

Court No. - 43

Case :- CRIMINAL MISC. WRIT PETITION No. - 13058 of 2020

Petitioner :- Yashwant Singh

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Dharmendra Singh

Counsel for Respondent :- G.A.

Hon'ble Pankaj Naqvi,J.

Hon'ble Vivek Agarwal,J.

Heard Sri Dharmendra Singh, learned counsel for the petitioner and Sri Deepak Mishra, the learned A.G.A, who does not propose to file any counter affidavit. With the consent of all, the writ petition is being decided on available materials, under the Rules of the Court.

This writ petition has been filed by the petitioner to issue a writ, order or direction in the nature of certiorari quashing the impugned FIR dated 2.8.2020, registered as Case Crime No. 371 of 2020 under section 500 I.P.C and 66-D of Information Technology (Amendment) Act, 2008, P.S. Bhognipur, District Rama Bai Nagar.

The FIR lodged by the police alleged that petitioner from his twitter handle allegedly remarked that the Chief Minister of the State has transformed the State into a *jungleraj* in which no law and order prevails. It also makes reference to various incidents of abduction, demand of ransom and murders.

Learned counsel for the petitioner submits that right to comment on the affairs of the State is well within his constitutional right envisaged under Article 19 of the Constitution of India. Mere dissent does not amount to criminality, FIR has been lodged malafidely only with a view to coerce the petitioner to stop expressing his dissent against the State government, no offence is made out, FIR be quashed.

Learned A.G.A, opposed the submission.

The offence alleged are Section 66-D of Information Technology Act and Section 500 IPC. Section 66D is extracted hereunder:

"Punishment for cheating by personation by using computer resource. - Whoever, by means of any communication device or computer resource cheats by personation, shall be punished with imprisonment of

either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees."

We after analysing the above provisions, qua allegation made in the FIR do not find even remotely a commission of offence under Section 66-D, as said provision relates to cheating by personation. It is not the case of prosecution that while committing the overt act, the petitioner either tweeted using other's twitter handle or was there any allegation of cheating. No offence under Section 66-D I.T. Act is made out. In so far, Section 500 IPC is concerned, same is also not made out, as the alleged tweet cannot be said to fall within the mischief of defamation. Expressing dissent on law and order situation in the State, is a hallmark of a constitutional liberal democracy like ours, constitutionally protected under Article 19 of the Constitution.

In view of above, the writ petition is **allowed**. The FIR dated 2.8.2020, registered as Case Crime No. 371 of 2020 under section 500 I.P.C and 66-D of Information Technology (Amendment) Act, 2008, P.S. Bhognipur, District Rama Bai Nagar and consequential proceedings are quashed.

The party shall file a computer generated copy of this order downloaded from the official website of High Court Allahabad, self attested by the petitioner alongwith a self attested identity proof of the said person (s) (preferably Aadhar Card).

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order Date :- 23.11.2020

N.S.Rathour