

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 113 of 2021

Sri Protip Roy Basunia

-Vs-

The State of West Bengal & Anr.

For the Petitioner : Mr. Avrojoyti Das
Mr. Pritam Roy

For the State : Mr. Aditi Shankar Chakraborty
Mr. Nilay Chakraborty

Heard on : 08.05.2023, 11.05.2023.

Judgment on : 12.05.2023

Ananya Bandyopadhyay, J.:-

1. Kotwali P.S. Case No. 325/2021 dated 06.05.2021 under Sections 504/505/506/120 of the Indian Penal Code 1860 was instituted on the basis of a complaint dated 06.05.2021 filed by the defacto complainant Anirban Sarkar inter alia alleging to have noticed certain comments on the Facebook profile of Pradip Basunia, Uttam Mondal, Tapaas Karmakar, Ashim Roy, Adaitya Barman which were “spreading communal hatred and violence amongst the people of society,” which according to him were “unauthentic, uncalled for and unwarranted.”
2. The petitioner has filed the instant Criminal Revisional Application seeking for a direction from this Court to quash the aforesaid Kotwali

P.S. Case corresponding to G. R. Case No. 577 of 2021 pending before the Court of the Learned Chief Judicial Magistrate, Sadar, Cooch Behar.

3. The Learned Advocate for the petitioner submits the petitioner, an Assistant Teacher of a school by profession has been falsely implicated due to rival political ideologies with an ulterior motive of wrecking vengeance on frivolous ground.
4. The Learned Advocate for the petitioner further submitted that the petitioner has been arraigned as an accused for commission of offences punishable under Sections 504/505/506/120B of the Indian Penal Code and all the offences except Section 505 of the Indian Penal Code are non-cognizable. The Officer in Charge has failed to specify as to under which clause of Section 505 the First Information Report has been lodged and since all other offences under which the instant criminal proceedings has been initiated are non-cognizable in nature, the instant case is liable to be quashed as the procedure prescribed under Section 155 of the Code of Criminal Procedure has not been followed.

It was further submitted the allegations stated in the First Information Report do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code of Criminal Procedure, except under an order of a Magistrate within the purview of Section 155(2) of the Code. All offences under which the First Information Report has been registered are non-cognizable and the procedure under Section 155 of the Code of Criminal Procedure dictates that if the offences are non-cognizable offences, the Officer-in-Charge of the police station shall

enter or cause to be entered the substance of the information in a book to be kept by such Officer in such form as the State Government may prescribe in this behalf, and refer 'the informant/opposite party no.2 to the Jurisdictional Magistrate. When a police officer does anything which he is not empowered to do, he cannot be said to act under the colour of his office. A bare perusal of the offences with which the petitioner was charged denote such offences under the Indian Penal Code to be non-cognizable offences, apart from one part of Section 505 of the Indian Penal Code and therefore the police could not, of its own, commence investigation on any of such allegations.

5. It was further contended, the controversial social media post was uploaded by one Ashim Roy and the petitioner was merely tagged in the said post due to which the said post was appearing on the Facebook profile of the petitioner herein. The petitioner was neither the creator of the post neither did he intent to spew any religious hatred with the intent of causing rites amongst the different communities in the State of West Bengal. There was no intention on the part of the petitioner to promote class/community hatred and since there was no attempt made by the petitioner to incite people belonging to a community to indulge in any violence, the basic ingredients of the offence under Section 505 of the Indian Penal Code have not been made out. The allegations made in the FIR or the complaint, even if they are taken on their face value do not prima facie constitute any offence or make out a case against the

accused, the criminal proceedings initiated against him shall be liable to be set aside.

6. The Learned Advocate for the petitioner relied upon the decisions cited in **(1997) SCC 431** and **2021 SCC OnLine SC 258**.
7. The Learned Advocate for State submits the existence of materials on record to implicate the petitioner and his involvement will be proved through the process of trial and at the premature stage the proceedings shall not be quashed.
8. Section 504 of the Indian Penal Code states that *“as intentional insult with intent to provoke breach of the peace.-Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”*
9. Section 505 of the Indian Penal Code states that *“whoever makes, publishes or circulates any statement, rumour or report,-*
 - (a) *With intent to cause, or which is likely to cause, any officer, soldier, 3[sailor or airman] in the Army, 4[Navy or Air Force] 5[of India] to mutiny or otherwise disregard or fail in his duty as such; or*
 - (b) *With intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or*
 - (c) *With intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment which may extend to 6[three years], or with fine, or with both. 7[(2)*

Statements creating or promoting enmity, hatred or ill-will between classes.-Whoever makes, publishes or circulates any statement or report containing rumour or alarming news 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, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.”

10. *Punishment for criminal intimidation. - Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc.-And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 1[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.*
11. The complaint dated 06.05.2021 and the statements recorded under Section 161 Code of Criminal Procedure on record do not describe the specific act of the present petitioner to constitute the elements to justify an offence to have been committed under Sections 504/505/506/120B of Indian Penal Code.
12. The Hon’ble Supreme Court in the case of **Bilal Ahmed Kaloo Vs. State of A.P¹**. and **State of A.P. Vs. Bilal Ahmed Kaloo** observed as follows:

¹ (1997)7 SCC 431; 1997 SCC (Cri) 1094

“11. This Court has held in *Balwant Singh v. State of Punjab* that *mens rea* is a necessary ingredient for the offence under Section 153-A. *Mens rea* is an equally necessary postulate for the offence under Section 505(2) also as could be discerned from the words “with intent to create or promote or which is likely to create or promote” as used in that sub-section.

12. The main distinction between the two offences is that while publication of the words or representation is not necessary under the former, such publication is *sine qua non* under Section 505. The words “whoever makes, publishes or circulates” used in the setting of Section 505() cannot be interpreted disjunctively but only as supplementary to each other. If it is construed disjunctively, anyone who makes a statement falling within the meaning of Section 505 would, without publication or circulation, be liable to conviction. But the same is the effect with Section 153-A also and then that section would have been bad for redundancy. The intention of the legislature in providing two different sections on the same subject would have been to cover two different fields of similar colour. The fact that both sections were included as a package in the same amending enactment lends further support to the said construction.

13. Yet another support to the above interpretation can be gathered from almost similar words used in Section 499 of the Penal Code as “whoever by words ... makes or publishes any imputation ...”.

14. In *Sunilakhya Chodhury v. H.M. Jadwet* it has been held that the words “makes or publishes any imputation” should be interpreted as words supplementing each other. A maker or imputation without publication is not liable to be punished under that section. We are of the view that the same interpretation is warranted in respect of the words “makes, publishes or circulates” in Section 505 IPC also.

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 group without any reference to any other community or group cannot attract either of the two sections.

16. The result of the said discussion is that the appellant who has not done anything as against any religious, racial or linguistic or regional group or community cannot be held guilty of either the offence under Section 153-A or under Section 505(2) of IPC”

13. The petitioner seemed to have been tagged in the Facebook post in dispute allegedly uploaded by another co-accused. The documents in the case diary did not disclose any comment of the petitioner on the Facebook post to have pioneered religious hatred amongst different communities. Moreover, subsequent effect of the Facebook posts as alleged to have resulted into an overwhelming negative impact on the society at large with violent outburst is absent. The allegations against the petitioner to have been directly involved in the commission of alleged offences are not substantially prevalent in the case record to indict him. Being tagged in the space of comments on social media at the instance of any other person necessarily does not confer any liability or responsibility on the person being tagged with or express unanimity of the comment or its essence thereof constructively. The complaint presupposes the occurrence of a riot but did not state any incident of such occurrence as an offshoot of such Facebook post.

14. It is of imprudence to subject any person to face trial in a criminal case based on mere assumptions and suspicious in absence of criminal intent

or ulterior motive for accomplishing any wrongful act. Therefore to allow the petitioner to face trial will result into abuse of the process of law.

15. Accordingly the instant criminal revisional being No. CRR 113 of 2021 is allowed.
16. The proceedings being Kotwali Police Station Case No. 325 of 2021 dated 6.05.2021 corresponding to G.R. Case No. 577 of 2021 under Sections 504/505/506/120B of the Indian Penal Code pending before the Learned Chief Judicial Magistrate, Sadar, Cooch Behar is accordingly quashed.
17. Connected application if any is also disposed of.
18. Case diary be returned to the Learned Advocate for the State.
19. There is no order as to cost.
20. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
21. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)