

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1109 OF 2020

Shaikh Naeem Shaikh Lal,  
Age 51 yrs., Occ. Business,  
R/o Paltan, Hingoli,  
Tq. & Dist. Hingoli.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra,  
Through P.S.I., City Police Station,  
Hingoli, Tq. & Dist. Hingoli.
- 2 Ravindra Baliram Jadhav,  
Age 57 yrs., Occ. Service,  
R/o Gat No.12, SRPF Camp,  
Hingoli, Tq. & Dist. Hingoli.

... Respondents

...

Mr. P.S. Agrawal, Advocate for the petitioner  
Mr. M.M. Nerlikar, APP for respondent Nos.1 and 2

...

**CORAM : SMT. VIBHA KANKANWADI AND  
RAJESH S. PATIL, JJ.**

**RESERVED ON : 05<sup>th</sup> AUGUST, 2022.**

**PRONOUNCED ON : 14<sup>th</sup> OCTOBER, 2022**

**JUDGMENT :** (PER : SMT. VIBHA KANKANWADI, J.)

1 Present Writ Petition has been filed invoking the constitutional powers of this Court under Article 226 of the Constitution of India to quash the complaint bearing First Information Report No.261/2020 dated 07.05.2020 registered with Hingoli City Police Station, for the offence punishable under Section 188, 500 and 505(1) of the Indian Penal Code, 1860, under Section 3 of the Police (Incitement to Disaffection) Act, 1922 read with Section 54 of the Disaster Management Act, 2005.

2 Heard learned Advocate Mr. P.S. Agrawal for the petitioner and learned APP Mr. M.M. Nerlikar for respondent Nos.1 and 2.

3 It has been vehemently submitted on behalf of the petitioner that the First Information Report has been lodged by respondent No.2 with ulterior motive and appears to be as a revenge for publishing the inconveniences those were suffered by Covid-19 affected SRPF personnel at Hingoli. The petitioner is a Chairman of Virat National Lokmanch Council, Hingoli and when he came to know that certain SRPF persons who had come from another place i.e. Malegaon and Mumbai after performing their duty and then found to be affected by Covid-19 were lodged in Covid Quarantine Centre at Hingoli, Basmath, Kalamnuri, Aundha, Sengaon and SRPF camp.

About 4-5 persons were accommodated in one room and there was no separate facility of toilets and bathrooms for the said patients. The figure reached to 46 and, therefore, the petitioner had raised the said point in social media. It was alleged against the petitioner-accused that without verifying the facts he has published false news. Now, the investigation is over and charge sheet has been filed. Even prior to the lodging of First Information Report explanation was asked for the petitioner and he has supplied the said explanation as to on the basis of which he had made complaint to Hon'ble the Chief Minister, Hon'ble Deputy Chief Minister and other officials. It could be seen that the news was already in the daily newspaper, wife of a SRPF personnel had made complaint to Hon'ble the Chief Minister. Even one Sunil Nagare, who himself is SRPF person had made appeal for giving good facilities. If the petitioner had relied on all these documents, then, how the petitioner can be said to have defamed the police authorities, is a question. Now, some SRPF persons have stated that they were put in good situation and they were following standard protocols, though they were affected by Corona. Making complaint about one of the departments to the Government itself does not attract the provisions of Police (Incitement to Disaffection) Act, 1922. Further, there is no question of any disobedience of the order promulgated by the State Government or public officer, because the evidence does not say that the petitioner had gone to the place where these affected

persons were lodged. Defamation of the police authorities was not in question or *mens rea* of the petitioner, because he wanted that better facilities should be given to SRPF personnel, who had returned by doing tough job of controlling the spread of the virus at Malegaon and Mumbai. When the First Information Report has been filed with mala fide intention and the entire evidence collected does not show that the offence has been committed under which the charge sheet has been filed, then, this would be the fit case where the powers of this Court under Section 482 of the Code of Criminal Procedure required to be exercised.

4           Per contra, the learned APP strongly opposed the application and submitted that the actions taken by the petitioner would clearly show that his intention was to defame the police authorities as well as the administration which was already under pressure in pandemic situation. Various facilities were made available to the general public when the affected persons were supposed to be isolated. The entire administration of each district has put endless efforts in maintaining the quarantine centres and how to bring the figure of the affected persons down and to make the general public aware about the disease and they should follow the Standard Operating Procedures. Under these circumstances, when the SRPF personnel returned from their duty and were put in quarantine centre as some of them got affected, taking

into consideration their number maximum facilities were made available. The statements of various SRPF personnel recorded by the Investigating Officer would show that even at the time of bringing them from Malegaon or Mumbai they were made to sit one person on one seat, they were provided with sanitizer and after their arrival they were kept at quarantine barracks. Since they all had come they were divided into equal number and four persons were put in one room, however, they themselves were supposed to follow the Covid protocol. They all have stated that the facility given to them was good. No doubt, only one bathroom and WC was provided, but it was the only thing which could have been provided under the given circumstances. Acquisition of certain other building and giving them lavish bungalows or spacious rooms with separate WC and bathroom could not have been possible in those situations. But that does not mean that it ought to have been then made public and some sympathy should have been collected by the petitioner. All that has been done by the petitioner with an intention to defame and to have disaffect amongst the SRPF persons against the Government administration at Hingoli and, therefore, prima facie case is made out. It would be for the Trial Court to consider as to whether charge can be framed, but certainly this is not a fit case where by exercising the inherent powers of this Court under Section 482 of the Code of Criminal Procedure the First Information Report as well as entire proceedings should

be quashed and set aside. Learned APP prayed for the dismissal of the writ petition.

5            Since the entire prosecution story is narrated in the above said paragraphs it is not reproduced. It is not in dispute that applicant is connected to one social institution by name Virat National Lokmanch Council, Hingoli. According to the First Information Report and the prosecution story the petitioner was the first person who had published such article, which is stated to be against the administration in general in respect of the alleged difficulties faced by the State Reserve Police unit after some of its members had become Corona positive. It can be certainly said that the Government agencies, especially the police, the persons from Health Department and also the Revenue Department had done excellent job in the difficult times of the pandemic situation. They had the challenge that the disease should not spread more and there should be minimal as the casualties. Definitely, those persons would have been under stress and tension and in such situation if some such persons would unnecessarily point fingers, then, the moral of the authorities goes down. In a given situation taking into consideration all odds the administration in a particular district or place was required to place the patients in a safe situation. It appears that the unit of State Reserve Police which was on duty at Mumbai and Malegaon,

Dist. Nashik had returned to Hingoli after performing duty in Covid situation, however, some of them had become Corona positive. They were kept at Quarantine Centre, Hingoli. It was tried to be projected that no proper facilities were given and the protocol suggested by ICMR was not followed. The petitioner had forwarded a complaint application as such to the then Hon'ble Chief Minister of Maharashtra informing him about the situation and it also appears that he had made his application/letter viral on social media. Definitely, the petitioner was duty bound to check the real situation. He could not have entered the quarantine centre to assess the situation. But, then, it appears that he had relied on some other information which he wanted to justify when a notice was issued to him under Section 41-A of the Code of Criminal Procedure. According to him, the news had already published in a daily newspaper and based upon the same he had made the said complaint to the then Hon'ble Chief Minister. The investigation is complete and the statements of those police persons who were the members of the State Reserve Force have been recorded, who had become positive. All of them have stated that the facility given to them was perfectly all right and there was no such situation as stated or projected in the social media. Even if for the sake of arguments we take the situation as it is, that means on the basis of available evidence we are therefore required to consider as to whether offence has been made out against the petitioner under the sections

now applied against him or not. As regards Section 3 of the Police (Incitement to Disaffection) Act, 1922 is concerned, the said provision runs thus -

**“3. Penalty for causing disaffection, etc. :**

Whoever intentionally causes or attempts to cause, or does any act which he knows is likely to cause disaffection towards the Government established by law in India amongst the members of a police force, or induce or attempts to induce, or does any act which he knows is likely to induce any member of a police force to withhold his services or to commit a breach of discipline, shall, on conviction, be punished with imprisonment for a term which may extend to three years, or with fine which may extend to five thousand rupees, or be punished with imprisonment which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

**Explanation** -Expressions of disapprobation of the Government with a view to obtain their alteration by lawful means or disapprobation of the administrative or other action of the Government do not constitute an offence under this section unless they cause or are made for the purpose of causing or are likely to cause disaffection.”

6                Recently this Court in **Sunil Madhukar Dhepe and another vs. The State of Maharashtra and another in Criminal Application No.437 of 2021** decided on 03.08.2022 has made following observations in respect of said provision and the decisions on the subject rendered earlier :

9. In fact, we would like to adopt the interpretation that has been done by the Division Bench of this Court in the case of Ravindra Dhawale (supra), in which, note was taken of the judgment delivered in Criminal M.A. No.7536/2008 decided with other applications on 18.04.2012 by Gujarat High Court (Bharat Desai, Editor, Times of India and Anr. Vs. State of Gujarat and anr.). After considering the facts, the Hon'ble Gujarat High Court held that the comments questioning the wisdom of State Government cannot lead to inference that there was intention of the publisher to induce or incite police which is requirement of Section 3 of the Act. Such disaffection needs to be created amongst police and it should be against the Government. Further, observations by the Hon'ble Apex Court in Civil Appeal No.4815/2013 [N. Sengodan vs. Secretary to Government, Home (Prohibition and Excise) Department, Chennai and others] in relation to Section 3 of the Act, were also noted. In para no.29, the Hon'ble Apex Court has made following observations :

“29. It is apparent from Section 3 of the Act 1966 that there is no specific ban to form association but there is a restriction to form association. A Police personnel can be a member of, or can be associated in any way with, any trade union, labour union, political association or with any class of trade unions, labour unions or political associations only with the express sanction of the Central Government or of the prescribed authority. For attracting the penalty under Section 3 for causing disaffection, it is to be proved that the person concerned intentionally caused or attempted to cause or done any act which is likely to be disaffection towards the Government established by law in this country among the members of the Police force or induces or attempts to induce or does any act which he knows likely to induce any member of the Police force to withhold his service or committed breach of discipline.”

10. Independently also if we consider the statement of objects and

reasons when the said provision or Act was enacted in 1922, we will have to consider that there was British Rule in this country and to protect the Government from any such agitation by or on behalf of the police department at the instigation of the public, these provisions were made. No doubt, the said Act still exists but its application is not in such a way as the prosecution intends to.

As aforesaid, the charge sheet contains statements of police persons only and they are rather saying that the administration i.e. the Government had put them in improper condition. Therefore, even after reading the complaint application if at all, they have not felt that the act of the petitioner amounted to incitement creating disaffection amongst them than against the Government. It also appears from the statement of witness Sunil Nagre that he had put a post on social media, wherein he had expressed dissatisfaction towards his department but then in his statement under Section 161 of the Code of Criminal Procedure he says that the medical staff, who was attending them was not treating them well and inspite of the fact that police persons were behaving in disciplined manner; yet, it was alleged that they were roaming around. He felt that it amounts to defamation of his department and those persons who were lodged therein and, therefore, in annoyance, he says that he had put that post. But then he says that he had never talked to anybody in respect of the same. His statement would certainly show that all was not well in the said centre.

Many of the said witnesses have not even stated that the complaint application or the news item in respect of lack of facility to them by the petitioner was read by them. Without reading what the petitioner has stated there could not have been creation of disaffection amongst those witnesses by the petitioner and, therefore, the ingredients of Section 3 of the Police (Incitement to Disaffection) Act are absolutely not attracted.

7           Section 188 of the Indian Penal Code deals with the offence of disobedience to order duly promulgated by public servant. Section 54 of the Disaster Management Act deals with punishments for false warning and prescribes that whoever makes or circulates a false alarm or warning as to disaster or its severity or magnitude, leading to panic would be convicted under this section. Neither the First Information Report nor the entire charge sheet shows as to which order that was duly promulgated was disobeyed by the petitioner. According to the prosecution, it has been tried to be stated that there was an order passed by the respective authority i.e. Collector, Hingoli that any rumour should not be spread. But, as aforesaid, taking into consideration the statement of witness Sunil Nagre, who himself had uploaded the situation in the said quarantine centre, it cannot be said that whatever was stated by the petitioner in his complaint application and the social media was a rumour. Under such circumstance, ingredients of Section

188 of the Indian Penal Code and Section 54 of the Disaster Management Act are also not attracted. Section 500 and 505(1) of the Indian Penal Code speak about the defamation, however, along with the said section we will have to consider the provisions of Section 199 of the Code of Criminal Procedure. It says that no Court shall take cognizance of an offence punishable under Chapter XXI of the Indian Penal Code except upon a complaint made by some person aggrieved by the offence. Therefore, for the exclusive offence under Section 500 and 505(1) of the Code of Criminal Procedure there cannot be a First Information Report as contemplated under Section 154 of the Code of Criminal Procedure Code. There has to be a complaint under Section 2(d) of the Code of Criminal Procedure. However, when those sections are coming along with other section for which there can be a First Information Report, then, such First Information Report can be filed. Therefore, taking into consideration the entire material as well as the contents of the First Information Report, no offence is made out under Section 188 of the Indian Penal Code, Section 3 of the Police (Incitement to Disaffection) Act, Section 54 of the Disaster Management Act. As regards Section 500 and 505(1) of the Indian Penal Code is concerned, we are of the opinion that it is for the concerned Court to decide as to whether the act amount to defamation or not, because it requires evidence. In other words, the case cannot be quashed and set aside in respect of Section 500 and

505(1) of the Indian Penal Code. With these observations we proceed to pass following order.

**ORDER**

1           The Criminal Writ Petition stands partly allowed.

2           The First Information Report No.261/2020 dated 07.05.2020 registered with Hingoli City Police Station against the present petitioner and the proceedings i.e. Summary Criminal Case No.140/2021 pending before learned Judicial Magistrate First Class, Hingoli stand quashed and set aside to the extent of Section 188 of the Indian Penal Code and Section 3 of the Police (Incitement to Disaffection) Act read with Section 54 of the Disaster Management Act, 2005.

3           Matter may proceed in respect of Section 500 and 505(1) of the Indian Penal Code which has to be decided by the learned Magistrate on its own merits.

( Rajesh S. Patil, J. )

( Smt. Vibha Kankanwadi, J. )