# Duty to laugh

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**By Vijay Kumar**

**SINCE**
this column is called 'Jest GST' and this being the last issue for this year, I would like to bring to you a very humorous judgement delivered recently by Madras High Court, so that you can smile your way to the new year. Obviously Justice G.R.SWAMINATHAN, who delivered this judgement has a tremendous sense of humour coupled with deep erudition.

The learned judge started his judgement with:

Jug Suraiya, Bachi Karkaria, E.P.Unny and G.Sampath ... if any one of them, or for that matter any satirist or cartoonist had authored this judgement, they would have proposed a momentous amendment to the Constitution of India to incorporate sub-clause (l) in Article 51-A.

Article 51-A (Fundamental Duties) stipulates that it shall be the duty of every citizen of India-

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture;

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i) to safeguard public property and to abjure violence;

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;

(k) who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

It is to this list that according to the judge, Jug Suraiya and others would have proposed to incorporate one more fundamental duty in sub-clause (l) after sub-clause (k) as the duty to laugh. The judge draws an inference from this:

> The correlative right to be funny can be mined in Article 19 (1) (a) of the Constitution of India (the use of crypto vocabulary to be forgiven). Being funny is one thing and poking fun at another is different altogether.

The fun continues, as the judge wrote,

> Laugh at what?" is a serious question. This is because we have holy cows grazing all over from Varanasi to Vadipatty.
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> One dare not poke fun at them. There is however no single catalogue of holy cows. It varies from person to person and from region to region. A real cow, even if terribly underfed and emaciated, shall be holy in Yogi's terrain. In West Bengal, Tagore is such an iconic figure that Khushwant Singh learnt the lesson at some cost. Coming to my own Tamil Desh, the all-time iconoclast ***"Periyar"***
> Shri.E.V.Ramasamy is a super-holy cow. In today's Kerala, Marx and Lenin are beyond the bounds of criticism or satire. Chhatrapati Shivaji and Veer Savarkar enjoy a similar immunity in Maharashtra. But all over India, there is one ultimate holy cow and that is ***"national security."***

Maybe these comments were not very essential in deciding the case before him, but the judge was indulging - perhaps in a little humour. Who can deny him that but at the peril of contempt, as mentioned by Advocate G. Ramaswamy in a case in which the judge asked him, ***"do you think we are fools?"*** To which Ramaswamy replied with much gravity,
***"My lords have put me in a very difficult situation. If I agree I am in contempt, if I disagree I commit perjury."***

Anyway, coming back to our Madras High Court, this is what the judge wrote about the case:

> The petitioner herein is an important office-bearer of a not-so-important political party. CPI (ML) is now an over-ground organization which contests elections also. Paper warriors are also entitled to fantasise that they are swadeshi Che Guevaras.
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> On 16.09.2021, the petitioner went on a sightseeing pleasure trip with his daughter and son-in-law to Sirumalai hills. He put out the photographs taken on the occasion in his Facebook page. He gave the caption ***"trip to Sirumalai for shooting practice."*** Revolutionaries, whether real or phoney, are not usually credited with any sense of humour (or at least this is the stereotype). For a change, the petitioner tried to be funny.
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> Perhaps it was his maiden attempt at humour.

The Judge was not on a humour spree. After all, he had to decide a criminal case and his order could land somebody in jail for the crime of attempting humour in Facebook. So, in all seriousness, the judge observed,

> Vadipatty Police did not find it to be a joke. They thought the petitioner was making preparations to wage war against the State. They registered a case against the petitioner for the offences under Sections 120B, 122, 505(1)(b) and 507 of IPC. They did not stop at that. They arrested the petitioner and produced him before the jurisdictional magistrate for remanding him to custody. Mercifully, Mr.M.C.Arun, the Judicial Magistrate, Vadipatty, had the good sense to refuse remand.
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> I wish other magistrates in the State of Tamil Nadu act likewise. Remand can never be made for the asking. The police and the prosecution will seek remand in every case. It is for the magistrate to satisfy **herself**
> that the arrestee deserves to be remanded. Requests for remand must be decided on the touchstone of Section 41 of Cr.Pc and Article 21 of the Constitution. Thanks to the judicious conduct so well exhibited by Shri.M.C.Arun (the Judicial Magistrate, Vadipatty), the petitioner escaped incarceration by a whisker.

The scholarly judge observed with no humour,

To wage war would require several steps and crossing of stages. There has to be mobilisation of men as well as accumulation of arms and ammunition. That would require a concerted effort. Each individual who is a party to the conspiracy to wage war may be allotted a particular task. One may be tasked with collecting men, another with arms and the third with ammunition.

Now let us see what the petitioner did. Except giving the title mentioned above to the photographs amateurishly taken on the occasion of his trip to Sirumalai hills, the petitioner has done nothing else. The petitioner is aged 62 years. His daughter is standing next to him. His son-in-law is also seen in the photograph. Four other photographs capturing the scenic beauty of the place have also been posted. No weapon or proscribed material was recovered from the petitioner. The petitioner neither intended to wage war nor did he commit any act towards preparation therefor.

None of the ingredients set out in Section 122, 505(1)(b) and Section 507 are present in this case. Section 120 B of IPC cannot be invoked for two reasons. Firstly, the petitioner is the sole accused. To constitute the offence of conspiracy, there must be a meeting of two or more minds. One cannot conspire with oneself. Secondly, conspiracy is hatched to commit an offence mentioned in the Section. When the ingredients of the primary offences have been shown to be non-existent, the prosecution cannot hang on to Section 120B IPC alone.

The very registration of the impugned FIR is absurd and an abuse of legal process. It stands quashed.

[Crl OP(MD)No.18337 of 2021 in the Madurai Bench of Madras High Court]

**Shanti Bhushan's Heart and Income Tax**

Here is an interesting case decided by the Delhi High Court ten years ago.

At the heart of the matter, as a matter of fact, is the heart itself. When one speaks of heart it brings forth imagery of myriad emotions. Emotions which encompass, often varied passions, of soulful love, abominable deceit, unremitting treachery and revenge. No two individuals deal with matters of heart similarly; often confounded, as to how to deal with it.

The issue raised is both ingenious and novel. The question raised is the product of experience, deftness and obvious artfulness of the petitioner (Shanti Bhushan) who is a seasoned, experienced and an eminent Advocate of the country.

During the Course of the assessment of Shanti Bhushan's Income Tax return for 1983-84, the Revenue found that he had claimed as expense a sum of Rs. 1,74,000/- incurred evidently by him, on coronary surgery performed on him, in Houston, USA. He claimed waiver under Section 31 of the I.T. Act which, inter-alia permits deduction ofÂ**expenditure incurred on current repairs of plant** .

The High Court was of the opinion that deduction under section 31 of the IT Act would not be available for two reasons:

**1. Cost of Acquiring heart?**

Â If the heart of a human being, as in the case of the assessee, were to be considered a plant, it would necessarily mean that it is an asset which should have found a mention in the assessee's balance sheet of the previous year in issue, as also, in the earlier years. Apart from the fact that this is admittedly not so, the difficulty that the assessee would face in showing the same in his books of accounts would be of arriving at the cost of acquisition of such an asset.

**2. Heart is not a professional tool:**

Â Even if one were to give the widest meaning to the word 'plant' in section 31 of the IT Act, it would still not fall within the definition of the word 'plant'. It cannot be said that the assessee who is a lawyer would have used his heart as a tool for his professional activity. The fact that a healthy and a functional human heart is necessary for a human being irrespective of his vocation or social strata is stating the obvious. But this would not necessarily lead to the conclusion that the heart is used by, a human being, as a tool of his trade or professional activity. General well-being of the heart and its functionality cannot be equated with using the heart as a tool for engaging in trade or professional activity. At least the facts in this case do not demonstrate the same.

**The alternate plea of claim under Section 37**
: The High Court held that the claim for deduction under section 37 of the IT Act should satisfy three conditions:

1. It should be an expense which is incurred wholly and exclusively for the purpose of the assessee's business or profession;

2. It should not be an expense incurred to bring into existence a capital asset; and

3. It should not be an expense of a personal nature.

The High Court held that the assessee's claim under section 37 of the IT Act does not fulfil the first condition which is that the expense in issue have been incurred wholly and exclusively for the purposes of the assessee's profession. An impaired heart would handicap functionality of a human being irrespective of his position, status or vocation in life. Expenses incurred to repair an impaired heart would thus add perhaps to the longevity and efficiency of a human being ***per se*** . The improvement in the efficiency of the human being would be in every activity undertaken by a person. There is thus no direct or immediate nexus between the expenses incurred by the assessee on the coronary surgery and his efficiency in the professional field ***per se*** . Therefore, to claim a deduction on account of expenses incurred by the assessee on his coronary surgery under section 37(1) of the IT Act would have to be rejected.

But Shanti Bhushan is not one to lose heart. He has appealed to the Supreme Court, where the case is pending for the last ten years. For Shanti Bhushan, the amount disallowed by the High Court may be paltry, but the 90 plus lawyer will not leave this case so close to his heart. And we should be grateful to God that even without the income tax deduction, his heart is hale and healthy. - **2011-TIOL-342-HC-DEL-IT**

**Keep them in good humour**

Once a revenue officer told my junior colleague that he is supposed to keep the officers in good humour. My junior came and asked me how to do that. ***"Do I go and tickle them once in a while?"***

# Don't forget your duty to laugh. Happy New Year

**Until Next Week.**