

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4746 OF 2017

Rajaram Shankar Patwardhan ...Applicant.

Versus

The State of Maharashtra & Anr. ...Respondents.

Mr. Paranjape Prakash S. and Menezes Joslyn A.,
Advocate for Applicant.
Mr. S. B. Pulkundwar, Addl. Public Prosecutor, for
Respondent No. 1 / State.
Mr. C. V. Thombre, Advocate for Respondent No. 2.

**CORAM : PRASANNA B. VARALE &
SMT.VIBHA KANKANWADI. JJ.**

DATE : 20-04-2018.

ORAL JUDGMENT : [Per Prasanna B. Varale, J.]

Heard Mr. Paranjape learned Counsel
appearing for the applicant, Mr. Thombre learned
Counsel appearing for the respondent No. 2 and
learned Addl. Public Prosecutor for respondent No.
1 / State.

02. Rule. Rule made returnable forthwith. By

consent, heard finally.

03. By the present application, the applicant is before this Court seeking quashment of first information report vide Crime No. 0287 of 2017 lodged by Mukundwadi Police Station for offences punishable under Sections 153A, 294, 295, 354 read with Section 34 of Indian Penal Code.

04. Mr. Paranjape in his detail submission firstly invited our attention to the copy of the report which is placed on record at Exhibit "A", page No. 18A, along with the application. On perusal of the document, it reveals that the respondent No. 2 approached the Police Station and submitted that she is resident of Aurangabad and is running a private study centre by name and style "Adarsh Abhyasika Kendra". She is also associated with an organisation and works as District President of the said organisation. Then it refers to an article published in the Newspaper Divya Marathi in its Sunday Edition under the title Rasik Edition. Then it is stated in the complaint that article is titled as "देवगुरु बृहस्पतीचे

वर्तन धर्ममान्य''. It is then stated that the article is leading to raising a suspicion over a class of society. It is then stated that the article refers to the woman of particular society as making certain indecent remarks to the woman of a particular community. Then it is stated that because of the said article life of the woman has become miserable and it is difficult for any lady of the community to move around in the society freely. Then it is stated that by publishing such article, an attempt is made to mislead the society and create dis-harmony in two sections of the society and it is a designed attempt to lead two sections of the society fight against each other. Then it is stated that the section of a particular community feels apprehended and unsafe because of the article. Then it concludes with request to the authority to take action against the writer, the Executive Editor of the daily and the daily itself. Though normally it may not be necessary for us to refer all the contents in detail, we have referred to all the contents so as to appreciate the submissions advanced and the issue raised in the matter.

05. Mr. Paranjape learned Counsel appearing for the petitioner vehemently submitted that the article is referring to particular part of Mahabharata and it also refers to the source. Mr. Paranjape submitted that the reference is to certain incidents of Mahabharat and then it refers to the source as Mahabharat, Adiparv Adhyay 105. Mr. Paranjape then submitted that the article also refers to a fact that those incidents stated in the article also find place in other research work published by an institution namely Bhandarkar Institute. Then Mr. Paranjape invited our attention to the concluding part of the article. Mr. Paranjape then submitted that on the basis of the complaint, offences attracted against the applicant are 153A, 294, 295, 354 read with Section 34 of Indian Penal Code. Mr. Paranjape then submitted that for applying provision of Section 153A pre-requisite is of a sanction to be obtained. Then he submitted that even taking the report as it is it would not attract the said provision. Mr. Paranjape submitted that an article refers to the incident of Mahabharata. It is not the work of the writer, but the writer of the article refers to the part of the

epic Mahabharata while referring to a particular era. Then he submitted that attraction of provisions namely Section 294 and 295 of Indian Penal Code is nothing but the act of non-application of mind by the authorities. He submitted that bare perusal of these provisions would show that there is nothing in the report to say that it relates to Section 294 which is under the head of obscene acts and songs nor it relates to Section 295 which is under the title injuring or defiling place of worship with intent to insult the religion of any class. Mr. Paranjape then submitted that an attraction of Section 354 of Indian Penal Code is clearly an act of absurdity. Mr. Paranjape submits that in the complaint, it is stated that the complainant / informant resides at Aurangabad. The accused who is writer of the article resides at Mumbai and in that situation one fails to understand how Section 354 would be attracted against the applicant. Thus, it was submitted by Mr. Paranjape that even taking the report as it is without adding any material to it or subtracting anything from the report, the report utterly falls short to make out a case for attracting any provision

of law as alleged in the report. The launching of criminal prosecution and its continuation would be nothing but an abuse of process of law. The learned Counsel then submitted that this Court by exercising its powers under Section 482 of Code of Criminal Procedure can prevent such an abuse of process of law. Mr. Paranjape then submitted that as a factual position, the article was published in the supplement dated 19th March 2017 daily Divya Marathi and on 2nd of April 2017 in another supplement of Divya Marathi i.e. Rasik, article countering the views of the applicant is published. Mr. Paranjape submitted that even the title of the said article is that article of the applicant is based on lack of research or study. He then submitted that in the counter article the writer of the article states that even prior to the article such attempt was made to mislead a common reader. It will not be out of place to refer to the title of this counter article. It is “अभिरुचिहीन आणि अविवेकी लेखन”. Thus, Mr. Paranjape prayed for allowing the application.

06. Learned Addl. Public Prosecutor made available the material collected by investigation agency.

07. Mr. Thombre learned Counsel appearing for respondent No. 2 vehemently submitted that the article is an attempt to lowering down status of particular section of society, more particularly womanhood. He then submitted that while filing the application, the applicant had not placed the copy of the article alongwith copy of report. Then he submitted that assuming that the writer of the article enjoys the freedom of expression including expressing his view by a written material in the form of an article, if an article written by the applicant results in dis-harmony or leading to feeling of hatred in two sections, lodgment of report to prevent such act is clearly sustainable. Mr. Thombre then submitted that there may not be material to clamp the offences under Sections 294, 295 and 354 of Indian Penal Code, but offence under Section 153A is clearly made out.

08. On the rival submissions of the learned counsel appearing for the parties, we have gone through the material placed on record. It may not be necessary for us to reiterate the contents of the complaint wherein reference is made to the contents of article. It would be useful for us to refer to certain facts. The article refers to those incidents which are in Mahabharata. The incidents specifically referred to are taken from a source material. It is not in dispute, that the epics like Ramayana and Mahabharata are studied by various scholars. There is innumerable research work relating to Ramayana and Mahabharata. It is also not in dispute that certain research work includes some criticism on the customs prevalent referred to in the work.

09. Mahabharata the epic tale lends itself to an infinite number of interpretations. Even these interpretations are from the point of view of characters in the tale or philosophy or religion. Some consider the epic as a mere story of mythological heroes and Gods or historical or semi-historical accounts of prince, princess and their

wars.

10. Now, in so far as the article in question is concerned, we find considerable merit in the submission of Mr. Paranjape. As stated above, it is all about those incidents referred to in Mahabharata. The reference is made to source material. It is pertinent to note that the writer of the article even refers to other research work published by Bhandarkar Institute. What is important is, comment of the writer concluding the article. The comment of the writer reads thus :

“त्या वेळी पती - पत्नी, स्त्री -पुरुष ही कौटुंबिक नाती काटेकोर नव्हती. दीर्घमताने सर्वप्रथम स्त्रियांसाठी अनुल्लंघनीय मर्यादा घातल्या. म्हणजे पुरुष मोकाटच राहिले!”

The comment of the writer of the article is, for a considerable long period the concept of the matrimonial relationship as like as husband and wife was not known and even the other family relations were not in a typical form or there was no such

guided relationship prevalent at that point of time. By a common conscious certain rules of behaviour were framed for only women. The writer then states that thus, it was a conditional behaviour of the women and the male was spared from the conditional behaviour. The author then wanted to submit that the male in the society was enjoying freedom and was free to act as per his will and wish. Thus, if the comment of the writer of the article is considered, we are of the opinion that this comment is a fair criticism. If a writer criticizes that the situation prevalent at that point of time was only for restricted behaviour of women and the male in the society were enjoying freedom and this was not a fair approach. Then we find that this comment can be treated as a progressive thought because the writer wanted a fair and equal treatment to both the sections of the society, namely, the women and the men. Thus, if the comment of the writer of the article is considered we are of the opinion that this comment is a fair criticism. If a writer criticizes that the prevalent situation was only rules for female and male were enjoying free status without restrictions or

condition, this could not be termed to be a fair act. We are aware of our limits dealing in the matters wherein the quashment of first information report is sought for. But, here in the present matter before us, the issue is also about a fair comment of a writer.

11. It is also not in dispute that the thought expressed by the writer was immediately countered by another writer. In our opinion, this was a proper way to counter a thought by another thought. It is also accepted way of a progressive society i.e. to counter one thought if it is lacking in study by another thought which is based on a better research. It will not be out of place for us to refer an often quoted principle in Sanskrit read as “वादे वादे जायते तत्त्व बोधा”. It can be loosely translated as if one submission is countered by another submission, it helps to understand the principle in a better way and there cannot be any criticism for accepting such a method.

12. In so far as attracting the provisions, Mr. Paranjape was absolutely justified in submitting that attracting Section 153-A was a serious error committed. It may not be out of place to refer to the observations of the Hon'ble Apex Court while dealing with this Section in the Judgment **Balwant Singh and Anr. V/s State of Punjab, reported in AIR 1995 Supreme Court 1785**. Hon'ble Apex Court observed thus :

"In so far as the findings under Section 153A of Indian Penal Code is concerned it provides for punishment for promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever or brings about disharmony or feeling of hatred or ill-will between different religious, racial, language or regional groups or castes or communities. It is only where the written or spoken words have the tendency or intention of creating public disorder or

disturbance of law and order or affect public tranquility, that the law needs to step in, to prevent such an activity. The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153A, I. P. C. and the prosecution has to prove the existence of *mens rea* in order to succeed."

As the matter relates to epic of Mahabharata and as the article refers to its source, it will not be out of place to refer the work under title "Sampoorna Mahabharata", Pro. Bhalba Kelkar. It also refers to as Adiparv Adhyay 1st and then there is also reference to Adhyay 105th. Thus, what reveals is, this source material referred to by the writer of the article is not his own creation. If it is not the own creation of the writer if it is a reference to a source material then Mr. Paranjape the learned Counsel for the applicant was wholly justified in submitting that lodgment of the report and for an unsustainable material attracting criminal provisions and asking the applicant to face a criminal prosecution would

nothing but an abuse of process of law. Considering all these facts we are of the opinion that the counsel for the applicant had made out a case for grant of relief as prayed in the application.

13. On the backdrop of these facts, we are unable to accept the submission of Mr. Thombre that writer of the article mis-used the freedom of expression.

14. Mr. Thombre learned Counsel made a submission that the quashment of the report may be restricted to the applicant only and the prosecution may go on in respect of other accused. The copy of the report placed on record show that it refers to two accused persons. It is very interesting to note that column reads as “माहिती असलेल्या आरोपीचे संपूर्ण नांव व पत्ता”. In the said coloumn two accused are referred, No. 1 is the present applicant, No. 2 is referred as Executive Editor of the daily. As stated above if there is only a vague reference to applicant No. 2 of his occupation as a Executive Editor of daily and no

other details are referred to in the report such as his name, etc. Then lodgment of report against a unknown identity and continuation of the proceeding would be nothing but an absurd proceeding and resultantly, the report will have to be quashed. We see no reason to continue the proceedings against the other accused whose identity even is not known to anybody. Resultantly, the report will have to be quashed not only in respect of the applicant, but in respect of other accused also.

In the result, following order;

ORDER

- (i) Criminal Application is allowed.
- (ii) The FIR bearing C. R. No. 287 of 2017, lodged at Mukundwadi Police Station for offences punishable under Sections 153A, 294, 295, 354 read with Section 34 of Indian Penal Code in

respect of the applicant as
well, other accused, is quashed
and set aside.

(iii) Rule made absolute in the above
terms.

[SMT. VIBHA KANKANWADI]
JUDGE

[PRASANNA B. VARALE]
JUDGE

ggd/-.