IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
CIRCUIT BENCH AT PORT BLAIR
***
CRR No. 6 of 2021

Zubair P. K. … Petitioner

Vs.

The State … Respondent

Mr. Mohammed Tabiraz, Advocate … for the petitioner

Mr. Krishna Rao, Advocate
Mr. Ajay Kumar Mandal, Advocate … for the State/OP

September 8, 2021
[SR]
Item No.1

The petitioner is a social worker and a journalist by profession and a permanent resident of these islands and he has assailed the Aberdeen Police Station, FIR No.233 dated 27.04.2020 registered under sections 51 and 54 of the Disaster Management Act 2005 read with sections 188, 269, 270, 505(1)(b) of the Indian Penal Code, *inter alia,* on the ground that there is no ingredients of the offence as alleged in the FIR and the tweet of the petitioner does not form any substance for registration of the said FIR.

In view of pandemic situation due to Covid-19, complete lockdown was called on from the mid-night of 24th March, 2020 restricting the movement of individuals.

It is pointed that the situation was so grim in the islands and based on the letter of an advocate of Andaman and Nicobar Bar Association, the Hon'ble Chief Justice of Calcutta High Court was pleased to treat the said letter as a Public Interest Litigation and a Monitoring Committee was constituted by the Hon'ble High Court to monitor the mechanism being adopted by the Administration to handle the pandemic situation.

The petitioner tweeted on 26th April, 2020 in his twitter account which reads thus:-

"Tweet

Zubair Ahmed @zuba….Apr 26, 2020..

"Request #Covid 19 quarantine persons not to call any acquaintance over phone. People are being traced and quarantined on the basis of phone calls. #StaySafeStayHome"

The petitioner further tweeted on 27th April, 2020 in his tweeter account with the following contents:

"Tweet
Zubair Ahmed @zuba….Apr 27, 2020..

"Can someone explain why families are placed under home quarantine for speaking over phone with covid patients?."
@MediaRN_ANI @Andaman_Admn".

Based on the said messages in his twitter handle, an FIR under reference was started which has been sought to be quashed in this revisional application under the provision of Section 482 of Cr.P.C.

Pursuant to the registration of the police case against the petitioner, he had to apply for his release on bail and by the order dated 28th April, 2020 passed in G.R.Case No.684 of 2020 the learned magistrate released the petitioner on interim bail.

Mr. Tabraiz, learned advocate for the petitioner submits that on perusal of the FIR and the provisions of sections 51 and 54 of the Disaster Management Act, 2005, no ingredients of the offence alleged is attracted against the petitioner. Identically, there is no ingredient of sections 188, 269, 270, 505(1)(b) of the Indian Penal Code which can attract the offence alleged in the FIR.

It would be profitable to reproduce the aforesaid provision of sections 51, 54 of the Disaster Management Act, 2005 for profitable appreciation of the case which enjoins thus:

"51. Punishment for obstruction, etc. – Whoever, without reasonable cause –

(a) Obstructs any officer or employee of the Central Government or the State Government, or a person authorized by the National authority or State Authority or District Authority in the discharge of his functions under this Act; or

(b) Refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive committee or the State Executive Committee or the District Authority under this Act,

shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years.

54. Punishment for false warning. – Whoever makes or circulates a false alarm or warning as to disaster or its severity or magnitude, leading to panic, shall on conviction, be punishable with imprisonment which may extend to one year or with fine."

It is submitted that the aforesaid provisions, of section 51 of the Disaster Management Act, 2005 speaks of punishment for disobedience of Regulations and obstruction to an officer or employee of the Central Government or State Government or a refusal to comply with the direction given by or on behalf of the Central Government or the State Government. But there is no such case as it would transpire from and on perusal of the tweets given by the petitioner.

Similarly, provision of section 54 of Act 2005 is also not attracted as tweet does not relate to any alarm or warning in relation to a disaster, neither is the case of the state that the tweet made by the petitioner has resulted to be a panic.

As regard, Section 188 of the Indian Penal Code, it relates to disobedience to order duly promulgated by public servant lawfully empowered to promulgate such order. To bring home the charge under Section 188, IPC, the prosecution is required to proof *prima facie* that (i) there was promulgation of an order by a public servant lawfully empowered to promulgate such order;

(ii) Such order directed the petitioner to abstain from certain act or to take certain order with certain property in his possession or under his management.

(iii) The petitioner/accused was aware of such order;

(iv) The petitioner disobeyed such order, and such disobedience caused or tended to cause destruction, annoyance or injury to any persons lawfully employed or such disobedience caused or tended to cause danger to human life, health or safety, or a riot or affray.

Indubitably, there was promulgation of regulation during complete lockdown declared by the Central Government on and from 24th March, 2020 to contain the Noval COVID 19 Virus which caused world-wide pandemic situation.

The provision of section 188 of the Indian Penal Code does not also instill the judicial mind to find any disobedience of any order passed by the authority causing obstruction or annoyance or injury to any persons.

It must be born in mind that the provision of Section 195 of the Code provides that no court shall take cognizance of any offence punishable under Sections 172 to 188 of the Indian Penal Code, except on the complaint in writing to a public servant concern or of some other public servant to whom he is administratively empowered. This Court finds that the FIR has been lodged at the instance of the Aberdeen Police Station and initiation of the proceeding and the prosecution against the petitioner is not at the instance of a person lodging complaint before the Court. Therefore, it was not wise even on the part of the learned court and the Magistrate for taking cognizance of any offence as alleged under Section 188 of Indian Penal Code.

In this regard reference to a decision in **Daulat Ram -vs- State of Punjab reported in AIR 1962 SC 1206** is pertinent to take note of in which the Hon'ble Supreme Court observed and held that prosecution under Section 182 of the Indian Penal Code has to be on a complaint in writing by a public servant. Having regard to the observation made by the Hon'ble Supreme Court in the cited decision, this Court finds that there is a absolute bar against the Court for taking

cognizance of offence under Section 188 of the Indian Penal Code, except in the manner provided by Section 195 of the Code and the cited decision readily applies to the offence under Section 188 of Indian Penal Code.

It would be apt to take note of the decision in case of **M.S Ahlawat vs State of Haryana** reported in **2000 (1) SCC 27**8 wherein the Hon'ble Supreme Court has held that provision of Section 195 CrPC are mandatory and no Court has jurisdiction to take cognizance of any offence mentioned therein unless there is a complaint in writing as required under that section.

Therefore, the offence alleged under Section 188 of the Indian Penal Code in the context of the facts of the case does not instill the judicial mind to *prima facie* hold in disobedience of any order passed by the public authority causing obstruction or annoyance or injury to any person.

In order to bring home the charges under Sections 269 and 270 of Indian Penal Code, the prosecution is required to prove the ingredients of the offence therein to show that the person has committed any act which his move is likely to spread infection of any disease which is dangerous to life. There is no case laid before this Court that the petitioner was suffering from COVID 19 positive and was wandering in and around the neighbouring area or in the locality in violation of the regulation relating to lockdown due to pandemic situation which cropped up due to COVID 19. Hence, this Court does not *prima facie,* even find any ingredients of the offence punishable under Sections 269 and 270 of the Indian Penal Code.

The petitioner has sought for quashing of the criminal proceeding registered against him under the provision of Section 482 of the Code of Criminal Procedure which enjoins the power the High Court to quash the criminal proceeding or the FIR. "In this regard, guidelines in a landmark decision in a case of **State of Haryana vs Bhajan Lall** reported in **1992 (Suppl.) 1 SCC 335** is required to be detailed, wherein the Hon'ble Supreme Court laid down the guidelines to be followed by the High Court in exercise of the inherent power under Section 482 of the CrPC to quash the Criminal Proceeding or the FIR. In paragraph 102 of the cited decision, the Hon'ble Supreme Court has given the guidelines thus:

> ***102.*** *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

Now, having heard the learned advocates for the petitioner and the opposite party/State, this Court is of the view that in the background of the facts *prima facie* case emerging from the FIR and in particular the tweets of the petitioner displayed on in his tweeter account, no offence alleged can be inferred and further in view of the provision of Section 195 (1) of the Indian Penal Code and further having regard to the decisions and the guidelines laid down for the quashing of the criminal proceeding, this Court is of the view that allowing the criminal proceeding in terms of the FIR registered against the petitioner would amount to sheer abuse of process of law and misuse of power of the Court as the allegation in the FIR appears to be absurd and no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the

accused/petitioner. That apart, legal bar in the prosecution proceeding instituted against the petitioner is inherent as the FIR registered by the police station is not at the instance of any public on the complaint.

In the context of the discussion above, having considered the scope of Section 195 (1) of the Code as well as Section 482 of the CrPC and after giving an anxious consideration of the facts of the case, the revisional application be allowed. Consequently, the FIR being No. 0233 of 2020 dated 27th April, 2020 registered by the Aberdeen Police Station for the alleged offence under Section 51 and 54 of the Disaster Management Act, 2005 and under Sections 188, 269, 270, 505 (1)(b) of the Indian Penal Code is hereby quashed.

Accordingly, the revisional application being CRR/6/2021 is allowed and disposed of.

Parties are directed to act on the basis of the website copy of the order.

(Shivakant Prasad, J.)