

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-17450-2022
Reserved on 30-08-2022
Pronounced on: 12-10-2022

Kumar VishwasPetitioner

v.

State of Punjab and anotherRespondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: - Mr. Randeep Rai, Sr. Advocate and
Mr. Chetan Mittal, Sr. Advocate with
Mr. Mayank Aggarwal Advocate
Ms. Rubina Virmani, Advocates
for the petitioner.

Mr. Puneet Bali, Sr. Advocate with
Mr. Prashant Manchanda, Addl. Advocate General, Punjab,
Mr. Ferry Sofat, Addnl. Advocate General Punjab,
Mr. H.S. Sitta, Dy. Advocate General, Punjab, and
Mr. Vaibhav, Advocate for the State of Punjab

Mr. Surjeet Bhadu, Advocate for the complainant/respondent no.2.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
25	12.04.2022	Sadar Rupnagar, District Rupnagar	153, 153A, 505, 505(2), 116, 143, 147, 323, 341, 120B of Indian Penal Code, 1860, [IPC] and 125 of the Representation of Peoples Act, 1951.

Aggrieved on being arraigned as an accused in the FIR captioned above, the petitioner has come up before this court under section 482 of the Code of Criminal Procedure, 1973 [CrPC], by invoking this court's inherent jurisdiction, seeking to disrupt the criminal proceedings at the inception stage to preserve his fundamental right of free speech, to prevent the abuse of process of law, and to secure the ends of justice, on the grounds that even if all the allegations on their face value are taken to be true and correct, still it would not constitute violation of any of the penal offences incorporated against him; thus, prays to quash the FIR.

2. The trouble sprouted on Feb. 16, 2022, when as per the complaint, the petitioner, during Vidhan Sabha elections, gave a video interview, leveling imputations about the involvement of Mr. Arvind Kejriwal, Chief Minister of Delhi, with certain nefarious and anti-social elements. The complainant alleged that to provoke and abet violence against the workers and supporters of the Aam Adami Party [AAP], Kumar

Vishwas deliberately stated in his interview pointing toward Delhi's Chief Minister, *"One day, he told me not to worry because either he would become Chief Minister of an independent State... On this, I (Kumar Vishwas) confronted him by saying this is separatism, the referendum of 2020 is coming, and the world is funding it, from ISI to the separatist groups... He said, so what, then, he would become Prime Minister of an Independent country. Look so much separatism is in this man's thoughts to form Government and acquire power at whatever cost."*

3. The gist of the allegations leveled in the complaint is that on Feb. 16 and Feb. 17, 2022, the petitioner, Kumar Vishwas, to satiate his personal enmity and hatred, gave a proactive video interview to ANI and other news channels, wherein he made baseless imputations regarding involvement of AAP's national convener Mr. Arvind Kejriwal, with certain nefarious and anti-social elements. The interview was widely circulated in the media and was being re-tweeted and numerous shared on social media websites through meticulous planning to promote hatred, animosity, and feelings of hostility in the State of Punjab, against the members of AAP. This was done deliberately with an intent to associate every leader, member, and supporter of AAP, with nefarious and disruptive elements. The timing and nature of the proactive statements were purposefully and strategically aimed to spread a communal narrative to create unrest and instability across Punjab during the elections to the State Legislative Assembly, and this instigation subjected AAP supporters to hatred, hostility, distrust, and vengeful violence, significantly rupturing the peaceful religious fabric of Punjab.

4. The complaint reads that, *"Today i.e., on 12.04.2022 at about 12 P.M. near T-Point Panjola, Purkhali road, when I was returning after redressing public grievances with my fellow party workers Shiv Kumar Lalpura, Gaurav Kapoor and Rana Panjola, a group of 10-12 unknown persons restrained and waylaid us unexpectedly and tried to assault and manhandle us by pushing us into a corner. They seemed furious about the victory of Aam Aadmi party in the Vidhan Sabha Elections and called us names like Khalistani, gaddar and started giving slogans to the effect "Kejriwal Mann ki Sarkar Hai Hai" "Khalistani Sarkar Hai Hai" "Punjab Khalistan Nahi Banega". We somehow managed to run away from them to safety. Having regards to the entire chain of events which has transpired over the past few months in light of a pre-planned conspiracy at the hands of the above-mentioned persons, in order to execute their evil motives your immediate intervention is thus required."*

5. The complainant handed over a written complaint to the SHO, Police Station Sadar, Rupnagar, Punjab, against the petitioner mentioning the afore-stated incident. Based on these allegations, on April 12, 2022, the SHO registered the FIR captioned above, the investigation commenced, and complainant also handed over to the investigator the video clippings of interviews of the petitioner. From April 15 onwards, the investigation was taken over by a Special Investigation Team [SIT], headed by the

Superintendent of Police (Investigation), and with one Dy.SP, and SHO as its members. The investigation revealed that the hooligans had apprised the complainant that they had watched the interview of Kumar Vishwas and subsequently that of Alka Lamba, who had also re-iterated the statements made in the interview. During investigation, the SIT also examined the incidents of assaults at Chamkaur Sahib on Feb. 18, and other places, which were stated to be its outcome.

6. On April 19, 2022, the investigator issued notices against the petitioner under S. 41-A of the CrPC. Aggrieved by the registration of the FIR and further directions to join the investigation, the petitioner came up before this court for the quashing of the FIR and during the pendency of the petition, a stay of further proceedings. Vide order dated May 02, 2022, this Court had stayed further proceedings *qua* the petitioner, including his arrest.

7. In paragraph 3 of the quashing petition, supported by the petitioner's affidavit, he states as follows, "3. *That the brief background of the case is that the petitioner was one of the founder members of the AAP. He came into contact with Sh. Arvind Kejriwal in the year 2005 during the "India Against Corruption" movement led by Sh. Anna Hazare. Recently in an interview the petitioner has given certain conversation which has taken place between him and Sh. Arvind Kejriwal regarding his political aspirations and thereafter there are series of statements and counter statements between the petitioner and Sh. Arvind Kejriwal which has been reported in media. The crux of all the conversation which has taken place during 2017 Punjab assembly elections when allegedly the petitioner had objected Sh. Arvind Kejriwal from taking any support from the Punjab based fringe and separatists elements to win Punjab elections on the basis of the said support.*"

8. Mr. R.S.Rai, Sr. Advocate representing the petitioner, referred to the petition and stated that the FIR is politically motivated, by misusing the State's machinery to wreak vengeance for the petitioner's defiance of the party's ways, is a gross abuse of power, and an act of vendetta due to hostile relations of the petitioner with AAP, which is now in power in Punjab, of which he was a founding member.

9. Mr. Puneet Bali, Sr. Advocate, appearing for the State of Punjab, argued that the investigation was at its initial stage when this court had stayed the further proceedings, as such the investigation on crucial aspects is yet to be carried out, and thus, if this court proceeds further to quash the FIR, it would amount to not letting the police fulfill its statutory obligation to investigate a crime of serious ramifications. Further contention is that as per the daily diary reports, similar incidents occurred on Feb. 18, 2022, in Chamkaur Sahib Vidhan Sabha constituency as a repercussion of this interview. The State's stand is that the complaint discloses the commission of a *prima facie* offence, and it is not a case that falls in the category of exceptional cases, where the High Court might use its inherent powers under section 482 CrPC to put a lid on everything.

10. Mr. Surjeet Bhadu, Advocate, representing the complainant, argued that a *prima facie* case is made against the petitioner and seeks dismissal of the petition.

ANALYSIS AND REASONING:

11. The incidents of Feb. 18, 2022, at Chamkaur Sahib, would have a separate cause of action. This occurrence is not even mentioned in the complaint because the complainant was unaware of it at the time of making the complaint. Further during the investigation, the investigator has linked the incident, which had occurred at a different place, under a different scenario, on a much earlier date, with the incident of April 12, 2022, at Panjola in District Rupnagar. There is no proximity between the two. As per section 154 CrPC, the officer-in-charge of a police station registers an FIR on receipt of information disclosing the commission of a cognizable offence. On receipt of information about the incident of Chamkaur Sahib, this information was not registered under section 154 CrPC but was merely entered as a Daily Diary Report [DDR]. There is no link between the said incident and the present one. The investigation in the present FIR registered in Police Station Sadar, Rupnagar, would not bring in its sweep all the previous incidents about which the concerned officers had not even registered any FIRs, and now, it would be legally impermissible to link or club the prior incidents with the current, which is later in time.

12. As per the State's reply dated July 01, 2022, filed on an affidavit of the concerned DySP, the FIR was registered on April 12, when the investigation commenced, which continued till May 02, when this court stayed the further proceedings. It implies that the investigation was carried out for seventeen days. The investigator has already recorded statements of the spot witnesses, and a reference to the reply reveals that the investigation was complete on all material particulars to incriminating the petitioner. The parties do not dispute the factum of the interview and its correctness. The matter requires nothing else to be proved. The veracity of the statements made in the interview is not required to be gone into and considered by launching the prosecution for trial as the same remains undisputed. The only relevant issue that remains to be addressed is whether the interview of the petitioner given on Feb 16, 2022, led to the incident of Apr 12, 2022. Given above, the disruption of the investigation shall not constitute the stifling of investigation.

13. The State contends that the investigation revealed that the speech of Kumar Vishwas flared up the sentiments and led to various untoward incidents where the agitated groups created ruckus, hooliganism, and raised slogans against the supporters of the AAP, and those incidents were also entered in as separate DDRs. Such incidents occurred on 18-2-2022 at Chamkaur Sahib; 28-03-2022 at Rupnagar; 03-04-22 at Ghanuali; clashes between two communities on 29-04-2022, and uploading of a fake video in Mar 2022. Suppose all the allegations made in the complaint and the subsequent investigation are taken at the face value; still, there is

not even an iota of evidence of any proximity between the interview and the incidents of Chamkaur Sahib, etc., and the one that had taken place on April 12, 2022, which are distinct criminal acts, and are neither an outburst of the interview of the petitioner given on Feb. 2022 nor did such interview snowball to make it happen.

14. The petitioner has been arraigned as an accused for violating sections 153, 153-A, 505, 505(2), 116, 143, 147, 323, 341, 120-B of IPC and Section 125 of the Representation of Peoples Act, 1951.

15. Section 153 of IPC makes it an offence when the provocation by an act of provocation intends to cause a riot or the provocation knows it will cause rioting. A perusal of the video transcript and the complaint neither points to any such intention nor knowledge. S. 153-A of IPC would constitute an offence when someone promotes enmity between different groups on the grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintaining harmony. A reading of the complaint does not mention the differences the petitioner created between the two groups, more so when no information regarding the personal and religious identities of the alleged perpetrators is pointed out in the complaint. Further, even the aggrieved convener, alleged to be a supporter of a specific group, does not himself identify or claim to be religiously connected to that group. It would be a travesty to conclude with absolute certainty that the interview was to create polarization and disharmony, when the comments were directed only at an individual and his alleged personal outlook on an issue.

16. The State contends that clashes between the two religious factions on 29-04-2022 are a probable repercussion of this interview. In the given facts, which amply highlight the lack of proximity between the time of the interview, and the purported clashes, the State cannot be permitted to fish evidence now to connect a remote clash with the petitioner's statement. Thus, a *prima facie* perusal of the complaint/FIR and the investigation does not make out a case under section 153-A of IPC.

17. In Balwant Singh v. State of Punjab, (1995) 3 SCC 214, para 9, Hon'ble Supreme Court holds, "*The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153A Indian Penal Code and the prosecution has to prove the existence of mens rea in order to succeed.*" This view was re-iterated by Hon'ble Supreme Court in Bilal Ahmed Kaloo v. State of Andhra Pradesh, (1997) 7 SCC 431, and subsequently by a three-judge bench in Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1.

18. Given above, even if every word of the FIR and the statement in the interview is taken as a gospel truth, it will still not constitute any offence under section 153-A IPC, as the element of culpability and intention is missing.

19. Section 505 IPC makes it an offence when any statement is conducive to

public mischief, and as per clause (1), it includes publishing and circulating any such statement with an intent to incite any group or create a fear or alarm to the public. Even if the video interview is hypothetically taken as baseless and a total lie, still, there is no material to suggest intention or that it created or promoted enmity, hatred, or ill-will between classes as its direct outcome. Thus, no case is made out given the scope of section 505(1) and 505(2) IPC.

20. S. 341 of IPC makes wrongful restraint a penal offence. The incident where the unknown persons had wrongfully restrained the complainant on April 12 was linked to the petitioner's video, is nothing more than an assumption. Such an incident would certainly not make out any offence against the petitioner because admittedly he was neither present nor any person acting on his behest and directions restrained the complainant and his associates.

21. Section 116 provides punishment for abetting an offence even if it is not committed. The first parameter to prove this offence is the availability of evidence of abetment or instigation, which is absent in the FIR.

22. Section 323 of IPC provides for punishment for causing simple hurt. Section 321 IPC makes it a penal offence when a person causes hurt by doing any act with the intention to cause hurt to any person or with the knowledge that he is likely to cause hurt to any person. There is no *prima facie* allegation or evidence that the petitioner had instigated those people to cause simple hurt, if any, to the complainant and his associates.

23. Section 143 provides punishment for every member of an unlawful assembly. Section 141 defines an assembly of five or more persons with the common object of causing any act as defined in the section. For the present FIR, it is impliedly the third clause to commit any mischief, criminal trespass, or other offence; however, there is no *prima facie* evidence to connect the petitioner with the incident as a member of such assembly.

24. Section 147 prescribes punishment for rioting, and Section 146 IPC makes rioting an offence whenever an unlawful assembly of people uses force or indulges in violence as a common object of such assembly. There is no *prima facie* evidence to rope in the petitioner with this offence.

25. Section 120-B IPC prescribes punishment for committing the offence of criminal conspiracy, and Section 120-A defines criminal conspiracy as an agreement between two or more persons to do or cause to be done any illegal act, or any act which may not be illegal, but by deploying illegal means. There is not even a shadow of any of these constituents in the FIR qua the petitioner; thus, no offence under Section 120-B is visible.

26. Section 125 of the Representation of the People Act, 1951 penalizes the

promotion/ attempt to promote the feelings of enmity or hatred between different classes of the citizens of India in connection with an election on the grounds of religion, race, caste, community, or language. The complainant did not allege that the petitioner was carrying forward an agenda of some party or was himself contesting the election. A threadbare reading of the interview transcript or the complaint does not even remotely point towards the petitioner's intention to do any act which would fall under this penal provision.

27. Given above, none of the penal provisions under which the petitioner stands arraigned, are prima facie made out against him.

28. In paragraph 11(I) of the petition, the petitioner states on affidavit, which reads as follows, "*Because the petitioner by making the alleged statement just wanted to place in public domain for healthy discussion the so-called mindset and narrative being followed by an individual and had no intent of creating any unrest or incident based on such statement. Further, if anyone has any grouse against the statements of the petitioner then it's the individual against whom the same were made. When the said individual has not countered or taken any legal action against the petitioner, then the present complainant has no cause available to proceed with the proxy agenda of targeting the petitioner.*"

29. In S Rangarajan v. P Jagjivan Ram, (1989) 2 SCC 574, a three-judge bench of Hon'ble Supreme court, holds,

[45]. The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19 (2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and social interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a "spark in a powder keg".

30. In Shreya Singhal v. Union of India, (2015) 5 SCC 1, Hon'ble Supreme Court holds,

[13]. This leads us to a discussion of what is the content of the expression "freedom of speech and expression". There are three concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in. It is at this stage that a law may be made curtailing the speech or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty & integrity of India, the security of the State, friendly relations with foreign States, etc. Why it is important to have these three concepts in mind is because most of the arguments of both petitioners and respondents tended to veer around the expression "public order".

31. Jawaharlal Nehru, in his inaugural address of 14 August 1947, made the following commitment to the Nation, *"Long years ago we made a tryst with destiny, and now the time comes when we shall redeem our pledge, not wholly or in full measure, but very substantially. At the stroke of the midnight hour, when the world sleeps, India will awake to life and freedom. A moment comes, which comes but rarely in history, when we step out from the old to the new, when an age ends, and when the soul of a nation, long suppressed, finds utterance. It is fitting that at this solemn moment, we take the pledge of dedication to the service of India and her people and to the still larger cause of humanity. At the dawn of history, India started on her unending quest, and trackless centuries are filled with her striving and grandeur of her success and failures. Through good and ill fortune alike, she has never lost sight of that quest, forgotten the ideals which gave her strength..."* (https://www.files.ethz.ch/isn/125396/1154_trystnehru.pdf).

32. It has always been India's quest to flirt with new ways for self-realization. Her vivacity and dynamism can be greatly attributed to an environment of diversity and freedoms abound; the freedom to be an atheist, an antagonist, or a believer; choice to practice beliefs of karmas, re-birth, detachment, or to the other extreme of Charvaka school; to become disciples of Jain Munis, Naga Sadhus, Nathpanthis, Siddhacharas, or Yogis; to decipher and perceive independently the descriptions on the structure of Khajuraho temple, to follow bhakti movement spearheaded by Chaitanya Mahaprabhu, and dohas of Sant Kabir. There exists an inherent liberty to individuals and the communities to propagate, follow, and spread the wisdom enshrined in the varied philosophies. All these astounding attributes and paths were a result of the freedom to practice and inform. Even in the shackles of colonialism, her mind remained free and eager for deliverance. With the liberation of her soul, the swatantrata was not just from British rule but from the slavery of thoughts, unchaining of oneself from the subjugation of alien laws, restoring the absolute freedom to think, undoing the status quo, and spreading the information. At the stroke of midnight, apart from liberty, we got azadi of choice and azadi of free speech and of expression; and we took a great leap forward by endorsing democracy, ushering equality and dignity, ensuring infinite opportunities to preserve and spearhead this fantastic diversity till eternity.

33. There cannot be any democracy without freedom of choice and free speech. In response to his older brother's arrest for sedition, Benjamin Franklin had said, "Without freedom of thought, there can be no such thing as wisdom; and no such thing as public liberty, without freedom of speech." (<https://www.ushistory.org/franklin/courant/issue49.htm>). In a democracy, it is the pre-election times when people's information matters the most. The petitioner being a social educator, while sharing the alleged exchange that took place with his ex-associate, cannot be said to have spewed the venom. There is nothing to infer any

intention to divide the classes on communal lines.

34. The petitioner was not one of the 10-12 unknown persons who allegedly waylaid the complainant. There is no *prima facie* material connecting the incident of April 12, 2022 with the interviews of the petitioner, and there are missing links. Thus, it would not be permissible to expand the scope of the complaint to connect the alleged subsequent incident by fishing the evidence and on the assumptions and suspicions of the complainant.

35. Given above, it is a fit case for this court to prevent the abuse of the process of law because the allegations made in the complaint and the investigation do not contain any material which even remotely links the incidents including that of April 12 with the interviews of the petitioner.

36. In the facts and circumstances peculiar to this case, the court's non-interference would result in a miscarriage of justice, and thus, the court invokes the inherent jurisdiction under section 482 CrPC and quashes the FIR and all subsequent proceedings *qua* the petitioner. All pending application(s), if any, stand closed.

Petition allowed.

**(ANOOP CHITKARA)
JUDGE**

October 12, 2022
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Whether speaking/reasoned:

Yes

Whether reportable:

Yes.

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