



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1539 OF 2023

Mahendra s/o Madan Puri
(in the FIR Mahendra Madanlal Puri) ... PETITIONER

VERSUS

1. The State of Maharashtra
through Superintendent of Police,
Hingoli
2. The Investigating Officer,
Police Station, Kalamnuri
Tq. and Dist. Hingoli
3. Nagorao Champatrao Vhadgir,
Police Head Constable
Police Station Kalamnuri
Tq. Kalamnuri Dist. Hingoli ... RESPONDENTS

...
Advocate for applicant : Mr. Dhananjay M. Shinde
A.P.P. for respondent/State : Mr. V.K. Kotecha

...
**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATED : 14.03.2024

ORDER (PER : MANGESH S. PATIL, J.) :

Heard both the sides finally at the stage of admission.

2. By resorting to Section 482 of the Code of Criminal Procedure the applicant is seeking quashment of the crime bearing FIR No.188/2023 registered with Kalamnuri Police Station, Tq. Kalamnuri Dist. Hingoli for the offence punishable under Section 500 of the Indian Penal Code and under Section 3, 3(1) of the Police (Incitement of Disaffection) Act, 1922 (the Act).

3. The respondent No.3 who was then serving as a Police Head Constable and was posted at Police Station Kalamnuri has filed the FIR alleging that he along with Police Inspector, Police Sub-Inspector and other ten police staff had gone to the spot for arresting an accused in connection with Crime No.324/2021 for an offence punishable under Section 307 of the Indian Penal Code, who was also an absconder and wanted in a matter under Maharashtra Control of Organised Crime Act (MCOCA). When the police party tried to apprehend him he made an attempt to avoid the arrest and in the melee a round was fired from the gun of a police personnel and accidentally the PSI in the police party sustained the bullet injury.

4. It is alleged in the FIR that distorting the facts the applicant circulated a news from his mobile phone on a WhatsApp group under the style 'Marathi News Hingoli', asserting that 'if the police were not safe what would happen to the public' and soon thereafter deleted it. However, some police personnel could notice the message posted by the applicant. It was also read by several other individuals.

5. Perceiving that this post circulated by the applicant is defamatory and scandalous the FIR was lodged and the offence was registered.

6. We have carefully considered the rival submissions and perused the papers.

7. As far as the offence punishable under Section 500 is

concerned, accepting the allegations at their face value, posting of such a text on a social media without there being anything else would not constitute defamation which is mainly an individual centric crime.

Section 499 of the Indian Penal Code reads as under :

“Section 499. Defamation.- *Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter expected, to defame that person.*

Explanation 1.--*It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.*

Explanation 2.--*It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.*

Explanation 3.--*An imputation in the form of an alternative or expressed ironically, may amount to defamation.*

Explanation 4.--*No imputation is said to harm a person's reputation, unless that imputation directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.*

First Exception.--*Imputation of truth which public good requires to be made or published*

It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

Second Exception.--Public conduct of public servants

It is not defamation to express in a good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no further.

Third Exception.--Conduct of any person touching any public question

It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no further.

Fourth Exception.--Publication of reports of proceedings of Courts

It is not defamation to publish substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Explanation.--*A Justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court of Justice, is a Court within the meaning of the above section.*

Fifth Exception.--Merits of case decided in Court or conduct of witnesses and others concerned

It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no further.

Sixth Exception.--Merits of public performance

It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no further.

Explanation.--*A performance may be substituted to the judgment of the public expressly or by acts on the part of the*

author which imply such submission of the the judgment of the public.

Seventh Exception.--Censure passed in good faith by person having lawful authority over another

It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Eight Exception.--Accusation preferred in good faith to authorised person

It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Ninth Exception.--Imputation made in good faith by person for protection of his or other's interests

It is not defamation to make an imputation on the character of another provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Tenth Exception.--Caution intended for good of person to whom conveyed or for public good

It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good."

8. Consequently, in our considered view, the ingredients for constituting the offence punishable under Section 500 can hardly be made out even if one accepts the allegations at their face value.

9. Besides, assuming for the sake of argument that there could be such a charge in view of Explanation 2, merely saying that if the police

were not safe and questioning how the citizenry would be safe, cannot be said to be an imputation in the light of first exception and third exception.

10. So far as the offence punishable under Section 3 of the Police (Incitement of Disaffection) Act, 1922, in our considered view, the allegations even would not constitute the offence. It reads thus :

“3. Penalty for causing disaffection etc. *Whoever intentionally causes or attempts to cause, or does any act which he knows is likely to cause, disaffection towards the Government established by law in [India] amongst the members of a police-force, or induces or attempts to induce, or does any act which he knows is likely to induce, any member of a police-force to withhold his services or to commit a breach of discipline shall be punished with imprisonment which may extend to six months, or with fine which may extend to two hundred rupees, or with both.*

Explanation. *Expressions of disapprobation of the measures of the Government with a view to obtain their alteration by lawful means, or of disapprobation of the administrative or other action of the Government, do not constitute an offence under this section unless they cause or are made for the purpose of causing or are likely to cause disaffection.”*

11. We cannot comprehend as to how merely saying that the police were not safe and questioning as to how even the citizenry would be safe, apart from the element of intention, could be a circumstance which would have a potential of inciting disaffection towards the Government established by law, amongst the members of a police force as is contemplated under Section 3.

12. There is nothing to indicate that the applicant had circulated the message with some *mens rea* which would be a necessary

concomitant for constituting the offence punishable under Section 3 of the Act.

13. It would be an exercise in futility and sheer abuse of the process of law to make the applicant face the trial.

14. The application is allowed. The crime bearing FIR No.188/2023 registered with Kalamnuri Police Station, Tq. Kalamnuri Dist. Hingoli for the offences punishable under Section 500 of the Indian Penal Code and under Section 3, 3(1) of the Police (Incitement of Disaffection) Act, 1922 is quashed and set aside.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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