

February 18, 2014

Mrs. Pratibha Somaiya
ISKCON Phoenix
100 S. Weber Drive
Chandler, Arizona

Dear Mrs. Somaiya,

The South Asian Bar Association of Arizona (“SABA-AZ”) is an organization that advocates for the legal interests of South Asian communities in our state. Founded in 2008, our membership consists primarily of attorneys of South Asian origin. Among the many communities we are committed to representing are those who practice the Hindu faith.

We write this letter to express our views as practitioners of law and members of the South Asian community at large. We do so not only to articulate the South Asian legal community’s perspective, but also to respond to a specific effort by you to invoke the powers of the legal system that we do not believe are in the best interests of justice or the community that we represent and often defend.

The Action Against Alleged Harassment

You are the president of the local chapter of the International Society of Krishna Consciousness, which runs a Hindu temple in Chandler, Arizona. The temple is supported at least in part by charity and donations from members of the community. Because of reports of legal actions brought to our attention, we undertook a full review of the court filings and exhibits filed in a matter captioned as *Somaiya v. Misra*, Chandler Municipal Court (Ariz.) Cause No. LC2013-000383-001. The action commenced with a petition for injunction against harassment against a member of the temple. The trial court held a hearing on February 13, 2013, at which you were represented by counsel but the defendant was not, and issued the injunction as requested.

An attorney, David Bodney, was ultimately retained to represent the defendant in an appeal to the Arizona Superior Court’s Lower Court of Appeals division. Mr. Bodney is well-respected for his expertise on matters of free speech and the First Amendment to the United States Constitution. His appeal was successful. The Court stated that you “did not substantiate” your accusation that the defendant had allegedly stolen food from the temple. The Court further declared that the accusation that he took a blessed garland from the temple was meritless. The Court noted, as do we, the lack of due process and lack of respect for procedural fairness that had taken place in the lower court proceeding. It concluded its lengthy opinion by reversing the judgment of the Chandler Municipal Court. The petition for an injunction was therefore rejected.

Threats of Criminal Prosecution

Diwali, one of the most important festivals and holidays of the Hindu faith, was celebrated at the temple on Sunday, November 3, 2013. It is widely accepted and known among followers of Hinduism that all people are free to participate in any such celebration at a Hindu temple. Centuries of tradition and cultural practices among Hindus support the notion that such festivals are open, public affairs. Yet, the Chandler Police Department was called to the temple in the midst of the celebration on November 3, in yet another unsuccessful effort to invoke the legal system against members of the community. We understand that Chandler police officers arrived at the scene but opted not to enter the premises in an effort to “expel” anyone, due to the large numbers of people present.

The efforts to invoke the law and law enforcement against temple members then continued. On November 8, 2013, the temple’s attorney sent a letter on his law firm’s letterhead to multiple individuals and devotees, this time invoking the criminal law of trespass. This letter stated that any recipient of the letter was on “formal notice” of “denied access to the Hare Krishna Temple located on the Private Property.” It cited Ariz. Rev. Stat. § 13-1501 to 13-1504 as the basis for this statement. These statutes govern the law of criminal trespass in Arizona. Section 13-1504, cited by your attorney, concerns criminal trespass in the first degree and defines it as a potential Class 6 felony crime. In Arizona, a Class 6 felony crime carries with it the threat of up to two years of imprisonment. See Ariz. Rev. Stat. § 13-702(D).

Our Position

SABA-AZ is concerned by the attempted legal actions taken against members of the community. Those legal actions include the meritless action filed in Chandler Municipal Court, the frivolous attempt to involve the Chandler Police Department on November 3, 2013, and the offensive November 8, 2013 letter authored by an attorney for the temple at your direction.

The strongly-worded appellate ruling issued by the Arizona Superior Court speaks for itself. The petition for an injunction against harassment was found to be meritless and violated the constitutional rights of a temple member. Broadly speaking, we find the attempt to invoke the injunctive powers of a court of law to resolve your personal differences with that member to be inappropriate, in light of your position of authority as the leader of a Hindu temple.

As to the specific accusations leveled in that action, we agree with the appellate court in finding these to be inappropriate topics on which to invoke the legal system. The temple’s attorney attempted to persuade the Court that food prepared at the temple was your personal property, and that the person eating it as a devotee of the temple constituted the crime of “theft.” Such accusations run contrary to the spirit in which *prasadam* is offered to persons after temple prayers. He also attempted to persuade the Court that the member had stolen a blessed garland, despite the unequivocal testimony of multiple witnesses who disagreed with this allegation. We believe that the taking of an item such as a sanctified garland should not expose a member of the community to accusations of the crime of theft.

Perhaps most concerning to us was the accusation that the member did not donate “much” to the temple. It is apparent from court records that the target of this litigation spent considerable time at the temple, and that he spent that time furthering the daily functions of the temple in different ways. The notion that a person is exposed to court actions against “harassment” on grounds that he chooses to come to the temple, even though he does not provide what someone considers to be sufficient amounts of donations, is contrary to the spirit in which Hindu temples should be available to the public at large. At a minimum, a person should not be exposed to legal action based on the amount he or she chooses to donate to a Hindu temple.

The effort to involve the Chandler Police Department, including the letter from the temple’s attorney threatening multiple devotees with charges of criminal trespass, is another legal tactic to which we object. Arizona’s system of justice, including its law enforcement officials, provides both the temple and its devotees with safety and security in times of need. It is our understanding, for example, that officers from the Chandler Police Department provided extra security for temple devotees in the aftermath of the Wisconsin Sikh Temple shooting tragedy in August of 2012. We therefore disagree with any attempt to waste the valuable resources of Arizona’s law enforcement community for the purpose of resolving your personal disputes with members of the community. That you would do so during the auspicious occasion of a Diwali celebration is particularly disturbing.

CONCLUSION

It is our hope that these inappropriate attempts to invoke the legal system against members of the community are not repeated again. As to the criminal trespass notice your lawyer sent to multiple individuals, we call on you to withdraw it. While it is not our desire to interfere with the inner workings of this or any other temple, we do not believe that suing temple devotees and having attorneys send threatening letters to individuals is a constructive method of resolving disputes or disagreements. Above all, we believe that temples should be forums for the community at which all citizens are welcomed, regardless of their political or other views, as long as such views are expressed in a respectful and civil manner. If our organization can facilitate in mediating a peaceful discussion, where disagreements can be aired and resolutions hopefully reached, please let me know and we will offer a volunteer or volunteers to do so.

Sincerely,



Neil Singh
Vice-President and Co-Founder, SABA-AZ
Ph: (602) 252-1080

cc: Don Fletcher, Esq. (Lake & Cobb, P.L.C., Tempe, AZ)
Hari Vilas Das (Vedic Cultural Center, Sammamish, WA)