2024:BHC-AUG:22271-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1560 OF 2023

Suresh Eknath Ghumatkar
Age: 40 years, Occu.: Service as
Lecturer, R/o. Bhagwanbaba Prathistan
Beed, Tq. And Dist. Beed. ***.. Petitioner***

Versus

1. The State of Maharashtra,
Through Police Inspector,
Beed City Police Station, Beed,
Tq. And Dist. Beed.

2. Mahesh Arjun Dhande
Age: 32 years, Occu.: Advocate,
R/o. Dhande Galli, Beed,
Tq. And Dist. Beed. ***.. Respondents***

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Mr. A. V. Indrale Patil, Advocate for the petitioner.
Mr. G. A. Kulkarni, APP for respondent No.1 – State.
Mr. A. P. Deshmukh, Advocate for respondent No.2.

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CORAM : SMT. VIBHA KANKANWADI &
S. G. CHAPALGAONKAR, JJ.

DATE : 06 SEPTEMBER 2024.

ORDER ***[Per Smt. Vibha Kankanwadi, J.]***

. Present petition has been filed invoking the constitutional powers of this Court under Article 226 of the Constitution of

India as well as the inherent powers under Section 482 of the Code of Criminal Procedure for quashing and setting aside initially the FIR vide Crime No.207 of 2023 registered with Beed City Police Station, Beed and then by taking leave, to quash and set aside the charge-sheet bearing No.1 of 2024 i.e. proceedings bearing R.C.C. No.23 of 2024 dated 06.01.2024 pending before the learned Chief Judicial Magistrate, Beed for the offences punishable under Section 295-A and 505(2) of the Indian Penal Code.

2. Heard learned Advocate Mr. A. V. Indrale Patil for the petitioner, learned APP Mr. G. A. Kulkarni for respondent No.1 – State and learned Advocate Mr. A. P. Deshmukh for respondent No.2.

3. It has been vehemently submitted on behalf of the petitioner that the petitioner is a reputed lecturer in Economics and has no criminal antecedents. Respondent No.2 appears to have filed FIR to gain publicity. Respondent No.2 is an Advocate and alleges that while he was at home around 10.00 a.m. on 14.09.2023, he saw his Facebook account, wherein he found that the petitioner with his Facebook account had posted certain posts, which was outraging the feelings and sentiments of Maratha community.

The petitioner, who is Assistant Lecturer in Vaijapur, in fact, had no intention to outrage the feelings of any community especially of Maratha community. It is reflected from the post itself that petitioner has not referred the post to anybody or to any community. The alleged post on the Facebook is an edited post, however, when he realised that the said post is being misinterpreted and misconstrued by some persons with *mala fide* intention, he had immediately deleted the same. It appears that despite the same, the informant had taken the screenshot of the said post and proceeded to file the FIR. The FIR does not attract the provisions of Section 295-A and 505(2) of the Indian Penal Code. Therefore, it would be unjust to ask the petitioner to face the trial. The learned Advocate for the petitioner has submitted that he is not pressing for prayer clause 'C' by which the petitioner wanted to agitate that his arrest was illegal, unconstitutional and, therefore, he should be compensated to the extent of Rs.5,00,000/- by the State.

4. Learned Advocate for the petitioner is relying on the decision in ***Priya Prakash Varrier Vs. State of Telangana, [2019 (12) SCC 432]***, wherein it has been held that it should be proved that the alleged act of outraging the religious feelings or

intending to outrage religious feelings should be deliberate and malicious. If the intention is missing then offence cannot be said to be proved or forthcoming. He also relies on the decision in ***Mahendra Singh Dhoni Vs. Yerraguntla Shyamsundar and another, [AIR 2017 (SC) 2392],*** wherein also it is held that insult to religion offered unwittingly without any deliberate or malicious intention not come within Section 295-A IPC. He further relies on the decision in ***Bilal Ahmed Kaloo Vs. State of A.P., [1997 (7) SCC 431],*** wherein it has been held that "the question to be decided was whether those acts would attract penal consequences under Section 153-A or 505(2) of the IPCode. The common ingredients of both offences is promoting feeling of enmity and hatred between the two groups religious or racial. The main distinction between the two offences was that while publication of the words or the representation was not necessary under Section 153-A, such publication was necessary under Section 505 of IPCode. In such circumstances, no offences under Section 153-A or 505(2) of IPCode are made out." This case was then relied by the Division Bench of this Court at Principal Seat in ***Amol Kashinath Vyavhare Vs. Purnima Chaugule Shrirangi and Others, [Writ Petition No.2954 of 2018***

decided on 06.05.2022], wherein also it is held that feeling of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities is a *sine qua non* for attracting Section 505(2) of the Indian Penal Code, if such material is published.

5. Per contra, the learned APP as well as learned Advocate for respondent No.2 strongly opposed the petition. They submitted that the post that was posted by the petitioner was to be considered in the present scenario. The persons from OBC community are having some grudge against Maratha community as Maratha community persons are praying for reservation from OBC quota. Taking into consideration this present scenario, the only intention behind said post was to bring hatred in the mind of the persons from the OBC community against the persons from the Maratha community. Persons from Maratha community are addressed as Dogs that is what is the feeling of the informant and his friends. Now, the statements of witnesses under Section 161 of the Code of Criminal procedure are available which shows that the witnesses, to whom the petitioner had shown the said post, were also having equal feeling. Therefore, when such evidence is available, let the petitioner face the trial.

6. Before proceeding, we would like to take note of the contents of the FIR. Respondent No.2 who is a practicing Advocate says that when he checked his Facebook account on 14.09.2023, he came across the Facebook post from the petitioner, wherein it was posted that "*ओबीसी बांधवांना हीन वागणूक देवून त्यांच्यावर अन्याय करणारे कुत्रे आज ओबीसी मधून आरक्षण मागत आहेत.*" According to him that post was against Maratha community and their feelings. He then gave the information regarding the said post to his friends Kishor Bajirao Pingle, Kiran Sandip Dhole, Sachin Kishor Ubale and Sachin Ravindra Aage. Then they made inquiry regarding the petitioner and they came to know that the petitioner is an Assistant Professor in a College at Vaijapur. The offence under Section 295-A, 505(2) of Indian Penal Code was then registered and investigation was undertaken.

6. Now the investigation is over and charge-sheet is filed on 05.01.2024. Taking into consideration the copy of the charge-sheet, which was made available to the petitioner, which has been produced on record for our perusal, we made query to the learned APP as to whether there is sanction under Section 196 of the Code of Criminal Procedure and why it has not been annexed to the charge-sheet. We also made query to the learned Advocate

appearing for the petitioner as well as to the learned APP as to whether the concerned Court has taken cognizance of the offence. It has been informed to us that the cognizance has been taken by the learned Magistrate. As aforesaid, the charge-sheet has been filed with the concerned Magistrate on 05.01.2024. Now, the learned APP is tendering sanction dated 12.01.2024 by learned District Magistrate, Beed according sanction. Here, we would like to reproduce relevant part of Section 196 (1) and (1A) of the Code of Criminal Procedure, which read thus :-

> *"**196. Prosecution for offences against the State and for criminal conspiracy to commit such offence.** —*
>
> ***(1) No Court shall take cognizance of —***
> *(a) any offence punishable under Chapter VI or under section 153A, [section 295A or sub-section (1) of section 505] of the Indian Penal Code (45 of 1860), or*
> *(b) a criminal conspiracy to commit such offence, or*
> *(c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government.*
>
> ***(1A) No Court shall take cognizance of —***
> *(a) any offence punishable under section 153B or*

sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or
(b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.]"

7. Thus, it is to be noted that for Section 196 (1A) previous sanction of the Central Government or of the State Government is mandatory before the Court takes cognizance of the offence under Section 295-A of Indian Penal Code. Further, in respect of Section 196 (1A) no Court shall take cognizance of the offence under sub-section (2) of Section 505 of Indian Penal Code except with the previous sanction of the Central Government or of the State Government or of the District Magistrate. Thus, the distinction between sub-section (1) and sub-section (1A) of Section 196 would show that District Magistrate has no authority to accord sanction for offence punishable under Section 295-A of Indian Penal Code. Therefore, even if for the sake of arguments it is accepted that there was a sanction given by learned District Magistrate, Beed on 12.01.2024, it will have to be restricted to Section 505(2) of the Indian Penal Code. Further, it is to be noted that the prosecution i.e. respondent No.1 has not placed on

record any such communication that the said sanction dated 12.01.2024 was placed before the learned Magistrate before the cognizance was taken. Even in the communication dated 05.09.2024 by the Police Inspector, Beed City Police Station, addressed to learned APP, it is not clarified that the said sanction dated 12.01.2024 was placed before the learned Magistrate on a particular day. When the bar was for taking cognizance itself, production of such sanction after the order of cognizance is of no use. Further, there is absolutely no evidence produced by respondent No.1 that sanction to prosecute the petitioner for the offence under Section 295-A was given by either Central Government or the State Government, as required under Section 196(1) of the Code of Criminal Procedure. It will have to be then presumed that there was no such sanction to prosecute the petitioner for the said Section; the learned Magistrate could not have taken cognizance of the offence. Further, it is also to be noted that when there is no compliance of Section 196(1) of the Code of Criminal Procedure (though we may accept for the sake of arguments that there is some compliance under Section 196(1A) of the Code of Criminal Procedure), the concerned Magistrate could not have taken cognizance of any of the offence, as in the

charge-sheet both the Sections are involved or in other words, single charge-sheet is filed for both the offences. On this ground only, the FIR and the proceedings deserve to be quashed and set aside.

8. In addition to the above ground, on merits, it is then required to be seen as to whether the contents of the FIR and the charge-sheet are attracting any of the offence. As aforesaid the post does not make a specific mention of Maratha community or it does not specifically say that Maratha community had given inferior behaviour to OBC and had given oppressive treatment and then they are demanding reservation from OBC quota. We do not agree with the statement on behalf of learned APP that we will have to interpret the post in present scenario. What is not written there cannot be taken by way of interpretation. The informant or the witnesses cannot interpret the said post as per their own convenience or belief. That should have been the intention of the person who posts the post. Therefore, definitely, intention is one of the main ingredient for both the offences and, therefore, we consider the ratio laid down in ***Priya Varrier (Supra)*** and ***Mahendra Singh Dhoni (Supra)*** and give benefit of the same to the petitioner. Another fact to be noted is that the

FIR has been filed on 14.09.2023 and it appears that the screenshot, which is stated to have been taken by the petitioner in his mobile has then been taken in pendrive and came to be seized on 15.09.2023. It appears that the same has been sent for analysis by taking its hash value, but the report is still awaited. Before it is concluded that there is no manipulation, the charge-sheet is also filed. It appears then that it is hastily done.

9. Perusal of the statements of witnesses would show that it was respondent No.2, who had informed them about the said post. Witness Kishor Pingle has not even stated that he had seen the Facebook account of the petitioner nor the screenshot. Same is the case of witnesses Sachin Ravindra Aage, Kiran Sandip Dhole and Sachin Kishor Ubale. Only witness Dnyansagar Dayasagar Javkar and Jagdish Pandurang Raut have stated that they had seen the screenshot taken by the informant. Therefore, taking into consideration all these aspects, we are of the opinion that it would be unjust to ask the petitioner to face the trial. The petition deserves to be allowed. Hence, the following order :-

ORDER

I) Criminal Writ Petition stands allowed.

II) The FIR vide Crime No.207 of 2023 registered with Beed City Police Station, District Beed and the charge-sheet bearing No.1 of 2024 i.e. proceedings bearing R.C.C. No.23 of 2024 dated 06.01.2024 pending before the learned Chief Judicial Magistrate, Beed, for the offences punishable under Sections 295-A, 505(2) of Indian Penal Code, stand quashed and set aside.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm