

**HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

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**CRM-M-33321-2021 (O&M)****Date of Decision: 20.01.2024**

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Jitender Jatasra

... Petitioner

VS.

State of Haryana &amp; Ors.

... Respondents

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**CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL**

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Present: Mr. PK Rapria, Advocate for the petitioner

Mr. Pawan Jhnda, AAG Haryana

None for respondent No.3

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**Sandeep Moudgil, J.**

(1). This petition under Sections 482 CrPC has been filed by the petitioner seeking quashing of the FIR No.0087 dated 22.04.2021 (Annexure P1) under Section 71 of the Information Technology Act, 2008 and Section 153-A(1)/504/505(2)/120-B IPC and Section 3(1)(r) & (u) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short, 'the Act') and Charge Sheet No.1 dated 31.05.2021 and all consequential proceedings arising therefrom.

(2). Learned counsel for the petitioner contented that prima facie no case is made out against the petitioner under the SC&ST Act as neither the complainant alleged that his image/prestige was lowered down by the petitioner in public nor there is any mention in the complaint whether the petitioner knew that the complainant belonged to the SC community. It is asserted that in fact the present FIR has been lodged at the instance of Superintendent of Police who has personal grudge against the petitioner because he had leveled

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corruption charges against the said police officer dated 01.05.2021 (Annexure P4).

(3). It is argued that the present FIR has been lodged at the instance of Sh.Vinod Kumar, SP, Charkhi Dadri alleging defamation of police for exercising fundamental right envisaged under Article 19(1)(a) of the Constitution vis-à-vis police atrocities including fake encounter and custodial torture and the provisions of the SC & ST Act has been invoked to give weight to their concocted story.

(4). On the other hand, learned State counsel has filed the reply dated 01.07.2022 wherein it has been stated that during investigation, accused Rahul s/o Satbir was arrested on 22.04.2021 and he confessed that he conspired with his friends namely Advocate Sanjiv Taxak and the present petitioner and had prepared the video clip and viraled the same and the mobile phone used in making the video was also recovered. It is further mentioned in the reply that details of Facebook of the petitioner on which the video clip was viraled and personal comment was made, had been taken in police possession; the petitioner was arrested on 05.05.2021 and Section 34 IPC was deleted and Section 120-B IPC was added.

(5). Heard learned counsel for the parties and gone through the record.

(6). One of the accused Rahul demanded arrest of policemen involved in fake encounter of his cousin. The policemen took Rahul in custody wherein he was tortured and his foot was fractured for raising his voice against the said encounter of his cousin and thereafter, FIR No.86 dated 22.04.2021 under Sections 323, 325, 34 IPC was registered against the policemen. In this regard, two video clips, wherein Rahul is seen begging for justice against the atrocities



of the police, was circulated in the social media platform like Facebook, the contents of the transcription of video clips read as under:-

*"I have right to speak, case should be registered against SP also....will you register case against SP who does not respond to telephonic calls...Can anyone answer? Everything is on sale. Justice Khare says: Everything is on sale. If you have money; only then you can get justice. I don't have money; I have only my voice; get me justice if you can. I have all recordings; police is accepting that they have wrongly beaten Rahul. Despite having all evidences I am unable to get justice....brothers/people please share this video. I have two recordings of SP Vinod Kumar...Action must be taken against SP Vinod Kumar. He is an officer posted to hear us, so that no wrong can be committed with public....IPS officer is posted to see that his junior officers don't do wrong acts...so that he can control his subordinates. Remove this SP from here....leave people at their own fate. System has been turned into a business venture. Action should be taken, today my foot has been broken...I have lost my brother in fake encounter. Tomorrow will be your turn. Today, if you support us, we will support you. Only that Cock cries which is cut...I have been cut so I am crying... If you don't support us; these police officers will sit over our head. In the viral videos you see how the policemen are beating public. If I am wrong I must be punished and if policemen are wrong they must be punished. Why is he occupying chair if he can do justice? Who has made him IPS? Sarpanch of a panachayat cant do justice...please don't form relationship with police to pressurise me for compromise.*

*I had called IG sir who told me that he is not well. Tomorrow, I will again call him. I want justice, by seeking justice I not committed anything wrong. If public cant support me, at least share this video...at least you can spread my voice; so that it can reach to the ears of officers. Today wrong has been committed with me.....please don't support wrong persons. please press button for sharing."*



(7). The transcript of the another video clip, wherein Rahul is alleged to have made 'casteist remarks' on the police office, the relevant portion of which reads as under:-

*"On dated: 13/03/2021 I was present on the Vita Milk Booth at bus stand, then policemen in PCR van picked-up me and took me to police station, there was beaten mercilessly and my foot was fractured by policemen. I have medical proof (of fracture) and have requested and pleaded with the senior officers, but Police is protecting policemen. Earlier my brother was murdered in fake encounter and only one policeman was arrested, in that matter also I could not get justice. If I would have murdered someone; even my relatives have been arrested by Police. What type of SP he is? Let him sit in front of me and have eye to eye contact with me. He (SP) has been recruited from quota. Till the Doctors and SP are recruited from quota, neither we will get good healthcare nor justice. Reservation needs to be scrapped. If someone is poor let him get good education in Govt. Schools, but reservation system needs to be stopped. I need justice and a person recruited from quota can not do justice."*

*"Dadari Police administration is a rogue, a big thief. I have been cheated. DSP Ram Singh Bishnoi threatened me which is video recorded, still they say that no wrong has been committed. Let that video recording be produced before public. Why are you hiding? Are you police or dacoit? You SP don't even attend call, if attended the same is disconnected. I had requested please don't disconnect my phone, but still he disconnected. SP needs to be removed; suspend him. That Anil Vij (Minister) always says that justice will be done. What type of justice is this? If you are a minister, please do justice. Meet me, if I am wrong I should be punished."*

(8). The petitioner Jitender Jatasra who claims himself to be a whistle blower and social activist, stated to have been rewarded by the Haryana Govt. for conducting 6 raids in PNDT cases, came across the above-said two video



clips of Rahul (transcript reproduced above) and he is stated to have shared one such video clip with the following comment:-

*“when general public will get same courage/enthusiasm; the IPS/IAS will not get place, who day and night commit wrong acts with the public”*

(9). The present FIR has been lodged apparently on the instructions of the Vinod Kumar, Superintendent of Police, Charkhi Dadri through ASI Jora Singh wherein it has been recorded that one Rahul s/o Satbir, caste Jat has made comments on the caste of Superintendent of Police that he belongs to scheduled caste and as such has made wrong and hateful comments on the said Officer on social media with intention to spoil the image of police.

(10). From a bare reading of the FIR, it is nowhere alleged that the respondent No.3 is a member of SC/ST community and the petitioner belong to a caste other than SC/ST and being as such, the petitioner was having knowledge of respondent No.3 belonging to such reserved caste. How the police came to know that the person speaking or appearing in the video-clip is Rahul s/o Satbir even specifying his residential address and caste to which he belongs? *In generalia*, the complainant/victim turns up to the police station with all details of the accused person as against in the present case, the ASI – who is the complainant without any prior investigation or enquiry about the authenticity of the video clip or the person allegedly appearing in the video-clip, candidly and accurately mentioned the name of Rahul in the FIR. This shows pre-conception and pre-determined mindset of the police and particularly respondent No.3 to implicate the accused persons.

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(11). In legal parlance, Section 3(1)(r) & (u) of SC & ST Act can be invoked only when an accused person intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view, by words either written or spoken or by signs or by visible representation or otherwise and promotes or attempts to promote feelings of enmity, hatred or ill-will against members of the Scheduled Castes or the Scheduled Tribes. The contents of the FIR nowhere remotely suggests that the petitioner used any casteist remarks indicating the name of the respondent No.3 in public place. Neither does the FIR show as to such-and-such abusive and casteist words were uttered by the petitioner or the main accused Rahul and that too specially naming respondent No.3 or any other officer.

(12). The whole FIR is on the pretext of hearsay as the alleged blasphemous comments are not directly said to the respondent No.3. For ease, it would be apposite to reproduce the exact words/comments made by the petitioner on the video-clip post of Rahul circulated on Facebook and the same reads as under:-

*“when general public will get same courage/enthusiasm; the IPS/IAS will not get place, who day and night commit wrong acts with the public”*

(13). A word-to-word microscopic scrutiny of the above comment, in the opinion of this Court, in no manner would suggest that the petitioner made any casteist remarks on the social media. Even a layman, if not an Officer of IPS rank, can easily comprehend that the comments made by the petitioner cannot be termed to be with a view to intentionally insult or intimidate



respondent No.3 or to promote the feelings of enmity, hatred or ill-will against him or police department as a whole. The statement in question, on the basis of which the FIR has been registered against the accused person(s), must be judged on the basis of what reasonable and strong-minded person will think of the statement, and not on the basis of the views of hypersensitive persons who scent danger in every hostile point of view and are gullible to such assertions.

(14). At best, it is only 'views' or 'expression of feeling' that burst out in the spurt of moment, in solidarity of the alleged atrocities meted out to Rahul at the hands of policemen. Having said so and culminating all the above factual aspects, the ingredients of Section 504/120-B IPC or for that matter, Section 3(1)(r) & (u) of the Act cannot be said to be made out against the petitioner inasmuch as it is not even mentioned that the petitioner had intimidated or threatened the respondent No.3 or anyone else.

(15). As regards, invocation of Section 153-A IPC in the case of the petitioner, is concerned, learned counsel pointed out that when the petitioner is not the creator of a source material, but has only made a reference/commented upon such material, in such circumstances, maintaining a criminal prosecution would be an abuse of the process of law. In **Bilal Ahmed Kaloo v. State of A.P. [(1997) 7 SCC 431]**, the Supreme court held that the common feature in both the Sections, viz., Sections 153A and 505 (2) IPC, being promotion of feeling of enmity, hatred or ill-will "between different" religious or racial or linguistic or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved. Further, it was observed that merely inciting the feeling of one community or group without



any reference to any other community or group cannot attract either of the two sections.

(16). In the present case, the action of the accused person/petitioner did not cause any enmity between the two groups nor such comment was made with the intention of causing the said enmity between the two religion/community/group inasmuch as the provision would become applicable only where enmity is caused on grounds of religion, race, place of birth or any other grounds whatsoever as per Section 153-A IPC. The intention to cause disorder or incite the people to violence is the *sine qua non* to make out an offence under Section 153-A IPC and the prosecution *prima facie* has to prove the existence of *mens rea* on the part of the accused.

(17). If what is considered by the Supreme Court in **Bilal Ahmed Kaloo's** case is paraphrased into the facts obtaining in the case at hand, it would become crystal clear that the offences alleged would not touch upon the ingredients of Sections 153A or 505 of the IPC or in any way are not enough to attract Section 153A of the IPC, conspicuously for the reason that despite having investigated the case from April 2021 onwards, the police have not been able to point out even a single untoward incident which may have occurred on account of petitioner's comment. Secondly, the petitioner or the main accused Rahul in their comments on Facebook, have not referred to even a single community, let alone to two communities for the purpose of Sections 153-A or 505 IPC. "Public tranquility" under Section 153A of the IPC does not mean that the accused's speech must merely affect public serenity, but it must give rise to violence or an insurrection. Therefore, on the aforesaid grounds permitting



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further proceedings under Sections 153-A and 505(2) IPC would become an abuse of the process of law and result in miscarriage of justice.

(18). Furthermore, the reply filed by the respondents is totally silent as to how the petitioner was involved in misrepresentation or suppression of material facts and obtained any type of licence for publishing his comment, by the Certifying Authority which may attract penal provisions under Section 71 of the Information Technology Act and as such, it seems that the said provision has been added by the police only with an intention to ameliorate their impaired stand.

(19). Accordingly, this petition is allowed and FIR No.0087 dated 22.04.2021 (Annexure P1) under Section 71 of the Information Technology Act, 2008 and Section 153-A(1)/504/505(2)/120-B IPC and Section 3(1)(r) & (u) of the Act and Charge Sheet No.1 dated 31.05.2021 and all consequential proceedings arising therefrom stand quashed.

**20.01.2024***V.Vishal*

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

**(Sandeep Moudgil)  
Judge***Yes/No  
Yes/No*