

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.3643 OF 2017

Mr. Shamsherkhan Vazirkhan Pathan	... Petitioner
vs.	
The State of Maharashtra	... Respondent

Mr. Shirish Gupte, Senior Counsel I/b Mr. S.R. Phanse for the Petitioner.
Mr. Rajan Salvi, APP for the Respondent/State.

CORAM : **A.A.SAYED &
RAVINDRA V. GHUGE, JJ.**

DATE : 27 APRIL 2018.

ORDER:

1 This Petition filed under section 482 of the Code of Criminal Procedure, 1973 for quashing of the First Information Report (FIR).

2 It is the case of the Petitioner that he is a Police Officer who retired on 30 April 2012 as the Assistant Commissioner of Police. He was awarded Mahatma Gandhi Award for maintaining peace in the year 2009. After retirement he launched his own party named 'Awami Vikas Party'. He seeks to quash FIR No.278 of 2017 registered against him on 3 July 2017 with Nagpada Police Station for the offence punishable under section 295-A of the Indian Penal Code.

3 The FIR is registered at the instance of one Smt. Asha Parmesh Mamedi, worker of the Shivsena party. In the FIR it is stated that on 2

July 2017 in the evening at 8.30 p.m. she received a phone call from the local leader of Shivsena party namely, Yeshwant Jadhav who told her that the Petitioner had posted one post regarding comparison of Hindu God Hanuman and Firaun on his Facebook account and he had asked her to file a complaint with Nagpada Police Station after discussing with one Asif Ajij Sardar and after opening link, she saw that the Petitioner had made a comparison between Humayun and Hindu God Hanuman and also made another comparison between Tabrej and Firaun. Tabrej and Humayun are brothers and comparison between Firaun and God Hanuman was seen in the said post. Islam followers called Firaun as devil. Therefore, after reading that post, in her view this post was objectionable and will create stress between the Hindu and Muslim community and there is a possibility of riots.

4 We have heard the learned Senior Counsel for the Petitioner and the learned APP. The learned Senior Counsel submitted that the First Informant is not a necessary party to the present Petition inasmuch as the Complaint has been filed by her only at the behest of the local leader of Shivsena party namely, Yeshwant Jadhav and she cannot be said to be an aggrieved party and that in any event the FIR is only based on a Facebook post which alone needs to be examined by the Court. Learned Senior Counsel for the Petitioner submitted that the FIR does not disclose the essential ingredients of the offence punishable under section 295-A of the Indian Penal Code.

5 We perused the statement of the first informant on the basis of which the impugned First Information Report was registered. We have also perused the post of the Petitioner on his Facebook account. The post speaks about one Tabrez and Humayun who are the brothers. In the said post it is stated - “.... ... Likewise # Humayun Shaikh used to play Hanuman Character in dramas as he looks like Hanuman. He used to call himself as Hanuman, a strong character. Hence, these names are pat family names in their family.”.

6 Section 295-A of the Indian Penal Code reads as follows:

“295-A. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.—Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

7 The Supreme Court in the case of **State of Haryana vs. Bhajanlal** in paragraph 108 has held thus:

“108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of

the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-

cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

8 The First Information Report was recorded on the basis of the Complaint by the first informant and registered as C.R. No.278 of 2017. Perusal of the First Information Report shows that the Complainant Smt. Asha Mamedi was instructed by Mr. Yeshwant Jadhav of Shivsena party to file the Complaint. In our view, the First Information Report does not disclose the essential ingredients of offence punishable under section 295-A of the Indian Penal Code. There is

nothing in the post of the Facebook account of the Petitioner which would cause insult to any religion or religious feelings and it cannot be said that the same was done deliberately or malicious intention to outrage the religious feelings of particular class of citizens. By no stretch of imagination can it be said that the Facebook post would outrage religious feelings of the particular class of citizens.

9 We are of the view that the allegations made in the First Information Report, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case or an offence against the Petitioner. The allegations made in the FIR/Complaint are absurd and it cannot be concluded that there is sufficient ground for proceeding against the Petitioner. In our view, the First Information Report is merely an abuse of process of law.

10 For the reasons stated above, this is a fit case to exercise the powers conferred under section 482 of the Criminal Procedure Code, 1973 for quashing the FIR. Accordingly, we pass the following order:

ORDER

i) Rule made absolute in terms of prayer clause (a) which reads as follows:

“a) That the Hon'ble Court may be pleased to quash and set aside the First Information Report registered by Nagpada Police Station vide C.R.

No.278 of 2017 for alleged offence under section
295-A of the Indian Penal Code, 1860;”

(Ravindra V. Ghuge, J.)

(A.A. Sayed, J.)

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