



Judgment

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [APL] No. 1378 OF 2022.

Mr. Mukesh s/o Dattatraya Mudgal,
Age – 57 years, Occupation – Doctor,
resident of Kawarapeth, Umred,
Tahsil Umred, District Nagpur. ... **APPLICANT.**

VERSUS

1.State of Maharashtra,
through PSO Umred,
District Nagpur.

2.Kadir s/o Maqbul Sheikh,
Aged 39 years, Occupation – Nil,
resident of Kawarapeth, Near
Durgapur School, Umred,
Tahsil Umred, District Nagpur. ... **NON-APPLICANT.**

Mr. A.M. Jaltare, Advocate for the Applicant.
Mrs. K.H. Bhondge, A.P.P. for Non-applicant No.1.
Mr. R.S. Akbani, Advocate for Non-applicant No.2.

CORAM : VINAY JOSHI AND
VRUSHALI V. JOSHI, JJ.

DATE : AUGUST 12, 2024.

Rgd.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard. **Admit.**

By consent of the learned Counsel present for the parties, the matter is taken up for final disposal.

2. This is an application in terms of Section 482 of the Code of Criminal Procedure, requiring this Court to invoke inherent powers to quash the criminal prosecution namely R.C.C.No.1049/2022 pending on the file of Judicial Magistrate First Class, Umred, arising out of first information report bearing Crime No.548/2022 registered with Umred Police Station, District Nagpur for the offence punishable under Sections 153-A and 295-A of the Indian Penal Code.

3. The unusual facts of the case are that on 07.09.2022, the informant Kadir Sheikh casually went to a pan shop, where a near by resident Aayan Sheikh had forwarded audio call recording of 17.26 minutes on the mobile of the informant through Whatsapp message. The informant heard the said audio recording, wherein one man and a

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woman were talking with each other on mobile phone. The said man [accused], was talking about some objectionable things against a particular community. The said conversation was approximately of the month of April, 2022. The informant has identified that the woman participating in the conversation was resident of his locality namely Sultana Sheikh, whilst the man saying objectionable things was a local Ex-corporator i.e. the present applicant.

4. After hearing the entire audio clip, the informant went to the police station and lodged a report on 08.09.2022, on the basis of which the aforesaid crime came to be registered. The police have carried out investigation and on completion, filed charge sheet.

5. The learned Counsel appearing for the applicant would submit that the contents of first information report even if taken to be true on its face value, does not make out the charged offences. The essential ingredients to constitute the offence of promoting enmity between religious group and the offence of intentional outraging religions feelings has not been made out and thus, it is a fit case for

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quashing the prosecution. It is the contention of the applicant that even if the facts are presumed to be true, however, it is a private conversation between two persons. As per the prosecution case, the applicant did not make the audio clip viral, nor he uttered those things in public or before a particular class of people. The audio clip was about private conversation between two persons prior to 4 months. The investigation paper never specifies as to who has made the audio clip viral. It is not the case that the applicant has posted the audio clip on whatsapp group with an intention to circulate the same amongst the people. The essential ingredient to constitute an offence namely – intentional act is totally missing. Moreover, the woman to whom the applicant allegedly spoke the objectionable things did not make any grievance and therefore, no offence is made out.

6. In resistance, we have heard the learned A.P.P. for State and the learned Counsel appearing for non-applicant No.2. It is their contention that if one goes through the script of the conversation, it clearly suggests to prompt disharmony or feeling of

enmity between a particular community. It is submitted that with a deliberate and malicious intention of outraging the religious feelings of a particular class, the applicant spoken the things to one lady, who belongs to the said community. It is submitted that at this preliminary stage, the material cannot be evaluated and thus, the application for quashing is liable to be dismissed.

7. The law in this regard is well settled that at this preliminary stage it is to be seen whether the first information report and the material collected during the course of investigation is capable enough to make out a the prima facie case to put the accused on trial. Needless to say that at this juncture meticulous scanning of the material or evaluation is not warranted. It reveals from the police paper that most of the things are not in dispute. The applicant had a telephonic talk with a lady namely Sultana prior to 4 months and during said conversation he made some derogatory and outraging remarks against a community to which the lady belongs. It is not the prosecution case that the applicant himself has put the said audio clip

on any whatsapp group/chat, or made it viral so as to communicate to others.

8. The police have recorded the statement of the said lady Sultana, who on the other hand denied that the applicant during conversation made communal remarks which would spread disharmony and feeling of enmity between the religious group. It is her contention that she had a talk with the applicant, which she never made viral. However, her daughter in law clandestinely got transferred said audio clip to her own mobile, and in order to pressurize, threatened to make it viral. The statement of daughter-in-law namely Saba was also recorded. She stated that she was suspecting that her mother-in-law [Sultana] was planning something against her, therefore, she got transferred various mobile conversations from the mobile of Sultana. She has transferred those audio clips to her husband and sister-in-law. She has stated that she was not aware whether those audio clips were inclusive of the conversation between Sultana and the applicant, and thus, showed

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ignorance about making the objectionable audio clip viral.

9. The police have recorded the statements of Aayan Sheikh, who has forwarded the audio clip on whatsapp to the informant. He stated that he has received the said audio clip from one Shabir Sheikh, which he merely forwarded to the applicant on his demand. The police did not record statement of said Shabir Sheikh.

10. It emerges from the said material that the objectionable talk was totally a private conversation in between two individuals i.e. applicant and Sultana. Admittedly Sultana has no grievance about the said conversation. It is not the case that the applicant has made the conversation viral, nor Sultana did. Rather it reveals that for some other purpose Saba has procured various audio clips of her mother-in-law, which she transferred to her husband and some relatives. The objectionable audio clip unknowingly got transferred by Saba without knowledge to the contents. In above background, the matter is to be looked – whether the applicant can be booked for the offence

punishable under Section 153-A and 295-A of the Indian Penal Code.

11. In order to constitute an offence punishable under Section 153-A of the Indian Penal Code, the accused must by means of words or by sign or by visible representation promotes or attempts to promote, disharmony or feeling of enmity in a particular community. The relevant provisions reads as below.

“Section 153A. Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—

(1) Whoever—

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racials, language or regional groups or castes or communities, or

(b)

(c)

shall be punished with imprisonment which may extend to three years, or with fine, or with both.”

12. Perusal of the police paper does not disclose that the applicant intended to promote or even attempted to promote disharmony or the feeling of enmity between religions. Apparently it was a private talk between two individuals from which it can hardly be gathered that the intention was to promote feeling of enmity in between two groups.

13. Similarly to constitute an offence punishable under Section 295-A of the Code, the essence is intention of the accused to outrage the religious feelings of a particular class. The learned Counsel appearing for the applicant would submit that to constitute an offence under Section 295-A of the Code, deliberate and malicious intent is an essential ingredient. In this regard he has relied on the decision of Supreme Court in case of **Mahendra Singh Dhoni .vrs. Yerraguntla Shyamsundar and another** – [2017] 7 SCC 760, wherein it is observed that, insult to religion unwittingly or careless or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the purview of Section 295-A of the

Code. Similarly, he relied on the decision of this Court in case of **Pramod Udebhan Shendre .vrs. The State of Maharashtra and another – Criminal Application No.1077/2023** and one decided on **24.07.2024**, wherein this Court has dealt in extenso the requirement to constitute an offence punishable under Section 295-A of the Code. In said case some whatsapp messages having objectionable material were circulated on whatsapp group. In said context, this Court after analyzing the facts observed that the whatsapp chat/messages of the group are end to end encrypted, that means within the group. A third person has no access to such messages. In absence of deliberate and malicious intention of outraging the religious feeling, the offence would not be complete.

14. Moreover, way back in the decision of **Ramji Lal Modi .vrs. State of U.P. - AIR 1957 SC 620**, the Constitutional Bench of the Supreme Court has observed that, Section 295-A does not penalize any and every act of insult to or attempt to insult the religion or the religious beliefs of a class of citizens but, it penalizes only those

acts of insults to or those varieties of attempts to insult the religion or the religious beliefs of a class of citizen, which are perpetrated with deliberate and malicious intention of outraging the religious feelings of that class. It was further observed that insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the purview of the said section.

15. Notably the informant has not stated that either the applicant intended to circulate the objectionable material or it has been heard by the members of a particular class. Accidentally informant met with one Ayan who has transmitted the audio clip to informant, that too on his demand. Pertinent to note that the informant did not come across the audio clip on any whatsapp group, but, he himself requested Ayan to forward, on which he received the audio clip. The statement of witnesses indicates that it was totally a private conversation which was never meant to be made known to others. Daughter-in-law of Sultana secretly obtained the audio clip

and forwarded it to her relatives, in which the applicant has absolutely no role. Taking over all view of the matter, it is evident that the essential ingredients are missing i.e. the applicant has either promoted or attempted to promote disharmony or intentionally/deliberately uttered the words to hurt the religious feeling of a particular class. It is also required to be noted that the conversation was never intended, nor meant to make it public. Private talk between two individuals on mobile may be of an objectionable nature, but, would not attract any penal consequence unless it was intended to make it public or viral. The person who deliberately made the private objectionable conversation viral may attract the liability, but, in that regard there is no investigation. The material does not disclose as to who has made the conversation viral, nor the informant claims that it was made viral by anyone.

16. Taking into consideration all these aspects, it is difficult to hold that a prima facie case is made out against the applicant. The parameters governing exercise of inherent powers of this Court under

Section 482 of the Criminal Procedure Code are well defined in the decision of Supreme Court in case of **State of Haryana .vrs. Ch. Bhajan Lal and others – AIR 1992 SC 604.** The case in hand squarely falls in category nos. 1 and 3 as laid down in the decision, therefore, we find it appropriate to exercise our inherent powers to prevent the abuse of process of Court. In view of this following order is passed.

ORDER

- (i) Criminal Application is allowed and disposed of.
- (ii) The criminal case bearing R.C.C.No.1049/2022 pending on the file of Judicial Magistrate First Class, Umred, arising out of first information report bearing Crime No.548/2022 registered with Umred Police Station, District Nagpur for the offence punishable under Sections 153-A and 295-A of the Indian Penal Code, is hereby quashed and set aside.

JUDGE

JUDGE