

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.701 OF 2022

Suraj s/o Arvind Thakare,
aged about 39 years,
occupation : Agriculturist,
r/o near Sofisaya Baba Darga,
Tahsil Rajura, District Chandrapur. ... Applicant

- Versus -

- 1) The State of Maharashtra,
through its Police Station Officer,
Police Station, Rajura, Tahsil
Rajura, District Chandrapur.
- 2) Vasudeo s/o Bapuji Chaffle,
aged about 47 years, occupation :
Shiv Sena Taluka Head, r/o
Mangi (Bu.), Tahsil Rajura,
District Chandrapur. ... Non-applicants

Shri T.S. Deshpande, Advocate and Shri A.D. Deshmukh, Advocate
for applicant.

Shri I.J. Damle, Additional Public Prosecutor for non-applicant no.1.

CORAM : SUNIL B. SHUKRE AND
M.W. CHANDWANI, JJ.

DATED : DECEMBER 19, 2022

ORAL JUDGMENT (PER SUNIL B. SHUKRE, J.) :

Rule. Rule is made returnable forthwith. Heard finally
by the consent of the learned Counsel appearing for the parties.

2) On the basis of the complaint lodged by the non-applicant no.2, Police Station, Rajura, District Chandrapur registered an offence punishable under Section 153-A of Indian Penal Code against the applicant. The allegations are that by using facebook page of Mr. Ravi Rana, M.L.A., the applicant kept on posting filthy and abusive comments, such as “गांड फाटली XXX XXX ची”, “हयाच्या बापाची मुंबई नाही आहे, साला khatam xxxx”, “xxx xxx, मर्द असेल तर लढ one by one”, “गांड फाटली XXX ची”, “२ नच भरी पडले हे काय लढतील xxx सोबत चिव सैनिक”. On the basis of these allegations, Police Station, Rajura registered an offence punishable under Section 153-A of Indian Penal Code against the applicant.

3) According to Shri Deshpande, learned Counsel for the applicant, no offence punishable under Section 153-A of Indian Penal Code is made out against the applicant even if all the allegations are accepted and read as they are. However, Shri Damle, learned Additional Public Prosecutor for the non-applicant no.1, submits that broadly speaking these allegations do indicate that they have potential to incite violence and thus, disturbing public order and also creating feeling of insecurity amongst members of different groups

on the ground of religion, race, language or regional groups or castes or communities.

4) Upon careful consideration of the allegations made in the first information report filed against the applicant, we find that there is a great substance in the submission of the learned Counsel for the applicant. All these allegations even if they are taken at their face value, by no stretch of imagination, could be said to be transcending into the forbidden area of communal or different groups divided on religious, racial, residential or linguistic lines and creating disharmony amongst them. None of these allegations could be said to be made even remotely by keeping in view a particular religion or particular place of birth or residence or some specific language. Then, in order that the spoken or written words or something said through signs or visible representation promotes or attempts to promote on grounds of religion, race, place of birth, residence, language, caste or community or any other ground disharmony or feeling of enmity or hatred or ill-will between different groups, the words said or signs or representations made must be accompanied by intention to promote or attempt to promote disharmony or feeling of enmity, hatred or ill-will amongst such different groups. As stated

earlier, the abuses prima facie attributed to the applicant do not seem to have been made with any such criminal intention. Even otherwise, such written or spoken words or signs or representations must have been said or made in a manner as would have had tendency of creating public disorder or disturbance of law and order or affecting public tranquility as held in paragraph 9 of the judgment of the Apex Court delivered in the case of *Patricia Mukhim vs. State of Meghalaya and others* (2021 SCC Online SC 258). Here, no such consequence or tendency can be read in the words posted on the facebook of Mr. Ravi Rana, M.L.A. Therefore, we are of the opinion that no offence punishable under Section 153-A of Indian Penal Code, which requires presence of the ingredients we have just pointed out, is made out in any manner in this case.

5) It appears to us that apart from Section 153-A of Indian Penal Code, no other offence has been registered against the applicant and, therefore, this is a fit case for making interference in the matter.

6) Before parting with the judgment, we would like to state here that our democracy has progressed so much where tolerance to fair criticism or dissent or critical and satirical comments has become

its hallmark. The social media, such as facebook, instagram, twitter, whatsapp, telegram, etc. today has become a powerful medium for exchange of views, expressing opinions, views, counter opinions and counter views, posting critical or satirical comments and thus has become one of the important pillars on which our democracy stands. But, the social media is so only till the point it is not misused by posting remarks, articles, etc., which by themselves constitute an offence or which do not fall within the prohibited zone created in terms of Article 19(2) of the Constitution. In addition, one has to be careful when one expresses one's view or makes comments that the words used are not obscene or indignified or demeaning. In other words, a balance has to be struck between the need for healthy use of social media and the need for preventing misuse of social media. In the present case, considering the essential ingredients of an offence under Section 153-A of Indian Penal Code and the filthy language used to denounce a leader, we are of the view that this fine balance on which the social media stands is upset. It is a different matter that offence of promoting enmity between different groups punishable under Section 153-A of Indian Penal Code is not made out in this case. But, that does not give licence to the applicant to revile Head of the State Government; to be bawdy about the Head.

A crime not disclosed has been registered against the applicant on the one hand and a new ebb in showing dissent through lewd comments has been attained by the applicant on the other. We hope, in future some restraint will be shown by both sides.

7) In view of above, we allow the application and hereby quash and set aside the First Information Report vide Crime No.171/2022 registered at Police Station, Rajura, District Chandrapur.

8) Rule is made absolute in the above terms. No costs.

JUDGE

JUDGE

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