

MHRG030000452022



R.C.C. No. 02/2022

(The State through Mahad City Police Station Vs. Narayan Tatyra @ Tatu Rane)

CNR No. MHRG030000452022

:: ORDER BELOW EXH. 11 ::

Perused application and reply given by the learned APP below Exh. 16. Heard advocate of the accused Shri. Maneshinde and learned APP Ku. Parit.

02. The charge-sheet is filed for the offences punishable under sections 153-A(1-b), 153-A(1-c), 189, 504, 505(2) and 506 of the Indian Penal Code ('the IPC' in short). The learned JMFC, by passing order below Exh. 01, found no material for offences punishable under sections 153-A(1-c) and 189 of the IPC therefore, he issued process vide section 204 of the Code of Criminal Procedure ('the Code' in short) for the offences punishable under sections 153-A(1-b), 504, 505(2) and 506 of the IPC. Therefore, the accused is summoned to answer these offences only.

03. The accused has moved this application under section 239 of the Code to discharge him of the offences. The learned APP strongly objected it.

04. It is alleged that on 23/08/2021 the accused in press

conference uttered words in regard to the then Chief Minister of the State Shri. Uddhav Thakeray as 'मी असतो तर कानाखालीच चढवली असती.' (If it was me, I would have slapped him.). His statement was published in various new papers and also video clip of the same were circulated on different platforms like social media and main stream media, which caused disturbance in public tranquility and breaking out violence. It is further alleged that there were feeling of hatred between different communities in the society due to the said statement of the accused.

05. The advocate of the accused did not deny the utterance of words by the accused, however submitted that it was just a political statement without having any intention to cause disturbance in society between any group or community and to disturb public tranquility. He further submitted that there is no ground for proceeding against the accused as the offences, for which process has been issued, do not attract in the given scenario and prayed to discharge the accused.

06. What is to be seen while deciding application under section 239 of the Code has been elaborately discussed by the Hon'ble Apex Court in recent judgment i.e., **State through Deputy Superintendent of Police Vs R. Soundirarasu etc. 2022 SCC Online Sc 1150.** In paragraph 57 the Hon'ble Apex Court observed thus -

“The nature of evaluation to be made by the court at the stage of framing of charge came up for consideration of this Court in Onkar Nath Mishra vs.

*State (NCT of Delhi), (2008) 2 SCC 561, and referring to its earlier decisions in the State of Maharashtra vs. Som Nath Thapa, (1996) 4 SCC 659, and the State of M.P. vs. Mohanlal Soni, (2000) 6 SCC 338, it was held that at this stage, the Court has to form a presumptive opinion as to the **existence of the factual ingredients constituting the offence alleged and it is not expected to go deep into the probative value of the materials on record.** The relevant observations made in the judgment are as follows:—*

‘11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.’

In paragraph 63 the Apex Court further observed thus -

“Section 239 of the Cr.P.C. lays down that if the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused. The word ‘groundless’, in our opinion, means that there must be no ground for presuming that the accused has committed the offence. The word ‘groundless’ used in Section 239 of the CrPC means that the materials placed before the Court do not make out or are not sufficient to make out a prima facie case against the accused.

07. Therefore, as per provision under Section 239 of the Code what needs to be considered is whether there is a ground for presuming that the offence has been committed and not that a ground for convicting the accused has been made out. At this stage, even strong suspicion founded on material which leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offences alleged, would justify the framing of charge against the accused in respect of that offence. It is only in a case where the Court considers the charge to be groundless, it is to discharge the accused after recording his reasons for doing so.

08. On this backdrop it is to be seen whether there is a case made out by the accused which entitles him to get discharge or have to face Charges for which is booked under the charge-sheet?

09. The accused submitted that intention is *sine-qua-non*

to prove the offences punishable under section 153-A and 505(2) of the IPC. He further submitted that the said intention must *prima facie* be established and in absence of intention, these offences can not be made out. The accused relied upon the authority **Sandip Arjun Kudale Vs. the State of Maharashtra, Writ Petition No. 21880 of 2022, decided on 27/02/2023.** Relevant portion of paragraph 18 of the said judgment reproduced here, thus;

“X X X X X X The gist of the offence of section 153-A is the intention to promote feelings of enmity/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 and the prosecution has to prima facie show the existence of mens-rea on the part of the accused.

10. The same has been observed by the Hon'ble Apex Court in **Balwant Singh and Anr. Vs. State of Punjab, (1995)3, Supreme Court Cases 214.** In **Bilal Ahmed Kaloo Vs. State of A.P. (1997)7 Supreme Court Cases, 431,** it is observed thus;

'Mens rea is the 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 subsection.'

The authority i.e., **Amish Devgan Vs. Union of India and ors. (2021) 1, Supreme Court Cases, 1**, throws much light on the point of intention in such offences. It is held in paragraph 96 thus-

“The view expressed by the Bombay High Court in Gopal Vinayak Godse lays considerable emphasis on the words itself, but the view expressed in P.K. Chakravarthy and Devki Sharma 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 (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".

11. From the ratio laid down by the above mentioned authorities one can easily understand that while saying that the accused has committed offences punishable under section 153-A and 505(2) of the IPC, a prosecution has to show the intention of the accused and that too at *prima facie* stage. Not only this it also needs to *prima facie* to show that the intention of the accused was to create or promote or likely to create or promote feeling of enmity, hatred or ill will between different religious or racial or linguistic or regional groups or castes or community. That intention can be gathered from the word spoke by the speaker. In absence of intention of the accused, the alleged act of the accused cannot be fixed within the four corners of these sections of the IPC.

12. In light of this settled law, it is to be gathered from the charge-sheet that whether the accused have uttered or made any statement with intention to promote feeling of enmity, hatred or ill will between different religious or racial or linguistic or regional groups or castes or communities.

13. At the cost of repetition, it is otherwise admitted by the accused that he used the words 'मी असतो तर कानाखालीच चढवली असती.' (If it was me, I would have slapped him) and that too in regard to the then Chief Minister Uddhav Thakeray. From the said word the intention of the accused needs to be gathered. For that I would like to rely upon paragraph 76 of Amish Devgan's case (*Cited Supra*) as -

“Persons of influence, keeping in view their reach, impact and authority they yield on general public or the specific class to which they belong, owe a duty and have to be more responsible. They are expected to know and perceive the meaning conveyed by the words spoken or written, including the possible meaning that is likely to be conveyed. With experience and knowledge, they are expected to have a higher level of communication skills. It is reasonable to hold that they would be careful in using the words that convey their intent. X X X X.”

14. The accused is a political figure having mass following and not only this he is Union Minister. This is sufficient to say that he is a person of influence and whatever he speaks has knowledge of its reaction. He made un-parliamentary remark against the then Chief Minister of the State and being influential figure in political arena and having long standing experience in politics, very well knew the outcome of the said

word and what will happen thereafter in society. As observed in *Amish Devgan's Case* the accused owes a duty and have to be more responsible. He is expected to know and perceive the meaning conveyed by the words he spoke. So, whatever statement made by the accused, had made not only with knowledge but with intention too and that knowledge and intention can be gathered from the words itself which he uttered in regard to the then Chief Minister of the State and surrounding circumstances.

15. Though there is intention of the accused in uttering the words as observed above, is it sufficient to attract the offences under sections 153-A of 505(2) of the IPC?

16. If we take the statement of the accused as it is, the said statement is not against any caste, religious, racial, regional groups. The learned APP harped upon the word community and argued that the word 'community' means a group of persons who believes in particular thing or follows a particular person. According to her, the words used by the accused are in respect of the then Chief Minister of the State who belongs to a particular political party which can be understood as a community for the sake of section 153-A or 505(2) of the IPC and due to the remark made by the accused there were violence in the society thereafter.

17. In *Bilal Kaloo's judgment (cited supra)*, it is observed by the Hon'ble Apex Court, while dealing with sections 153-A

and 505(2) of the IPC observed in Paragraph 15 thus;-

The common feature in both sections being promotion of feeling of enmity, hatred or ill will between different religious, racial, linguistic, 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.

18. If judgment of *Amish Devgan's* is gone through, the Hon'ble Apex Court many a times used words *groups, targeted community, non targeted community* which, with no doubt, also say that there must be promotion of enmity between two groups or communities. Reference of one group or community is not sufficient to bring the accusation in four corners of sections 153-A and 505(2) of the IPC.

19. The learned APP submitted that it can be presumed that there are two communities i.e., political parties, Shivsena on one hand and Bhartiya Janata Party on the other because the then Chief Minister Uddhav Thakeray was belonging to Shivsena party at that relevant time and the accused belongs to Bhartiya Janata Party and violence also broke out in between them due to the statement made by the accused.

20. There is no reference of any of the community in the

statement made by the accused which the learned APP trying to put forth which does not satisfy the test which is laid down by the Hon'ble Apex Court in Bilal Kaloo's case (*cited supra*). As it is discussed above section 239 of the Code does not allow to presume or assume something to stretch the things to anyhow connect or link the accusation with the accused. Whatever finds in charge-sheet and documents submitted along-with it shall be taken into consideration on its face value without stretching imagination. So, there is no targeted and non targeted group or community in the words spoken by the accused. The very basic requirement to attract the offences punishable under section 153-A and 505(2) of the IPC is missing.

21. The accused also charge-sheeted for the offences punishable under section 504 and 506 of the IPC. Section 504 of IPC states that whoever intentionally insults, and thereby causes provocation to any person, intending to cause provocation or knowing that such provocation would likely cause him to break the public peace, or to commit any other offence. Any person who provokes the other one by insulting him and thereby makes him cause a disturbance so as to ruin the peace of a public place or leads the insulted person to commit any other criminal offence, will be punished under this Section.

22. A person is supposed to commit an offence under this section if his act fulfills the conditions constituting essential ingredients for the said offence as:

- a) The accused has insulted the other person

intentionally.

b) The intention of the person should be such that it is likely to **provoke the person who has been insulted**.

c) The accused has the knowledge that such provocation would cause **the person** to break the public peace or under the influence of which, he can commit some other offence.

23. This section mandates a person who has been insulted by the accused must be an aggrieved person and that person must be provoked to break the public peace or to commit offence. Here, the words uttered by the accused is in respect of the then Chief Minister of the State. Obviously, the person who has occupied the post of the Chief Minister will not break the public peace or commit any offence nor there is case of the prosecution that the insulted person i.e., the then Chief Minister of the State, has caused to break the public peace or can commit any offence. The informant has not been insulted by the accused, therefore, he is not the person who has been insulted and provoked to breach the public peace or to commit offence, resultant not aggrieved person, within the meaning of section 504 of IPC.

24. So far as section 506 of the IPC is concerned criminal intimidation is the key ingredient. One who commit criminal intimidation punished under this section. But what require for this section is to give threat what he is going to do with person

or any other person in whom that person is interested. It is not like that what the accused would have done with that person if he is in that position. A concrete threat in the form of criminal intimidation is expected to law.

25. In our case the alleged threat that 'मी असतो तर कानाखालीच चढवली असती' (If it was me, I would have slapped him) is not a concrete or immediate threat in form of criminal intimidation. Threat under the guise of *If* and *then* do not fall under this section. The threat should really mean and should be immediate. I will slap him or am going to slap him may be considered as immediate threat and falls under the terminology of 'Criminal intimidation' but not the so called threat in the form of *if* and *then*. The statement made by the accused can be said as controversial and politically insensitive which is not expected from a person who holds post of Union Minister.

26. Looking to all these facts and law laid down by the Hon'ble Apex court and High Court, discussed above and after evaluating the materials and documents on record even if taken at their face value, do not disclose the existence of all the ingredients constituting the alleged offences. Therefore, the charges against the accused are found groundless and is entitled for discharge of the said offences. Accordingly, I pass the following order :-

:: ORDER ::

- 1) The application is allowed.

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- 2) The Accused is discharged of all the offences *vide* section 239 of the Code of Criminal Procedure.
- 3) His bail bonds are cancelled.

Alibag.

Date : **01/04/2023**.

(**S.W. Ugale**)

Chief Judicial Magistrate,
Raigad-Alibag