IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Miscellaneous Application No. 1468 of 2021

Vijay Singh Pal .....Petitioner

Vs.

State of Uttarakhand and Another ..... Respondents

Presents:-
Mr. Arvind Vashistha, Senior Advocate assisted by Mr. Vivek Pathak, Advocate for the petitioner.
Mr. Amit Bhatt, D.A.G. for the State of Uttarakhand.
Ms. Nipushmola Joshi and Ms. Aditi Dalakoti, Advocates for the respondent no.2.

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral)

The challenge in this petition is made to the chargesheet dated 30.06.2019, cognizance/summoning order dated 14.10.2019, passed in Criminal Case No. 16150 of 2019, State Vs. Vijay Singh Pal (FIR/Case Crime No.1053 of 2018), by the court of Chief Judicial Magistrate, Haridwar ("the case"), as well as the entire proceedings of the case.

2. Heard learned counsel for the parties and perused the record.

3. The respondent no.2, the informant filed FIR No.1053 of 2018, under Section 153 A IPC, Police Station Kotwali Nagar Haridwar, District Haridwar,

against the petitioner. According to the FIR, the petitioner has been demonstrating at a public crossing. He was shouting some religious slogans. The petitioner was also appealing to the public that they would not spare the person, who has demolished the Shiv Temple. He was also cautioning the public that, “Hindu Samaj is in Danger”. The FIR records that some posts were uploaded by the petitioner on the social media also. The links have been provided in the FIR. After investigation in the FIR, chargesheet has been submitted against the petitioner under Section 153 A IPC, on which cognizance was taken on 14.10.2019 under Section 153 A IPC. These proceedings are under challenge.

4. Learned Senior Counsel appearing for the petitioner would submit that, in fact, with regard to the property of the temple, the petitioner had filed a Public Interest Litigation in this Court; he had also intervened in a litigation with regard to the temple in the Hon’ble Madhya Pradesh High Court, where his intervention was allowed and he participated. His contentions were considered by the Hon’ble High Court of Madhya Pradesh. It is submitted that the matter further reached to the Hon’ble Supreme Court.

5. Learned Senior Counsel for the petitioner would further argue that even if the entire case of the prosecution is accepted in its entirety, *prima facie* offence under Section 153 A IPC is not made out because the allegations, which have been levelled against the petitioner, in no manner promote or attempt to promote on the grounds of religion, race, place of birth, residence, language, caste or community or any other ground, whatsoever, disharmony or feeling of enmity, hatred or ill will between different religious, racial, language or regional groups or caste or communities.

6. Learned Senior Counsel for the petitioner would also submit that both the petitioner and the informant are Hindus. It is not a case of any act between two different groups. It is argued that the provisions of Section 153 A IPC has been discussed by the Hon'ble Supreme Court in the case of Bilal Ahmed Kaloo Vs. State of A.P. (1997) 7 SCC 431. In Paragraphs 15 and 16, the Hon'ble Supreme Court has laid down the criteria, which squarely applies in the instant case.

7. Learned counsel appearing for the informant would submit that, prima facie, offence under Section 153 A IPC is made out. Learned counsel for the

informant has referred to the social media posts to argue that, in fact, the petitioner has been promoting hatred or disharmony between two castes. On the one side, he was reminding the public about Pal Baghel Holkar Dhanaitkar Samaj, and on the other hand, he was referring Pandas Samaj. It is argued that they are distinctly two different communities.

8. According to learned counsel appearing for the informant, the petitioner did make attempts to promote disharmony, ill will between two communities, as is apparent from the social media posts. It is argued that the deeper scrutiny on those aspects may be done during trial. Prima facie, offence under Section 153 A IPC is made out.

9. Learned counsel for the informant has also relied on the principles of law, as laid down in the case of Bilal Ahmed (*supra*). It is argued that there is no merit in this C-482 application and it deserves to be dismissed.

10. Learned State Counsel would submit that the witnesses have stated that the petitioner was speaking about the danger to a particular religion.

11. It is a petition under Section 482 of the Code of Criminal Procedure, 1973 ("the Code"), a provision, which is much wide so as to make such orders, as may be necessary to give effect to any order under the Code or to prevent abuse of process of any Code or otherwise to secure the ends of justice. The contours of the jurisdiction under Section 482 of the Code has been defined and discussed by the Hon'ble Supreme Court in a number of cases. In the case of Bhajan Lal and Others, 1992 Supp (1) SCC 335, the Hon'ble Supreme Court discussed the provisions of Section 482 of the Code and in Para 102, illustratively given the circumstances under which the interference under this provision may be made. It reads as follows:-

> "**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
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> > (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
> > (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence,

> justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
> (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
> (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
> (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

12. What is being argued on behalf of the petitioner is that even if the case of the prosecution is accepted in its entirety, it does not make out any prima facie offence under Section 153 A IPC because there are no two groups, as such.

13. Section 153 A IPC is as follows:-

> "**153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.**—(1) Whoever—

> (a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or
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> (b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or
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> (c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community shall be punished with imprisonment which may extend to three years, or with fine, or with both.
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> **(2) Offence committed in place of worship, etc.—**Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine."

14. The provisions of Section 153 A IPC have come up for discussion in the case of Bilal Ahmed (*supra*) and in Para 15, the Hon'ble Supreme Court observed as follows:-

> "15. The common feature in both sections being promotion of feeling of enmity, hatred or ill will "between different" religious or racial or linguistic or regional groups or castes and communities, it is necessary that at least two such groups or

> communities should be involved. Merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two sections."

15. In fact, during the course of discussion, learned Senior Counsel has also referred to the principles of law, as laid down in the case of Amish Devgan Vs. Union of India and Others, (2021) 1 SCC 1. In the case of Amish (*supra*), the Hon'ble Supreme Court has discussed the applicability of Section 153 A and its relationship with Section 505 IPC. In the case of Amish (*supra*), in Paragraphs 92, 93, 94, 95, 96, 97 and 98, the Hon'ble Supreme Court observed as follows:-

> "92. In the present case, we are not concerned with clause (c) of sub-section (1) of Section 153-A and hence we would not examine the same. Section 153-A has been interpreted by this Court in Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1 and Balwant Singh v. State of Punjab, (1995) 3 SCC 214 and other cases. It would be, however, important to refer to the legislative history of this section as the same was introduced by the Penal Code (Amendment) Act, 1898 on the recommendation of the Select Committee. The section then enacted had referred to words, spoken or written, or signs or visible representation or other means that promote or attempt to promote feeling of enmity or hatred between different classes of citizens of India which shall be punished with imprisonment that may extend to two years or fine or with both. The Explanation to the said section was as under:
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> > "Explanation.—It does not amount to an offence within the meaning of this section to point out without malicious intention and with an honest view to their removal, matters which are producing or have a tendency to produce, feelings of enmity or hatred between different classes of Her Majesty's subjects."

The original enacted section was amended with clauses (a) and (b) by the Criminal Law (Amendment) Act, 1969 and clause (c) was subsequently inserted by the Criminal Law (Amendment) Act, 1972. "The Wounded Vanity of Governments" in Republic of Rhetoric : Free Speech and the Constitution of India by Abhinav Chandrachud (Penguin Books India 2017).

93. The Calcutta High Court in P.K. Chakravarti v. King Emperor, 1926 SCC OnLine Cal 96 had delved into the question of intention and had observed that the intention as to whether or not the person accused was promoting enmity is to be collected from the internal evidence of the words themselves, but this is not to say that other evidence cannot be looked into. Likewise, while examining the question of likelihood to promote ill-feelings the facts and circumstances of that time must be taken into account. Something must be known of the kind of people to whom the words are addressed. Words will be generally decisive, especially in those cases where the intention is expressly declared if the words used naturally, clearly or indubitably have such tendency. Then, such intention can be presumed as it is the natural result of the words used. However, the words used and their true meaning are never more than evidence of intention, and it is the real intention of the person charged that is the test. The judgment rejects the concept of constructive intention.

94. Similarly, the Lahore High Court in Devi Sharan Sharma v. Emperor, 1927 SCC OnLine Lah 454 had observed that intention can be deduced from internal evidence of the words as well as the general policy of the paper in which the article concerned was published, consideration of the person for whom it was written and the state of feeling between the two communities involved. In case the words used in the article are likely to produce hatred, they must be presumed to be intended to have that effect unless the contrary is shown.

95. The Bombay High Court in Gopal Vinayak Godse v. Union of India, 1969 SCC OnLine Bom 88 has observed that the intention to promote enmity or hatred is not a necessary ingredient of the offence. It is enough to show that the language of the writing is of the nature calculated to promote feelings of enmity or hatred, for a person must be presumed to intend the natural consequences of his act.

96. The view expressed by the Bombay High Court in Gopal Vinayak Godse v. Union of India, 1969 SCC OnLine Bom 88 lays considerable emphasis on the words itself, but the view expressed in P.K. Chakravarti v. King Emperor, 1926 SCC OnLine Cal 96 and Devi Sharan Sharma v. Emperor, 1927 SCC OnLine Lah 454 take a much broader and a wider picture which, in our opinion, would be the right way to examine whether an offence under Section 153-A clauses (1)(a) and (b) had been committed. The ordinary reasonable meaning of the matter complained of may be either the literal meaning of the published matter or what is implied in that matter or what is inferred from it. A particular imputation is capable of being conveyed means and implies it is reasonably so capable and should not be strained, forced or subjected to utterly unreasonable interpretation. We would also hold that deliberate and malicious intent is necessary and can be gathered from the words itself—satisfying the test of top of Clapham omnibus, the who factor—person making the comment, the targeted and non-targeted group, the context and occasion factor—the time and circumstances in which the words or speech was made, the state of feeling between the two communities, etc. and the proximate nexus with the protected harm, to cumulatively satiate the test of "hate speech". "Good faith" and "no legitimate purpose" test would apply, as they are important in considering the intent factor.

97. In Balwant Singh v. State of Punjab, (1995) 3 SCC 214 this Court had accepted that mens rea is an essential ingredient of the offence under Section 153-A and only when the spoken or written words have the intention of creating public disorder for disturbance of law and order or affect public "tranquillity", an offence can be said to be committed. This decision was relied on in Bilal Ahmed Kaloo v. State of A.P., (1997) 7 SCC 431, was overruled on a different point in Prakash Kumar v. State of Gujarat, (2005) 2 SCC, while referring to and interpreting sub-section (2) to Section 505 of the Penal Code. Similarly, in Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1, the intention to promote feeling of enmity or hatred between different classes of people was considered necessary as Section 153-A requires the intention to cause disorder or incite

> the people to violence. The intention has to be judged primarily by the language of the book and the circumstances in which the book was written and published.
> 98. In the context of Section 153-A(1)(b) we would hold that public tranquillity, given the nature of the consequence in the form of punishment of imprisonment of up to three years, must be read in a restricted sense synonymous with public order and safety and not normal law and order issues that do not endanger the public interest at large. It cannot be given the widest meaning so as to fall foul of the requirement of reasonableness which is a constitutional mandate. Clause (b) of Section 153-A(1), therefore, has to be read accordingly to satisfy the constitutional mandate. We would interpret the words "public tranquillity" in clause (b) to mean ordre publique a French term that means absence of insurrection, riot, turbulence or crimes of violence and would also include all acts which will endanger the security of the State, but not acts which disturb only serenity, and are covered by the third and widest circle of law and order. Public order also includes acts of local significance embracing a variety of conduct destroying or menacing public order. Public order in clause (2) of Article 19 nor the statutory provisions make any distinction between the majority and minority groups with reference to the population of the particular area though as we have noted above this may be of some relevance. When we accept the principle of local significance, as a sequitur we must also accept that majority and minority groups could have, in a given case, reference to a local area."

16. The law on the subject has been discussed by the Hon'ble Bombay High Court in the case of Sandeep Arjun Kudale Vs. State of Maharashtra through Public Prosecutor, 2023 SCC OnLine Bom 519, and very substantively, the principles have been summed up in Para 20 as follows:-

"20. Thus, what can be culled out from the aforesaid judgments is;

(1) It is not an absolute proposition, that one must wait for investigation to be completed before an FIR can be quashed under Section 482 Cr. P.C., as the same would depend on the facts and circumstances of each case;

(2) The intention of the accused must be judged on the basis of the words used by the accused along with the surrounding circumstances;

(3) The statement in question on the basis of which the FIR has been registered against the accused must be judged on the basis of what reasonable and strong minded persons will think of the statement, and not on the basis of the views of hypersensitive persons who smell danger in every hostile point of view;

(4) In order to constitute an offence under Section 153A of the IPC, two communities must be involved. Merely inciting the feeling of one community or group without any reference to any other community or group cannot attract Section 153A;

(5) The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153A of IPC and prosecution has to prove prima facie the existence of mens rea on the part of the accused;

(6) An influential person such as "top government or executive functionary, opposition leader, political or social leader of following or a credible anchor on a T.V. show" carries more credibility and has to exercise his right to free speech with more restraint, as his/her speech will be taken more seriously than that of a "common person on the street";

(7) A citizen or even an influential person is under no obligation to avoid a controversial or sensitive topic. Even expressing an extreme opinion in a given case does not amount to hate speech;

(8) The Apex Court has reiterated the test of imminence in Amish Devgan's case by holding that the likelihood of harm arising out of the accused's speech must not be remote, conjectural or far-fetched."

17. In these proceedings under Section 482 of the Code, this Court may not conduct any mini trial. If prima facie case is made out, definitely, a lawful trial may not be stopped at its threshold. But the question is, as argued on behalf of the petitioner, as to whether any prima facie case is made out against the petitioner.

18. The arguments, which have been advanced on behalf of the State as well as on behalf of the informant, have a clear line of distinction between them. On behalf of the State, it is argued that the petitioner was appealing to the public in the name of the religion. Reference has been made to the statements of the witnesses recorded during investigation. Whereas, on behalf of the informant, while reading some social media posts, a distinction has tried to be drawn between the community, to which the petitioner belongs, and the other communities. It is argued that, in fact, not based on two different religions, but based on two different castes, the petitioner was trying to create a disharmony. On one side, Pal Baghel Holkar Dhanaitkar Samaj, and on the other side, Pandas Samaj. Fact remains that the prosecution has not come up with the case as to what is the caste of Pandas, to which he belongs, and what is Pal Baghel Holkar Dhanaitkar Samaj, as argued on behalf of the informant. Do they fall within the same

basket of the same community or caste or are they distinct? If it is so, who has stated it? Where is that evidence? Except those alleged posts made by the petitioner, there is no material on record.

19. The FIR, as such, does not speak of disharmony between two castes or communities. According to the FIR, the petitioner was trying to create disharmony between two religions. The catch phrase was, "**Hindu Samaj Khatre me hai.("Hindu Society is in danger")**" The FIR was on religion based. According to the FIR, the petitioner was trying to create disharmony between two religions.

20. It is admitted fact that the petitioner and the informant both belong to the same religion. It is true that the FIR cannot be considered as an Encyclopedia. It cannot contain every detail of an offence. Some of the attributes of the offence may be collected during investigation to make the prosecution case complete. But then, there should be some evidence collected during investigation. The Investigating Officer has recorded the statement of the informant. He has reiterated the version of the FIR. He has stated about religion. He has not stated about any caste. In his statement to the Investigating Officer, the informant

does not say that the petitioner was trying to create disharmony between two groups, two communities or two castes. He spoke about religion alone.

21. Witnesses Sandeep, Anirudh, Rahul Aggarwal and Bansal Arora have been examined by the Investigating Officer. They have also stated about the religion. They have also not stated that the petitioner, in any manner, was trying to create disharmony between two distinct groups of castes and communities.

22. Witnesses Chandra Mohan, Shreya Talwar and Preet Kamal have stated that the petitioner was wrongly demonstrating that the temple has been destroyed. According to these witnesses, the temple, in fact, had never been destroyed.

23. In order to attract the provisions of Section 153 A IPC, the intention has some bearing. Mere statement, per se, may not make out any offence. In the case of Bilal Ahmed (*supra*), in Para 11, the Hon'ble Supreme Court referred to the judgment in the case of Balwant Singh v. State of Punjab, (1995) 3 SCC 214, wherein it was held that, **"mens rea is a necessary ingredient for the offence under Section 153-A."**

24. It is the case of the petitioner that, in fact, he had been agitating with regard to the temple property and its transfer.

25. It is the prosecution case that the statement, with regard to the destruction of the temple, as made by the petitioner was false, but it also, per se, does not attract the provisions of Section 153 A IPC.

26. The FIR does not speak about any disharmony between two castes. It speaks of attempted disharmony between two religions. As stated, the religion of the petitioner and the informant, admittedly, is one and the same. The prosecution witnesses have not stated about any attempted disharmony between any two groups or communities. As stated, the prosecution witnesses, as examined during investigation, have stated about attempted religions disharmony; false statement and false demonstration *Dharna*. Even the informant has not told it to the Investigating Officer that the petitioner, in any manner, tried to create any disharmony; ill will between any two groups or castes. The informant himself has not stated as to which caste he belongs and as to which caste the petitioner belongs. Of course, some social media posts have been referred to to make a distinction, which no witness has as such supported.

27. In view of what is stated hereinabove, this Court is of the view that even if the prosecution case is accepted in its entirety, prima facie offence under Section 153 A IPC is not made out against the petitioner. Accordingly, the petition is liable to be allowed.

28. The petition is allowed.

29. The chargesheet dated 30.06.2019, cognizance/summoning order dated 14.10.2019, as well as the entire proceedings of the case are, hereby, quashed.

(Ravindra Maithani, J.)
22.12.2023

Ravi Bisht