

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.94 OF 2023

Mr. Javed Ahmed Hajam,
Aged 26 years, Occ.Service,
Presently residing at Annapurna Lodge,
Near Hatkanangle Police Station,
Hatkanangale, Dist. Kolhapur,
Permanent Resident of
Village Dangivacha, Dist. Baramulla,
State Jammu & Kashmir.

.. Petitioner

Vs.

1. The State of Maharashtra

At the instance of Hatkanagale Police Station.
Kolhapur.

2. Mr. Sangram Pandit Patil,

Age 33 years, Occ. Service,
Residing at MIDC,

District Kolhapur, Maharashtra.

.. Respondents

- Mr. Karim Pathan, for the Petitioner.
- Mr. J.P. Yagnik, APP for State.

**CORAM : SUNIL B. SHUKRE &
M.M. SATHAYE, JJ.**

DATE : 10th APRIL, 2023.

ORAL JUDGMENT (PER : SUNIL B. SHUKRE, J.)

1. Heard. Rule. Rule is made returnable forthwith. With the consent of the parties, the petition is taken up for final disposal at the stage of admission itself.

2. The petitioner is a Professor in Sanjay Ghodavat Collage. There is a whatsapp group comprising parents-teachers organization and the petitioner is a member of this whatsapp group. It is alleged that between 13.08.2022 and 15.08.2022, the petitioner being a member of this whatsapp group, created whatsapp status giving two messages namely; (1) AUGUST 5 BLACK DAY JAMMU & KASHMIR and (2) 14th August Happy Independence Day Pakistan. It is further alleged that below the first message displayed as status of the petitioner on whatsapp application in petitioner's handset was written "Article 370 was abrogated, we are not happy". On the basis of these allegations, Hatkanangale Police Station, Kolhapur registered an offence punishable under Section 153-A of the Indian Penal Code, 1860.

3. Learned counsel for the petitioner submits that here is the case where the petitioner has not circulated any derogatory message much less any message with the intention of promoting enmity between different groups on grounds of religion, race, place of birth, residence,

language, caste or community or any other ground whatsoever or bringing about disharmony or feeling of hatred or ill-will between different religious, racial, language or rational groups or castes or communities. He submits that by these status messages, the petitioner did not commit any act which would be prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquility.

4. Reliance is placed upon the view taken by the Supreme Court in the case of *Balwant Singh & Anr. Vs. State of Punjab*¹ and *Manzar Sayeed Khan Vs. State of Maharashtra & Anr.*² Reliance is also placed upon the judgment of this Court in the case of *Sandeep Arjun Kudale Vs. The State of Maharashtra* in Writ Petition (Stamp) No.21880 of 2022 decided on 27.02.2023.

5. Learned APP for the State submits that whether the whatsapp status messages uploaded by the petitioner on his whatsapp application had the tendency or intention to promote disharmony or feeling of hatred or ill-will between different religious, racial, language or rational groups or castes or communities or were prejudicial to the

1 (1995) 3 SCC 214

2 (2007) 5 SCC 1

maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturb or are likely to disturb the public tranquility etc. is something which will have to be decided on merits of the matter as *prima facie* the status messages had the tendency to promote religious disharmony and/or prejudicial to the maintenance of harmony between two different groups and also had the tendency to disturb the public tranquility. He also submits that the petitioner is a Professor and if by these status messages, the petitioner is showing his certain likes and dislikes in a casual manner, without giving any reason or justification whatsoever for them, the *prima facie* inference would have to be drawn about constituting the offence punishable under Section 153-A and this is all the more so as the target audience is the organization of parent and teachers of an educational institution.

6. Upon considering the status messages in question, we find that there is substance in the argument of the learned APP for the State and there is no merit in the submissions of the learned counsel for the petitioner.

7. It is true that the Supreme Court, in the cases relied upon by the learned counsel for the petitioner and also in the order of the Co-

ordinate Bench of this Court, referred to above, a view has been taken that Section 153-A of IPC is an offence which is constituted only where the spoken words have the tendency or intention of creating public disorder or disturbance of law and order or adversely affect public tranquility. It is also true that the view, a settled one, is that without such intention to cause disorder or incite people to violence or without any adverse impact on public tranquility, no offence punishable under Section 153-A of IPC would be *prima facie* constituted. It is also true that the Supreme Court has held, in the case of ***Manzar Sayeed Khan Vs. State (supra)***, that 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 i.e. Section 153 and 153-A of IPC and that the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view or in other words, the words must be evaluated and understood by applying the standards of a reasonable man having strong and firm mind.

8. This view has been followed by the Co-ordinate Bench of this Court in the case of ***Sandeep Arjun Kudale (supra)***, but in the present case, when we consider the status messages in question which have

been made visible by the petitioner on his whatsapp application, we find *prima facie* that the petitioner has, in a very casual manner, posted at least the first status message about abrogation of Article 370. He has not given any reason or justification when he declares by this message that as Article 370 is abrogated, we are not happy, and therefore, 5th August is a black day for Jammu & Kashmir. But, this is not so about the other status message celebrating independence day of Pakistan. In respect of this message, we do not think that the message would be covered by Section 153-A of the IPC as no reasonable person with strong mind would see anything wrong in celebrating Independence Day of other countries without denouncing celebration of Independence Day of ones own country, which is the case here. But, about the first message proclaiming 5th August as a black day of India, we feel that there is something which needs consideration on merits of the matter.

9. The first message which has been posted on the whatsapp application by the petitioner is, without giving any reason and without making any critical analysis of the step taken by the Central Government towards abrogation of Article 370 of the Constitution. In our view, this message has the tendency to play with emotions of different groups of people in India as there are strong feelings of

contrasting nature about status of Jammu and Kashmir in India and, therefore, one has to tread cautiously in such a field, lest the emotions may reach up to such a level as to bring about consequences or reasonable possibility of consequences visiting as envisaged in Section 153-A of IPC. So, if any criticism is to be made, it must be upon evaluation of all pros and cons of the situation and backed by reason. No doubt, in a democratic country like India where there is a fundamental right in the nature of freedom of speech and expression under Article 19, every word of criticism and every view of dissent is important for maintaining democracy in good state of health. But, we may add that at least in sensitive matters any critical words or dissenting view must be expressed after proper analysis of the whole situation and must provide for the reasons for which the critic or dissent is made. This is all the more so, when the emotions and sentiments behind a particular thing or aspect being criticised run high with different shades and hues among different groups of people. In such a case, the criticism, disagreement; difference of opinion, dissent, whatever one may choose to call, must be, expressed upon an in-depth analysis and accompanied by reasons, so that the appeal that such critique makes is not to the emotions of groups of people but to the reason; the logic; the rationale of the groups of people. Whenever,

appeal is to the reason, there is least possibility of stirring up emotions and whenever appeal is to the emotions, the reason is the casualty. When reason falls victim to the emotions, there results ill-will, hatred, public disturbance and negativity all around. Such is the importance of criticism based upon critical analysis and same being not here, now it would be required to be examined on merits; if the whatsapp status message in question, really brought about the consequences contemplated under Section 153-A of IPC or not, which would be possible only upon appreciation of evidence, which is a stage of trial. As of now, *prima-facie* it does seem to be having such impact on the mind of different groups of people, for the reasons stated just now, and hence *prima-facie* constitutes the offence under Section 153-A of IPC.

10. In this view of the matter, in our considered opinion, this is not a fit case for quashing of the FIR and the proceedings initiated thereupon.

11. The petition is dismissed.

12. Rule is discharged.

[M.M. SATHAYE, J]

[SUNIL B. SHUKRE, J.]