

Neutral Citation No. - 2024:AHC:68035

AFR

Reserved on : 02.04.2024

Delivered on :19.04.2024

**Court No. - 91**

**Case :- APPLICATION U/S 482 No. - 10302 of 2024**

**Applicant :- Owais Khan**

**Opposite Party :- State of U.P. and Another**

**Counsel for Applicant :- Surya Shanker Pandey, Vivek Saran**

**Counsel for Opposite Party :- G.A.**

**Hon'ble Prashant Kumar, J.**

1. Heard Sri Vivek Saran, learned counsel for the applicant, Sri Shashi Dhar Pandey, learned Additional Government Advocate for the State-opposite party no.1 and perused the record.
2. In this matter an FIR was lodged on 04.06.2022 under Sections 153-A, 295-A IPC and Section 6 of Information Technology (Amendment) Act, Police Station Chharra, District Aligarh. The allegation in the FIR was that the applicant had posted derogatory remarks and also deliberately posted derogatory photos of Lord Shiva on social media platform with the intention of hurting the religious feelings of other community. It was further alleged that he also posted a comment that the divider on the road was treated as the Shivling and has put to ridicule, and further had used derogatory language on Hindu Society. After detailed investigation charge sheet was filed on 02.09.2022. The trial Court had taken cognizance and issued summons on 13.01.2023.
3. The present application under Section 482 Cr.P.C. has been filed by the applicant, praying for quashing the charge sheet dated 02.09.2022, and summoning order dated 13.01.2023, as well as entire proceedings of Case No.28 of 2023 (State Vs. Asif and others), arising out of Case Crime No.120 of 2022, under Sections 153-A, 295-A IPC and Section 6 of Information Technology (Amendment) Act, Police Station Chharra, District Aligarh.
4. Learned counsel for the applicant submits that the applicant has been falsely implicated as he has not posted the comment himself but the same was made after hacking his account. He further submits that, assuming the alleged comment has been posted, still it does not constitute any offence, and is rather an innocuous statement made without intending to hurt

religious feelings of any community. The applicant has never committed any offence as alleged against him. Further submission is that no offence against the applicant is disclosed and the court below has utterly failed to consider that no *prima facie* case is made out against the applicant, and hence, all the proceedings initiated should be quashed.

5. Per contra, learned A.G.A., Sri Shashi Dhar Pandey, has vehemently opposed the application and contended that after investigation charge sheet has been filed in this matter. He further submits that the comment of the applicant was outrageous and had hurt the religious sentiment. The Court below has rightly summoned the applicant and no interference is required by this Court in the impugned order as well as the on going proceedings.

6. Heard counsel for the parties and perused the record.

7. From the perusal of material on record and looking into the facts of the case at this stage it cannot be said that no offence is made out against the applicant. The submissions of hacking and deliberate comments made by the applicant relates to the disputed question of fact, which cannot be adjudicated upon by this Court under Section 482 Cr.P.C. At this stage it is only to be seen as to whether a *prima facie* case is made out or not in the light of the law laid down by the Supreme Court.

8. In a democratic society, such as ours, where freedom of speech is held in high regard, it is imperative to understand that this freedom is not absolute. It comes with responsibilities, foremost among them being the obligation to respect the sentiments and beliefs of others. The misuse of freedom of speech to denigrate or insult religious beliefs undermines the very fabric of constitutionalism and fundamental human belief upon which our society is built.

9. The principle of secularism, enshrined in our Constitution, underscores the importance of fostering an environment of mutual understanding and acceptance among individuals holding diverse beliefs and identities. The secular fabric of our nation demands individuals to exercise restraint and refrain from actions that may cause harm or offence to any religious community.

10. It is well-established that religious sentiment holds immense significance for citizens, and any act aimed at denigrating or disintegrating such sentiments constitutes a grave affront to the principle of tolerance and secularism. The applicant's actions, which demonstrate a blatant disregard for religious sentiments, cannot be viewed as mere inadvertence but would be a deliberate affront to the cherished values of our pluralistic society.

11. Moreover, the applicant's conduct by posting derogatory statements is not only an affront to the religious sentiments of the affected community but

also undermines the foundational principles of our democracy. By making a mockery of a community's beliefs and comparing them to mundane objects, the accused has displayed a callous disregard for the deeply held beliefs and sentiments of millions.

12. Religious sentiment holds immense significance for citizens, serving as a source of solace, identity, and community cohesion. Any attempt to denigrate or disparage these sentiments constitute a grave affront to the dignity and religious beliefs of individuals. The applicant's actions, which seek to mock and ridicule the religious beliefs of others, not only cause emotional distress but also undermine the foundational values of our democratic society. It is incumbent upon the judiciary to send a clear message that such conduct will not be tolerated and will be met with appropriate legal consequences.

13. Article 51A of the Indian Constitution outlines the fundamental duties of every citizen, including the duty to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, and regional or sectional diversities. This article underscores the obligation of citizens to foster an environment of mutual understanding and respect for diverse religious beliefs and identities. The actions of the applicant, by promoting enmity between different groups on the basis of religion and causing disharmony within society, contravene the spirit of this constitutional provision. Therefore, in adjudicating the case, the court must consider the violation of these fundamental duties and the detrimental impact on the social fabric of the nation.

14. The intent behind the applicant's actions must be scrutinized closely. It is evident from the nature of the derogatory remarks and the deliberate posting of a derogatory photo of Shivling that the applicant harbored a malicious intent to outrage the religious feelings of a particular community. This malicious intent is indicative of a deliberate attempt to inflict harm and offend the religious sensibilities of others. Such actions cannot be excused as mere expressions of opinion but must be recognized for what they are: deliberate acts of religious vilification there as a deliberate attempt to insult and hurt the sentiments of a particular community.

15. It is imperative to underscore that this is not a case of hypersensitivity, but rather a matter concerning the sanctity and reverence attached to religious symbols by individuals who hold them divine. While some may perceive the Shivling as an object of religious significance, for many, it embodies profound spiritual and cultural significance. Hence, it is not the reaction of a hypersensitive individual that is at stake here, but the impact on those who genuinely hold the Shivling sacrosanct and are deeply affected by the derogatory social media post and comments. In a society that values

religious pluralism and mutual respect, it is incumbent upon individuals to exercise prudence and refrain from actions that may cause unwarranted offence or hurt the sentiments of others, particularly in matters as sensitive as religious beliefs and practices.

16. In the case of **Sri Baragur Ramachandrappa & Ors. vs. State Of Karnataka & Ors 2007 (5) SCC 11**, the Supreme Court emphasized that freedom of speech is not absolute and cannot be used as a license to infringe upon the feelings of others. The diversity of India, encompassing various religions, languages, and cultures, necessitates a careful approach towards speech that may cause offence or hurt to religious sentiments.

17. Furthermore, in the case of **Kutti Chami Moothan And Ors. vs Rana Pattar (1978) 19 Cri. LJ 960** it was held that 'It is the main principle of good governance that everyone should be offered to proclaim his own religion and that no man **should suffer insult** to his or her religion by another.

18. In the instant case the comments made on Shivling clearly shows the malicious intent harboured by the applicant on the religious feelings of other community. Such action cannot be clothed as a protection of right enshrined under Article 19 of the Constitution of India, as apparently it was a deliberate attempt by the applicant to insult others' religious sentiments.

19. As far as instant proceedings are concerned, this Court has to evaluate whether the instant application preferred under Section 482 Cr.P.C. needs to be entertained.

20. Hon'ble Supreme Court in the matter of **State of Haryana Vs. Bhajan Lal 1992 Supp (1) SCC 335** has laid down the guidelines under which circumstances the Court should, in its inherent power, entertain an application under Section 482 Cr.P.C. The guidelines are as follows:-

*"(i) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

*(ii) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

*(iii) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

*(iv) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

(v) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

(vi) *Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.*

(vii) *Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

21. The Hon'ble Supreme Court in the matter of **Amanullah & Anr vs State of Bihar & Ors reported in (2016) 6 SCC 699** has held that once a magistrate after perusing the evidence on record comes to the conclusion that prima facie case is made out and take cognizance then the High Court should not generally use the inherent power granted under Section 482 Cr.P.C, unless the order is *ex facie* illegal.

22. The facts as alleged in the instant matter cannot be said that, prima facie, no offence is made out against the applicant. It is only after the evidence and trial, it can be seen as to whether the offence, as alleged, has been committed or not.

23. This matter does not fall under the guidelines laid down by the Hon'ble Supreme Court, under which the inherent powers granted under Section 482 Cr.P.C. could be exercised. Any observation made in this order would not come in the way of the trial. I assume the trial would proceed purely on merits.

24. Hence, the instant application filed under Section 482 Cr.P.C. cannot be entertained and is, accordingly, dismissed.

**Order Date :- 19.04.2024**

S.P.