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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1006/2014

- 1] Abhijeet Bhalchandra Salvi,
age 48 yrs., occu.business,
- 2] Harjitkaur @ Babli Abhijeet Salvi,
age yrs., occu.housewife,

Both r/o Sonai Tq.Newasa
Dist.Ahmednagar.

...Petitioners...

Versus

- 1] The State of Maharashtra,
through Police Inspector,
Sonai Police Station,
Tq.Newada Dist.Ahmednagar.
- 2] Paulas Gendaji Vairagar,
age 67 yrs., occu.labour,
r/o Near Swami Samarth Mandir,
Darandale Galli, Sonai.
Tq.Newasa Dist.Ahmednagar.

...Respondents...

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Shri R.R. Karpe, Advocate for petitioners.
Shri M.M. Nerlikar, APP for respondent no.1.
Shri S.G. Magare, Advocate for respondent no.2.

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**CORAM: A.B. CHAUDHARI &
INDIRA K. JAIN, JJ.**

DATE: 08.09.2015

ORDER :

1] Heard learned counsel appearing for the parties. Rule. Rule made returnable forthwith and the petition is taken up at this stage for hearing with the consent of learned counsel for the parties.

2] Following are the prayer clauses in the petition :-

[B] By an order of this Hon'ble Court, the FIR bearing CR No.I-77/2014 registered with Sonai Police Station, Tqluka Newasa Dist.Ahmednagar for offence punishable u/sec.295(A) of I.P.C. and subsequent chargesheet, may kindly be quashed and set aside.

[C-1] By an order of this Hon'ble Court, pending hearing and final disposal of the present Criminal Writ Petition, the further proceedings bearing R.T.C. No.171/2014 pending before the Court of learned Judicial Magistrate, Ist Class-1, Newasa Dist.Ahmednagar, initiated pursuant to FIR bearing No.I-77/2014 registered with Sonai Police Station, Newasa Dist.Ahmednagar, may kindly be stayed."

3] In this matter, the complainant as well as the accused persons are admittedly Christians by faith.

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Perused the First Information Report as well as the statement, at page no.65 of the paper-book, recorded on 22.4.2014 by the Police during investigation and filed alongwith the charge-sheet in Marathi language, true translation of which is as under:

"I, Dadasaheb Shankar Vairagar, aged 32 yrs., occu.labour r/o Rajwada, Sonai Tq.Newasa (9975099663),

state on being personally asked that I alongwith my family reside at above address. Myself, my wife and two children reside alongwith me in the house. On behalf of Christian community as a preach, Paulas Gendaji Vairagar offers religious prayers in the SPG Mission Churh in village Sonai, Grampanchayat Property No.1182 known as Mission Church Bungalow. But since 2002, a case relating to said Mission is pending with Charity Commissioner, Ahmednagar, between Dr.Shri Bhalchandra Daulat Salvi & Manorama Daulat Salvi both r/o Sonai and Paulas Wairagar. Because of this pending case, he was not offering prayers. Only because no prayers are offered there and by taking advantage of this fact in order to accomplish vested interest and in spite of the matter relating to Church being subjudice, yesterday on 21.4.2014 in the evening at about 05-00, [1] Abhijeet Bhalchandra Salvi and [2] Babli Abhijeet Salvi, both r/o Sonai Tq.Newasa, now r/o

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Pipeline Road, Ahmednagar, by damaging said Church and demolishing wall of the Church have committed such act which may hurt religious feelings of Christian community.

At that time, myself and the persons belonging to my community namely Bhausahab Bapu Bhingardiwe, Sachin Raosaheb Vairagar so also other community members while attempting to tell to Abhijeet Salvi and his wife Babli Abhijeet Salvi that they should not demolish Church, which may hurt community feelings, they have told me as well as to the community members accompanying me that you may do whatever you may like and told that you have no concern here. Because of this, religious feelings of Christian community are hurt.

My above statement is read over to me and the same is correct as per my narration."

4] It is abundantly clear from the reading of the statement recorded during investigation so also the FIR, which we have seen, that the only allegation is that the accused persons had damaged the wall of the Church and then the colour is given about damage to the Church proper. We have perused the photographs placed on record at page nos.29 and 30 of the writ petition paper book. The photographs clearly show the extreme dilapidated condition of the old Church inasmuch as there is neither

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any roof nor there are doors or windows, which is supported by the spot panchanama at page no.63. Upon perusal of the photographs, we doubt the *bona-fides* of the complainant and we are really astonished as to why anybody would even need to touch any wall of the Church and, therefore, we find that except for giving colour that allegedly religious sentiments were hurt, there is no substance in the report lodged to the Police Station. The reason appears to be obvious namely the pendency of litigation before the Joint Charity Commissioner, Ahmednagar between the rival parties before us. No ingredient of Section 295-A of the Indian Penal Code is at all satisfied.

5] Of late, it is seen that such type of actions by the intemperate persons indulging in the shenanigans have been disturbing and polluting the peace, that too by abusing the process of criminal law by making such type of provocative and ugly reports. It is necessary to mention one more fact that the statements of Dadasaheb Shankar Vairagar, Bhausaheb Bapu Bhingardiwe and Sachin Raosaheb Vairagar were recorded on the same date i.e. 22.4.2014 and if writing thereof is carefully perused,

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only by changing the name of a person giving statement, everything written underneath is word by word same, by using the same letter type. It is not expected of the Police machinery to help such provocation, rather the same should be nipped in the bud. Unfortunately, we find that the Police Station Officer has also not taken appropriate and legitimate care by finding out that there was background of litigation between the rival parties and the Church was in dilapidated condition. Hence, before registering FIR, the Police Station Officer should have consulted his higher officers including the Superintendent of Police particularly when allegations about hurting of religious sentiments made are serious.

6] Be that as it may. We are fully convinced that the FIR as well as the charge-sheet is nothing but an abuse of process of law and we will be failing in our duty if we do not interfere in the light of parameters stated in the decision of the Apex Court in the case of *State of Haryana & others V/s Ch.Bhajan Lal & others* reported at **AIR 1992 SC 604.**

7] The up-shot of the above discussion is that the instant writ petition must succeed. Hence, Rule is made

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absolute in terms of prayer clause (B). Consequently, the proceedings bearing R.T.C. No.171/2014 pending before the Judicial Magistrate, First Class, Newasa Dist.Ahmednagar, arising out of FIR No.I-77/2014 would not survive and are dismissed. There shall be no order as to costs.

(INDIRA K. JAIN, J.)

(A.B. CHAUDHARI, J.)