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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 2nd July, 2019

+ W.P.(C) 5749/2019

BANKIM K. KULSHRESTHA Petitioner

Through: Petitioner in person

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Anurag Ahluwalia, CGSC
with Mr. Piyush Gaur, GP for
R-1

Mr. Sidhant Kumar Marvah,
Adv. for R-2/ECI

Mr. Premsagar Pal for
Mr. Rishikesh Kumar, ASC for
R-4

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR JUSTICE C. HARI SHANKAR

J U D G M E N T

D.N.PATEL, CHIEF JUSTICE (ORAL)

1. The present writ petition has been filed by the petitioner with the following prayers :

*(a) Issue any appropriate writ(s), order(s), direction(s)
against :*

*1. Swami Sakshi Maharaj (Respondent No.6) – A
sitting member of parliament belonging to Bharatiya*

Janata Party (BJP) from Parliamentary Constituency Unnao, U.P., and renominated by BJP to contest the election from same seat in ongoing 2019 elections – for making patently sedition comment that “after 2019 elections, there wont be any in 2024”- published and shown in print and electronic media while he owes his membership of Parliament to his oath to Constitution of India and while election happens to be the only constitutional process under democracy to install a legitimate government.

2. Bhartiya Janata Party (BJP) – A political party recognized as per law by election commission of India for renominating Swami Sakshi Maharaj (Respondent No.6) as mentioned above implying concurrence with his statements – thus becoming willing accomplice in an attack on our Constitution.

3. Election Commission of India – competent authority under Constitution to regulate all aspects of election process as per mandate of the Constitution and representation of people act for not acting against Swami Sakshi Maharaj and BJP whose public utterances and conduct in relation to the sanctity of electoral democracy have been incompatible with the requirements under Constitution.

(b) Pass such any further order(s) direction (s) as this Hon'ble Court may deem just fit and proper in the

given facts and circumstances of the present case and to uphold the majesty of Constitution and the majesty of Constitutional Democracy.”

2. Having heard the petitioner in person at length as well as looking to the averments made in this writ petition, we see no reason to impute seditious intent to the statement made by Respondent No.6 for the following reasons.

3. The law on the offence of sedition contained in Section 124A of the Indian Penal Code, 1860 (IPC) is well settled by a catena of decisions of the Apex Court. In ***Kedar Nath Singh v. State of Bihar*** AIR 1962 SC 955, the Apex Court faced with the question of Constitutional validity of Section 124A on the ground that it imposes restriction on freedom of speech and expression, held :

“24.In other words, any written or spoken words, etc. which have implicit in them the idea of subverting Government by violent means, which are compendiously included in the term “revolution”, have been made penal by the section in question. But the section has taken care to indicate clearly that strong words used to express disapprobation of the measures of Government with a view to their improvement or alteration by lawful means would not come within the section. Similarly, comments, however strongly worded, expressing disapprobation of actions

of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal. In other words, disloyalty to Government established by law is not the same thing as commenting in strong terms upon the measures or acts of Government, or its agencies, so as to ameliorate the condition of the people or to secure the cancellation or alteration of those acts or measures by lawful means, that is to say, without exciting those feelings of enmity and disloyalty which imply excitement to public disorder or the use of violence.”

(Emphasis supplied)

Thus the basic ingredient for an offence under Section 124A is to bring or attempt to bring hatred or contempt or to excite or attempt to excite disaffection towards the nation, which is wanting in the present case.

4. The Bombay High Court as far back as in 1933, in ***Emperor v. Maniben Liladhar Kara*** AIR 1933 Bom.65 held :

“In estimating the effect of a speech, the Court should look at the speech as a whole, and not pay under regard to any particular sentence or phrase; and looking at the speech as a whole, the Court has to gather from the language used what the intention of the speaker was. It is not open to a speaker to say that

he or she did not intend his or her language to bear the meaning which it naturally does bear.”

The statement complained of by way of the present writ petition, “after 2019 Elections, there won’t be any in 2024” has been extracted from news reports of the comments made by Respondent No.6. Our own research shows that there are numerous reported versions of the statement complained of. One such version is, “I am an ascetic and I speak whatever comes to my mind and I am feeling that after these elections there will be no elections in 2024. There is only this election now and this is being fought on the name of the country.” In view of the exposition of law reproduced above, the statement complained of, looked at holistically, by any stretch of imagination does not fall within the mischief of Section 124A.

5. Democracy and free elections are basic structure of our Constitution and indestructible by a cavalier and fallacious interpretation of the Constitution expressed by Respondent No.6 in exercise of his freedom of speech and expression.

6. The petitioner in this writ petition even though has assiduously expounded on democracy, has miserably failed to plead any reasonable basis much less justification to infer that the prevalent political climate at the time the statement was made coupled with the context in which it was made was such that the same could be interpreted by any reasonable man to be intended to incite violence or

disturb law and order and create disorder. The ingredients of commission of offence of sedition may be present if the action alleged incites or tends to incite violence in a reasonably normal person and the reaction of a hyper-sensitive individual would not be sufficient to attribute culpability to the maker of the statement complained of.

7. Hence we see no reason to entertain this writ petition and the same is therefore dismissed.

CHIEF JUSTICE

C. HARI SHANKAR, J.

JULY 02, 2019/kr