

23
03.08.2023
Ct-237
(RD)

In the High Court at Calcutta
(Criminal Revisional Jurisdiction)
Appellate side

CRR 85 of 2017

**Pooja Mehta & Ors.
Vs.
The State of West Bengal & Anr.**

Mr. Sourav Chatterjee, Adv.
Mr. Supriya Ranjan Saha, Adv.
Mr. Subhrangsu Mitra, Adv.

.... For the petitioner

Mr. Binay Panda, Adv.
Mr. Subham Bhakat, Adv

... For the State.

This revision application has been filed with a prayer for quashing of proceeding in connection GR Case No. 7905 of 2016 pending before the Ld. Chief Judicial Magistrate, Howrah corresponding to Sankrail Police Station Case No. 1044 of 2016 dated 19.12.2016 under Section 153A of the Indian Penal Code.

One Chiranjeet Das put the law in motion by lodging a written complaint before the officer in-charge of Sankrail Police Station on 17.12.2016 alleging, *inter alia*, that on 13.12.2016 and 14.12.2016 there was a disturbance at Dhulagarh following confrontation between two communities and as a result few houses and shops were set on fire. It was further alleged in the complaint that in the evening on 16.12.2016 he watched Zee News where the disturbance mentioned above was

categorized as communal disturbance resulting in tension in the area.

On receipt of the complaint dated 17.12.2016 Sankrail Police Station Case No. 1044 of 2016 dated 19.12.2016 under Section 153A of the Indian Penal Code was started against the petitioners.

The revision application was filed on 9th January 2017. The proceeding of the case was stayed by the Co-ordinate Bench of this court on 11.01.2017.

Ld. Advocate, Mr. Sourav Chatterjee, appearing on behalf of the petitioners by referring to Section 153A of the Indian penal Code together with the written complaint, submits that there is nothing in the FIR promoting enmity between the different groups on the ground of religion as alleged to constitute an offence Under Section 153A of the Indian Penal Code. It is submitted that the incident alleged in the case happened between two communities on 13.12.2016 and 14.12.2016 and according to FIR petitioners being official attached to Zee News visited the spot to cover the news, on 16.12.2016. It has been further contended by Mr. Chatterjee that written complaint did not disclose any untoward incident after the visit of Zee News on 16.12.2016. In support of his contention he relied on the following decisions laid down by the Hon'ble Apex Court:-

Balwant Singh and another Vs. State of Punjab reported in (1995) 3 Supreme Court Cases 214.

Bilalahmed Kaloo Vs. State of A.P. and State of A.P.

Vs. Bilalahmed Kaloo reported in ***(1997) 7 Supreme Court Cases 431***

Manzar Sayeed Khan Vs. State of Maharashtra and another with Vinod Hansraj Goyal Vs. State of Maharashtra reported in ***(2007) 5 Supreme Court Cases 1***

Patricia Mukhim Vs. State of Meghalaya and others reported in ***(2021) 15 Supreme Court Cases 35***

Mr. Chatterjee has further submitted by referring to paragraph 15 of the revision application that the news was covered by various media but proceeding was imitated against official of Zee News only.

Per contra, Mr. Binay Panda, appearing on behalf of the State, has contended that Zee News usually patronize particular political party and the facts of the case relied on behalf of the petitioners are not identical to that of ours.

Mr. Panda has further contended that, investigation of this case was stayed by the order dated 11.01.2017 by this Court while investigation was initiated only on 19.11.2016. Thereby, Mr. Panda has tried to make this Court understand that investigation could not be proceeded with in spite of lapse of 51 days.

On careful perusal of the case diary, I find that Investigating Officer, within the span of 51 days, only succeeded to record statement of two persons namely Prasenjit Khara and Jaydeb Polley and both the statements, in my opinion, are replica to each other and that too none of those two witnesses could speak any

single word intending to promote enmity between two different communities to attract the Provision under Section 153A of the Indian penal Code. On careful scrutiny of the case diary as well as First Information Report, nothing untoward incident was found to have been committed after 16.12.2016 when petitioners visited the spot.

In **Balwant Singh** (supra) it was held in paragraph 9 as follows:-

“ 9. Insofar as the offence under Section 153-A IPC is concerned, it provides for punishment for promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever or brings about disharmony or feeling of hatred or ill-will between different religious, racial, linguistic or regional groups or castes or communities. In our opinion only where the written or spoken words have the tendency or intention of creating public disorder or disturbance of law and order or affect public tranquillity, that the law needs to step in to prevent such an activity. The facts and circumstances of this case unmistakably show that there was no disturbance or semblance of disturbance of law and order or of public order or peace and tranquillity in the area from where the appellants were apprehended while raising slogans on account of the activities of the appellants. The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153-A IPC and the prosecution has to prove the existence of mens rea in order to succeed. In this case, the prosecution has not been able to establish any mens rea on the part of the appellants, as envisaged by the provisions of Section 153-A IPC, by their raising casually the three slogans a couple of times. The offence under Section 153-A IPC is, therefore, not made out.”

In our case also prosecution could produce any material against the petitioners with regard to intention to cause disorder or incite people to violence

which is in *sine qua non* of the offence under Section 153A of the Indian Penal Code.

In ***Bilalahmed*** (supra) it was held further in paragraph 15 as follows:-

“ 15. The common feature in both sections 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. Merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two sections.”

In this case investigation could not reveal inciting of feeling of any particular community with any reference to other community.

In ***Manzar Sayeed Khan*** (supra) Hon'ble Apex Court rule in paragraph 16 as follows:-

“16. Section 153-A 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 tranquillity. 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 153-A 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 153-A 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.”

Here in this case also prosecution could not produce any document showing intention to cause disorder or incite the people to violence. Had it been so there would have been a further escalation after 16.12.2016.

In ***Patricia Mukhim*** (supra) Hon’ble Court observed as follows:-

“9. Only where the written or spoken words have the tendency of creating public disorder or disturbance of law and order or affecting public tranquility, the law needs to step in to prevent such an activity. The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153-AIPC and the prosecution has to prove the existence of mens rea in order to succeed. [Balwant Singh v. State of Punjab, (1995) 3 SCC 214 : 1995 SCC (Cri) 432]

10. The gist of the offence under Section 153-AIPC is the intention to promote feelings of enmity or hatred between different classes of people. The intention has to be judged primarily by the language of the piece of writing and the circumstances in which it was written and published. The matter complained of within the ambit of Section 153-A 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 [Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1 : (2007) 2 SCC (Cri) 417].”

In the case in hand, prosecution could not produce any material before this Court to adjudicate primarily to

attract any offence under Section 153A of the Indian Penal Code.

In the premises set forth above, further proceeding with this case would result in an abuse of process of court and will not serve the ends of justice.

No option is left to this court but to quash the proceeding in connection GR case no. 7905 of 2016 pending before the Ld. Chief Judicial Magistrate, Howrah corresponding to Sankrail Police Station Case no. 1044 of 2016 dated 19.12.2016 under section 153A of the Indian Penal Code. Thus, the proceeding stands quashed.

Thus, Criminal Revision application being no. CRR 85 of 2017 stands dispose of.

Case diary be returned.

All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Bibhas Ranjan De)