain persons. It is contended that the FIR bearing C.R. No. 265 of 2010 came to be registered without any preliminary verification of the correctness of the allegations. It is further urged that in respect of an offence under Section 295-A read with Section 34 of the Indian Penal Code, prior sanction is a mandatory requirement for investigation, which has not been obtained in the present case. Additionally, it is submitted that the complaint does not contain any specific averment indicating knowledge on the part of the Petitioners regarding any

::: Uploaded on - 30/04/2026 ::: Downloaded on - 04/05/2026 21:46:06 :::

objectionable content, nor does it attribute any overt act to them. In the absence of such foundational allegations, the registration of the FIR is assailed, leading to the filing of the present petitions.

10. Mr. Niteen Pradhan, learned Advocate appearing on behalf of the Petitioners, submits that the action of the police in initiating investigation against the Petitioner, who was merely discharging his role as a Judge in the concerned programme, and in compelling his attendance before the police station, is wholly unnecessary, unjustified, and unwarranted. It is contended that no offence, as alleged, is made out inasmuch as the programme in question was in the nature of light entertainment, devoid of any intention to insult or outrage the religious feelings of any particular class or community. Learned counsel further submits that for constituting an offence under Section 295-A of the Indian Penal Code, the essential ingredients of deliberate and malicious intention to outrage religious feelings must be satisfied, which, according to him, are conspicuously absent in the present complaint.

11. It is further submitted that the use of expressions such as “Dahi Bhalla” and “Rasgulla”, which are commonly known food items consumed across communities without any religious connotation, cannot, by any reasonable standard, be construed as inviting or provoking religious animosity, nor can the same be regarded as an insult directed against any religious group or community.

::: Uploaded on - 30/04/2026 ::: Downloaded on - 04/05/2026 21:46:06 :::

12. Learned counsel further contends that no sanction, as mandated under Section 196 of the Code of Criminal Procedure, 1973, has been obtained prior to initiation of the present proceedings. It is urged that such sanction is a condition precedent for taking cognizance of offences under Section 295-A of the Indian Penal Code. Attention is invited to Section 196(1) of the Code, which unequivocally stipulates that no Court shall take cognizance of offences punishable, inter alia, under Section 295-A of the Indian Penal Code except with the previous sanction of the Central Government or the State Government.

13. It is further submitted that even assuming, without conceding, that the expressions "Dahi Bhalla" and "Rasgulla" could be perceived as offensive, the same were uttered inadvertently and without premeditation, and certainly without any deliberate or malicious intention to outrage the religious feelings of any section of society. It is contended that the present case squarely falls within the ratio laid down by the Supreme Court in *Ramji Lal Modi vs. State of Uttar Pradesh*, (1957) 1 SCC 591 wherein it has been held that acts or expressions which may incidentally cause offence, but are not actuated by deliberate and malicious intent, would not attract the provisions of Section 295-A of the Indian Penal Code. The emphasis laid by the Supreme Court on the expression "deliberate and malicious" is highlighted to submit that both elements must co-exist, signifying a consciously motivated intention to offend. In the present case, it is urged that the expressions in question were neither deliberate

::: Uploaded on - 30/04/2026 ::: Downloaded on - 04/05/2026 21:46:06 :::

nor malicious in nature. It is also submitted that affidavits of service have been duly filed in both petitions; however, despite service, the original complainant has failed to appear before this Court. On these grounds, learned counsel prays for quashing and setting aside of the impugned FIR.

14. Per contra, Mrs. Megha Bajoria, learned Additional Public Prosecutor appearing on behalf of the State, submits that the allegations contained in the FIR, on a plain reading, disclose the commission of cognizable offences against the Petitioners. It is contended that having regard to the nature and seriousness of the allegations, the issue as to whether the Petitioners have committed the alleged offences ought to be examined during the course of trial, upon appreciation of evidence to be led by the prosecution. It is, therefore, submitted that the present petitions do not merit interference at this stage and are liable to be dismissed.

Reasons And Analysis

15. I have heard Mr. Niteen Pradhan, learned Advocate appearing for the Petitioners, and Mrs. Megha Bajoria, learned APP appearing for the State. I have also gone through the material placed on record and the complaint which has led to registration of C.R. No. 265 of 2010 at Pydhonie Police Station.

16. For proper appreciation, Section 295-A of the Indian Penal Code is reproduced hereinbelow:

::: Uploaded on - 30/04/2026 ::: Downloaded on - 04/05/2026 21:46:06 :::

"295-A. Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs. 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 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."

17. The relevant portion of Section 196 of the Code of Criminal Procedure is reproduced for ready reference:

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

(c) 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.

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

::: Uploaded on - 30/04/2026 ::: Downloaded on - 04/05/2026 21:46:06 :::

section (1A), and the District Magistrate 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 below the rank of Inspector, and such officer shall have the powers referred to in sub-section (3) of section 155."

18. The principal submission of the Petitioners is that the Petitioner in Writ Petition No. 1902 of 2012 was only acting as a Judge in a television programme and the Petitioner in Writ Petition No. 1906 of 2012 was only a performing artist. The programme itself was a light entertainment programme. It was meant for humour, stage performance and comic exchange. The learned counsel submits that no reasonable reading of the episode would show a deliberate design to insult any religion or religious belief. This submission has substance. The Court cannot ignore the context of the programme. A comedy show is not judged by the same standards as a doctrinal speech or a political statement. A performance of this nature is to be read as a whole, and not by selecting stray expressions from it.

19. Learned counsel has placed strong emphasis on the ingredients of Section 295A of the Indian Penal Code. The provision is not attracted by every utterance which may annoy some person or group. The language of the section itself speaks of deliberate and malicious intention of outraging the religious

::: Uploaded on - 30/04/2026 ::: Downloaded on - 04/05/2026 21:46:06 :::

feelings of a class of citizens. Both elements are necessary. The intention must be deliberate, and it must also be malicious. If one of them is absent, the offence will not be fully made out. In the present case, from the complaint and from the episode as described, I do not find any material showing such deliberate or malicious intention on the part of either Petitioner. The performance appears to have been made in a theatrical manner, with the object of entertainment. That does not by itself create criminality.

20. The words which are said to be objectionable are "Ya Allah! Rasgulla! Dahi Bhalla!". The Petitioners say that these are only words used in rhyme and comic effect. The submission is that "Dahi Bhalla" and "Rasgulla" are common food items, known and consumed by people across communities, and there is no religious colour in those expressions. This contention cannot be brushed aside. The words by themselves are neutral in ordinary social use. Mere mention of food items in a comic act cannot amount to insult of religion. Something more is required. There must be material to show that the words were selected as a weapon of offence.

21. Learned counsel has also relied upon the decision of the Supreme Court in *Ramji Lal Modi*. The principle emerging therefrom is well settled, namely, that the protection of Section 295A is confined to acts which are deliberate and malicious, and expressions which are lacking in the intention would not fall

::: Uploaded on - 30/04/2026 ::: Downloaded on - 04/05/2026 21:46:06 :::

within the section. Even if the complaint is taken at its face value, the material does not show a intention to outrage the religious feelings of any class. At the highest, it suggests that some viewers may have felt offended by the style of expression used in the performance. But offence felt by a section of viewers is not enough in law unless the mental element is also disclosed.

22. The background of the programme also assumes importance. The material shows that the show was telecast as a family entertainment programme and had been running for a considerable time. The Petitioners say that the performers and judges in such programme are meant to create laughter. I find this to be a relevant surrounding circumstance. A judge in a comedy show does not stand in the position of a speaker making a declaration against a religious group. A performing artist on such stage also performs according to the script of the episode. The record does not disclose that the Petitioner Judges personally authored the expressions. The role attributed to them is too remote to bring them within the purview of offences alleged by the complainant.

23. The Petitioners have urged that no sanction under Section 196 of the Code of Criminal Procedure was obtained. Section 196 places a clear bar upon the Court from taking cognizance of offences under Section 295A of the Indian Penal Code except with previous sanction of the appropriate Government. The provision is mandatory. It is intended to prevent abuse of

::: Uploaded on - 30/04/2026 ::: Downloaded on - 04/05/2026 21:46:06 :::

prosecution in matters of sensitive public expression. Here, the record as placed before me does not show that such sanction was obtained before the matter was proceeded with in the manner in which it was done. This omission goes to the legality of the prosecution.

24. The State, through learned APP, has submitted that the allegations are sufficient and that the question whether the offences are actually made out should be left for trial. In ordinary cases, this Court would be slow to interfere. It is true that where factual issues are disputed and evidence is needed, trial is the normal course. But the present is not one of those cases where the Court is asked to appreciate disputed evidence. The question is whether, on the admitted material and the complaint itself, the essential ingredients of the offence are disclosed at all. If the foundation is absent, then to compel the Petitioners to face the rigour of criminal proceedings would itself be unjustified. The mere saying that trial should proceed cannot cure the absence of legal ingredients.

25. I am also mindful of the fact that criminal law should not be invoked in a casual manner against an artist or a programme judge merely because somebody feels insulted by a performance viewed out of context. There must be deliberate targeting of religious feeling. There must be malicious object. There must be sufficient material to connect the petitioner with that object. On the present record, the connection is missing.

::: Uploaded on - 30/04/2026 ::: Downloaded on - 04/05/2026 21:46:06 :::

26. The role of the Petitioner in Writ Petition No. 1902 of 2012 is that he was functioning as a Judge in the programme. The complaint does not disclose that he uttered the alleged words in any active manner, or that he shared any common design to insult a religion. The same is substantially true of the other Petitioner, who was acting in a performance under a theme of comic entertainment. The legal requirement of Section 34 also does not stand on proper footing, because common intention cannot be assumed from presence in a programme or participation in a televised act. There must be some material of shared mind, and such material is absent.

27. The complaint proceeds more on the reaction of a section of audience. The words complained of, taken in the setting of a comedy programme, do not by themselves establish deliberate and malicious intention. The absence of sanction under Section 196 adds an additional legal defect. Both these aspects together make the prosecution infirm.

28. I am therefore unable to accept the broad submission of the State that this is a matter which must necessarily proceed to trial. Trial is not a substitute for legal foundation. When the complaint itself does not disclose the ingredients and when the mandatory sanction is not shown, continuation of criminal proceedings would amount to misuse of process. The power of this Court under Article 226 and the inherent principles governing criminal justice are meant to prevent such misuse.

::: Uploaded on - 30/04/2026 ::: Downloaded on - 04/05/2026 21:46:06 :::

29. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

(i) Both the Criminal Writ Petitions are allowed.

(ii) The First Information Report bearing C.R. No. 265 of 2010 dated 27 November 2010 registered with Pydhonie Police Station for the offence punishable under Section 295-A read with Section 34 of the Indian Penal Code, and all consequential proceedings arising therefrom, are quashed and set aside.

(iii) Rule is made absolute in the aforesaid terms.

(iv) There shall be no order as to costs.

(AMIT BORKAR, J.)

::: Uploaded on - 30/04/2026 ::: Downloaded on - 04/05/2026 21:46:06 :::