Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.Petn. No. 9 of 2020

Date of Decision: 10.11.2020

Smti. Patricia Mukhim Vs. State of Meghalaya & 4 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K. Paul, Adv.
For the Respondent(s) : Mr. N.D. Chullai, AAG. with
Ms. R. Colney, GA. for R 1 & 2.
Ms. P.L. Khongsngi, Adv. for R 3-5.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

1. This matter has been taken up via video conferencing.

2. The genesis of this matter is an incident which occurred on 03.07.2020 where a group of boys while playing basketball at Lawsohtun, Shillong at around 12:30 PM or so, about 20-25 unidentified youths attacked them resulting in injuries sustained by some of the victims. In this connection, the police registered a criminal case No. 71(7)2020 under Sections 326/307/506/34 IPC. In this regard, according to the Press Release issued by the Asstt. Inspector General of Police (A) on 04.07.2020, altogether seven suspects were picked up for interrogation and the statements of the victims were also recorded. Investigation is in progress.

3. The petitioner who is a journalist said to be of national and international repute responded to the said incident by posting her comments

in a social media platform, that is, 'Facebook' on 04.07.2020, echoing her stance against such brutal attacks meted out to non-tribals in the State and the ordeal faced by them since the past several decades. In the said post, a query was also made to the respondent No. 3/Dorbar Shnong on their obligatory role of keeping vigil at the place of occurrence and their required assistance for apprehending the culprits. The petitioner went on to aver that the statements made are general in nature and the same was made in good faith and in public interest without any criminal intent or *mens-rea*.

4. On 06.07.2020, the respondent No. 4 & 5 on behalf of respondent No. 3 (Dorbar Shnong) filed a complaint against the petitioner before the Superintendent of Police, East Khasi Hills District, Shillong alleging that the said Facebook post of the petitioner has firstly, incited communal tension between the tribal and the non-tribal community and secondly, has defamed not only the respondent No. 3 (Dorbar Shnong Lawsohtun) but the entire village for which offence under Section 153A, 505 and 499 IPC has been made out.

5. Thereafter, the police have registered a criminal case being Laban P.S Case No. 72(7)2020 under Section 153A/500/505C IPC against the petitioner and in furtherance thereof, have also issued a notice under Section 41 A Cr.P.C on 09.07.2020 requiring the petitioner to appear before the I/O within seven days of receipt of the Notice.

6. The petitioner being highly aggrieved by the impugned complaint dated 06.07.2020 filed by the private respondents herein, have approached this Court with an application under Section 482 Cr.P.C with a prayer to quash and set aside the said impugned complaint dated 06.07.2020.

7. All the parties involved herein having entered appearance, this matter was taken up for hearing.

8. Leading the argument on behalf of the petitioner, Mr. K. Paul learned counsel has started his submission by seeking to place the principle

of law and the proceedings thereto to convince this Court as to why Section 482 Cr.P.C cannot be resorted to as far as the case of the petitioner is concerned.

9. The first point raised by the learned counsel is with regard to the provision of Section 500 IPC which prescribes the punishment for defamation. However, the definition of word "*defamation*" can be found in Section 499 IPC.

10. Mr. Paul has submitted that in cases of defamation under Section 499 and 500 IPC, the procedure is for the complainant to file a complaint under Section 200 Cr.P.C for which a Magistrate taking cognizance of an offence on complaint will initiate the process by firstly, recording the statement of the complainant. It is not contemplated that the police will register the complaint and treat the matter as a police case. The case of ***Subramanian Swamy v. Union of India, Ministry of Law & Ors***: ***(2016) 7 SCC 221*** was cited in this regard and the specific paragraph at 207 was stressed upon by the learned counsel for the petitioner.

11. Coming to Section 505(c) IPC, Mr. Paul has referred to the First Schedule (Classification of Offences), of the Code of Criminal Procedure and has again led this Court to the portion under chapter XXII, submitting that for the offence under Section 505 IPC, the offence is non-cognizable and as such, the police could not have registered an FIR in this regard. The case of State of ***Haryana v. Bhajan Lal and Others: 1992 Supp (1) SCC 335*** paragraph 102 (4) was cited in this regard.

12. Lastly, on the offence under Section 153A IPC, Mr. Paul has submitted that a look at the said Facebook post at Annexure-2 of the petition which shows that the petitioner has only shown concern on the handling of the case in question by the police and the Dorbar Shnong and has only expressed the hope that this will not be another case lost in the police files but must be dealt with as per the law of the land. Therefore, one cannot take out portions from the whole passage and try to make out a case under

Section 153A IPC. For an offence under Section 153A IPC, the intention has to be borne out by the records and in this instant case, there is nothing to show that the petitioner has any *mens rea,* rather the petitioner has published the same in good faith and in public interest. The case of ***Manzar Sayeed Khan v. State of Maharashtra & Ors: (2007) 5 SCC 1*** at paragraphs 16, 17 & 18 was cited by the learned counsel in this regard. Again, the case of ***Arnab Ranjan Goswami v. State of Maharashtra & Ors: (Crl. Writ Petition LD-VC No. 37/2020)*** was also referred to by the learned counsel submitting that in the order pronounced on 30.06.2020, at paragraph 47.1, the Bombay High Court has observed that, for a matter charged as being within the mischief of Section 153A, it must be read as a whole and one cannot rely on stray, isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and then connect them by meticulous process of inferential reasoning.

13. Finally, learned counsel for the petitioner has submitted that the impugned FIR at Annexure-3 of the petition does not constitute a cognizable offence and is an absolute abuse of the process of law. Criminal law cannot be set on motion for settling personal grudges and wreaking vengeance and as such, this Court can resort to the provision of Section 482 Cr.P.C to quash the proceedings before the Court below which is hereby prayed for.

14. Ms. P.L. Khongsngi, learned counsel for the respondent No. 3-5 has submitted that the offending Facebook post, posted by the petitioner carries a communal colour and is not a free, frank and honest reporting, inasmuch as, an incident which occurred on the 3rd of July 2020 involving two groups of basketball players, was depicted as a clash between two communities, that is, tribal versus non-tribal. Infact, the petitioner by dragging the long forgotten incidents which took place in the year 1979 and equating the same with the said incident of 03.07.2020 has done so only to paint the same in a communal colour.

15. It is also submitted that the petitioner has laid the blame on the

Dorbar Shnong (Respondent No. 3) by ridiculing them that they did nothing about the said incident has thus incriminated the Dorbar Shnong by insinuating that it is in connivance with the criminals which has lowered the long standing reputation and dignity of the Dorbar Shnong and this has accordingly attracted the offence of defamation for which the filing of the complaint is justified. To this extent, the case of ***Subramanian Swamy (supra)*** at paragraph 98 and 144 was cited by the learned counsel in support of her case.

16. It is submitted that this is not a fit case for quashing of the proceedings against the petitioner at the level of the Trial Court and the same be rejected accordingly.

17. Mr. N.D. Chullai learned AAG assisted by Ms. R. Colney, learned GA on behalf of the State respondent No. 1 & 2 has submitted that the provision of Sections 500 and 505 are indeed non-cognizable, however Section 153A is cognizable and as such, going by the provision of Section 155, sub-section 4 of the Cr.P.C., where it has been provided that where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.

18. The learned AAG has also submitted that the said Facebook post (Annexure-2) exhibits highly communal contents looking into the tone and tenor of the same and accordingly, a case under Section 153A is clearly made out and there is nothing wrong with the investigation carried out by the police. The case of ***Bhajan Lal (supra)*** at paragraph 102 was also relied upon by the learned AAG in this regard.

19. I have considered the submission and contention of the respective learned counsels for the parties and in my considered opinion, what is first required to be established is whether any case is made out under Section 153A IPC following which the issue in dispute can be decided accordingly.

20. Section 153A IPC reads as follows:

> ***"[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 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 tranquility, (or)*
>
> *(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 cast 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*".

21. I agree with the submission of the learned counsel for the petitioner that the said offending Facebook post (Annexure-2 of this petition) has to be looked into in its entirety and not to select isolated portions to suit any of the parties' interest for establishing the presence of *mens rea*.

22. At this juncture it would also be worthwhile to reproduce the offending Facebook post (Annexure-2) herein as under: -

> ***"Patricia Mukhim***
> ***4 July at 04:07 Facebook for Android***
>
> *Conrad Sangma CM Meghalaya, what happened yesterday at Lawsohtun where some non-tribal youth playing Basketball*

were assaulted with lethal weapons and are now in hospital, is unacceptable in a state with a Government and a functional police force. The attackers, allegedly tribal boys with masks on and should be immediately booked. This continued attack on non-tribals in Meghalaya whose ancestors have lived here for decades, some having come here since the British period is reprehensible to say the least. The fact that such attackers and trouble mongers since 1979 have never been arrested and if arrested never penalised according to law suggests that Meghalaya has been a failed state for a long time now.

We request your Government and the police force under the present DGP, R. Chandranathan, to take this matter with the seriousness it deserves. Show us the public that we have a police force we can look up to.

And what about the Dorbar Shnong of the area? Don't they have their eyes and ears to the ground? Don't they know the criminal elements in their jurisdiction? Should they not lead the charge and identify those murderous elements? This is the time to rise above community interests, caste and creed and call out for justice.

We hope that this will not be yet another case lost in the police files. We want action. Criminal elements have no community. They must be dealt with as per the law of the land.

Why should our non-tribal brethren continue to live in perpetual fear in their own state? Those born and brought up here have as much right to call Meghalaya their state as the indigenous tribal does. Period."

23. On a cursory observation of the said Facebook post, what is noticed is that the author has referred to the incident which took place at Lawsohtun at the Basketball Court. There is a distinct portrayal of an alleged skirmish between two groups, one, group allegedly consisting of tribal youths and the other group consisting of non-tribal youths.

24. The author further stated that this continued attack on non-tribals in Meghalaya, whose attackers and trouble mongers have never been arrested since 1979 has resulted in Meghalaya being a failed State for a long time. Finally, the author has gone on to assuage the feelings of the non-tribals by posing a question as to why they should live in perpetual fear in their own

State when they have a right to call Meghalaya their state as the indigenous tribal does.

25. Again, on going through the said Facebook post and as observed above, what can be deduced is that there is an attempt to make a comparison between tribals and non-tribals vis-à-vis their rights and security and the alleged tipping of the balance in favour of one community over the other. This, in the opinion of this Court would fall on the mischief of Section 153 A (a) IPC as it apparently seeks to promote disharmony or feelings of enmity, hatred or ill-will between two communities.

26. The Hon'ble Supreme Court in the case of ***Babu Rao Patel v. State (Delhi Administration): AIR 1980 SC 763*** at paragraph 3 has observed that: *"...It is seen that S.153 A (1) (a) is not confined to the promotion of feelings of enmity etc. on grounds of religion only as argued by Shri Sen, but takes in promotion of such feelings on other grounds as well such as race, place of birth, residence, language, caste or community...."*

27. At paragraph 4 of the same, the Hon'ble Supreme Court while analyzing the article in question, which is the subject matter of the dispute before the Court concerning the remarks about Hindus and Muslims, the Supreme Court has observed *"... In our opinion there cannot be the slightest doubt that the article is not even thinly veiled as a political thesis; it is an undisguised attempt to promote feelings of enmity, hatred and ill-will between the Hindu and the Muslim communities. It is designed to fan the sparks of ill-will and hatred on ground of community..."* Again, at para 6 the Court went on to say *"...There is no question that the article is created to rouse feelings of enmity, hatred and ill-will between Muslims and Hindus."* Yet again, at para 7 it has been observed as *"... we are convinced that both the articles do promote feelings of enmity, hatred and ill-will between the Hindu and Muslim communities on grounds of community and this cannot be done in the guise of political thesis or historical truth...."*

28. Drawing a parallel from the above to the case in hand, it can be said

that the said Facebook post has sought to create a divide to the cordial relationship between the tribal and non-tribal living in the State of Meghalaya even alluding to the role of the State machinery as being bias in this regard.

29. Taking into account the authorities cited by the parties in support of their respective case, what can be established herein is that prima facie, it appears that a case under Section 153A IPC is made out against the petitioner herein.

30. At this juncture, this Court will not go into the merits of the provision of Sections 500 and 505 IPC, however suffice it to say that under the facts and circumstances of this case, the said provisions read conjointly with Section 153A IPC would attract the provision of Section 155(4) Cr.P.C.

31. In the event, the investigating agency is required to be given a free hand to investigate the matter and to come to its own conclusion in due process of law.

32. Consequently, I find no merit in the instant petition for exercising powers under Section 482 Cr.P.C. This petition is accordingly hereby rejected.

33. Case disposed of. No cost.

Judge

Meghalaya
10.11.2020
"D. Nary, PS"