

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

HON'BLE SHRI JUSTICE SATYENDRA KUMAR SINGH

ON THE 19th DAY OF DECEMBER, 2022

MISC. CRIMINAL CASE No. 40839 of 2021

BETWEEN:-

**MAHENDRA TRIPATHI S/O SHRI RAMKRISHA TRIPATHI
AGED ABOUT 38 YEARS, OCCUPATION: PHARMACY BUSIENSS
CH-43 HIG, SUKHLIYA
INDORE (MADHYA PRADESH)**

.....APPLICANT

(BY SHRI R. S. RAGHUVANSHI, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER
THROUGH P.S. BHANVARKUAN
INDORE (MADHYA PRADESH)**

.....NON-APPLICANT/STATE

(BY MS. MAMTA SHANDILYA, G.A. FOR STATE)

Reserved on : 06.09.2022

Pronounced on : 19.12.2022

*This petition having been heard and reserved for orders, coming on for pronouncement this day, **Hon'ble Shri Justice Satyendra Kumar Singh** pronounced the following:*

ORDER

This petition under Section 482 of Cr.P.C. has been preferred for quashment of FIR bearing Crime No.686/2018, registered at police

station Bhanvarkuan, District Indore against the applicant for the offences punishable under Sections 505 and 295-A of IPC alongwith Section 67 of the Information Technology Act, 2000, consequent charge-sheet and also subsequent criminal proceedings pending against him in RCT No.11307/2019 before the Court of Judicial Magistrate First Class, Indore.

2. Factual matrix giving rise to the instant case for just and proper adjudication of this petition are that complainant Ajay made a written complaint on 10.10.2018 to the SHO Police Station Bhanvarkuan, District Indore to the effect that holder of mobile No.6265349065 posted an image on Whatsapp groups and Facebook page showing **“Pre Loveratri Weekend Offer - Condoms (pack of 3)/Pregnancy Test Kit at INR 0”**, giving an offer providing free of cost condom pack and pregnancy kit from 06.10.2018 to 07.10.2018. In the background of the said image, a couple dancing Garba is shown which hurts the religious sentiments of the people. On the basis of the above complaint, FIR bearing Crime No.686/2018 was registered for the aforesaid offences against unknown persons. During investigation, it was found that applicant, being holder of the said mobile number posted the alleged image and hurt the religious feelings and sentiments of the complainant and other followers of the Hindu religion. The prosecution sanction was obtained and after completion of investigation, charge-sheet was filed against the applicant before the Court of JMFC, Indore. Hence, the instant petition under Section 482 Cr.P.C. has been filed by the applicant for quashment of FIR, consequent charge-sheet and also subsequent criminal proceedings.

3. Learned counsel for the applicant submits that applicant himself belongs to the Hindu community. He is a religious man and as he himself would not do anything and has actually not done anything which would hurt the religious feelings of the Hindu community or would incite hatred etc. He is a pharmacy professional and he was previously employed as the Area Manager and later promoted as Regional Manager in Eris Life Sciences Pvt. Ltd. at Indore for around seven years. Presently, he is running his business of pharmacy in the name and style of Morphus Pharmaceuticals Pvt. Ltd. at Indore. He being in pharmacy profession for past many years, without any criminal intention, has in good faith published such image offering to lure the customers during Garba period as various condom companies themselves came up with promotional offers. A bare perusal of the said image do not show any intention of the applicant to create or promote any feelings of enmity, hatred or ill-will between different religious groups or it does not insult any religion or outrages the religious feelings of any class. As soon as the applicant came to know about the fact of registration of FIR, he immediately removed the said image from the social media namely, Facebook page "Feel Free Indore" and also from Whatsapp groups and also apologized for the same publicly stating that there was no intention of hurting any religious feelings or religion and the applicant apologized publicly for the same stating that such act shall not be repeated. Since no case is made out against the applicant, the proceedings against the applicant are frivolous and malafide. Hence, the FIR, charge-sheet and the subsequent criminal proceedings against the applicant be quashed. To bolster his submissions, counsel has placed reliance on the order

dated **29.11.2019** passed by the Apex Court in the case of **Salman Khan vs. State of Gujarat and others (W. P. (Cri.) No.270/2018)**.

4. Learned counsel for the non-applicant/State has opposed the prayer and submits that admittedly, applicant posted the disputed image on the social media namely, Facebook and Whatsapp groups. It is apparent from the image posted by the applicant, wherein contents of the same hurts the religious feelings of the Hindu community. Such type of offer during Navratri period itself shows the criminal intention of the applicant. Therefore, at this stage, prayer made by the applicant for quashment of FIR, consequent charge-sheet and also subsequent criminal proceedings pending against him are not acceptable and the petition is liable to be dismissed.

5. Heard, learned counsel for the parties at length and perused the record.

6. Upon perusal of the record, this fact is undisputed that applicant being holder of mobile No.6265349065 posted an image on his Whatsapp groups and Facebook page **“Feel Free Indore”** showing **“Pre Loveratri Weekend Offer - Condoms (pack of 3)/Pregnancy Test Kit” at zero cost as a special offer from 06.10.2018 to 07.10.2018**. It is also apparent that the said image had a couple dancing Garba in the background.

7. So far as the issue whether the applicant posted the aforesaid image on social media with an intent to wound the religious feelings of any person or with an intent to incite any community of persons to commit any offence against any other community is concerned.

admittedly, applicant being a pharmacy professional, is running a business of pharmacy in the name and style of Morphus Pharmaceuticals Pvt. Ltd. at Indore. Since there is nothing on record except the said post which indicates his such intention therefore, considering the fact that he himself belongs to the Hindu community, and so also the fact that he posted the said image from his own mobile number without concealing his identity, it appears that his intention was just to promote the product of his company and not to hurt the religious feelings and sentiments of any community. In this regard, the order passed by the Apex Court in the case of **Salman Khan (supra)** can also be relied upon, wherein the FIR lodged against Salman Khan for releasing his movie titled Loveratri during Navarati period has been quashed.

8. As the essential ingredients of Section 295-A of IPC i.e. “..... deliberate and malicious intention of outraging the religious feelings or insulting the religion or religious beliefs of a class” and also essential ingredients of Section 505 of IPC i.e. “.... with intent to incite any class or community of a person to commit any offence or community” are not fulfilled hence, it is apparent that the aforesaid offence cannot be said to be made out against the applicant.

9. Upon perusal of the alleged post, it is apparent that the contents of the same are not obscene hence, ingredients of Section 67 of the I.T. Act are also not fulfilled. In view of the above, allowing the prosecution to continue the case would amount to abuse of the process of Court, therefore, it is necessary to quash the proceedings in order to serve the

ends of just. Thus, this petition is **allowed**. FIR bearing Crime No.686/2018, registered at police station Bhanvarkuan, District Indore against the applicant for the offences punishable under Sections 295-A and 505 of IPC alongwith 67 of the I.T. Act, consequent charge-sheet and also subsequent criminal proceedings pending against him in RCT No.11307/2019 before the Court of Judicial Magistrate First Class, Indore are hereby quashed. Applicant is discharged from the charges levelled against him. His bail bond, if any furnished, stands discharged.

10. Accordingly, the petition filed under Section 482 of Cr.P.C. stands disposed of as indicated above.

11. A copy of this order be sent to the concerned court for information and necessary compliance/action without delay.

Certified copy as per rules.

(SATYENDRA KUMAR SINGH)
JUDGE

gp