

Reserved

AFR

Case :- Application U/S 482 No.25838 of 2022

Applicant :- Abbas Ansari and another

Opposite Party :- State of U.P. and 2 others

Counsel for Applicant :- Upendra Upadhyay

Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Kumar Singh, J.

1. Heard Sri Anil Tiwari, learned Senior Advocate, assisted Sri Upendra Upadhyay, learned counsel for the petitioners and Sri M.C. Chaturvedi, learned Additional Advocate General assisted Sri Ratnendu Kumar Singh, learned AGA for the State.

2. The present petition under Section 482 Cr.P.C. has been filed seeking quashing of the charge sheet dated 11.5.2022 under Sections 171-F, 506, 186, 189 and 153-A and 120-B IPC in pursuance to the FIR dated 3.3.2022 registered at Crime No.97 of 2002, initially registered under Sections 506 and 171-F IPC at Police Station Kotwali Mau, District Mau. Further prayer has been made for quashing of the order of cognizance and summoning dated 23.5.2022 passed by the Special Judge (MP/MLA Court)/Additional Chief Judicial Magistrate, Mau in Criminal Case No.9720 of 2022.

3. The FIR in question came to be registered after petitioner no.1 made a statement in a public meeting during his election campaign for Member of Legislative Assembly from Mau Sadar Constituency. Petitioner No.1 was contesting the said elicitation on the ticket of Suheldev Bhartiya Samaj Party in March, 2022. The offending part of the statement made by petitioner no.1 would read “समाजवादी पार्टी के राष्ट्रीय अध्यक्ष श्री अखिलेश यादव जी से यह कहकर आया हूँ कि 6 महीने तक किसी का ट्रान्सफर पोस्टिंग नहीं होगी। भइया जो यहां है वो यहां ही रहेगा पहले हिसाब किताब होगा उसके बाद उसके जाने के सर्टीफिकेट पर मुहर लगाया जायेगा।”

4. The main contention of the learned counsel for the petitioners is that the said statement by no stretch of imagination would constitute an offence under Section 153-A IPC. It has been further submitted that to constitute an offence under Section 153-A IPC, there must be an intention of the person making the statement to create disorder or to incite people to violence. Even if it is believed that petitioner no.1 had made the said statement, the statement was directed towards the Government people and not against any member, religion, racial, language or regional groups or castes or communities. It is further submitted that if the provisions of Section 153-A IPC are considered in proper perspective, the said offence would not get attracted against the petitioners for making the offending statement and, therefore, taking cognizance for an offence under Section 153-A IPC against the petitioners is wholly illegal and to that extent at least the cognizance order is bad in law and is liable to be set aside.

5. In support of his said contention, learned counsel for the petitioners has placed reliance on the following judgments:-

1. *Balwant Singh and another Vs. State of Punjab*; (1995) 3 SCC 214;
2. *Bilal Ahmed Kaloo Vs. State of A.P.*; (1997) 7 SCC 431;
3. *Manzar Sayeed Khan Vs. State of Maharashtra and another*; (2007) 5 SCC 1;
4. *Amish Devgan Vs. Union of India and others*; (2021) 1 SCC 1; and
5. *Shreya Singhal Vs. Union of India*; (2015) 5 SCC 1.”

6. On the other hand, Sri M.C. Chaturvedi, learned Additional Advocate General has submitted that the investigating officer has prepared a report, which was sent to the Government for sanction of the prosecution against petitioner No.1 on 3.5.2022. Thereafter, the charge sheet has been submitted against both the petitioners on 11.5.2022. The Government had sanctioned the prosecution against both the petitioners on 24.8.2022 and the said sanction order has been incorporated in the case diary of Parcha No.CD-11 and forwarded the same on 02.09.2022.

7. It has been further submitted that petitioner no.1 is having seven similar cases, including the present one, and petitioner no.2 is having to his credit five criminal case, including the present one. After making the offending statement by petitioner no.1, the Returning Officer of 356 Mau Assembly Constituency sent a notice dated 4.3.2022 to petitioner no.1 calling upon him to furnish his reply as to why action should not be taken against him under the relevant provisions of Representation of Peoples Act, 1951. However, petitioner no.1 did not give any reply to the said notice issued by the Returning Officer. The Election Commission of India had barred petitioner no.1 from holding any public meeting, public procession, public rallies, road shows and interviews, public utterances in media (electronic, print, social media) etc. in connection with the ongoing election for 24 hours from 7 PM from 4.3.2022.

8. Learned Additional Advocate General has further submitted that the offending statement made by petitioner no.1 was not only directed against the Government machinery, but it was also directed against the law abiding and peace-loving citizens/communities, who were feeling protected under the then government in the State from the atrocities and crimes of petitioner no.1 and his family and other co-accused. He has also submitted that the State Government had given free hand to the State machinery to handle law and order without being influenced from any political pressure. The Government officials had acted as per law without being coming under pressure from any quarter and, therefore, the residents of the said constituency, who were not supporters of the petitioners, were threatened and made insecure by giving threats to the government officials. Not only the Government officials but all those who were feeling safe and secure, felt tremors and fear in their spines by the open threat given by the petitioners. He has, therefore, submitted that the offence under Section 153-A IPC is clearly attracted in the facts and circumstances of the case.

9. Learned Additional Advocate General has also submitted that the gesture, language and the context are relevant to see whether the offence under Section 153-A IPC is attracted or not. If one looks at the video recording of the statement given by petitioner no.1 in public meeting, the warning was not against the Government officials, but it was against all those who were feeling protected and saved under the then State government. Petitioner no.1 was sure that the Government of Samajwadi Party lead by Sri Akhilesh Yadav would occupy the seat of power in the State of Uttar Pradesh and, therefore, he made the threatening statement, which has propensity to disturb the public order. He, therefore, submits that the offence under Section 153-A IPC is clearly attracted against the petitioners and no interfere is required by this Court to quash the proceedings, and the petition being devoid of merit and substance, is liable to be dismissed.

10. I have considered the submissions advanced by the learned counsel for the parties and perused the record.

11. For the sake of argument, Section 153-A IPC reads as under:-

“153A. Promoting enmity between different groups on ground 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, racials, language or regional groups or castes or communities, or

(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,

(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.

(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.”

12. The offence under Section 153-A IPC may get attracted where a person 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 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. If the statement or the sign or representation has propensity to incite people to violence, the offence under Section 153-A IPC gets attracted.

13. The Supreme Court in the case of *Balwant Singh* (Supra) has held that the intention to cause disorder or incite people to violence is the *sine qua non* of the offence under Section 153-A IPC and the prosecution has to prove the existence of *mens rea* in order to succeed. Paragraph 9 of the said judgment would be apt to extract, which reads as under:-

“9. Insofar as the offence under Section 153-A IPC is concerned, it provides for punishment for promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever or brings about disharmony or feeling of hatred or ill-will between different religious, racial, linguistic or regional groups or castes or communities. In our opinion only where the written or spoken

words have the tendency or intention of creating public disorder or disturbance of law and order or affect public tranquillity, that the law needs to step in to prevent such an activity. The facts and circumstances of this case unmistakably show that there was no disturbance or semblance of disturbance of law and order or of public order or peace and tranquillity in the area from where the appellants were apprehended while raising slogans on account of the activities of the appellants. The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153-A IPC and the prosecution has to prove the existence of mens rea in order to succeed. In this case, the prosecution has not been able to establish any mens rea on the part of the appellants, as envisaged by the provisions of Section 153-A IPC, by their raising casually the three slogans a couple of times. The offence under Section 153-A IPC is, therefore, not made out.”

14. Thus, the question of proving *mens rea* to incite people to violence or cause disorder is to be proved during trial by leading evidence by the prosecution. However, if *prima facie*, the act, sign or words has propensity to disturb the public order or incite the people to violence, the proceedings cannot be quashed at the threshold.

15. The Supreme Court in the case of *Bilal Ahmed Kaloo* (supra) by placing reliance on the judgement of *Balwant Singh* (supra) has again reiterated that *mens rea* is an equally necessary postulate for the offence under Section 153-A IPC and same can be discerned from the words “with intent to create to promote or which is likely to create or promote”. Paragraphs 10 and 11 of the said judgement which would be relevant, would read as under:-

“10. Section 153-A was amended by the Criminal and Election Laws (Amendment) Act, 1969 (Act No. 35 of 1969). It consists of three clauses of which clauses (a) and (b) alone are material now. By the same Amending Act sub-section (2) was added to Section 505 of the Penal Code, 1860. Clauses (a) and (b) of Section 153-A and Section 505(2) are extracted below:

“153-A. 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

(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

*(c) ****

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

505. (2) Statements creating or promoting enmity, hatred or ill will between classes.—Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.”

The common ingredient in both the offences is promoting feeling of enmity, hatred or ill will between different religious or racial or linguistic or regional groups or castes or communities. Section 153-A covers a case where a person by “words, either spoken or written, or by signs or by visible representations” promotes or attempts to promote such feeling. Under Section 505(2), promotion of such feelings should have been done by making and publishing or circulating any statement or report containing rumour or alarming news.

11. This Court has held in Balwant Singh v. State of Punjab [(1995) 3 SCC 214 : 1995 SCC (Cri) 432] that mens rea is a necessary ingredient for the offence under Section 153-A. Mens rea is an equally necessary postulate for the offence under Section 505(2) also as could be discerned from the words “with intent to create or promote or which is likely to create or promote” as used in that sub-section.”

16. In the case of *Manzar Sayeed Khan* (supra), it has been held that the intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153-A IPC and the prosecution has to prove *prima facie* the existence of *mens rea* on the part of the accused.

The question of proof would arise only at the time of trial and the same can be proved by leading the necessary evidence. Paragraph 16 of the said judgement which would be relevant, would read as under:-

“16. Section 153-A IPC, as extracted hereinabove, covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities or acts prejudicial to the maintenance of harmony or is likely to disturb the public tranquillity. The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153-A IPC and the prosecution has to prove prima facie the existence of mens rea on the part of the accused. The intention has to be judged primarily by the language of the book and the circumstances in which the book was written and published. The matter complained of within the ambit of Section 153-A must be read as a whole. One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning.”

17. Preamble to the Constitution consciously puts together fraternity assuring dignity of the individual and the unity and integrity of the Nation which are linked; one in the form of rights of individuals; and other in the form of individual's obligation to others to ensure unity and integrity of the Nation. The unity and integrity of the Nation cannot be overlooked and slighted, as acts that promote or are likely to promote divisiveness, alienation and schematism do directly and indirectly impinge on diversity and pluralism. When such acts are done with the objective and intent to cause public disorder or to demean dignity of the targeted groups, they have to be dealt with as per law and such an act would attract the offence under Section 153-A IPC.

18. In the case of *Amish Devgan* (supra) while explaining the context of Section 153-A IPC regarding public tranquillity, the Supreme Court in paragraph 98 of the said judgement held as under:-

“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.”

19. Further, in paragraphs 104 to 106 of the aforesaid judgement, the Supreme Court held as under:-

“104. The word “attempt”, though used in Sections 153-A and 295-A of the Penal Code, has not been defined. However, there are judicial interpretations that an “attempt to constitute a crime” is an act done or forming part of a series of acts which would constitute its actual commission but for an interruption. An attempt is short of actual causation of crime and more than mere preparation. In Aman Kumar v. State of Haryana [Aman Kumar v. State of Haryana, (2004) 4 SCC 379 : 2004 SCC (Cri) 1266] it was held that an attempt is to be punishable because every attempt, although it falls short of success, must create alarm, which by itself is an injury, and the moral guilt of the offender is same as if he had succeeded. Moral guilt must be united to injury in order to justify punishment.

105. Further, in State of Maharashtra v. Mohd. Yakub [State of Maharashtra v. Mohd. Yakub, (1980) 3 SCC 57 : 1980 SCC (Cri) 513] this Court observed : (SCC p. 62, para 13)

“13. ... What constitutes an “attempt” is a mixed question of law and fact, depending largely upon the circumstances of a particular case. “Attempt” defies a precise and exact definition. Broadly speaking, all crimes which consist of the commission of affirmative acts are preceded by some covert or overt conduct which may be divided into three stages. The first stage exists when the culprit first entertains the idea or intention to commit an

offence. In the second stage, he makes preparations to commit it. The third stage is reached when the culprit takes deliberate overt act or step to commit the offence. Such overt act or step in order to be “criminal” need not be the penultimate act towards the commission of the offence. It is sufficient if such act or acts were deliberately done, and manifest a clear intention to commit the offence aimed, being reasonably proximate to the consummation of the offence.”

106. On the scope of proximity, it was elucidated in State of Maharashtra v. Mohd. Yakub [State of Maharashtra v. Mohd. Yakub, (1980) 3 SCC 57: 1980 SCC (Cri) 513] that the measure of proximity is not in relation to time and place but in relation to intention.”

20. Considering the context and the intention with which the offending words were spoken in a public meeting, at this stage it cannot be said that the offence under Section 153-A IPC is not attracted against the petitioners. The scope of power under Section 482 Cr.P.C. is limited, and it should be exercised in exceptional cases where the complaint or charge sheet does not disclose any offence. Whether the offence under Section 153-A IPC gets attracted or not, would depend on the quality of evidence lead by the prosecution during trial. However, at this stage, this Court does not find any ground to interfere with the ongoing proceedings or the charge sheet.

21. Thus, the petition being devoid of merit and substance, is hereby ***dismissed***. Interim order, if any, stands vacated. Trial court to proceed accordingly.

(Dinesh Kumar Singh, J.)

Order Date :- 1st February, 2023
Rao/-