

Court No. - 93**Case :-** APPLICATION U/S 482 No. - 31091 of 2023**Applicant :-** Mohd Imran Kazi**Opposite Party :-** State of U.P. and Another**Counsel for Applicant :-** Jai Raj**Counsel for Opposite Party :-** G.A.**Hon'ble Arun Kumar Singh Deshwal,J.**

1. Heard Sri Jai Raj, learned counsel for the applicant and Sri Rajeev Kr. Singh, learned A.G.A. for the State.

2. The present application has been filed to quash the impugned charge sheet dated 16.12.2019, cognizance order dated 16.3.2020 as well as non-bailable warrant dated 30.6.2023 passed in Case No. 17603 of 2020 (State vs. Sami and others), arising out of Case Crime No. 53 of 2019, u/s 147, 148, 149 I.P.C., Section 67 Information Technology (Amendment) Act, 2008 and 7 Criminal Law Amendment Act, P.S. Mantola, District Agra, pending before the C.J.M., Agra.

3. The allegation against the applicant was that he posted certain provocative messages on social media, which resulted in the assembly of about 600-700 persons belonging to the Muslim community for arranging procession without permission, which caused a serious threat to breach of peace.

4. Learned counsel for the applicant has contended that there is no material against the applicant, and even the report of Cyber Crime Cell, Crime Branch, Agra itself shows that no content was found on the Facebook account of the applicant.

5. In the counter affidavit, learned A.G.A. has relied on extract of the case diary (Page-8 of the counter affidavit) in which contents of the cyber cell report have been mentioned. In that part of the case diary, it is mentioned that though there is no content in the Facebook account of the applicant because he has deleted the same, but the contents are available on WhatsApp and other social media platforms.

6. This Court, by order dated 11.10.2023, had directed the I.O. to remain personally present before this Court along with report showing any material in the case diary regarding objectionable posts on Whatsapp and other social media. In pursuance of that order, the I.O., Mr. Anuj Kumar, appeared before this Court and placed reliance on the post of one Chaudhari Farhan Usman, which was liked by the applicant, Imran Kazi, in which it was mentioned that they would assemble before the collectorate to hand over the memorandum to Hon'ble the President of India.

7. From perusal of Section 67 of the I.T. Act, it is clear that it is punishable only when any person publishes or transmits or causes to be published or transmitted in the electronic form any material which tends to deprave and corrupt persons who

read, see or hear aforesaid material/message contained or embodied. Section 67 of the I.T. Act is being quoted as under:

"67. Punishment for publishing or transmitting obscene material in electronic form. -Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees."

8. From the perusal of the provision mentioned above, it is clear that publishing or transmitting obscene material is an offence. A post or message can be said to be published when it is posted, and a post or message can be said to be transmitted when it is shared or retweeted. In the present case, it is alleged that there is material in the case diary showing that the applicant has liked the post of one Farhan Usman for unlawful assembly, but liking a post will not amount to publishing or transmitting the post, therefore, merely liking a post will not attract Section 67 I.T. Act. Even otherwise, from the material on record, it appears that no message which could be provocative in nature is available on record and merely liking a message published by Chaudhari Farhan Usman will not attract penalty u/s 67 of I.T. Act or any other criminal offence.

9. The Madras High Court in the case of **S.Ve.Shekher vs. Al.Gopalsamy and others; Crl. O.P. (MD) No. 11494 of 2018** dated 14.7.2023, observed that forwarding a message must be construed to acknowledge the contents of message and that is the main reason as to why he forwards that message to others. Once that is done, he has to take responsibility for having forwarded the message to others. Paragraph 16 of the aforesaid judgement is being quoted as under:-

"16. A person, who forwards the message, must be construed to acknowledge the contents of the message and that is the main reason as to why he forwards that message to others. In other words, the recipient of a message, who wants others also to know about that message, forwards that message to others. Once that is done, he has to take the responsibility for having forwarded the message to others. A person, who gets a dopamine high by looking at the likes for the message forwarded by him, must also be equally prepared to face the consequence, if that message has a derogatory content."

10. Though there is no direct judgement on the issue of whether liking of a post

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will amount to any offence or not, Hon'ble Supreme Court in the judgement of ***Kaushal Kishor vs. State of U.P. and others; (2023) 4 SCC 1***, observed that every citizen of India must consciously be restrained in speech, and exercise the right to freedom of speech and expression under Article 19(1)(a) of the Constitution only in the sense that it was intended by the framers of the Constitution, to be exercised. Paragraph-251 of the above judgement is being quoted as under:-

"251. Every citizen of India must consciously be restrained in speech, and exercise the right to freedom of speech and expression under Article 19(1)(a) only in the sense that it was intended by the framers of the Constitution, to be exercised. This is the true content of Article 19(1)(a) which does not vest with citizens unbridled liberty to utter statements which are vitriolic, derogatory, unwarranted, have no redeeming purpose and which, in no way amount to a communication of ideas. Article 19(1) (a) vests a multi-faceted right, which protects several species of speech and expression from interference by the State. However, it is a no brainer that the right to freedom speech and expression, in a human-rights based democracy does not protect statements made by a citizen, which strike at the dignity of a fellow citizen. Fraternity and equality which lie at the very base of our Constitutional culture and upon which the superstructure of rights are built, do not permit such rights to be employed in a manner so as to attack the rights of another."

11. Even otherwise Section 67 of the I.T. Act is for the obscene material and not for provocative material. The words "lascivious or appeals to the prurient interest" mean relating to sexual interest and desire, therefore, Section 67 I.T. Act does not prescribe any punishment for other provocative material.

12. Having heard learned counsel for the applicant and having perused the record, I do not find any material which could connect the applicant with any objectionable post, as there is no offensive post available in the Facebook and Whatsapp accounts of the applicant. Therefore, no case is made out against the applicant.

13. In view of the above, so far as the applicant is concerned, the proceeding of Case No. 17603 of 2020 (State vs. Sami and others), arising out of Case Crime No. 53 of 2019, u/s 147, 148, 149 I.P.C., Section 67 Information Technology (Amendment) Act, 2008 and 7 Criminal Law Amendment Act, P.S. Mantola, District Agra, is hereby quashed.

14. Accordingly, the application is **allowed**.

15. It is made clear that the court below is free to proceed against other co-accused persons if there is no legal impediment.

Order Date :- 18.10.2023

Vandana