

2024 LiveLaw (SC) 251

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
B.R. GAVAI; J., SANDEEP MEHTA; J.**

March 19, 2024.

CRIMINAL APPEAL NO(S). 1708 OF 2024 (Arising out of SLP(Crl.) No(s). 3687 of 2020)
SHIV PRASAD SEMWAL versus STATE OF UTTARAKHAND AND OTHERS

Indian penal Code, 1860; Section 153A – For applying Section 153A IPC, the presence of two or more groups or communities is essential. Held, in the present case, no such groups or communities were referred to in the news article. Hence, the FIR lacks the necessary ingredients of the said offence. (Para 29)

Indian penal Code, 1860; Section 504 – This offence can be invoked when the insult of a person provokes him to break public peace or to commit any other offence. Held, there is no such allegation in the FIR that owing to the alleged offensive post attributable to the appellant, the complainant was provoked to such an extent that he could indulge in disturbing the public peace or commit any other offence. Hence, the FIR lacks the necessary ingredients of the said offence. (Para 30)

Indian penal Code, 1860; Section 34 & 120B – Since the foundational facts essential for constituting the substantive offences under Sections 153A and 504 IPC are not available from the admitted allegations of prosecution, the allegations qua the subsidiary offences under Sections 34 and 120B IPC would also be *non est*. (Para 30)

Constitution of India – Quashing of proceedings – Held, tested on the touchstone of the principles stated in State of Haryana and Ors. v. Bhajan Lal and Ors., allowing continuance of the proceedings pursuant to the impugned FIR is gross abuse of process of law because the allegations as set out in the FIR do not disclose necessary ingredients of any cognizable offence. Hence, the impugned FIR and all proceedings sought to be taken against the appellant are quashed and set aside. (Para 33)

Constitution of India; Article 226 and Criminal procedure Code, 1973; Section 482 – Categories of cases wherein quashing power could be exercised to prevent abuse of the process of any court or to secure the ends of justice are: (1) Where the allegations made in the first information report or the complaint, 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. (5) Where the allegations made in the FIR or complaint are absurd and inherently improbable to reach a conclusion that there is sufficient ground for proceeding against the accused. (6) Where there is an express legal bar to the institution and continuance of the proceedings and/or where there is provision providing efficacious redress for the grievance of the aggrieved party. (7) Where a criminal proceeding is mala

vide. (Para 32) *State of Haryana and Ors. v. Bhajan Lal and Ors.*, 1992 Supp (1) SCC 335; relied on.

(Arising out of impugned final judgment and order dated 20-07-2020 in CRLWP No. 881/2020 passed by the High Court of Uttarakhand at Nainital)

For Petitioner(s) Mr. Aditya Samaddar, AOR Mr. R K Mohit Gupta, Adv. Mr. Karan Kumar Gogna, Adv. Mr. Rahul Pratap Singh, Adv. Mr. Akshay Sahni, Adv.

For Respondent(s) Mr. Jaswant Singh Rawat, AOR Mrs. Kamlesh Pant, Adv. Mr. Krishan Chand Sharma, Adv. Mr. S K Gandhi, Adv. Ms. Nidhi Jaswal, AOR

J U D G M E N T

Mehta, J.

1. Leave granted.
2. The appellant herein calls into question the order dated 20th July, 2020 passed by the learned Single Judge of High Court of Uttarakhand whereby Criminal Writ Petition No. 881 of 2020 preferred by the appellant for assailing FIR No. 31 of 2020 registered for the offences punishable under Sections 153A, 500, 501, 504, 34 and 120B of the Indian Penal Code, 1860(hereinafter being referred to as the 'IPC') at P.S. Muni Ki Reti, District Tehri Garhwal was dismissed.
3. Shorn of details, the facts relevant and essential for disposal of the appeal are noted hereinbelow.
4. The respondent No.3 Shri Rajeev Savara filed a complaint to the SHO P.S. Muni Ki Reti, District Tehri Garhwal alleging *inter alia* that he owns land admeasuring 1.196 hectares(approximately 15.94 bighas) situated on National Highway No. 7 at village Singthali, Tehsil Narendra Nagar, District Tehri Garhwal, Uttarakhand. He had formed a trust by the name, Savara Foundation of which he is the founder and also Chairman of the Board of Trustees. He claimed to be an internationally recognised domain expert of pre-modern, modern visual and decorative Indian arts, having served on the advisory boards of various art galleries and museums.
5. The complainant had planned a foundation stone laying ceremony of 'Matra Ashraya-A collection museum' on the said land/property to be done by the Hon'ble Chief Minister of Uttarakhand, namely, Mr. Trivendra Singh Rawat, in the presence of Juna Peethadheeshwar Acharya Mahamandaleshwar Swami Avdheshanand Ji Maharaj. The event was scheduled on 20th March, 2020.
6. It was alleged in the complaint that in order to blackmail the complainant, the accused named in the aforesaid FIR, acting in collusion, got published a news article in the e-newspaper 'Parvatjan', edition dated 17th March, 2020 wherein it was portrayed that the land on which the foundation stone was proposed to be laid was Government land which had been unlawfully occupied/encroached upon by the complainant. The complainant alleged that even his invitation was published in the defamatory news article. It was further alleged that the imputations were made in the news article with the intent and knowledge that the same would irreparably tarnish the reputation of the complainant and his standing in the public domain.
7. The complainant asserted that the sole objective of the publication was to incite breach of peace. The article was published without undertaking proper fact-finding exercise which as per the complainant, would have conclusively and indisputably established that he had not encroached upon Government land and that the plot in question was lawfully owned and occupied by the complainant. In this manner, the

accused caused serious damage to the goodwill, reputation and standing of the complainant in the society. As per the complainant, the act of publication of the mischievous and malicious news article by the accused invited invocation of the offences punishable under Sections 153A, 500, 501, 504 read with Sections 34 and 120B IPC.

8. Based on the said complaint, FIR No. 31 of 2020 came to be registered at P.S. Muni Ki Reti, District Tehri Garhwal, Uttarakhand for the above offences.

9. The appellant filed Criminal Writ Petition No. 881 of 2020 in the High Court of Uttarakhand for challenging the said FIR claiming to be completely innocent and taking a plea that the allegations made in the FIR did not disclose commission of any cognizable offence. It was averred in the petition that the news article which had been published in the e-newspaper Parvatjan of which the appellant herein was the Director, was entirely based on the Facebook post of a journalist named Gunanand Jakhmola and as such, the appellant herein was not liable to face prosecution for the said publication.

10. As stated above, the High Court proceeded to dismiss the criminal writ petition filed by the appellant vide order dated 20th July, 2020 which is challenged in this appeal.

11. Notice was served on the respondents. Whilst official respondent Nos. 1 and 2 have put in appearance, respondent No. 3- complainant has chosen not to appear in the matter.

12. Counter affidavit has been filed on behalf of the State wherein, it is stated that during the course of investigation, no offence has been found to be made out against the newspaper named Parvatjan as well as the Editor and Admin of Parvatjan Newspaper, Parvat Jan Media Pvt. Ltd. and Parvatjan Newspaper(e-paper), Parvat Jan Media Pvt. Ltd. respectively. Since the news item was published on the Parvatjan news portal, the name of Mr.Gajendra Singh Rawat, Director, Parvat Jan Media Pvt. Ltd. was also dropped from the investigation and the investigation agency has confined its focus upon the role of the appellant herein and Gunanand Jakhmola, the journalist whose Facebook post was allegedly the basis of the offending news article.

13. It is further stated in the counter affidavit that the investigation has revealed that only offences punishable under Sections 153A, 504 IPC read with Sections 34 and 120B IPC are made out against the accused and the offences under Sections 500 and 501 IPC have been dropped.

14. Learned counsel for the appellant vehemently urged that admitted allegations as set out in the FIR do not disclose the necessary ingredients constituting the offences under Sections 153A, 504 read with Sections 34 and 120B IPC and hence, the continued investigation of the impugned FIR is nothing short of gross abuse of process of law. He contended that the words 'spoken' or 'written' attributed to the accused were not such which promoted or attempted to promote on the 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 religions, racial, language or regional groups or castes or communities, or committed any act which is prejudicial to maintenance of harmony between different religions, racial, language or regional groups or castes or communities, and which disturbed or was likely to disturb the public tranquillity.

15. It was also urged that there is no communal, caste, religion, race or place of birth based imputation in the news article published on the online news portal of Parvatjan. Thus, ingredients of the offence punishable under Section 153A IPC are not made out from the FIR.

16. It was further submitted that the contents of the news article cannot be construed as promoting enmity or hatred between different groups. It was submitted that even if the allegations made in the FIR are taken to be true on the face of the record, apparently, no two or more groups were involved in the matter and it was simply a reporting about the proposed foundation stone ceremony by the Hon'ble Chief Minister being held on a disputed piece of land.

17. Learned counsel submitted that if at all, the complainant was aggrieved that the news article had tarnished his image in the society or had defamed him in the eyes of the public at large, the appropriate remedy for him would have been to file a complaint for defamation. However, he has tried to misuse the process of criminal law by filing a totally frivolous FIR against the appellant. He thus, urged that the impugned FIR and the proceedings sought to be taken as a consequence thereof against the appellant deserve to be quashed.

18. *Per contra*, learned standing counsel for the State of Uttarakhand by referring to the counter affidavit filed on behalf of the State, vehemently and fervently opposed the submissions advanced by the appellant's counsel. He urged that journalist Gunanand Jakhmola, during the course of investigation, has stated that his Facebook post had been manipulated. Thus, as per learned standing counsel, the investigation might not be limited to the offences for which the FIR has been registered.

19. He further submitted that by allowing publication of totally false and malicious news article, the appellant generated imminent possibility of strife and discontent between the people belonging to the hill area (one group) and the people belonging to the plains (the other group) and thus, *prima facie* ingredients of offence under Section 153A IPC are made out from the allegations levelled in the FIR.

20. He further submitted that in addition to the above offence, offence under Section 504 read with Sections 34 and 120B IPC has also been applied by the Investigating Officer. It was thus, contended that it is not a fit case warranting interference with the impugned order.

21. We have given our thoughtful consideration to the submissions advanced at bar and have gone through the impugned order and the material placed on record.

22. It may be noted that the entire case as set out in the impugned FIR is based on the allegation that the Facebook news post uploaded by one journalist Mr. Gunanand Jakhmola was caused to be published on Parvatjan news portal being operated by the appellant.

23. Thus, essentially, we are required to examine whether the contents of the news report constitute any cognizable offence so as to justify the investigation into the allegations made in the FIR against the appellant.

24. For the sake of ready reference, the contents of the disputed news article are reproduced hereinbelow: -

"Gunanand Jakhmola

17th March 2020 at 30.05

Trivender Uncle what amazing things you are doing?

Uncle you are laying foundation stone of Art Gallery which is going to construct by acquiring government land.

Uncle you are associating the mafias who are violating the decisions of Modi Government.

Don't trap yourself with mafias, have you forgot the problems arisen out of marriage of Gupta brother's.

Uncle you were not like this, what happened to you? Was the troubles arisen out of marriage of Gupta Brothers was not enough that you are now going to laying foundation stone of the Art Gallery which is going to construct by acquiring government land. Just think over it, or take report from LIU and other agencies about this Art Gallery which is going to construct on the acquired government land. This is a government land which is dismantled by mafias and your officers. Uncle you are innocent, anybody can use you. Advisers and officers surrounding you they are cunning.

This cunning persons have brought you forward against the decisions of Modi Government.

Uncle let I inform you for your knowledge that Modi Government means your honour has given sanction to planning for Singtali Project near Rishikesh. This project will reduce the distance between Kumau and Garhwal and also it will arrange sources of employment in mountains. World bank is also giving money, but the program of Mafias in which you are going to participate on 20 March, that is an enemy of mountains. It has no concern with the well being of mountains. It is against the proposed project of Modi Government and your officers and advisers are in collusion with that. Please inquire it and then only you go.

Note: Kindly see the invitation card given by mafias.”

25. As per the counter affidavit filed on behalf of the State, after investigation, two substantive offences were retained by the Investigating Officer against the appellant, which are Sections 153A and 504 read with Sections 34 and 120B IPC.

26. From a bare reading of the language of Section 153A IPC, it is clear that in order to constitute such offence, the prosecution must come out with a case that the words 'spoken' or 'written' attributed to the accused, created enmity or bad blood between different groups on the ground of religion, race, place of birth, residence, language, etc., or that the acts so alleged were prejudicial to the maintenance of harmony.

27. Upon careful perusal of the offending news article, reproduced (*supra*), it is crystal clear that there is no reference to any group or groups of people in the said article. The publication focuses totally on the complainant imputing that he had encroached upon public land where the foundation stone laying ceremony was proposed at the hands of Hon'ble Chief Minister of Uttarakhand. Apparently, the post was aimed at frustrating the proposed foundation stone laying ceremony on the land, of which the complainant claims to be the true owner. The post also imputes that the person who was planning the foundation stone ceremony was an enemy of mountains and had no concern with the well-being of the mountains.

28. Learned standing counsel for the State tried to draw much water from these lines alleging that this portion of the post tends to create a sense of enmity and disharmony amongst people of hill community and the people of plains. However, the interpretation sought to be given to these words is far-fetched and unconvincing. The lines referred to *supra* only refer to the complainant, imputing that his activities are prejudicial to the hills. These words have no connection whatsoever with a group or groups of people or communities. Hence, the foundational facts essential to constitute the offence under Section 153A IPC are totally lacking from the allegations as set out in the FIR.

29. In the case of ***Manzar Sayeed Khan v. State of Maharashtra and Anr.***¹, this Court held that for applying Section 153A IPC, the presence of two or more groups or

¹ (2007) 5 SCC 1

communities is essential, whereas in the present case, no such groups or communities were referred to in the news article.

30. The other substantive offence which has been applied by the investigating agency is Section 504 IPC. The said offence can be invoked when the insult of a person provokes him to break public peace or to commit any other offence. There is no such allegation in the FIR that owing to the alleged offensive post attributable to the appellant, the complainant was provoked to such an extent that he could indulge in disturbing the public peace or commit any other offence. Hence, the FIR lacks the necessary ingredients of the said offence as well. Since we have found that the foundational facts essential for constituting the substantive offences under Sections 153A and 504 IPC are not available from the admitted allegations of prosecution, the allegations qua the subsidiary offences under Sections 34 and 120B IPC would also be *non est*.

31. The complainant has also alleged in the FIR that the accused intended to blackmail him by publishing the news article in question. However, there is no allegation in the FIR that the accused tried to extract any wrongful gain or valuable security from the complainant on the basis of the mischievous/malicious post.

32. In the case of ***State of Haryana and Ors. v. Bhajan Lal and Ors.***¹, this Court examined the principles governing the scope of exercise of powers by the High Court in a petition under Article 226 of the Constitution of India and under Section 482 CrPC seeking quashing of criminal proceedings and held 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.

(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.

¹ 1992 Supp (1) SCC 335

(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.”

33. Tested on the touchstone of the above principles, we are of the firm view that allowing continuance of the proceedings pursuant to the impugned FIR bearing No. 31 of 2020 registered at P.S. Muni Ki Reti, District Tehri Garhwal against the appellant is nothing but gross abuse of process of law because the allegations as set out in the FIR do not disclose necessary ingredients of any cognizable offence. Hence, the impugned FIR and all proceedings sought to be taken against the appellant are hereby quashed and set aside.

34. The appeal is allowed accordingly.

35. Pending application(s), if any, shall stand(s) disposed of.

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