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HIGH COURT OF TRIPURA
AGARTALA

Crl.Petn. No.03/2020

Shri Arindam Bhattacharjee, son of Shri Basudev Bhattacharjee, resident of North Badharghat, Subhash Palli, P.O. & P.S.-A.D. Nagar, District-West Tripura.

----Petitioner(s)

Versus

1. The State of Tripura.
2. The Superintendent of Police, West Tripura District, Police Head Quarters, A.K. Road, Fire Brigade Chowmohani, PO & Sub-Division-Agartala, District-West Tripura.
3. The Officer-in-charge, West Agartala, P.S., Post Office Chowmohani, PO & Sub-Division-Agartala, District-West Tripura.
4. Shri Victor Shome, son of Bhaskar Shome, Joynagar, PO & Sub-Division-Agartala, District-West Tripura.

-----Respondent(s)

For Petitioner(s) : Mr. Sankar Lodh, Advocate.

For Respondent(s) : Mr. Samrat Ghosh, Addl. P.P.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Date of hearing and judgment : **12th March, 2021.**

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

The petitioner seeks quashing of an F.I.R. dated 04.01.2020 filed by the respondent No.4 before the West Agartala Police Station.

Contents of the F.I.R. read as under:

“Sir, WWW.LIVELAW.IN

Please find an attachment of an face book post by Sri Arindam Bhattacharjee, which itself instigates division of religious sentiments, creates an environment of misinformation & public nuisance & reumer mongering inconsequence of criminal conspiracy as a sole purpose.

The number was issued by Bharatiya Janata Party, the number is 8866288662 & to appil the Citizen of India to give a miss call to show their support in favour of Citizen Amendment Act—2019 (CAA).

This is my kind request to investigate the matter and take appropriate legal action against Sri Arindam Bhattacharjee.”

2. The said complaint has been registered by the police authorities for offences punishable under Sections 120B, 153A and Section 505 of Indian Penal Code (IPC, for short).

3. The petitioner is allegedly an active member of a political party. He had put a facebook post with respect to a mobile number 8866288662. This post reads as under:

“By mistake if you make a call in 8866288662, all of your data saved in the mobile would go to hackers. Be alert.... Be alert....”

4. As noted, according to the complainant the said telephone number was being used by another political party inviting members of the public to give a missed call to show their support in favour of the Citizenship Amendment Act, 2019 (CAA). According to the complainant by

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putting the said false facebook post the petitioner had instigated division amongst religious groups and created an environment of misinformation which was a public nuisance and he was spreading rumours. This was pursuant to a criminal conspiracy.

5. Counsel for the petitioner submitted that the petitioner had not committed any offence and at any rate none of those under which the F.I.R. is registered. He pointed out that in order to draw the citizens into calling the said number, one Amlan Mukherjee had put a facebook post which was as follows:

“Want free Netflix subscription for 1 year?!?
Call 8866288662 and get Username and Password.
Promotional offer, valid only for first 100 callers.
Try your luck.”

6. Learned counsel submitted that the petitioner had lodged a similar complaint before the police station against said Amlan Mukherjee, however, the same was not registered as an F.I.R. and much later the F.I.R. is registered only under Section 420 of IPC which clearly shows the inconsistency in the stand of the authorities.

7. On the other hand, learned Additional Public Prosecutor opposed the petition contending that the petitioner is in the habit of posting incorrect and harmful comments against the members of the rival political

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party. The actions of the petitioner are being investigated. The complaint discloses *prima facie* commission of cognizable offences. The petition may, therefore, be dismissed.

8. As noted, the petitioner had posted a comment suggesting that if anybody calls the said number 8866288662, the caller's data saved in the mobile phone would be hacked. This would undoubtedly alarm the prospective callers and in many cases dissuade them from calling the said number. The question is does this action of the petitioner fall within the parameters of any of the three penal provisions of IPC which are mentioned in the F.I.R. For such purpose, we may refer to the said Sections. Section 120B of IPC provides for punishment of criminal conspiracy and reads as under:

“120B. Punishment of criminal conspiracy.—(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”

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9. The term “criminal conspiracy” is defined under Section 120A as to mean when two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means. Proviso to Section 120A provides that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. Only if the allegations contained in the F.I.R. taken on face value, the ingredients of Section 120A of the Indian Penal Code are satisfied, the question of handing down punishment to the accused under Section 120B would arise. The offence of criminal conspiracy, would comprise of an agreement to do or to be done an illegal act or an act which may not be illegal but may be done by illegal means. In the present case, there is no iota of allegation as to which offence the petitioner in consort with anyone else, agreed to do or caused to be done. In plain terms Section 120B of the IPC is wrongly applied.

10. Section 153B pertains to imputations, assertions prejudicial to national-integration and reads as under:

“153B. Imputations, assertions prejudicial to national-integration.—(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,—

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of

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any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons,

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

(2) 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.”

11. As per sub-section (1) of Section 153B, whoever, by words either spoken or written or by signs or by visible representations or otherwise, does any of the acts provided in clauses (a), (b) and (c) to sub-section (1) shall be punished with imprisonment which may extend to three years, or with fine, or with both. Sub-section (2) of Section 153B is an aggravated form of the offence specified in sub-section (1). Further analysis

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of three clauses (a), (b) and (c) of sub-section (1) of Section 153B would show that as per clause (a), the offence would be said to have been committed by a person who makes or publishes any imputation that any class of persons cannot by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India. Clause (b) would be applicable when a person asserts, counsels, advises, propagates or publishes that any class of persons shall by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India. Clause (c) would apply to a person who makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons.

12. The allegations against the petitioner made in the F.I.R. suggest that he had wrongly represented to the members of the public that a caller of a particular number would be incurring the risk of his data being hacked.

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This alleged act on part of the petitioner, does not fall within any of the clauses (a) to (c) of sub-section (1) of Section 153B. There is no imputation even allegedly made against the petitioner that he had claimed that any class of persons cannot bear true faith and allegiance to the Constitution and uphold the sovereignty of the country by the reason of their belonging to members of any religious, racial, language or regional group or caste or community. Likewise, there is no allegation that the petitioner had asserted, counseled or advised or propagated or published that any class of persons be denied or deprived their rights as citizens of the country by reason of their being members of a particular religious, racial, language or regional group or caste or community. Again, the petitioner had not made or published any assertion or plea concerning the obligation of any class of persons by reason of their being members of any religious, racial, language or regional group etc. None other ingredients of Section 153B of the IPC are satisfied.

13. Coming to Section 505 of IPC, the same pertains to statements concerning to public mischief. Sub-section (1) of Section 505 provides that whoever makes, publishes or circulates any statement, rumour or report with intent as specified in clauses (a), (b) or (c), shall be punished with imprisonment which may extend to three years or with fine, or with both. Sub-sections (2) and (3) are in the nature of aggravated form of the offence.

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Clause (a) of sub-section (1) of Section 505 would include a person who with intent to cause, or is likely to cause any officer, soldier, sailor or airman in the Army, Navy or Air Force etc. to mutiny or otherwise disregard or fail in his duty as such. *Ex facie*, this clause is not applicable. Clause (b) would include a person who with intent to cause or is likely to cause, fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility. Once again, *ex facie*, there are no allegations covering this clause. Lastly, clause (c) would cover a person who with intent to incite, or is likely to incite any class or community of persons to commit any offence against any other class or community. Once again, the contents of the post of the petitioner may be false, it cannot be said that the same was posted with intent to incite or which is likely to incite any class or community of persons to commit any offence against any other class or community.

14. Learned Additional Public Prosecutor had not brought to my notice any other penal provision under which the allegations against the petitioner can be investigated. If there are any provisions of Information Technology Act or any other applicable statute, the police authorities had neither applied nor the learned Additional Public Prosecutor brought to my notice. I have, therefore, confined my scrutiny to the question of

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applicability of the stated provisions of IPC and which I find, have no applicability. It is ironic that when the petitioner had made a similar complaint against Amlan Mukherjee of putting a misleading post on a social media which had the tendency to draw innocent callers into making phone calls on the given number, the police authorities did not think it appropriate to register the complaint under any of the provisions which are applied to the petitioner namely Sections 120B, 153A or Section 505 of IPC.

15. In the result, impugned F.I.R. is quashed. Petition disposed of accordingly.

Pending application(s), if any, also stands disposed of.

(AKIL KURESHI), CJ

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