

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 887 of 2017

Ravindra Vitthalrao Tahakik,
Age - 46 years, Occupation - Service,
R/o Jai Bhavai Nagar, Gut No.1,
Aurangabad.

... PETITIONER
(Orig. Accused)

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
CIDCO Police Station,
Aurangabad.

2. Vishal Kaduba Pakhare,
Age : 34 years, Occu.:
Social Work, R/o : C-57,
Old Police Colony, N-7,
CIDCO, Aurangabad.

...RESPONDENTS

Mr.V.S.Kadam, Advocate for the petitioner.
Mr.A.A.Jagatkar, APP for respondent No.1/State.
Mr.S.P.Dhobale, Advocate for respondent No.2.

CORAM : PRAKASH D. NAIK, J.

DATE OF RESERVING THE JUDGMENT : 04th DECEMBER, 2017.
DATE OF PRONOUNCING THE JUDGMENT : 22nd DECEMBER, 2017.

JUDGMENT :

By order dated 20.11.2017, the parties were put to notice that the petition will be heard finally at the stage of admission. In view of that the parties were heard for final disposal of this petition.

2] The petitioner has taken exception to the order passed by the Additional Sessions Judge-6, Aurangabad on 6th April, 2017 below Exhibit-7 in Sessions Case No. 115 of 2016.

3] The petitioner is the original accused in Sessions Case No. 115 of 2016 pending before the Court of Additional Sessions Judge-6, Aurangabad. The First Information Report (F.I.R.No.I-374 of 2015) was registered with CIDCO Police Station, Aurangabad, under Section 295A of Indian Penal Code (for short " the IPC), Section 7(c) of the Protection of Civil Rights Act, 1955 and Sections 3(1)(x) and 3(r)(u),(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)

Act, 1989. The F.I.R. was registered on 23-07-2015. The investigation was completed and the charge-sheet was filed before the Court of Special Judge, Aurangabad.

4] The prosecution case is that on 4th July 2015 news appeared in the daily Newspaper 'Dainik Lokpatra' in which it was stated that there was dispute between two families. The contents of the article was affecting sentiments of Ambedkar Samaj. The contents of the said news item was affecting and intended to outrage religious feelings by insulting their beliefs. It is alleged that the editor exaggerated the behaviour of husband of victim. The article indicated as to who will teach follower of Dr. Babasaheb. The victim had grievance against the woman who is allegedly in relationship with her husband, who comes from family of respected person. The F.I.R. was lodged on 23-07-2015 and the offence, as aforesaid, was registered. The police completed investigation and filed a report under Section 173 of Cr.P.C.

5] The petitioner's contention is that he is a journalist and working as an Executive Editor of daily newspaper 'Lokpatra' published at Nanded. The said newspaper has been published since 1991, whereas news articles are published in the column "Thet Bola". The grievances of the persons, who are victims in society, are being reflected in the articles written in the said column. Persons who are aggrieved in life and who are not getting support of their family, are submitting their grievances in writing and the newspaper was printing the same in the said column. In June-2015, Smt. Ashwini Kadam, who is married to Dr. Prakash Kadam lodged her grievance with the petitioner. She had stated that she is married to Dr. Prakash Kadam in 2003. He is practising at Aurangabad. They were residing at Aurangabad and out of the said wedlock, a daughter was born. She had further stated that there are matrimonial disputes between Smt. Ashwini Kadam and her husband and she has filed complaint in that regard. She also stated

that Dr. Kadam is in relationship with another lady. She was assaulted by her husband and driven her out of house alongwith her daughter. She had filed a complaint with the Commissioner of Police, Aurangabad. In respect to her complaint, the F.I.R. was registered as C.R. No. I-87 of 2015 on 30th June, 2015 with Begumpura Police Station, Aurangabad under Sections 498-A, 323 and 504 of the IPC. Smt. Ashwini Kadam narrated and addressed a letter in her own hand writing to the petitioner who is an Executive Editor of daily newspaper "Lokpatra", mentioning the above facts and requested him to publish the said grievance in the column "Thet Bola". The copy of the letter has been annexed to the petition. The petitioner accordingly published the grievance of Smt. Ashwini Kadam as per interview given by her without expressing any personal opinion in the newspaper " Dainik Lokpatra". There was mixed response from various parts of the society. In view of the grievances expressed by some people, the petitioner published an apology on 6th July, 2015 at prominent place on the front page of the

newspaper, in relation to article dated 4th July, 2015. Respondent No. 2 further filed a complaint on 23-07-2015 with CIDCO Police Station alleging that the news item was published with a view to humiliate the persons belonging to Scheduled Castes and Dr. Babasaheb Ambedkar, who is the author of Constitution. It was further alleged that there was private dispute between two families and still with a view to defame the person belonging to the backward classes, the news item was published. Initially the police did not take cognizance about the complaint filed by respondent No.2. Hence, he filed a petition before this Court. On the basis of the statement of learned Assistant Public Prosecutor that the F.I.R. has been registered, The Writ Petition No. 900 of 2015 was disposed of vide order dated 28th July, 2015.

6] Smt. Ashwini Kadam forwarded an application to the Commissioner of Police on 25-07-2015 stating that the news published in "Dainik Lokpatra" under the Column "Thet bola" on 4th July, 2015, contains her own thoughts

and feelings which are printed as per her interview.

7] The petitioner preferred an application before the Sessions Court, Aurangabad for anticipatory bail which was allowed on 28-07-2015. The petitioner states that the Chief Editor of the said newspaper filed Criminal Writ Petition No. 1503 of 2015 before the Division Bench of this Court for quashing F.I.R. bearing C.R. No. I-374 of 2015. The High Court allowed the said petition and the F.I.R. was quashed. The Division Bench of this Court has observed that at the time of incident, Section 3 of the Act was not amended and the Ordinance of 2014 had lapsed and Section 3 (r),(v) was not part of the statute on the date of incident. The copy of the order dated 25th February, 2016, has been annexed to the petition. However, the petitioner's application for discharge preferred before the Sessions Court in Sessions Case No. 115 of 2016 was rejected by the Sessions Judge on 6th April, 2017.

8] The learned counsel for the petitioner advanced the following submissions :-

(a) The petitioner is journalist and working as an Executive Editor of daily newspaper. The disputed article was published under the column "Thet bola" on the basis of the application tendered by the aggrieved person. The article was relating to the sufferings of Smt. Ashwini Kadam at the hands of her husband who was allegedly in relationship with another woman ;

(b) The petitioner has not expressed his personal opinion and it was re-production of the grievance of the aggrieved person. The article was not intended to harm the sentiments of people belonging to Scheduled Castes. Section 7(a) of the Provision of the Civil Rights as well as provisions of the Atrocities Act are not applicable. The evidence under Section 295A of the IPC is also not made out ;

(c) There was no attempt on the part of the petitioner to insult or intimidate with intention to humiliate the complainant or any other person. The

column in the said newspaper was run to ventilate the grievances or sufferings of persons in society ;

(d) The High Court had quashed the proceedings against co-accused on the ground that the provisions of the Atrocities Act, which were invoked in the complaint, cannot be applied on account of lapse of Ordinance. The said Judgment is applicable to the case of the petitioner ;

(e) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Ordinance 2014 came to be published on 4th March, 2014 and it was in existence upto six months i.e. till 3rd September, 2014. The said Ordinance has not become part of statute and, therefore, in view of Article 123 of Constitution Act, it has lapsed. Although Ordinance had lapsed, the charge-sheet was filed in the case.

(f) The Trial Court did not consider Article 123 of the Constitution and without making out any case under Section 295A of the IPC, rejected the discharge application. Respondent No. 2 has no locus standi to file

such complaint. The Trial Court has erroneously rejected the application for discharge without assigning proper reasons ;

(g) The Trial Court ought not to have taken cognizance of the complaint for an offence under Section 295A of the IPC, without previous sanction of the Central Government or State Government ;

(h) The Trial Court has rejected the application on the basis of the observation that the High Court, while quashing the proceedings against co-accused, had observed that the offence may be made out under Section 153A of the IPC. The case may continue against the accused under Section 153A of the IPC. The Court, therefore, rejected the application.

9] Learned APP and the learned counsel for respondent No. 2 controverted the submissions of the petitioner. It is submitted that the charge-sheet makes out a prima-facie case against the petitioner. The contents of the news item published in the newspaper

makes out an offence against the petitioner. No case for discharge was made out. The grounds raised by the petitioner can be considered at the time of the trial. The Assistant Commissioner of Police filed an affidavit opposing the prayers in the petition. After the publication of article, various reactions came from various parts of society as the complaint was lodged. The dispute between Smt. Ashwini Kadam and her husband was a private dispute, and in spite of that to humiliate the person belonging to the backward class/community, the news item was published. The police conducted investigation, recorded statements of various witnesses, collected documents and filed charge-sheet on 13-10-2015. At the stage of framing of charge, the Trial Court is not expected to carry out any inquiry in detail. Prima-facie case is made out against the petitioner and the trial can be proceeded. The petitioner had written a letter to Assistant Commissioner of Police accepting the responsibility of the news item. It is, therefore, submitted that the petition may be dismissed.

10] The petitioner is a journalist and Executive Editor of daily newspaper 'Lokpatra' published at Nanded. The article had appeared in the column 'Thet bola'. The said column re-produces the versions received as articles, in respect to the persons who are undergoing sufferings in society. There was matrimonial dispute between Smt. Ashwini Kadam and her husband and a child was born out of the wedlock. Smt. Ashwini Kadam had a grievance that her husband is having illicit relationship with another lady. The complaint is filed by respondent No. 2 alleging that the article hurts the sentiments and feelings of the Scheduled Castes, which constitute the offence, as alleged in the F.I.R. lodged by him.

11) On perusal of the order passed by the Division Bench of this Court, it appears that the co-accused had filed said petition challenging the charge-sheet in the present proceedings. The petitioner therein was the owner of the newspaper in which the offending news item

was published. The Court observed that at the time of incident Section 3 of the said Act did not contain clauses (r), (u) and (v) of Section 3. The said clauses were included as a part of Section 3 by Ordinance of 2014. The Ordinance has lapsed on 4-7-2015. On the day of incident, the quoted clauses (r), (u) and (v) of Section 3 were not part of the said Section. The Court has, however, noted that now the Ordinance has become law vide amendment on 2016, the amendment would not apply retrospectively. Thus, none of the clauses could have been utilised against the accused. It was also observed that the contents of the article would not amount to offence punishable under Section 3(1) of the Act or under Section 7(1)(d) or (c) of the Protection of Civil Rights Act, 1955. The Court, therefore, allowed the petition and charge-sheet against the said accused was set aside. However, the Court made a passing reference to the fact that news item might amount to offence punishable under section 153A of the IPC and case may continue against other accused for said offence.

12] The learned counsel for the petitioner submits that no charge-sheet is filed for the offence punishable under Section 153A of the IPC. The Trial Court has rejected the application on the basis of the observations made by the High Court in the aforesaid order. The Trial Court has not stated as to how Section 153A of the IPC is applicable. The learned counsel for the petitioner submitted that even for taking cognizance under Section 153A of the IPC, the previous sanction is required from the Central Government or State Government in accordance with Section 196 of Cr.P.C. There is no such sanction to prosecute the petitioner either for the offence punishable under Section 295A or 153A of the IPC.

13] Clause (r) of Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989 provides "whoever intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view".

Clause (u) states that " whoever, by words either written or spoken or by signs or by visible representation or otherwise promotes or attempts to promote feelings of enmity, hatred or ill – will against members of the Scheduled Castes or the Scheduled Tribes" and,

Clause (v) refers to the offence "by words either written or spoken or by any other means disrespects any late person held in high esteem by members of the Scheduled Castes or the Scheduled Tribes".

As reflected in the order passed by the Division Bench, on the day of the incident, said provision was not in existence and ought not to have been applied. The said order has not been challenged by the prosecution. The observations made in the said order, are not disputed in any manner in the affidavit in reply filed by the respondents. Section 196 of the Cr.P.C. categorically states that no Court shall take cognizance of any offence punishable under Sections 153A of the IPC and 295A of the

IPC or a criminal conspiracy to commit such offence or abatement to commit such offence, without previous sanction of the Central Government or the State Government. In the present case, it is not pointed out by the prosecution that a sanction as contemplated under Section 196 of the Cr.P.C. is sought. In any case the charge-sheet was not filed under Section 153A of the IPC. In the circumstances, the proceedings against the petitioner are required to be quashed and set aside. Hence, I pass the following order :

O R D E R

1. Criminal Writ Petition No. 887 of 2017 is allowed.
2. The impugned order dated 6th April, 2017 passed by Additional Sessions Judge-6, Aurangabad in Sessions Case No. 115 of 2016 is quashed and set aside.
3. The petitioner is discharged from the proceedings in Sessions Case No. 115 of 2016 pending before the Court of Additional Sessions Judge-6, Aurangabad.
4. The petition is disposed of.

(Prakash D. Naik, J.)