

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.232 of 2017

Arising Out of PS. Case No.-2685 Year-2015 Thana- VAISALI COMPLAINT CASE
District- Vaishali

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Asauddin Owaisi Son of Late Sultan Salahuddin Owaisi, R/o 34 , Ashoka Road, P.S.- Connaught Place, New Delhi- 110001.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Rajeev Kumar Sharma, Son of Sri Umashankar Sharma, Civil Court, Hajipur, P.S.- Hajipur Sadar, District- Vaishali.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sandeep Kumar, Adv. Mr. Rohit Raj, Adv. Mr. Shradha Banka, Adv.
For the Respondent/s	:	Mr.Sri Ashok Kumar Singh 1
For O.P. No. 2	:	Mr. Rajesh Ranjan, Adv.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

5 01-08-2019 Heard learned counsel for the petitioner, learned counsel for opposite party no. 2 as well as learned counsel appearing on behalf of State.

2. This revision application has been filed for setting aside the order dated 11.07.2016 passed by learned Sub Divisional Judicial Magistrate, Hajipur, Vaishali in Complaint Case No. 2685 of 2015, by which, processes have been issued after enquiry against the petitioner under Section 153A of the Indian Penal Code.

3. Case in short is that opposite party no. 2 filed a complaint petition against the petitioner in the court of learned Chief



Judicial Magistrate, Vaishali, Hajipur stating therein that on 29.07.2015 from 8.00 P.M. to 9.00 P.M. and on 30.07.2015 from 9.30 P.M. to 10.00 P.M., he was watching Zee News Channel and Aaj Tak News Channel and saw that the petitioner was making statement on the death sentence given by the Hon'ble Apex Court to the accused – Yakub Menon in Mumbai Serial Blast 1993 case. In the said statement, the accused – petitioner stated that the persons, who assassinated Beant Singh, the Chief Minister of Punjab have been given mercy and the persons, who assassinated Rajeev Gandhi have also been given the life imprisonment and the persons, who have caused riot in Gujarat have also not been convicted but the Supreme Court sentenced Yakub Menon to death, which seems to be not proper and thus it is alleged by the opposite party no. 2 that the petitioner by his said act has tried to promote enmity between the two religious groups on grounds of religion, race, place of birth, residence etc. and performing acts prejudicial to maintenance of harmony under Section 153A of the Indian Penal Code.

4. Learned Sub Divisional Judicial Magistrate, Hajipur, Vaishali after perusal of materials available on record has issued processes against the petitioner finding a *prima facie* case against the petitioner.



5. The above order has been challenged by the petitioner in the instant revision application and it has been submitted that the order issuing processes against the petitioner has been passed by the learned Sub Divisional Judicial Magistrate without proper application of mind, as the complaint petition does not constitute any offence under Section 153A of the Indian Penal Code as the same does not show that the petitioner has tried to promote enmity between the two religious groups or to disrupt communal harmony or to create hatred between two religious groups. It has also been submitted that petitioner is three times parliamentarian and the present case has been filed by the opposite party no. 2 as an attempt to malign his image and what has been expressed by the petitioner, is merely an opinion of the petitioner on the decision of Hon'ble Apex Court against hanging to Yakub Menon and everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers. Learned counsel for the petitioner has also placed reliance on a judgment of Hon'ble Apex Court in the case of **Manzar Sayeed Khan vs. State of Maharashtra and Another** reported in (2007) 5 Supreme Court Cases 1. Further



submission of learned counsel for the petitioner is that now the opposite party no. 2 – complainant has also died.

6. Mr. Rajesh Ranjan, learned counsel appearing on behalf of opposite party no. 2 has admitted that opposite party no. 2 has died. However, his submission is that merely because complainant died the proceeding cannot abate rather it may continue on behalf of the legal heirs of the complainant.

7. From perusal of the record, it appears that no Vakalatnama has been filed by learned counsel Mr. Rajesh Ranjan to show as to on whose behalf his appearing. However, without entering into the question, whether he is entitled to appear in this case, this court considers his submissions. It has been submitted by him that the contents of the statement of the petitioner made in the news channels clearly disclosed that the same has been made in order to promote enmity between the two religious groups on grounds of religion, race, place of birth, residence etc. and as such the said act of the petitioner is prejudicial to maintenance of harmony in the society and he has made a comment against the judgment of Hon'ble Apex Court and, therefore, a case under Section 153A is made out against the petitioner. Further submission is that the judgment in the case of **Manzar Sayeed Khan** (supra), as relied upon by



learned counsel for the petitioner, is not applicable in the facts of the present case. Further submission is that under revisional jurisdiction, this court has only to see the legality or propriety of the order and not more than that.

8. No doubt, in his revisional jurisdiction, this Court has to see the legality or propriety as well as error apparent on the record but at the same time, the court has to see whether *prima facie* case is made out against the petitioner in order to continue the proceeding against him, otherwise, it is just an abuse of process of Court, to which court cannot shut its eyes and at the same time, it has inherent powers under Section 482 of the Code of Criminal Procedure to prevent the abuse of process of the Court.

9. Before entering into the merit of the case, I would like to place the provisions of Section 153A Cr.P.C.

“[153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—

(1) *Whoever—*

(a) *by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other*



ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, 2[or] 2[(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,] shall be punished with imprisonment which may extend to three years, or with fine, or with both. Offence committed in place of worship, etc.—(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]



10. The Hon'ble Apex Court has considered the application of Section 153A of the Indian Penal Code in the judgment in the case of **Manzar Sayeed Khan** (supra) in para – 16 to 18, relied upon by the learned counsel for the petitioner, which reads as follows:

" 16. Section 153A of IPC, as extracted hereinabove, covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities or acts prejudicial to the maintenance of harmony or is likely to disturb the public tranquility. The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153A of IPC and the prosecution has to prove prima facie the existence of mens rea on the part of the accused. The intention has to be judged primarily by the language of the book and the circumstances in which the book was written and published. The matter complained of within the ambit of Section 153A must be read as a whole. One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning.

17. In Ramesh Chotalal Dalal v. Union of India & Others [AIR 1988 SC 775], this Court held that TV serial "Tamas" did not depict communal tension and violence and the provisions of



Section 153AA of IPC would not apply to it. It was also not prejudicial to the national integration falling under Section 153B of IPC. Approving the observations of Vivian Bose, J. in Bhagvati Charan Shukla v. Provincial Government [AIR 1947 Nagpur 1], the Court observed that the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. It is the standard of ordinary reasonable man or as they say in English Law, "the man on the top of a clapham omnibus". (Emphasis supplied).

18. Again in Bilal Ahmed Kaloo v. State of A.P. [(1997) 7 SCC 431], it is held that the common feature in both the Sections, viz., Sections 153 A and 505 (2), being promotion of feeling of enmity, hatred or ill-will "between different" religious or racial or linguistic or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved. Further, it was observed that merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two Section".

11. In the background of the law settled by the Hon'ble Apex Court in the above judgment, it is clear that for application of Section 153A of the Indian Penal Code, there should be ingredients to show that the statement has been made with a view to promote enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or



communities and as such, there must be presence of two groups or communities in the speech under consideration in order to incite the feeling of enmity against one group or community.

12. What appears in the present case that the petitioner has made statement in the news channel, which shows that he was not satisfied with the Judgment of Hon'ble Apex Court and tried to show that in other cases like the case of Beant Singh and Rajeev Gandhi, the accused persons were given life imprisonment but in the case of Yakub Menon, he has been sentenced to hanging but in the said statement, there is no mentioning of other group or community and there is also nothing to show that he tried to promote hatred and ill will between the two groups or communities. The gist of the statement also does not show that he has made such statement with an intention to promote the feeling of enmity and hatred between two groups and intention to cause disorder or incite the people of two different communities against each other in order to incite violence, which is sine qua non of the offence under [Section 153A](#) of IPC. No doubt, the petitioner made a remark against the judgment of Hon'ble Supreme Court for that it may be a subject matter for consideration as to whether the said statement amounts to contempt of the Hon'ble Supreme Court



or not. It is also noted here that the petitioner being a politician of India has a right to speak and express his views in public without disturbing the communal harmony. Learned Judicial Magistrate without considering the above facts and also without considering the fact that as to whether the materials available constitute an offence under Section 153A of Indian Penal code issued process against the petitioner on enquiry, which clearly appears to be a non application of mind and an abuse of process of court, allowing the proceeding to continue without considering the fact whether it constitutes an offence against the petitioner or not.

13. Accordingly, this revision application is allowed. Order dated 11.07.2016 passed by learned Sub Divisional Judicial Magistrate, Hajipur, Vaishali in Complaint Case No. 2685 of 2015 is set aside.

(Vinod Kumar Sinha, J)

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