

WRIT PETITION NO.2954 OF 2018

PRONOUNCED ON : 6 MAY 2022

2 There is a background for registration of FIR. There were two news
articles published in the Edition dated 8 October 2017 for Dainik
Pudhari and the Edition dated 22 May 2018 for the same newspaper.

“In the news dated 8 October 2017, the news was published about the incident that took place when there was a raid on Sawan Hotel, Solapur by the police attached to City Crime Branch. At that time, one police personnel on a uniform was heavily drunk in that hotel, and there was a videography and it was circulated on social media. On account of that, the news further says that there were a tussle in between the Office of Deputy Commissioner of Police and the police attached to Crime Branch.”

Similarly, the news article is published in the Edition dated 22 May 2018. It says that :-

“the police staff attached to Crime Branch Office is not following the instructions given by the Senior Officers of Crime Branch, but they are having a loyalty to Deputy Commissioner of Police.”

3 On his background, the Deputy Commissioner of Police-Crime Smt. Pournima Chaugule Shringi lodged complaint with Sadar Bazar Police Station Solapur City on 1 June 2018. It was lodged against present Petitioner, who is shown as the Reporter of those two news articles. Police have registered an offense under Sections 505(2), 500, 501 and 502 of the Indian Penal Code.

Submissions

4 On this background, the Petitioner has approached this Court in a writ jurisdiction. Already, this Court has granted a stay from filing of charge- sheet. We have heard the learned Advocate for the Petitioner and learned APP Shri Yagnik. **Rule.** The petitioner made following two

submissions :-

- (i) If the averments in the FIR and two news articles are perused, it does not disclose an offense under section 505(2) of Indian Penal Code. According to him, the publication must lead to spreading a rumor or an alarming news and it must pertain to a religion, race, language or community.
- (ii) There is a prescribed procedure if Criminal Law has to be set in motion for an offense under Section 500 of Indian Penal Code pertaining to defamation of public servant. The same has not been followed.

5 In support of his contention, he relied upon a judgment in case of **Bilal Ahmad Kaloo Vs. State of Andhra Pradesh**¹ and a judgment in case of **KK Mishra Vs. State of Madhya Pradesh**².

6 As against this learned APP Shri Yagnik vehemently opposed the grant of reliefs. According to him, a publication in order to fall under the provisions of section 505(2) of Indian Penal Code, it need not pertain to two religions and even if it pertains to the employees of one Establishment, still, the provisions are attracted. He also submitted that even if the Petitioner has any grievance about the provisions of Section 500 of Indian Penal Code, he can agitate his case and can make out a case under any of the exceptions to Section 499 of Indian Penal Code. To buttress his submission, he relied upon a judgment in case of **Amish Devgan Vs. Union of India**³.

7 Before going into the facts and ratios laid down in above

1 (1997) 7 Supreme Court Cases 431

2 (2018) 6 Supreme Court Cases 676

3 (2021) 1 Supreme Court Cases 1

judgments, it will be material to consider the provisions and ingredients of Section 505(2) of the Indian Penal Code.

8 The following are the main ingredients :

- (A) There must be either publication circulation of any statement or report.
- (B) It must contain rumor or alarming news.
- (C) It must be with the intention to create or promote feeling of enmity, hatred or ill will.
- (D) It must be on account of religion, race, place of birth, casts or community.

Then, only it can be said that it violates the provisions of Section 505(2) of Indian Penal Code. According to learned APP even when in those two defamatory articles, the Petitioner has reported about disharmony amongst the staff belonging to two offices of the Police Commissionerate, Solapur, still it violates the provisions of Section 505(2) of Indian Penal Code. According to him, there is no need that there should be two religions or two communities. According to him, those aspects have been used in a wider sense and even if a news is published thereby creating a rumor amongst two Sections of the police, it is objectionable. He also read over the contents of those two news articles.

Discussion

9 It is true that the Petitioner in those two articles have said about a rift in between the staff of the Office of Deputy Police Commissioner on one hand and staff attached to Crime Branch of Solapur Unit. It is also true that by reading those two news articles, any person from the society will certainly form an opinion that there is a rift in between the police

personnel of two offices. It is also true that it may not give a good message about overall functioning of the Police Commissionerate Office, Solapur. It is also true that it will create an alarm amongst the members of the society to the effect that whether Police of Solapur Commissionerate area are in a position to protect their interest in case of need and whether they are competent to maintain law and order.

10 However. In order to attract the provisions of Section 505(2) of the Indian Penal Code, whether these materials are sufficient ? According to the learned Advocate for the Petitioner, the alarming news or rumor must be on account of religion, race, communities and otherwise the provisions are not at all applicable. According to him, in fact the police have deliberately applied those provisions in order to bring the case within the purview of police case. According to him, if section 505(2) of the Indian Penal Code is not invoked, then the only offense remains under section 500 of the Indian Penal Code and for which police case cannot be initiated. According to him, at the most, they can file a private complaint.

11 On this background, it will be material to consider the ratios laid down in the judgments relied upon by both the sides. The learned APP Shri Yagnik is right that in case of **Amish Devgan**, the observations by the Supreme Court in case of **Bilal Ahmad Kaloo** are also referred. The learned APP is also right that in **Bilal Ahmed Kaloo's** case, Hon'ble Supreme Court dealt with correctness of the conviction under section 505(2) of the Indian Penal Code. He wants to suggest that the said appeal was filed after completion of full fledged trial.

Case of Bilal Ahmad Kaloo

12 It is important to note that the appellant in that case was a member of Militant Outfit Al-Jihad. He spread communal hatred amongst the muslims youths in the old city of Hyderabad and motivated them to undergo training. He was prosecuted for various sections of TADA Act and various sections of the Indian Penal Code including Section 505(2) of the Indian Penal Code. His appeal against conviction was dealt with by the Hon'ble Supreme Court. Evidence of certain witnesses were recorded.

13 The appellant was spreading a news that members of Indian Army were indulging in commission of atrocities again Kashmir muslims. Hon'ble Supreme Court in para no.13 has considered what are the common features in the provisions of Section 153 A and Section 505(2) of the Indian Penal Code. There should be involvement of at least such two groups or communities (Para-15). The provisions cannot be exhausted merely because the feelings of one community or group were incited. The conviction was set aside.

14 The Hon'ble Supreme Court has considered legislative history for adding Section 153-A and Sub-section (2) to Section Section 505 in Indian Penal Code. There is also discussion on common feature in both Sections, distinction in between provisions of both Sections and how the words are interpreted "Promoting feeling of enmity, hatred or ill will between different religious or racial or linguistic or regional groups or castes or communities", are the common ingredients in both Sections. Mens rea is common ingredient in both Sections. (Para-10)

15 The main distinction in between both the Sections is "publication of the words or representation" is not necessary for Section 153-A, whereas

it is necessary for Section 505(2) of the Indian Penal Code. (Para-12) Earlier to 1969, there were no sub-sections to Section 505 of the Indian Penal Code. Sub-section 2 was added and original provision was numbered as Sub-section (1) by way of Act No.35 of 1969. What is important is amongst whom hatred / ill will (by publication of news) is expected by the legislatures ? It must relates to religion, castes, language or community.

Case of Amish Devgan

16 He was a journalist and Managing Director of several new channels. He posted and anchored a debate on News18 India and another channel under the title Aar Paar. There was a debate on an Enactment of the Places of Worship (Special Provisions) Act, 1991. He has described Pir Harzrat Moinduddin Chishti as Terrorist Chishti came. There is a allegation that deliberately and intentionally he insulted a peer or pious saint belonging to Muslim community and revered even by Hindus. There were 7 FIRs registered at different Police Stations from States of Rajasthan, Telangana, Maharashtra and Madhya Pradesh. Petitioner Ajay approached Hon'ble Supreme Court in exercise of the jurisdiction under Article 32 of the Constitution of India.

17 Hon'ble Supreme Court has considered the law on the point of hate speech. There is also consideration of provisions of law prevailing in foreign countries and there is also consideration of opinions expressed by various authors in their articles/treatises digest. There is also an elaboration on difference between hate speech and free speech. The fundamental right as to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India and reasonable

restrictions laid down under the Article 19(2) of the Constitution of India are also discussed. For deciding speech as hate speech or not, there are three paramount considerations. They are :-

- (i) what are contents of the article.
- (ii) what is intent in that article.
- (iii) whether it is going to cause harm to any one.

18 Hon'ble Supreme Court also considered distinction laid down by the Supreme Court in earlier judgment of **Bilal Ahmed Kaloo**. What we find in both these Judgements, at least there was reference of one religion. According to ratio laid down in **Bilal Ahmed Kaloo's** case, there should be reference of two groups/communities referred in the Section 505(2) of the Indian Penal Code. Whereas, in case of **Amish Devgan**, there was reference of one religion. Though Bilal Kaloo is referred, the observations are not overruled. But what is important is there is reference of at least religion.

19 Now it will be material to consider the contentions raised by the learned APP, as to whether the contents of a news article showing disharmony amongst two offices of Police Commissionerate, Solapur will fall within the purview of Section 505(2) of the Indian Penal Code ? The provisions of sub-section are very clear. Alarming news or rumour must relate to following subjects :-

- (a) relation
- (b) race,
- (c) place of birth,
- (d) residence,
- (e) language,
- (f) caste,
- (g) community,

(i) any other ground,

20 The news published in those two news articles does it relate to any of the above subjects ? It is true that all those subjects also appears in Section 153-A of the Indian Penal Code. The only difference lies in publication. Admittedly, the content of those two news articles does not deal with any of the subject referred to above. Now whether residuary clause “in other grounds” can be invoked? The above subjects are mentioned in Section 505(2) at two places.

Firstly :

With intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever.

Secondly :

Feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities.

21 In fact, the subject of two news articles does not relate to any of the categories mentioned in Section 505(2) of the Indian Penal Code. If we will say that any news article pertaining to two Sections of any Department will fall within the purview of Section 505(2) of the Indian Penal Code, in that case, we are interpreting the provisions of Section 505(2) of the Indian Penal Code too far and it is not expected by legislatures. Hence, we are not inclined to accept the submissions made on behalf of the prosecution. We reject it.

22 For the above discussions, we are of the considered opinion that the police have wrongly invoked the provisions of Section 505(2) of the Indian Penal Code to the facts before us. It is not warranted. It does not satisfy all ingredients of Section 505(2) of the Indian Penal Code. Hence, the application of that Section has to be struck down.

APPLICATION OF SECTION 500 OF THE INDIAN PENAL CODE

23 Section 499 of the Indian Penal Code defines what is meant by defamation and Section 500 lays down punishment. Whereas Sections 501 and 502 of the Indian Penal Code deals with printing and selling of defamation material. Learned Counsel for the Petitioner invited our attention to the provisions of Section 199 of the Code of Criminal Procedure. The requirement are as follows :-

- (a) it debars the Court from taking cognizance of the complaint for offences falling under Chapter XXI of the Indian Penal Code unless aggrieved person files a compliant. Sections 499 to 502 of the Indian Penal Code falls under Chapter XXI of the Indian Penal Code.
- (b) so also Section 199(2) creates Special Forum of Court of Sessions, if offence pertains to specified category of persons. One of them is public servant in connection with affairs of the State.
- (c) Furthermore, Section 199(2) lays down one more requirement. Such complaint can be filed by the Public Prosecutor only with the prior sanction of the State Government.

24 These provisions are interpreted in case of **K.K. Mishra**. The complaint was filed before the Sessions Court, Bhopal by obtaining sanction from the Government. It was in respect of defamation of Hon'ble Chief Minister of State of Madhya Pradesh. The proceedings were filed before the Hon'ble Supreme Court, thereby challenging the maintainability of that complaint.

25 After going through the defamatory statement made in respect of Hon'ble Chief Minister, it was observed that those statements do not relate to discharge of public duties by the Hon'ble Chief Minister. On this background, it was observed that the procedure laid down under Sections 199(2) and 199(4) of the Code of Criminal Procedure need not be followed (Para-15). While dealing with the issue the Hon'ble Supreme Court has reiterated what is the procedure to be followed, if there is defamation of specified category of person. Infact, when the appeal was pending before the Hon'ble Supreme Court, the trial was conducted and accused was also convicted and appeal against the conviction was pending before the Hon'ble High Court and issue was raised before the High Court and it was turned down. That is how the matter reached to the Hon'ble Supreme Court.

26 Without going into issue whether news article caused defamation or not, it is true that procedure neither under Section 199(2) nor under Section 199(4) of the Code of Criminal Procedure is followed. Instead of that first informant has taken circuitous route and filed a police complaint. It is not warranted.

27 So FIR pertaining to offences under Sections 500, 501 and 502 of

the Indian Penal Code also does not stand scrutiny of law. The Petitioner-accused can certainly make out a case under exception to Section 499 of the Indian Penal Code. This can be possible only when the prosecution is initiated validly by filing a proper complaint. This has not happened in this case. Hence, the entire FIR consisting of offences u/s 500, 501, 502, 505(2) of the Indian Penal Code needs to be quashed. Hence, the following Order.

: ORDER :

- (i) Writ Petition No.2954 of 2018 is allowed.
- (ii) FIR in C.R. No.0390 of 2018 dated 1 June 2018, for the offence punishable under Sections 505(2), 500, 501 and 502 of the Indian Penal Code registered at Sadar Bazar Police Station, Solapur is quashed and set aside.
- (iii) Rule discharged.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)

RAJESH
VASANT
CHITTEWAN

Digitally signed by
RAJESH VASANT
CHITTEWAN
Date: 2022.05.06
14:09:53 +0530