

Court No. - 43

Criminal Misc. Writ Petition No. 5505/2020

Petitioner :- Manurojan Yadav
Respondent :- State of U.P. and others
Counsel for Petitioner :- Ravindra Kumar Yadav, Sheo Ram Singh
Counsel for Respondent :- Deepak Mishra, A.G.A.

Hon'ble Pankaj Naqvi, J.

Hon'ble Vivek Agarwal, J.

Heard Sri Ravindra Kumar Yadav, learned counsel for the petitioner and Sri Deepak Mishra, the learned AGA.

This writ petition has been filed with a prayer to quash the FIR dated 15.5.2020 registered as Case Crime No.0137/2020, under Section 66 of the Information Technology (Amendment) Act, 2008 (Act 21 of 2000) & 505 IPC, P.S. Badhalganj, Gorakhpur.

We deem service to be sufficient on respondent no. 4 in view of office report dated 5.8.2020, 11/14.9.2020 but no one appeared on his behalf.

1. The FIR alleged that the informant, a "Kshatriya" by caste, was aggrieved with the publication of a post on facebook account of the petitioner which the informant found to be objectionable as the same was posted with a view to spread disharmony at the instance of Samajwadi Party leaders as also the Chairman of Zila Panchayat.

2. The screen shot generated by the petitioner on his facebook account reads as under:

“Marwadi Raja Maharana Pratap ko purane itihaskar IT Cell ne Rajpoot Kshatri batakar itihash me maarwadiyo ke sath anyay kiya”

3. Section 66 of the I.T. Act, 2000 relates to punishment for computer related offence which provides that if any person dishonestly or fraudulently does any act referred to in Section 43, he shall be punishable with imprisonment upto 3 years or with fine which may extend up to Rs.5 lacs.

4. Section 43 of the I.T. Act is contained in Chapter – which relates to penalty, compensation and adjudication. Section 43 is extracted hereunder:-

43. Penalty and compensation for damage to computer, computer system, etc.

If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network,-

(a) accesses or secures access to such computer, computer system or computer network;

(b) downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium;

(c) introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;

(d) damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network;

(e) disrupts or causes disruption of any computer, computer system or computer network;

(f) denies or causes the denial of access to any person authorised to access any computer, computer system or computer network by any means;

(g) provides any assistance to any person to

facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made thereunder;

(h) charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network,

(i) destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means;

(j) steals, conceals, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage;

5. The overt act attributed to the petitioner does not relate to any of the clauses of Section 43 as the same relates to damage to the computer system. The learned AGA too does not dispute the above position. Thus, no offence under Section 66 of the I.T. Act is made out.

6. The Apex Court in **Manzar Sayed Khan vs. State of Maharashtra and another, (2007) 5 SCC 1** held that to attract Section 505(2) IPC, there must be reference to two communities between whom feeling of enmity/hatred/ill-will, is sought to be generated. The Apex Court in **Ramesh vs. Union of India (1988) 1 SCC 668** approved the observation of Vivian Bose, J in **Bhagwati Charan Shukla vs Provincial Govt., AIR 1947 Nag 1**, which is as under:-

“the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vainglorious minds, nor of these who scent danger in every hostile point of view.. It is the standard of ordinary reasonable man or as they say in English law 'the man on the top of a Clapham omnibus'.”

7. Words spoken or written must be with intent to create / promote or likely to create / promote feelings of enmity, hatred or ill-will between two factions separated by religion / caste / language / region / communities. Opinion about a historical fact could be a matter of perceptions. Two historians may not be on the same page on a historical event. A discordant view per se would not attract the offence under Section 505(2) IPC as the same would be saved by Article 19(1)(a) of the Constitution i.e. fundamental right of freedom of speech and expression.

8. The author of the post is only sharing his perception as to in which class would Mahrana Pratap fall i.e. as a Kshatriya or a Marwadi. We do not find that the statement was intended to create or promote feelings of enmity, hatred or ill-will between two different groups. Mens rea is an important element of this provision which is lacking. The statement is not of such category / character which could create feeling of enmity, hatred or ill-will in the mind of a reasonable man. This provision is not meant to be invoked on the basis of sentiments of a weak / sensitive person.

9. We in the light of above discussion, are of the considered view that neither any offence under Section 66 of the I.T. Act nor under Section 505(2) IPC is made out.

10. The writ petition is **allowed**. The FIR dated 15.5.2020 registered as Case Crime No.0137/2020, under Section 66 of the Information Technology (Amendment) Act, 2008 (Act 21 of 2008) & 505 IPC, P.S. Badhalganj, Gorakhpur stands quashed.

Order Date:- 7.10.2020

Chandra

(Vivek Agarwal, J) (Pankaj Naqvi, J)