

Court No. - 51

Case :- CRIMINAL MISC. WRIT PETITION No. - 851 of 2021

Petitioner :- Ritesh Sidhwani And Another

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

Counsel for Petitioner :- Syed Imran Ibrahim

Counsel for Respondent :- G.A.

Hon'ble Manoj Kumar Gupta,J.

Hon'ble Subhash Chand,J.

Heard Sri G.S. Chaturvedi, learned Senior Advocate and Sri Manish Tiwari, learned Senior Advocate assisted by Sri Jay Kumar Bhardwaj, Syed Imran Ibrahim, Ms. Pooja Sharma and Ms. Saumya Chaturvedi, for the petitioners and Sri J.K. Upadhyay, learned A.G.A. for the State-respondents.

The impugned FIR is under Sections 295-A, 504, 505, 34 IPC and 67-A of Information Technology Act. The main allegation in the FIR is that the petitioners, who are stated to be running a production company and are producers of web series 'Mirzapur' are guilty of offences under the above sections by improper and indecent portrayal of the town of Mirzapur. It had hurt the religious, social and regional sentiments of the first informant and is instrumental in advancing ill feelings and animosity. It is further alleged that the web series of such kind must have been produced by such a big production house after due deliberations. It has impacted the society so much so that his friends have started calling him 'Kaaleen Bhaiya', who is a main protagonist in the said web series.

It is urged that even if, all allegations in the FIR are taken to be correct, no offence is made out against the petitioners. There is no allegation that the web series was produced with any deliberate or malicious intention of outraging the religious and social feelings of the citizen of India or to insult the religious

and social feelings of the people of any particular class. In other words, the submission is that the web series is a work of fiction and that every act which tantamount to insult or attempts to insult the religious feelings of any class of citizens would not come within the purview of Section 295-A of IPC, unless the said act is perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class of citizens. In support of the said contention, reliance has been placed upon the judgment of Supreme Court in **Mahendra Singh Dhoni Vs. Yerraguntla Shyamsundar and another (2017) 7 SCC 760.**

It is further submitted that even no offence is made out under Section 505 IPC as there is no allegation that web series was produced with intent to insult the feelings of any class or community of persons and thereby incite that class or community to commit offence against any other class or community. It is further urged that there is no allegation of exhibition of any sexually explicit act or conduct in the web series, so as to constitute an offence under Section 67-A of the Information Technology Act, 2000.

It is also brought to our notice that at the start of web series there is a disclaimer clause which reads as under:

"This program is made solely for viewer entertainment and is a work of fiction. Names, characters, businesses, places, events and incidents are either the author's imagination or used in a fictitious manner. Any resemblance to actual persons, living or dead, or actual events is purely coincidental. Any dialogues, characters in the program are not intended to offered the sentiments of any individual, caste, community, race, or religion or to denigrate any institution or person, living or dead. Amazon India does not endorse or bear responsibility for any content shown or the views expressed in this program. Viewer discretion advised."

On the other hand, learned A.G.A. submitted that there is

specific allegation that the web series has hurt the social and religious feelings of the first informant. He also urged that web series promotes illicit relationships and incites religious disharmony, which is not permissible.

Having considered the rival submissions, we prima-facie find force in the contentions of learned counsel for the petitioners. We are also of the opinion that the matter requires further consideration after exchange of affidavits.

Notice on behalf of respondent nos. 1 and 2 has been accepted by learned AGA.

Issue notice to respondent no. 3.

In addition to normal mode of service, the petitioners shall serve the said respondent also by registered post by taking steps within a week.

All the respondents shall file counter affidavit within three weeks. Rejoinder affidavit be filed within two weeks thereafter.

List in the first week of March 2021.

Having regard to the facts of the case and the submissions made, till the next date of listing or till submission of police report under Section 173(2) CrPC, whichever is earlier, no coercive action shall be taken against the petitioners in pursuance of the FIR registered as Case Crime No. 0016 of 2021, under Section 295-A, 504, 505, 34 IPC & Section 67-A of Information Technology Act, Police Station Kotwali Dehat, District Mirzapur.

However, the petitioners shall offer full cooperation in the investigation.

In case steps are not taken to serve respondent no.3 within the stipulated time, the interim order would stand vacated automatically.

(Subhash Chand, J.) (Manoj Kumar Gupta, J.)

Order Date :- 29.1.2021
Prajapati