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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3380 OF 2022

Rohan Suresh Pawar

...Petitioner

Vs.

The Maharashtra State Election Commission
& Anr.

...Respondents

Mr.Prakash Ambedkar with Mr.Yogesh More with Hitendra Gandhi with Bhagyesha Kurane, Mr.Sandesh More, Mr.Hari Rajguru with Mr.Siddharth Herode and Mr.Nikhil Kamble, for the Petitioner.

Mr.Sachindra B. Shetye with Danashee Mondkar with Sarika Shetye, Akshay Pansare and Vrushali Shivgan, for Respondent No.1.

Mrs.Sangeeta D. Shinde, APP for the State-Respondent Nos.2 to 4.

**CORAM: G. S. KULKARNI &
R. N. LADDHA, JJ.**

DATE : APRIL 26, 2023

ORAL ORDER: (Per G.S. Kulkarni, J.)

1. This petition under Article 226 of the Constitution of India prays for a writ of mandamus to be issued to respondent No.4 – the Commissioner of Police, Mumbai, to register an F.I.R. against respondent No.1 – the Maharashtra State Election Commission through Mr.Urvinder Pal Singh, the Chief Election Commissioner, Maharashtra, under Section 124A of the Indian Penal Code, 1960 (for short “the **IPC**”), for the

alleged intentional violation of the Constitutional obligations and mandate in terms of Article 243-E and 243-U of the Constitution of India, including Section 6 and 6(B) read with Section 452A(2) of the Maharashtra Municipal Corporation Act, 1949, in not holding or delaying holding of local body elections. The only prayer as made in the petition reads thus:-

“a. This Hon’ble Court be pleased to issue writ of Mandamus or any other appropriate writ, orders or directions in the nature of Mandamus to the respondent No.4 to Register the F.I.R. against respondent No.1 U/s. 124 A of the Indian Penal Code,1960 for intentionally violating the Constitutional obligations and mandate in terms of Article 243-E and 243-U of the Constitution of India, including Section 6 and 6(B) read with Section 452A(2) of the Maharashtra Municipal Corporation Act, whereby attempts to excite disaffection of common citizens towards, the Government established by law and towards the Constitution of India as well, with immediate effect.”

2. This petition was filed on 30 August 2022. As the memo of the petition is bereft of any details of the interest of the petitioner, reflecting on his locus to make such serious prayers, we presume that the petitioner has filed the present petition being a citizen of India and having some concern with the elections of local body. This more particularly as the present petition is not filed as a public interest litigation. Be that as it may, it also appears from the averments as made in the petition that prior to filing of this petition, praying for a writ of

mandamus, the petitioner did not submit a complaint with the appropriate authorities demanding justice and there was any denial of the same by the appropriate authorities. On a query as made by us, Mr.Ambedkar, learned Counsel for the petitioner has tendered a compilation of documents from which it is seen that during the pendency of this petition on 22 March 2023 a complaint was to be made to the Senior Inspector, Bhoiwada Police Station in regard to the subject matter of the petition namely non holding of local body election by respondent No.1. Our attention is drawn to a response dated 18 April 2023 received by the petitioner from the said police station which interalia records that in regard to the petitioner's complaint that the local body elections were not undertaken for a period of one to two years, after the term of the earlier elected bodies had expired, and for such reason an offence be registered against respondent No.1 under Section 124A of the IPC, is not a subject issue falling within the provision of the Code of Criminal Procedure, and therefore, the complaint stands filed. Referring to such communication, Mr.Ambedkar would submit that in these circumstances already the petitioner had correctly adopted the only remedy to approach this Court by making the prayers as prayed for in the petition.

3. Mr.Ambedkar, learned Counsel for the petitioner in support of the prayers as made in the petition, has made the following submissions:-

(i) It is submitted that the mandate of Article 243-U read with Article 243-K and Article 243-ZA of the Constitution was required to be complied by respondent No.1 by holding local body elections of the Municipal Corporation, Zilla Parishad and Gram Panchayats. It is submitted that the issue in regard to the conduct of such elections was also the subject matter of consideration before the Supreme Court in the case of *Rahul Ramesh Wagh vs. The State of Maharashtra & Ors.*¹. Our attention is drawn to an order dated 4 May 2022 and another order dated 28 July 2022 passed by the Supreme Court in such proceedings, wherein the Supreme Court had called upon respondent No.1 to explain as to why the elections for large number of local bodies around 2486 across the State of Maharashtra, though overdue, and in some cases even overdue for two years, have not been taken forward, despite the peremptory directions issued by the Supreme Court in successive orders, including an order dated 3 March 2022. Mr.Ambedkar has referred to a subsequent order dated 28 July 2022 passed by the Supreme Court in the said proceedings, in which the Supreme Court observed that in terms of order dated 20 July 2022 the State Election Commission was

1 Special Leave to Appeal (C) No.19756/2021 dt.22/10/2021

directed to complete the election process, which was notified as on the date of that order, in respect of 367 local bodies. It is submitted that such being the clear mandate of the orders passed by the Supreme Court, failure to comply with such mandate, necessarily amounts to respondent No.1 having committed an offence under Section 124A of the India Penal Code.

(ii) It is next submitted that respondent No.1 apart from being a Constitutional functionary is also a citizen of this Country and a public servant and in terms of the observations of the Supreme Court in the case of *S. G. Vombatkere Vs. Union of India*², the directions of the Supreme Court, that the State and Central Governments be restrained from registering any FIR, continuing any investigation or taking any coercive measures by invoking Section 124A of the IPC, while the said provision of law is under consideration, would not apply in so far as respondent No.1 is concerned.

(iii) Reliance is also placed on the decision of the Supreme Court in *Mohinder Singh Gill v. Chief Election Commissioner*³, to support the contention that in the present circumstances as held by the Supreme Court, there would be no alternative to a citizen but to approach the judicial branch i.e. this Court for redressal of his grievance, as canvassed

² 2022(7) SCC 433

³ (1978)1 SCC 405

in the present petition.

4. It is on the above submissions Mr.Ambedkar would submit that the petition is required to be allowed inasmuch as except for an offence to be registered under Section 124A of the IPC there is no alternate mandate of law which can be applied to respondent No.1 having not complied the Constitutional obligations as also the orders of the Supreme Court to conduct the local body elections.

5. On the other hand Mr.Shetye, learned Counsel for respondent No.1 has made submissions opposing the petition. At the outset, Mr.Shetye submits that such petition as filed against the Constitutional authority, like the State Election Commissioner is an abuse of the process of law apart from being not maintainable. He submits that respondent No.1 has filed an affidavit and has pointed out the steps taken by respondent No.1 to hold elections. It is submitted that such compliances are also placed before the Supreme Court in the pending proceedings in the case of *Rahul Ramesh Wagh* (supra). Drawing the Court's attention to the averments made in the affidavit and more particularly, in regard to the conduct of elections in respect of Municipal Corporations, Zilla Parishads and Gram Panchayats, it is submitted that appropriate steps

were taken to hold the elections. It is submitted that there was issue on delimitation in respect of certain constituencies which is also subject matter of consideration of the Supreme Court in the case of *Rahul Ramesh Wagh* (supra). It is submitted that respondent No.1 in taking such steps, in no manner whatever can be said to be not complying the constitutional obligations of respondent No.1 to conduct elections, much less, amounting to an offence under Section 124A of the IPC. Mr.Shetye has placed reliance on the decision of the Supreme Court in the case *S. G. Vombatkere* (supra) to submit that the Supreme Court has clearly ordered that till the re-examination of the provisions of Section 124A, in regard to its mandate is concerned, the State and Central Governments will restrain from registering any FIR, continuing any investigation or taking any coercive measures by invoking Section 124A of IPC, and in that view of the matter, there is no question of such provision being invoked by the petitioner, in the manner asserted in the present proceedings. It is submitted that the interpretation of such orders passed by the Supreme Court, by the petitioner, is not well founded. Mr.Shetye has also drawn our attention to the specific paragraphs as contained in the reply affidavit to contend that the entire issue in regard to holding of local bodies election, is subjudice before the Supreme Court as seen from the orders passed in *Rahul Ramesh Wagh* (supra).

Mr.Shetye would thus submit that the petition is wholly untenable and deserves to be dismissed with exemplary cost.

6. We have heard learned Counsel for the parties, we have perused the record as also the decisions of the Supreme Court and the orders as noted above, as placed for our consideration.

Analysis and Conclusion

7. At the outset, we are quite surprised with the approach of the petitioner to invoke the jurisdiction of this Court under Article 226 of the Constitution in making prayers against a Constitutional authority like the State Election Commission, alleging that non conduct and/or delayed conduct of the local body election, which on the petitioner's own showing is subject matter of consideration before the Supreme Court, would amount to an offence under Section 124A of the IPC. As this is the primary and the only contention, we are required to note the provisions of Section 124A of the IPC which reads thus:-

"124A Sedition. - Whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law in [India], shall be punished with [imprisonment for life], to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1.-- The expression "disaffection" includes disloyalty and all feelings of enmity.

Explanation 2-- Comments expressing disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.

Explanation 3-- Comments expressing disapprobation of the administrative or other action of the Government without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section.”

8. A bare perusal of the Section 124A would makes us wonder and to our wildest of imagination, as to how the said provision would at all become applicable against the State Election Commission/ Commissioner, and as to how a complaint against respondent No.1 of any offence under Section 124A of the IPC would be maintainable, which essentially requires ingredients namely; to bring or attempt to bring into hatred or contempt or excite or attempt to excite, disaffection towards the Government established by law in India. We fail to understand as to how the said ingredients even remotely are present in the actions of respondents which itself are statutory, from the materials on record.

9. We may also observe that even assuming that there was some civil case for the petitioner to invoke the jurisdiction under Article 226 of the Constitution on the ground that the local elections are delayed and/or are not conducted by respondent No.1, it could not have been an

assertion of the nature as made in the present proceedings. A bonafide litigant would have taken an approach praying for a relief for a mandamus to be issued by the Court to consider holding timely election.

10. This apart, the petitioner is well aware that the issue in regard to the conduct of local body elections is *seisin* before the Supreme Court in *Rahul Ramesh Wagh's* case (supra) and as noted above, the Supreme Court from time to time has passed orders, directing respondent No.1 to hold such elections and in the course of such proceedings, respondent No.1 has also placed on record of the Supreme Court, certain difficulties in holding elections at some places. It is also informed by Mr.Shetye, which also appears to be not disputed that in many constituencies elections have been held. In such circumstances the petitioner being conscious that the proceedings in respect of the local body elections are pending before the Supreme Court, the petitioner ought not to have filed this petition with such drastic prayers. In our opinion, such approach of the petitioner, apart from being reckless, is also an approach totally untenable in law.

11. As noted above, even otherwise in making prayers for issuance of writ of mandamus, the petitioner has not adhered to the well settled principles of law to approach the concerned authority namely in making a demand for justice, and only on a denial of the same, invoke the

extraordinary jurisdiction of the High Court under Article 226 of the Constitution. In such context, it is clearly seen that much later (seven months) after the petition was filed, a complaint was made by the petitioner to the Officer-in-Charge of the Bhoiwada Police Station, purportedly to be a complaint under Section 124-A of the IPC. Thus, on such ground also the petition at the threshold was not maintainable.

12. We also find much substance in the contention as urged on behalf of respondent No.1 that the prayers as made in the petition are totally untenable in view of the orders passed by the Supreme Court in the case of *S. G. Vombatkere* (supra) which are proceedings pending before the Supreme Court, wherein the constitutionality of Section 124A of the Indian Penal Code relating to the offence of sedition, itself is pending. The said orders passed by the Supreme Court read thus:-

“1. These petitions are filed challenging the Constitutionality of Section 124 A of the Indian Penal Code 1860 (hereinafter IPC) relating to the offence of Sedition.

2. Having heard learned Senior counsel appearing for the parties and perusing the documents available on record, we may observe that this matter was listed for the first time on 15.07.2021. Thereinafter, this Court, after hearing the parties, issued notice on 27.04.2022. When this matter was next taken up, learned Solicitor General of India prayed for additional time of 2 to 3 days for filing of counter-affidavit. Accordingly, time was granted till the end of the week for filing counter-affidavit. Again, the matter was listed on 05.05.2022, wherein the

Solicitor General again sought additional time to file a counter affidavit. On that date, this Court while granting the Solicitor General time to file counter affidavit, directed the parties to file their written submissions on the preliminary issue of the necessity of reference to a larger bench prior to the next date of hearing.

3. Accordingly, on 07.05.2022, written submissions were filed on behalf of Solicitor General of India.

4. On 09.05.2022, an affidavit was filed on behalf of Union of India, averring as under:

“3. I state and submit that so far as Section 124A is concerned, there are divergence of views expressed in public domain by various jurists, academicians, intellectuals and citizens in general. While they agree about the need for statutory provisions to deal with serious offences of divisive nature affecting the very sovereignty and integrity of the Country, acts leading to destabilizing the government established by law by means not authorised by law or prohibited by law. Requiring a penal Provision for such purposes is generally accepted by everyone in legitimate State interest. However, concerns are raised about its application and abuse for the purposes not intended by law.

4. The Hon’ble Prime Minister of India has been cognizant of various views expressed on the subject and has also periodically, in various forums, expressed his clear and unequivocal views in favour of protection of civil liberties, respect for human rights and giving meaning to the constitutionally cherished freedoms by the people of the country. He has repeatedly said that one of India’s strengths is the diverse thought streams that beautifully flourish in our country.

5. The Hon’ble PM believes that at a time when our nation is marking ‘Azadi Ka Amrit Mahotsav’ (75 years since independence) we need to, as a nation, work even harder to shed colonial baggage hat has passed its utility, which includes outdated colonial laws and practices. In that spirit, the Government of India has scrapped over 1500 outdated law since 2014-15 . It has also ended over 25,000 compliance burdens which were

causing unnecessary hurdles to people of our country. Various offences which were causing mindless hindrances to people have been decriminalised. This is an ongoing process. These were laws and compliances which reeked of a colonial mind set and thus have no place in today's India.

6. The Government of India, being fully cognizant of various view being expressed on the subject of sedition and also having considered the concern of civil liberties and human rights, while committed to maintain and protect the sovereignty and integrity of this great nation, has decided to re-examine and re-consider the provision of section 124A of the Indian Penal Code which can only be done before the Competent Forum.

7. In view of the aforesaid it is this respectfully submitted that this Hon'ble Court may not invest time in examining the validity of Section 124A once again and be pleased to await the exercise of reconsideration to be undertaken by the Government of India before an appropriate forum where such reconsideration is constitutionally."

5. In view of the above, it is clear that the Union of India agrees with the prima facie opinion expressed by this Court that the rigors of Section 124A of IPC is not in tune with the current social milieu, and was intended for a time when this country was under the colonial regime. In light of the same, the Union of India may reconsider the aforesaid provision of law.

6. This Court is cognizant of security interests and integrity of the State on one hand, and the civil liberties of citizens on the other. There is a requirement to balance both sets of considerations, which is a difficult exercise. The case of the petitioners is that this provision of law dates back to 1898, and pre-dates the Constitution itself, and is being misused. The Attorney General had also, on an earlier date of hearing, given some instances of glaring misuse of this provision, like in the case of recital of the Hanuman Chalisa.

7. Therefore, we expect that, till the re-examination of the provision is complete, it will be appropriate not to continue the usage of the aforesaid provision of law by the Governments.

8. In view of the clear stand taken by the Union of India, we deem it appropriate to pass the following order in the interest of justice:

a. The interim stay granted in W.P.(Crl.)No.217/2021 along with W.P.(Crl.)No.216/2021 vide order dated 31.05.2021 shall continue to operate till further orders.

b. We hope and expect that the State and Central Governments will restrain from registering any FIR, continuing any investigation or taking any coercive measures by invoking Section 124A of IPC while the aforesaid provision of law is under consideration.

c. If any fresh case is registered under Section 124A of IPC, the affected parties are at liberty to approach the concerned Courts for appropriate relief. The Courts are requested to examine the reliefs sought, taking into account the present order passed as well as the clear stand taken by the Union of India.

d. All pending trials, appeals and proceedings with respect to the charge framed under Section 124A of IPC be kept in abeyance. Adjudication with respect to other Sections, if any, could proceed if the Courts are of the opinion that no prejudice would be caused to the accused.

e. In addition to the above, the Union of India shall be at liberty to issue the Directive as proposed and placed before us, to the State Governments/Union Territories to prevent any misuse of Section 124A of IPC.

f. The above directions may continue till further orders are passed.

9. List these petitions in the third week of July, 2022.”
(emphasis supplied)

13. On a reading of the above orders passed by the Supreme Court in

S. G. Vombatkere's case (supra), we do not accept the interpretation of such orders as made on behalf of the petitioner that the order be read only as bar on the State and Central Government to restrain registering any FIR invoking Section 124A of the Indian Penal Code and that there would not be any embargo for this Court to direct that FIR be registered against respondent No.1. In this context, at the outset it may be stated that there is no case made out even remotely to consider any such relief being granted by this Court against respondent No.1 in the facts of the present case. In any event, the order passed by the Supreme Court is required to be read holistically. The proceedings before the Supreme Court are clearly proceedings wherein the constitutionality of Section 124A relating to the offence of sedition, is subject matter of consideration. The concern of the Supreme Court is as to the efficacy to have such provision in the present times as clearly expressed in paragraph 5 of the said order, in which, the Supreme noting the stand taken by the Government of India, has categorically observed that the Government of India has agreed with the prima facie opinion expressed by the Supreme Court, that the rigours of Section 124A of IPC are not in tune with the current social milieu, and were intended for a time when the country was under the colonial regime. It was observed that in the light of the same, the Government of India may reconsider the aforesaid

provision of law. The Supreme Court in paragraph 6 of the said order has also recorded the case of the petitioners that such provision of law dates back to 1898, and pre-dates the Constitution itself, and is being misused. It is in the light of such observations, the said interim orders came to be passed by the Supreme Court whereby it was observed that *‘We hope and expect that the State and Central Governments will restrain from registering any FIR, continuing any investigation or taking any coercive measures by invoking Section 124-A IPC while the aforesaid provision of law is under consideration.’* It was also observed that if any fresh case is registered under Section 124-A of IPC, the affected parties are at liberty to approach the Courts concerned for appropriate relief, in that event the Courts are requested to examine the reliefs sought, taking into account the said orders passed by the Supreme Court as well as the clear stand taken by the Government of India. Most importantly in regard to all pending trials, appeals and proceedings in regard to the charge framed under Section 124-A of IPC, was directed to be kept in abeyance, whereas the adjudication with respect to other sections, if any, could be proceeded if the Courts are of the opinion that no prejudice would be caused to the accused. The Supreme Court has thus created a self contained mechanism to protect the rights of the citizens in the event they are affected by the application

of the said provision. It is thus quite clear that even otherwise in the teeth of the said orders passed by the Supreme Court, there cannot be a cause for the petitioner to invoke applicability of Section 124A of the IPC. It needs to be noted that such orders were passed by the Supreme Court on 11 May 2022 whereas the present petition was filed by the petitioner on 30 August 2022. In view of such subsisting orders passed by the Supreme Court, the petitioner could have been well advised to await the adjudication of the proceedings before the Supreme Court in *S. G. Vombatkere* (supra) in raising any plea on Section 124-A of the IPC. However, for the reasons best known to the petitioner, the present petition has been filed.

14. Insofar as Mr.Ambedkar's reliance on the decision of the Supreme Court in *Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors.* (supra) is concerned, the principle as enunciated in the said judgment in regard to the situation under which a person may approach the Court, is well settled. However, in the facts of the present case, such principles are totally inapplicable, for the reasons as discussed hereinabove.

15. Even otherwise, the petitioner has filed this petition oblivious of the statutory remedies available to the petitioner under the provisions of the Code of Criminal Procedure. It was certainly not permissible for the

petitioner to give a go-by to such statutory remedies and approach this Court directly.⁴ On this count also the petition is not maintainable.

16. In our opinion, the distinction as made by Mr.Ambedkar in regard to such provision being available to be invoked against respondent No.1 in the capacity as citizen of India, is also untenable and deserves to be rejected.

17. In the light of the above discussion, considered from any angle, the petition is wholly misconceived and in fact is an abuse of the process of law. It is accordingly dismissed.

18. Although pressed on behalf of respondent No.1, on the petitioner's request, we refrain from imposing costs.

[R. N. LADDHA, J.]

[G.S. KULKARNI, J.]

4 See: Section 154(3), 156(3) and Section 200 of the Cr. P.C.