

**IN THE HIGH COURT OF MADHYA PRADESH,
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

ON THE 27th OF OCTOBER, 2023

MISC. CRIMINAL CASE No. 60202 of 2022

BETWEEN:-

MANSINGH S/O SAMSU

.....APPLICANT

(SHRI AKASH RATHI, ADVOCATE.)

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER
THROUGH POLICE STATION MEGHNAGAR, DISTRICT JHABUA
(MADHYA PRADESH)**

.....RESPONDENTS

(SHRI TARUN PAGARE, GOVERNMENT ADVOCATE.)

This application coming on for orders this day, the court passed the following:

ORDER

The present petition is filed under Section 482 of Code of Criminal Procedure, 1973 seeking quashment of FIR at crime No.200/2022 registered under Section 153-A, 505(2), 188, 269, 270 of IPC at police station Meghnagar, District Jhabua on a complaint made by Shambhu Singh @ Seva Dumar.

02. According to the complainant, he received a “whatsapp message” in his smartphone from mobile No.963XXXX500 belonging to this present applicant making certain comment about the celebration of certain festival. As per the opinion of the complainant, this message would develop differences between two groups of persons and create hatred and enmity and disturb the peace. He produced the screenshot of the message and on the basis of this limited material the police has registered FIR under the aforesaid sections. However, in memorandum statement under Section 161 of Cr.P.C. recorded on 20.04.2022 he has made allegation that same message was also forwarded by the present applicant in a whatsapp group of Tribals.

03. Other local residents also recorded their statement to whom this complainant shown the message. It appears that the complainant himself shown this message to others which he was not supposed to do. After completing the investigation charge-sheet was filed against the present applicant under Section 153-A, 505(2), 188, 269, 270 of IPC.

04. Shri Akash Rathi, learned counsel for the applicant submits that now the Learned Judicial Magistrate First Class, Thandla, District Jhabua vide order dated 04.08.2023 has framed the charges against the applicant only under Section 153-A and 505(2) of the IPC and same is reproduced below:

मैं, सचिन कुमार जाधव, न्यायिक मजिस्ट्रेट प्रथम श्रेणी, थांदला, जिला झाबुआ म.प्र. आप अभियुक्त मानसिंह आत्मज समसु भूरिया पर निम्नानुसार अपराध विवरण लगाता हूँ कि:—

1. आपने दिनांक 15/04/2022 को समय 15.00 बजे या उसके लगभग स्थानसाईं चौराहा, मेघनगर पर वाट्सअप मैसेज द्वारा विभिन्न धार्मिक समूहों, जातियों या समुदायों के बीच शत्रुता की भावना, सपरिवर्तित किया या सपरिवर्तित करने का प्रयत्न किया या ऐसे कार्य किया, जो विभिन्न समूहों, जातियों या समुदायों के बीच सामजत्य प्रतिकूल है एवं जो लोकशांति विध्वंस करता है या विध्वंस करने के लिये संभाव्य है।
2. आपने दिनांक 15/04/2022 को समय 15:00 बजे या उसके लगभग स्थान साईं चौराहा, मेघनगर पर वाट्सअप द्वारा हिन्दू धर्म (रामनवमी जुलूस) जुलूस पर संत्रास कारी मैसेज सूचनाकर्ता शंभूसिंह उर्फ सेवा के वाट्सअप नंबर 9630222500 पर इस आशय से प्रेषित किया, जिससे विभिन्न धार्मिक समूहों के बीच शत्रुता, घृणा या व्यमनस्य की भावना धर्म के आधार पर या अन्य किसी भी आधार पर उत्पन्न किया जायें, रचें।

आपका उक्त कृत्य भा.द.सं. की धारा 153-क व 505 (2) के अंतर्गत दण्डनीय अपराध होकर इस न्यायालय के संज्ञान तथा विचारण क्षेत्राधिकार में है।

05. Shri Rathi further submits that the Apex Court in case of *Patricia Mukhim V/s State of Meghalaya reported in (2021) 15 Supreme Court Cases 35* has considered the scope of Section 153-A and 505(2) of IPC and quashed the FIR. Paragraph No.11 of the judgment is reproduced below:

11. In *Bilal Ahmed Kaloo v. State of A.P.*, this Court analysed the ingredients of Sections 153 A and 505 (2) IPC. It was held that 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 feeling of enmity, hatred or ill will. Under Section 505 (2) promotion of such feeling should have been done by making a publication or circulating any statement or report containing rumour or alarming news. Mens rea was held to be a

necessary ingredient for the offence under Section 153 A and Section 505 (2). The common factor of both the sections being promotion of feelings of enmity, hatred or ill will between different religious or racial or linguistics or religious groups or castes or communities, it is necessary that at least two such groups or communities should be involved. It was further held in *Bilal Ahmed Kaloo* (supra) that merely inciting the feelings of one community or group without any reference to any other community or group cannot attract any of the two sections. The Court went on to highlight the distinction between the two offences, holding that publication of words or representation is sine qua non under Section 505. It is also relevant to refer to the judgment of this Court in *Ramesh v. Union of India* in which it was held that words used in the alleged criminal speech should be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. The standard of an ordinary reasonable man or as they say in English law “the man on the top of a Clapham omnibus” should be applied.

06. Shri Rathi further submits that the applicant and the complainant both belong to one community and religion. No member of other religions were involved in the message, no member of other community or religion were involved in this transfer of message, therefore, no offence under Section 153-A and 505(2) of IPC is made out. It is further submitted that there was no *mens rea* that this message was sent in order to create enmity hatred between two religion.

07. As per the complainant, the message was received in his mobile through whatsapp, it was not made public or transferred to the member of other religion and community rather the complainant has shown this message to various persons, therefore, in view of the law laid

down by the Apex Court in case of *Patricia Mukhim* (supra), no charge is made out. Accordingly, FIR at crime No.200/2022 registered under Section 153-A, 505(2), 188, 269, 270 of IPC at police station Meghnagar, District Jhabua and consequential proceedings arising out Crime No.200/2022 are hereby quashed.

08. With the aforesaid, M.Cr.C. stands disposed off.

(VIVEK RUSIA)
JUDGE

Divyansh