

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-14632-2022 (O&M)
Reserved on: 08-08-2022
Pronounced on: 12-10-2022

Tejinder Pal Singh Bagga

.....Petitioner

Vs.

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Randeep Singh Rai, Senior Advocate and
Mr. Chetan Mittal, Senior Advocate with
Mr. Gautam Dutt, Mr. Anil Mehta, Mr. Mayank Aggarwal,
Ms. Rubina Virmani, Mr. N.K. Verma and Mr. Udit Garg, Advocates
for the petitioner.

Mr. Puneet Bali, Senior Advocate with
Mr. B.S. Sewak, Addl.A.G., Punjab,
Mr. J.P. Ratra,, DAG, Punjab,
Mr. Ferry Sofat, Mr. Sachin Jain, Mr. Vikram Brar and
Mr. Vishavjeet Beniwal, Advocate
for respondent no.1.

Mr. Akshay Bhan, Senior Advocate with
Mr. MJS Bedi, Amit Shukla, Mr. Mohd. Irshad and
Mr. Gurbhej Singh, Advocates
for respondent no.2-complainant.

ANOOP CHITKARA J.

FIR No.	Dated	Police Station	Sections
18	01.04.2022	Punjab State Cyber Crime Police Station, SAS Nagar, Mohali	153-A, 505, 505(2) & 506 IPC

Aggrieved by the registration of FIR captioned above, the accused has come up before this court under section 482 CrPC for its quashing, submitting that it is a misuse of State criminal machinery for the oblique motive of political gain, and even if all the allegations leveled in the FIR are accepted in the entirety, still they do not *prima facie* constitute any offence.

2. The context in which the FIR came to be registered was that on 11th March 2022, a

Hindi movie, "The Kashmir Files," was released. The petitioner claims in paragraph 3 that various State Governments granted Entertainment Tax exemptions to the movie, and when a similar demand of concession was made for Delhi, Mr. Arvind Kejriwal, Delhi's Chief Minister, in the State's Assembly not only refused to grant any such concession but allegedly also mocked the authenticity of the movie's storyline. It agitated the petitioner and being a spokesperson of BJP-Delhi, the enraged petitioner gave an interview on 30th March, 2022, to the media in which he severely criticized Mr. Arvind Kejriwal. The interview was widely circulated on print and digital platforms, including Twitter.

3. As per paragraph 4 of the petition, the petitioner criticized the statement of Mr. Arvind Kejriwal and demanded an apology for mocking the plight of Kashmiri Hindus, and stated that BJP's youth wing, would continue demonstration till Mr. Arvind Kejriwal apologizes by making a statement that the genocide of Hindus that had taken place in Kashmir was not a hoax. The transcript of the statement made by the petitioner, (Annexure P-2), reads as follows, "*Aaj jo unhone kaha hai uske liye unhe maafi mangni chahiye. Agar wo maafi nahi mangte to Bhartiya Janta Yuva Morcha ka ye Karyakarta unhe jine nahi dega. - Hum sab tab tak apna pradarshan jaari rakhenge jab tak vo is desh ke hinduon se maafi nahi maang lete, ye kehne ke liye ki es desh ke hinduon ka narsanhaar hua tha Kashmir mein wo jhutha tha.*" Its English translation would be 'He should apologize for what he has said today. If he doesn't apologize, then this BJP worker will not let him live. They would continue their agitation till the time he apologizes to the Hindus of this country for his statement that the genocide of Hindus in Kashmir was a lie'. This interview got wide public attention and the petitioner posted it on his Twitter handle and social media.

4. After coming to know about this interview, respondent no.2 gave a written complaint to the Cyber Crime Cell of Punjab Police at Mohali on 1st Apr 2022, against the petitioner and other unknown persons for causing instigation, incitement, criminal intimidation to cause violence, use of force, imminent threat of life to Sh. Arvind Kejriwal and other leaders of Aam Admi Party (AAP.) The complainant stated that he was the Lok Sabha in charge of the AAP and was constrained to file the present complaint due to the activities of the petitioner, who made and published inflammatory statements to outrage religious feelings and promote disharmony, and further create the feeling of enmity, hatred and ill will, etc. He informed the police that Mr. Tejinder Pal Singh Bagga gave an interview to various news channels and circulated it on print and social media, in which he had made false, fabricated, and communally divisive statements against Sh. Arvind Kejriwal, which makes out *prima facie* case under Sections 153, 153A, 505, 505(2), 506, 116 read with Sections 143, 147, 120-B IPC against Tejinder Pal Singh Bagga and other unknown persons, who were behind this pre-designed malicious propaganda. The complainant further stated that the statement made by the petitioner, "Sh. Arvind

Kejriwal, what he is saying today, today I want to say that Hindus will tell his status in this country. What he has said today, he should apologize and if he doesn't apologize, this worker of Bhartiya Janta Yuva Morcha will not let him live," had caused serious repercussions. Based on this complaint, the above-captioned FIR was registered.

5. After the registration of FIR, the Government of Punjab constituted a Special Investigation Team (SIT), which started the investigation and issued notices under Section 41-A CrPC to the petitioner on 9.4.2022, 11.4.2022, and 15.4.2022. The petitioner responded to such notices, expressed his inability to join the investigation on personal grounds, and informed that on 06.04.2022, he had approached this court under section 482 CrPC for quashing the FIR along with consequential proceedings. In response to the notice dated 15.4.2022, the petitioner gave a detailed reply, (attached with CRM-14047-2022 as Annexure P-8), in which he clarified that the interview's transcript has been twisted and edited, and the same is not an actual and correct version of the original statement. He further stated that instead of conducting a preliminary inquiry, an FIR was registered, whereas the petitioner had only stated that they would continue to demonstrate till Mr. Arvind Kejriwal apologizes.

6. As per the reply filed by the police, two more notices were issued to the petitioner on 22.4.2022 and 28.4.2022, but he did not appear. Consequently, DDR No.25 dated 6.5.2022 was entered at CIA, SAS Nagar, and Mohali, and a police team was sent to arrest the petitioner, and the petitioner was duly arrested on 6.5.2022. However, (as per Annexure R-22 annexed along with CRM-22807-2022, which is the response filed by the Delhi Police in CRWP-4345-2022), the police party bringing the petitioner, was stopped by the Haryana Police at Karnal-Kurukshetra highway, and as such, the petitioner could not be produced before the concerned Magistrate. Subsequently, vide order dated 7.5.2022, JMFC, Mohali, issued non-bailable warrants against the petitioner, which this Court stayed.

7. Mr. R.S. Rai, Sr. Advocate representing the petitioner, argued that the words used were, "*BJP yuva morcha ka ye karyakarta inhen jine nahin dega*" and the context in which they were spoken by no stretch of the imagination would mean or imply assassination or criminal intimidation. No material in the complaint disclosed the commission of any cognizable offence, and the registration of FIR was illegal. Petitioner's next contentions are that the complaint by the AAP spokesperson is *mala fide*, by a proxy, with no locus in the absence of any legal injury. The petitioner's further contention is that the complainant deliberately omitted the last part of the petitioner's statement, where he had cautioned Mr. Arvind Kejriwal, that he would to continue to agitate until Mr. Kejriwal retracts his statement questioning the genocide of Hindus in Kashmir.

8. Mr. Puneet Bali, Sr. Advocate, appearing for the State of Punjab, argued that the

investigation is at its nascent stage. Despite notices dated 9th, 11th, 15th, 22nd, and 28th of April, the petitioner did not turn up to join the investigation, which he was under an obligation to do; he did not seek bail but sought a stay of the arrest, and thus, his conduct is deplorable. Referring to various tweets, it was contended that the accused intended to convey misinformation, spread communal disharmony, and create a hostile and vicious environment through them. He further contended that because this court had stayed the proceedings, as such the investigation on crucial aspects could not be carried out. If this court quashes the FIR, it would not be letting the police do its statutory obligation to investigate a crime of severe ramifications because the petitioner propagated hate speech. He contended that the Delhi Police and Haryana Police should not have offered any patronage to the petitioner. His next line of argument is that when two interpretations are possible on the evidence adduced in the investigation, an FIR cannot be quashed, and it will become a complete recipe for a criminal trial.

9. Mr. Akshay Bhan, Sr. Advocate, appearing for the complainant, contended that all the ingredients of the penal offences invoked in FIR are fully engrained in the complaint, and it is not the stage for quashing the FIR. The complainant's submission is that he has the locus to file the present complaint because the social media has no boundaries, and tweets have been retrieved from authenticated user accounts.

ANALYSIS AND REASONING:

10. The petitioner commented against Sh. Arvind Kejriwal on his alleged statement about the authenticity of genocide of Hindus, projected in the movie "The Kashmir Files". The petitioner reacted by saying in an interview in the following terms, "*Aaj jo unhone kaha hai uske liye unhe maafi mangni chahiye. Agar wo maafi nahi mangte to Bhartiya Janta Yuva Morcha ka ye Karyakarta unhe jine nahi dega. Hum sab tab tak apna pradarshan jaari rakhenge jab tak vo is desh ke hinduon se maafi nahi maang lete, ye kehne ke liye ki es desh ke hinduon ka narsanhaar hua tha Kashmir mein wo jhutha tha*". He sought an apology from Sh. Arvind Kejriwal for his statement and further stated that in case Sh. Arvind Kejriwal does not tender an apology, then this worker of BJP will not let him live, and they will continue their demonstrations till he apologizes for saying that the genocide of Hindus committed in Kashmir was a lie.

11. The phrase, "*Jeene nahi doonga*" cannot be seen independent of the entire statement made by the petitioner. The phrase precedes the petitioner's warning of incessant protests, in case apology is not tendered. The contention that it was an act of criminal intimidation, a threat to kill, to a reasonable person is not conceivable if the statement is analyzed and read in entirety. Further the context and the behavior, particularly criminal, is also a material factor in

arriving at a conclusion in such situations. If a gangster, mafia, or a recidivist makes a statement that he will not let somebody live, the first probable reasonable assumption that is likely to be drawn is a threat to assassinate, however, an ordinary person, e.g., a nagging spouse or a disgruntled boss, makes such a statement in response to the doing or undoing of something, it would altogether have a different first impression. The petitioner's statement did not seek an armed rebellion and was not a call to assault.

12. As per the response filed by the police, the petitioner had a criminal history, which he had declared while submitting his application form for the Delhi assembly elections. A reference to the petitioner's declaration Annexure R-1 reveals that the petitioner had declared the following criminal history:

S. No.	FIR No.	Date/ Year	Offences	Police Station
1.	182	2011	452/323/120-B/34 IPC	Tilak Marg, New Delhi
2.	12	2012	153A IPC	Tilak Marg, New Delhi
3.	09	2012	153/34 IPC	Tilak Marg, New Delhi

13. Out of these, the first FIR is for house trespass, causing simple hurt in a criminal conspiracy, whereas the second and third FIRs are under Section 153A for promoting enmity between different groups on the grounds of religion, race, place of birth, residence, language, etc. While considering any person's criminal history, such an assessment has to be based on reasonableness and not arbitrariness. The nature of offences, proximity, and the time lag are relevant factors when considering criminal history. A bare perusal of the FIRs reproduced above reveals that these are all for non-serious offences registered a decade earlier, and lacks proximity to the interview. Thus, based on this criminal history, there is nothing to assume that the petitioner is a habitual offender, or a gangster, or a mafia, or an anti-social element. In the given context, the petitioner's assertion that '*Agar wo maafi nahi mangte to Bhartiya Janta Yuva Morcha ka ye Karyakarta unhe jine nahi dega*' reasonably amounts only to making somebody's life restless with nagging about the undoing of an act.

14. In Bhagwati Charan Shukla v. Provincial Govt., AIR 1947 Nagpur 1, Justice Vivian Bose observed, "*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 vacillating minds, nor of those 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'.*"

15. Merely because the language used by the petitioner is unrefined, it shall not be sufficient to import hatred, detestation, or slander to its contents. There is nothing in the statement to take the speech as an insult or threat, or an attempt to vilify the members of the targeted group or that it stigmatized them. There is nothing in the speech which points

towards petitioner's intention to divide the communities on regional and religious lines. The petitioner's agitation cannot be termed other than political, and there is no evidence of any specific incident in the complaint that led to the peace breach because of the statement. There is nothing to infer that the statement was so inciting that it would fall within the purview of hate speech and that it led to any violence or made fault lines in the structures of communities. Although the statement appears crude and uncouth, it does not have any disguised or obscured meaning. The statement was not a vitriolic diatribe and cannot be read so narrowly that its delivery was to only spread hatred towards a particular group. Thus, even if the statement of the petitioner on its face value, is admitted as correct, still *prima facie*, no offence under any of the sections in the FIR captioned above, is made out.

16. The police had registered the FIR against the petitioner under Sections 153-A, 505, 505(2), and 506 IPC.

17. Section 153-A IPC applies when a person promotes enmity between different groups based on religion, race, place of birth, residence, language, etc., and acts prejudicial to maintaining harmony. Even if the statement made by the petitioner is taken as a gospel truth, it still does not imply that such statement is prejudicial to maintaining harmony amongst different sections of society.

18. In Patricia Mukhim v. State of Meghalaya, 2021 Law Suit (SC) 223, Hon'ble Supreme Court holds,

[8] "It is of utmost importance to keep all speech free in order for the truth to emerge and have a civil society." - Thomas Jefferson. Freedom of speech and expression guaranteed by Article 19 (1) (a) of the Constitution is a very valuable fundamental right. However, the right is not absolute. Reasonable restrictions can be placed on the right of free speech and expression in the interest of sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence..."

19. Section 506 IPC makes criminal intimidation an offence. According to the complainant, the intimidation was not to him but to Sh. Arvind Kejriwal. Without even considering the complainant's locus to make such a complaint, a bare reading of the contents of the interview of the petitioner do not point out any particular criminal intimidation. It only appears that the objective was to create pressure by taking a tough stand, and by no stretch of the imagination, it would make out an offence under Section 506 IPC.

20. Sections 505 and 505(2) IPC make out an offence when a person creates public mischief through his statement by circulating or publishing it. Even if this statement was spread by the petitioner in his interview or through his Twitter handle, it cannot be said that the contents of

his statement intended to cause or are likely to cause any fear or alarm in the people or its sections, which would induce unrest against the State or would be against public tranquility or incite or was likely to incite any class or community, or it constituted or incited any class or community of persons to commit an offence against other class or community. Even if this statement is widely circulated, there is still no evidence that it led to hatred or ill will between different religions, regional groups, or communities. Thus, Sections 505 and 505(2) IPC are not attracted, considering the *prima facie* and straightforward analysis of the petitioner's statement.

21. The purported statement of the petitioner is a protest against the statement made by the leader of AAP in power in Delhi and Punjab, where the BJP is in opposition. Being a political activist and an official spokesperson of a political party, as a shadow of the incumbent, it was well within his rights to make the people aware of the response of an opposite political leader. Democracy is all about informing the people and creating sentiments, and it would be an offence only if campaigning is full of hatred, or there is an involvement in malicious activities, or derogatory and vicious statements are made to gain political mileage. According to the petitioner, the movie, '*The Kashmir Files*', had exposed the genocide of a minority, i.e., Hindus, in Kashmir. The petitioner put forth his displeasure because the party in power did not accept his demand to make the movie tax-free. It was well within his rights to raise such protests.

22. I have seen all the tweets and posts placed on record by the parties. There is no allegation that the petitioner had posted such tweets by entering the State of Punjab, or any incident had taken place within its territories due to such tweet. Every post of the petitioner will not give territorial jurisdiction to the State of Punjab to investigate in the guise of the present FIR. Had the investigating agency of another State been given that much leverage, it would impact the federal structure under the Indian Constitution, where every State has the right to maintain law and order within its territorial boundaries.

23. Even otherwise, a perusal of such tweets show that same are part of a political campaign. There is nothing in the investigation that the petitioner's statement created or would have created any communal hatred. Thus, even if all the allegations made in the complaint and subsequent investigation from social media posts, are true and correct at face value, they would not amount to a hate speech, and no case against the petitioner is made out.

24. Given above, in the peculiar facts and circumstances, it is a fit case where the continuation of criminal proceedings shall amount to an abuse of the process of law, and the Court invokes its inherent jurisdiction under section 482 CrPC and quashes the FIR and all

subsequent proceedings.

Petition allowed. All pending applications stand closed in tune with this judgment.

(ANOOP CHITKARA)
JUDGE

October 12, 2022

AK

Whether speaking/reasoned:

Yes

Whether reportable:

YES.

