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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P. (Criminal) No.801 of 2008 & C.M. Appl. No.7496 of 2008

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01.09.2010

DR. ASHISH NANDY

..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Advocate with
Mr. Rahul & Mr. Gaurav Kanth, Advs.

Versus

STATE OF GUJARAT & ANR.

..... Respondents

Through: Mr. O.P. Malviya & Ms. Gitanjali
Malviya, Advocates for respondent No.2.

Reserved on: 30th July, 2010

Pronounced on: September 01, 2010

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

J U D G M E N T

1. The present petition has been filed by the petitioner for quashing of F.I.R. bearing I-CR No.600 of 2008 registered by Satellite Police Station, Sub-District Satellite, District Ahmedabad (Rural) under Sections 153-A and 153-B IPC.

2. The petitioner has claimed that he was an eminent academician of international repute. He wrote an article in Delhi which was published on 8th January, 2008 in National edition of Times of India as well as in local editions of Times of India, a daily newspaper. His article was a critical analysis of outcome of Gujarat Legislative Election held in December, 2007 and he had commented on a sad and unfortunate polarization amongst people of Gujarat. Respondent No.2, Sh. V.K. Saxena, President of National Council for Civil Liberties having office at Ahmedabad served a notice on petitioner on

18th January, 2008 alleging that the article contained intemperate, distasteful, undue harsh, vituperative and sharp statement showing Gujarat in general and Gujaratis in particular in low light. Thereafter, Mr. Saxena made an application to the Government of Gujarat seeking permission to lodge F.I.R. against the petitioner for offences under Sections 153-A and 153-B IPC. This permission was accorded and F.I.R. was registered against the petitioner under Sections 153-A and 153-B IPC at Satellite Police Station. The petitioner learnt about registration of F.I.R. through newspapers.

3. The petitioner claimed that he had lamented the politics of hate and religious polarization that had clutched Gujarat politics since 2002. The petitioner had no intention to promote or create animosity or differences between different communities neither such an intention can be gathered from the article. It is stated that the F.I.R. does not disclose commission of offences under Sections 153-A and 153-B IPC. The F.I.R. was baseless and non-bonafide and it was in violation of petitioner's right to freedom of speech and expression guaranteed under Article 19 of the Constitution of India. The petitioner was a resident of Delhi, the article was prepared and published from Delhi and the cause of action, if any, arose in Delhi. The petitioner felt insecure and frightened as offences under Sections 153-A and 153-B IPC were cognizable and non-bailable and there was apprehension that the petitioner may be arrested. A prayer is made that the F.I.R. be quashed.

4. The petition is opposed by respondent No.2 on the ground that the F.I.R. cannot be quashed since it does not fall within the parameters laid down by the Supreme Court in *State of Haryana & Others Vs. Ch. Bhajan Lal & Others*; 1992 Supp. (1) SCC 335. It is submitted that the petitioner after filing of present petition had approached the Supreme Court by way of an SLP and the SLP was disposed of by restraining State of Gujarat and

its authorities and officials from taking any step to arrest and detain the petitioner in connection with the proceedings arising out of the articles written by the petitioner. This petition was a gross misuse of law. It is further submitted that following were the statements made by the petitioner in the articles in reference to State of Gujarat and Gujaratis in the article :-

- “(a) Gujarati cities particularly its educational institutions are turning cultural deserts.
- (b) Gujarat has already disowned the Indian Constitution.
- (c) They (Hindus and Muslims) now face each other as hostile nations.
- (d) In Gujarat this class (middle class) has smelt blood for it does not have to do the killing but can plan, finance and co-ordinate them with impunity.
- (e) The actual killers are mostly lowers of the low and mostly tribals and dalit.
- (f) The middle class controls the media and education which have become hate factories in recent times.
- (g) They receive spirited support from most non-resident Indians who, at a safe distance from India can afford to be more nationalist blood thirsty and irresponsible.”

5. It is submitted that since the article was published in Ahmedabad Edition of Times of India, the jurisdiction of Satellite Police Station, Ahmedabad cannot be denied and this court should not entertain a petition for quashing of F.I.R. registered at Ahmedabad. It is further submitted that the powers of this court under Article 227 or 226 of the Constitution of India should not be exercised to stifle a legitimate prosecution and the court should not give a premature decision in a case where process of investigation was at a nascent stage. It is submitted that the petitioner/accused would have an opportunity to raise contentions and defence at the time of trial and would be entitled to full-fledged

opportunity to prove and establish his case. The entire process cannot be short circuited in the manner sought by the petitioner. It is submitted that registration of F.I.R. by respondent no.2 against the petitioner was legitimate exercise of the right of respondent No.2.

6. It is contended by counsel for the petitioner that no F.I.R. could have been registered at the police station Gujarat since the entire cause of action had taken place in Delhi. The article was written in Delhi and it was handed over to newspaper in Delhi, therefore, F.I.R. could not have been registered at Gujarat. This argument must be turned down. Section 179 Cr.P.C. specifically provides that when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence would be tried by a court within whose local jurisdiction such thing has been done or such consequence has ensued. A person sitting in a studio in Delhi may make an inflammatory speech on television or he may give an article for publication to a newspaper having all-India circulation but if the consequences of such speech or the article are visited at a distant place or in another State, registration of F.I.R. in that State is not without jurisdiction. The Supreme Court in *State of M.P. Vs. Suresh Kaushal & Anr.; 2003 (11) SCC 126* had observed that Section 179 Cr.P.C contemplates two courts having jurisdiction and the trial is permitted to take place in one of those two courts. One is the court within whose local jurisdiction the act has been done and other is the court within whose local jurisdiction the consequence has ensued. I, therefore, consider that the no fault can be found with registration of the F.I.R at Satellite Police Station Ahmedabad.

7. No doubt it is right of a journalist to express his views but it is equally a right of the citizen of this country to initiate action against any person, who has committed an offence as per law. If Constitution gives liberty to a citizen of freedom of speech, it also

gives liberty to other citizen, who is affected by such speech to bring an action against journalist citizen who, in his opinion, has committed an offence by writing an article and thereby violated provisions of penal laws.

8. In any offence under Section 153-A and 153-B IPC, it is the word spoken or written signs or representation which is the subject matter of consideration of the court of Metropolitan Magistrate and it is the court of Metropolitan Magistrate where the offence is tried who has to consider the effect of words either spoken or written and has to see whether these words created or were intended to create ill will between different religious, racial, language or regional groups or castes or communities and whether these were prejudicial to the maintenance of harmony between different groups stated above. Section 153-B IPC provides if anyone publishes either by spoken or written signs or by visible representation an imputation that any class of persons cannot, by reason or their being members of any religious, racial, language or regional group or caste or community bear true faith and allegiance to the Constitution, it amounts to an offence.

9. Should it be that the High Court at the time of entertaining quashing petition usurp the power of Metropolitan Magistrate and take upon itself the job of considering the implications of the written or spoken words and hold that these written and spoken words did not amount to an offence under Sections 153-A IPC and 153-B IPC. If the intention of legislature had been that offences under Sections 153-A IPC and 153-B IPC should only be tried and heard by High Court, the legislature would have provided so. The legislature had not made these two offences as a special category of offences to be tried by the High Court. These two offences like other offences under IPC are to be tried by Metropolitan Magistrate. What had been the cause and effect of the words spoken or written on the communities in Gujarat cannot be considered by Delhi High Court sitting

thousands of miles away from Gujarat and Gujaratis, the subject matter of article written by the petitioner.

The petitioner in his article had made various accusations and the justification or impact and intent of these accusations can be given before the court at Gujarat. One of the accusations given in the article is that the Gujarati translations of the works of Gandhi had been stealthily distorted to present a Hindu nationalist agenda. This statement can be justified by writer only by producing those Gujarati translations on which the petitioner relied (petitioner has not mentioned the names of works of Gandhi which, according to him, were distorted in translation) by showing stealthily distortions to conform to the Hindu nationalist agenda. The petitioner has made imputation that actual killers were the lowest of the low, mostly tribals and *dalits*. This observation made by the petitioner against the tribals and *dalits* of Gujarat has to have factual base and the petitioner alone can justify this before the court of Metropolitan Magistrate and this court cannot hold a fact finding inquiry in proceeding for quashing whether such imputations made by the petitioner were truthful or not and what was the basis of making these imputations. There are several such other imputations including that Gujarat has already disowned the Indian Constitution and the educational institutions of Gujarat are turning cultural deserts. A Court of MM at Gujarat, knowing Gujarati language and Gujarati culture and institutions is the most suitable and competent court to appreciate the impact and consequences of such assertions.

10. As far as intention of the petitioner is concerned, that cannot be taken from the subsequent conduct or words of the petitioner. The intention is to be inferred from the article written by the petitioner. A full Bench of Allahabad High Court in *Azizul Haq Kausar Naquvi & Anr. Vs. The State; 1980 CLJ 448* had observed as under :-

“45. This explanation has been omitted by Act XLI of 1961. A similar question came up for consideration before a Special Bench of this court in the case of Kali Charan Sharma v. [Emperor](#): AIR 1927 All 649 . Lindsay, J. with whom Banerji J. and Walsh, Ag. C. J. agreed enunciated the law as under :--

"If the language is of a nature calculated to produce or to promote feelings of enmity or hatred the writer must be presumed to intend that which his act was likely to produce. This was the principle laid down by Best, J. in Burdett's case in dealing with a case of seditious libel and the same principle clearly applies to the case of a publication punishable under Section [153A](#) I.P.C. Applying this test to the case before me I can only say that in my opinion the natural, indeed the inevitable, consequence of writing such as I find in this book is the excitement of enmity or hatred or both between the followers of the Hindu and Mahomedan religions."

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47. In the case of Gopal Vinayak Godse v. [Union of India](#): AIR 1971 Bom. 56 , Chandrachud, J. (as he then was) delivering the judgment of the Special Bench emphasised that in order to bring a case within the purview of Section [153A](#), intention to promote enmity or hatred apart from what appeared from the writing itself was not a necessary ingredient. It was enough to show that the language of the writing was of a nature calculated to promote feelings of enmity and hatred for, a person must be presumed to intend the natural consequences of his act. The Special Bench of that court carefully went into the different passages of the book entitled "Gandhi Hatya animee" which had been proscribed by the Delhi Administration under Section 99A of the Code of Criminal Procedure, 1898 and was of the view that although the language of the book was somewhat heavy and involved, it was not of a nature which could inflame feelings of hatred and enmity between Hindus and Muslims and no criminality could attach to the author under Section [153A](#) of the Indian Penal Code.

48. In the case of Kedar Nath Singh v. [State of Bihar](#): AIR 1962 SC 955 , the Supreme Court had to consider if Section [124A](#) Indian Penal Code which prescribes punishment for the offence of sedition (sic). It was urged before the court that, the provision was violative of the fundamental right guaranteed to the citizens under Article [19\(1\)\(a\)](#) of the Constitution. Their Lordships held that the true scope and content of Article [19\(1\)\(a\)](#) can be determined only by reading it along with Clause (2) of the said Article which is in the nature of an exception to the general words used in Article [19\(1\)\(a\)](#). Sinha, C. J. speaking for the court held:

"Any law which is enacted in the interest of public order may be saved from constitutional invalidity. It is only when the words written or spoken etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of public order. So wilful the Section, in our opinion, strikes a correct balance between individual fundamental rights and the interest of public order."

11. I consider that it is not within the jurisdiction of this court to preempt investigation/trial of an offence registered in Gujarat in respect of the communities in Gujarat about offences allegedly committed under Sections 153-A and 153-B IPC by analyzing the article and observing whether the article fell within the mischief of Sections 153-A and 153-B IPC. If this is done then no offence under Sections 153-A and 153-B IPC can ever be tried by any Metropolitan Magistrate and every offence under Sections 153-A and 153-B IPC will have to be gone into by High Court or Supreme Court alone who will have to analyze the article right in the beginning and come to a conclusion whether the article fell within the mischief of Sections 153-A and 153-B IPC usurping the powers of Metropolitan Magistrate.

12. The petition has not force and is hereby dismissed.

SHIV NARAYAN DHINGRA
[JUDGE]

September 01, 2010
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