

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO. 1063 OF 2009
CRIMINAL WRIT PETITION NO. 1121 OF 2009
CRIMINAL WRIT PETITION NO. 195 OF 2010**

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CRIMINAL WRIT PETITION NO. 1063 OF 2009

1. Chandrashekar s/o. Govind Behere .. Petitioners
Age. 62 years, Occ. Business,
R/o. Behere Chowk,
Matoshri Radha Sankul,
Mehta Road, Nandurbar,
Dist. Nandurbar.
2. Kaushubh s/o. Chandrashekar Behere
Age. 42 years, Occ. Business,
R/o. Behere Chowk,
Matoshri Radha Sankul,
Mehta Road, Nandurbar,
Dist. Nandurbar.

Versus

1. State of Maharashtra .. Respondents
2. Police Inspector
Nandurbar City Police Station,
Nandurbar.

**WITH
CRIMINAL WRIT PETITION NO. 1121 OF 2009**

1. Chandrashekar s/o. Govind Behere .. Petitioners
Age. 62 years, Occ. Business,
R/o. Behere Chowk,
Matoshri Radha Sankul,
Mehta Road, Nandurbar,
Dist. Nandurbar.

2. Kaushubh s/o. Chandrashekar Behere
Age. 42 years, Occ. Business,
R/o. Behere Chowk,
Matoshri Radha Sankul,
Mehta Road, Nandurbar,
Dist. Nandurbar.

Versus

1. State of Maharashtra .. Respondents
2. Police Inspector
Nandurbar City Police Station,
Nandurbar.

**WITH
CRIMINAL WRIT PETITION NO. 195 OF 2009**

- Chandrashekar s/o. Govind Behere .. Petitioner
Age. 62 years, Occ. Business,
R/o. Behere Chowk,
Matoshri Radha Sankul,
Mehta Road, Nandurbar,
Dist. Nandurbar.

Versus

1. State of Maharashtra .. Respondents
2. Police Inspector
Nandurbar City Police Station,
Nandurbar.

Mr.S.D. Hiwrekar, Advocate for the petitioners.
Mr.V.S. Badakh, A.P.P. for respondents/State.

**CORAM : T.V.NALAWADE &
S.M.GAVHANE, JJ.
DATED : 06.09.2017**

J U D G M E N T [PER : T.V. NALAWADE,J.] :-

1. During arguments, learned Counsel for petitioner – Chandrashekar s/o. Govind Behere from Writ Petition No.195 of 2010 submitted that the case itself is disposed of and so the proceeding has become infructuous. Due to this statement, Writ Petition No.195 of 2010 needs to be disposed of as infructuous.

2. Writ Petition No.1063 of 2009 is filed by Chandrashekar Behere and his son Kaushubh Behere for relief of quashing of F.I.R. No.94 of 2006 registered with Nandurbar Police Station, Nandurbar for offence punishable under section 153 (a) (b) (c) of the Indian Penal Code. Writ Petition No.1121 of 2009 is also filed by the same petitioners and it is filed for relief of quashing of F.I.R. No.47 of 2007 registered with Nandurbar Police Station, Nandurbar for offence punishable under section 153 (a) (b) (c) of the Indian Penal Code. Both the sides are heard.

3. The petitioners are Owners and Editors of news paper "Tapi Kath". Learned Counsel for the petitioners makes statement in Writ Petition No.1121 of 2009 that the petitioners had simply republished the material which was already published in other newspaper of one institution Sanatan Prabhat and so it cannot be said that they have committed aforesaid offences. In that case, the matter published by them in their daily news-paper "Tapi Kath" dated 23.02.2007 is involved. In Writ Petition No.1063 of 2009, the matter published by the petitioners in the same news-paper dated 06.07.2006 is involved. In view of the contentions made by the learned Counsel for the petitioners in Writ Petition No.1121 of 2009 of aforesaid nature, this Court deems it necessary to quote the relevant portions of the publication involved in Writ Petition No.1063 of 2009. From that matter, the mind-set of the petitioners and their intention can be gathered.

4. In the news-paper dated 06.07.2006, the matter

was published by the petitioners of following nature:-

(i) It has become universal principal that all the terrorists belong to Muslim community. The persons who had attacked Akshardham temple were also Muslims.

(ii) After conviction of the accused involved in the matter of Akshardham temple, Muslims of Ahmedabad city had observed "Bundh" and so it can be said that as per the Muslims of Ahmedabad, the persons who had attacked temples were Jihadis, fighting for their religion. Those Muslims must be feeling that the persons who were fighting against Kafirs were Jihadis.

(iii) As Muslims from Ahmedabad had protested conviction in the aforesaid manner, there is possibility that the Muslims may take law in hand as in some instances it was noticed that Muslims had taken law into their hands.

(iv) About two months prior to the date of publication, some construction of Dargah was pulled down as it was illegal and on that occasion also chaos was created by Muslims of that area and on that basis it can be said that Muslims are protecting the criminals.

(v) About 500 Muslims had attacked team of police officers, who had gone to arrest the criminals and that shows that they were not abiding by law.

(vi) Due to aforesaid instance, time has come to think seriously as to whether the persons who are taking name of religion, doing aforesaid acts, can be allowed to act against nation. They are trying to convert the world into one of only Muslims and that is their aim. Such situation was being created in India.

(vii) Muslims are not faithful to the country in which they are born and they believe that land where there is rule of Islam is their

land and this thought was of Dr. Ambedkar. Due to conduct of Muslims, it can be said that there is truth in this thought.

(viii) Conduct of Muslims of not hoisting flag of this Country and rejoicing when Pakistan wins sport events also speaks about their feelings. Unfortunately, Nehru and Gandhi – Congressmen had not considered this nature of Muslims and persons who are successors of these persons cannot understand these things. If that approach continues, one day Muslims will become a danger to the Indians and they will take country into their hand as by nature they are never faithful.

(ix) As a conclusion, the residents of this Country need to consider the aforesaid real nature of Muslims and only after that their interest will be protected.

5. In the news-paper dated 23.02.2007, the matter

of following nature was published by the petitioners.

(i) Till the time Islam is there on earth, till the time there is Quran and there is Hadis, the Indians cannot have peace of mind. Even the world cannot have peace. This thought was expressed by the Head of Hindu Parishad Shri Satyapal Malani.

(ii) Malani had said that if Islam was religion then what was irreligious (It was sarcastic comment). Criticizing Islam Malani said that the customs of rites etc. were based on Quran but it was not culture and it was abnormality / aberration. In Quran it is mentioned that if one dies for religion, he gets heaven, where there are 72 Apsaras and he can enjoy liquor. Due to this mention in Quran, Jihadi Muslims fight for religion, and they are ready to give life to enjoy the things, which they can get in heaven.

(iii) Gandhiji was wrong and he was telling foolish things that all religions are equal. The saying of Gandhiji like "Ishwar Allah Tere Nam" is totally incorrect. This kind of criticism was made by Malani in his speech.

(iv) While talking about Christian religion, Malani said that Christians are cheats in saying that due to Yeshu, one can get cure from all diseases and by saying so they are converting Hindus into Christian religion. If Yeshu cannot save several thousands of person dying in America due to Aids, why such false things Christians are saying.

(v) Malani asked question during his speech as to what kind of philosophy was there in Quran and Bible.

(iv) During speech Milind Ekbote called upon Marathas to remember those Marathas who had sacrificed their lives while fighting with Aurangzeb. As Gulams of Aurangzeb and persons

remembering Aurangzeb are still there, Marathas need to fight against them.

. The learned Counsel for the petitioners submitted that petitioners published only thoughts of Malani, which were already published by other paper.

6. The first article of the petitioners was published on 06.07.2006 and aforesaid contents of the first article show that by publishing aforesaid matter, they have tried to create rift between persons of aforesaid two religions. In view of their belief and intention, not much can be made from the contention made in Writ Petition No.1121 of 2009 that they have only reproduced the article published by Satan Prabhat. It can be said that in continuity of what they started during 2006, they published article in 2007. This act is against the unity of nation as it is an attempt to make Hindus fight against Muslims and Christians.

7. In the F.I.R. given by Police Officers, it is

specifically contended that the intention was to create rift between the persons of two religions and contents were provoking the persons from Hindu community to act against persons of Muslim community. The Police Officer had expressed apprehension that due to such article, there will be disturbance of public peace and danger was created to law and order situation.

8. Learned Counsel for the petitioners submitted that the apprehended instances of rioting did not take place after publishing aforesaid articles and so apprehension was baseless. He placed reliance on the observations made by the Apex Court in the case reported in (1995) 3 SCC 214 (Balwant Singh & Anr. Vs. State of Punjab). In that case the Apex Court was considering the decision of conviction and sentence given to the accused for offence punishable under section 124-A and 153-A of the Indian Penal Code. In the present matter the F.I.R. itself is challenged and so the observations made by the Apex Court are of no help in the present matter.

Similarly, in the case reported in (1997) 7 SCC 431 (Bilal Ahmed Kaloo Vs. State of A.P.), the decision of the conviction was under challenge. These cases are of no help to the petitioners in the present matter.

9. Learned Counsel for the petitioners submitted one more point, the point of limitation. He submitted that punishment provided for aforesaid offences is three years imprisonment and so it can be said that now the Magistrate cannot take cognizance of the matter. This submission is not at all acceptable. In Writ Petition No.1063 of 2009, there is no specific order of stay. In Writ Petition No.1121 of 2009, there is order dated 29.09.2010 of interim relief like stay. It can be said that due to pendency of the proceeding and stay order the investigation is not made. This circumstance can be certainly considered by the learned J.M.F.C., as provided in section 473 of the Cr.P.C. The petitioners cannot be allowed to make misuse of the pendency of the matters and also of the interim relief granted by this Court. In

such circumstances, the learned J.M.F.C. has power to use provisions of section 473 of Cr.P.C. and extend the period and so, on this Count, no relief can be granted to the petitioners. Such instances are increasing day by day. We are a secular country and such conduct cannot be taken lightly. The persons like petitioners need to realize that the Courts will not take lenient view in such matter and they will have to face process of law, if they commit offences, which affect the unity and secular structure of country.

10. In the result, Criminal Writ Petition No. 1063 of 2009 and Criminal Writ Petition No.1121 of 2009 are dismissed. Third petition bearing Criminal Writ Petition No.195 of 2010 is disposed of as infructuous. Rule stands discharged. Interim relief, if any, granted earlier stands vacated.

[S.M.GAVHANE, J.]

[T.V.NALAWADE, J.]