

Yuvraj Singh vs. State of Haryana and another

Present: Mr. Puneet Bali, Sr. Advocate with
Mr. Vaibhav Jain, Advocate,
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Arjun Sheoran, Advocate
for the complainant/respondent no.2.

Case heard *via* video conference.

The reply filed by the SP, Hansi, dated 30.09.2021, is ordered to be taken on record.

Learned senior counsel has today addressed arguments in reference to what constitutes an offence under Section 3(1)(r) of the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act of 1989'), to submit that what the petitioner intended by using the word in question (*bhangi*) in the video recording of the conversation between him and his friend, did not in any manner intend to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes, the implication of the word used only being in the context of an inebriated person.

Learned senior counsel therefore contends that in any case there was no *mens rea* behind the usage of the word, which was used in an absolute casual conversation pertaining to a marriage of a friend who does not belong to a Scheduled Caste/Scheduled Tribe community.

He next submits that even as regards the provisions of the IPC that the petitioner has been accused of committing offences under, i.e.

Sections 153-A and 153-B of the Code, it is obvious that in the context that the word was used, there was no intention and no promotion of enmity between different groups, on the ground of religion, place of birth, race, residence, language etc., and no act was committed prejudicial to maintenance of harmony (reference to Section 153-A and Section 153-B).

Arguments have been addressed at length by Mr. Bali; however, he wishes to address arguments further.

For that purpose adjourned to 18.11.2021.

It is to be noticed that in the short affidavit filed by the SP, it has been stated that the petitioners' physical presence was required for effecting his "formal arrest" in view of the provisions contained in Section 18A(b) of the Act of 1989, which reads as under:-

18A. No enquiry or approval required.—

(1) For the purposes of this Act,—

(a) preliminary enquiry shall not be required for registration of a First Information Report against any person; or

(b) the investigating officer shall not require approval for the arrest, if necessary, of any person, against whom an accusation of having committed an offence under this Act has been made and no procedure other than that provided under this Act or the Code shall apply.

As it is to be again noticed, learned State counsel on the previous date of hearing had referred to the judgment of the Supreme Court in **M/s Neeharika Infastructure Pvt. Ltd. vs. State of Maharashtra and others**, AIR 2021 SC 1918, to submit that the order passed by this court at the time when notice of motion was issued, to the effect that no coercive steps be taken against the petitioner, is an order that this court should not

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pass, even in terms of the ratio of that judgment.

As regards that particular phrase (“no coercive steps”), it has been referred to by their Lordships in clauses (xvi) and (xvii) of the conclusions drawn, i.e. the parameters laid down as regards staying operation/quashing of FIRs/staying investigation/staying coercive steps.

The said clauses read as follows:-

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under [Section 482 Cr.P.C.](#) and/or under [Article 226](#) of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under [Section 438 Cr.P.C.](#) before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under [Section 173 Cr.P.C.](#), while dismissing/disposing of the quashing petition under [Section 482 Cr.P.C.](#) and/or under [Article 226](#) of the Constitution of India.

xvii) X X X X X X X X X X X X X X

xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.

Mr. Bali has pointed out that even as per the Merriam Webster dictionary there are two meanings of the word in question (*bhang*), one pertaining to a particular caste and the other with regard to a person who uses *bhang* (an intoxicant), the petitioner has used it in the second sense.

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Learned counsel for the complainant however submits that that is an argument raised before this court after the petition was filed, with the petition itself not containing that contention at all and therefore it was only an “ingenious argument” made by learned senior counsel.

Having considered the matter, as regards the order passed by this court on September 15, 2021, directing that no coercive steps be taken against the petitioner, with the Supreme Court, in clause (xvi) of the judgment in **M/s Neeharika Infrastructures'case** (supra) having observed that normally such directions should not issued by this court and the accused should be relegated to apply for anticipatory bail under the provisions of Section 438 of the Cr.P.C., and admittedly the petitioner not having done that so far, but with it seen that the SP herself is seeking only “formal arrest” of the petitioner in terms of Section 18-A(b) of the Act of 1989, the interim order is modified to the extent that the petitioner, upon joining investigation with the investigating officer, if he is sought to be arrested, would be released on interim bail, upon furnishing bail and surety bonds to his satisfaction, till the next date of hearing before this court,

It is made absolutely clear that if the SP has anything further to say on the issue, with regard to the phrase “formal arrest” used by her in her affidavit, she would file another affidavit clarifying what she meant.

To be shown in the urgent motion list and to be taken up as the first case of the day.

October 06, 2021

dharamvir

AMOL RATTAN SINGH)
JUDGE