

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH
Sr. No.: 254

Criminal Miscellaneous No.12226 of 2012 (O & M)
Date of Decision: *July 15, 2016*

Anand Parkash

..... PETITIONER

VERSUS

State of Haryana

..... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

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

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PRESENT: Mr. Anil Chawla, Advocate, for the petitioner.

Mr. S.S. Pannu, Deputy Advocate General, Hayrana.

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Jaspal Singh, J

Crl. Misc. No.24849 of 2012

Application is allowed as prayed for.

Crl. Misc. No.M-12226 of 2012

1. This is a petition preferred under Section 482 Cr.P.C. by Anand Parkash for quashing FIR No.52 dated February 12, 2007 under Section 153-A IPC registered at Police Station, Sector 5, Panchkula alongwith all consequent proceedings.

2. Instant case stands registered on the basis of letter written by District Magistrate, Panchkula to the Superintendent of Police unfolding that two books have been written by Anand Parkash and published by Nikalpa Prakashan 3314, Bank Street, Karol Bagh, New Delhi, published in Hindi and English, titled as “Mahatma Gandhi Bharat Key Liye Abhishap” containing pages 1 to 49

contains objectionable description and remarks, and further that it has been got published without registration of the book with Registrar of India, Government of India, New Delhi.

3. After investigation, report under Section 173(2) Cr.P.C. was presented against the petitioner in the court of learned jurisdictional Magistrate, in which, he is facing trial.

4. Mr. Anil Chawla, Advocate contends that petitioner has been falsely implicated in the instant case. In fact, while writing a book in question, he has gathered the information from various books authored by different writer and compiled the same in Hindi and English version just to express the scenario of Pakistan – India partition and discriminatory views and policies made by the political leaders consequently faced by Hindu community at times. The aforesaid book is based on the broad ideological perceptions, political ideology and their socio political actions including the policy of appeasement of a political community of Indian Society has been criticised in the book. The book in question deals with political ideology of Mahatma Gandhi and other leaders irrespective of any personal attack to anyone. The book in question does not promote enmity between different groups or create/convey any disharmony or feeling of hatred or ill-will between different groups. There is no mensrea on the part of author while

writing the book as the right to freedom to speech and expression of personal views is a Constitutional right.

5. Learned counsel for the petitioner further contends that contents of the book does not in any manner attract any action punishable under Section 153-A IPC. He urged that entire wording of the aforesaid book or its translated form has been taken from different books written by different authors which are already existing and published. Since, no action has been taken against the authors of various groups, from which, the book in question has been compiled, thus, no action can be taken against the petitioner under the criminal law.

6. Learned counsel further contends that Financial Commissioner and Principal Secretary, Home Department, Government of Haryana, have wrongly issued notification dated September 8, 2006 exercising powers under Section 95(1) Cr.P.C., forfeiting the copies of book titled “Mahatma Gandhi a curse for Bharat”. The said notification is illegal and does not speak about the government’s opinion or reason or objectionable portion of the book for forfeiture which comes within the purview of Section 153-A IPC and intends to promote feeling of enmity, hatred and ill will between different communities. Moreover, the words/phrases incorporated in the book in question have been extracted from other books which are still in circulation and have not been so far banned by the Government as yet. Thus, sanction order for prosecution as well as all consequential proceedings against the petitioner are bad in law as well as but abuse of process of law which are liable to be quashed, especially in circumstances that before declaring forfeiture of the material, no opinion has

been formed that contents of book are objectionable under Section 153-A IPC.

7. On the other hand, learned counsel for the State has argued with vehemence that mere fact that no action has been taken against the author(s) of various books from which petitioner has taken various wordings/ phrases which is a compilation of the book in question, does not *ipso facto* absolve the petitioner from his liability. Moreover, no person can be allowed to perpetuate the wrong committed by another person. Learned State counsel prayed for dismissal of the petition.

8. This court has given an anxious thought to the rival submissions made by learned counsel for the parties and has perused various documents available on file.

9. Undisputably, after completion of investigation, report under Section 173(2) Cr.P.C. has been presented against the petitioner and even charge has also been framed, though, subsequent to framing of charge, proceedings in this case have been stayed by this court vide order dated May 24, 2013. Since investigation is complete and challan has already been presented, instant petition is otherwise not maintainable. The various pleas taken in the instant petition are just a defence which can only be taken by the petitioner before trial court during the course of trial. It is a matter of evidence that various wordings/ phrases have been taken from the books written by different authors while writing the book in question, and can be gone through by the trial court. If a wrong has been committed by different author(s) of various books or that they have not been prosecuted, does not *ipso facto* means that petitioner stands absolved from his liability. Similarly, whether the contents incorporated in the book promote feeling of enmity,

hatred or ill will between different communities and constitute an offence under Section 153-A IPC, are to be considered by the trial court. However, this Court is of the considered view that on the face of the allegations, it cannot be said that no cognizable offence is made out.

10. Keeping in view the aforesaid discussion, this Court does not find any merit in the instant petition and the same is dismissed.

11. However, it is expected that trial court shall not be influenced or prejudiced by any observation made in this order. Further the petitioner shall be at liberty to take all the pleas which have been taken in this petition during trial, before the court concerned.

July 15, 2016

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(Jaspal Singh)
Judge