Court No. - 9

Case :- MISC. BENCH No. - 19277 of 2021

Petitioner :- Munnawar Rana
Respondent :- State Of U.P. Thru. Prin. Secy. Home. Lko & Others
Counsel for Petitioner :- Sudhanshu S. Tripathi,Anjani Kumar Mishra,Sheeran Mohiuddin Alavi
Counsel for Respondent :- G.A.

Hon'ble Ramesh Sinha,J.
Hon'ble Mrs. Saroj Yadav,J.

(1) Heard Sri I.B. Singh. learned Senior Advocate, assisted by Sri Sudhanshu Shekhar Tripathi, learned counsel for the petitioner, Sri S.N. Tilhari, learned AGA for the State/respondents no. 1, 2, 3 and 5 and perused the impugned F.I.R. as well as material brought on record.

(2) This writ petition has been filed by the petitioner, **Munnawar Rana**, seeking a writ of certiorari to quash the First Information Report dated 20.08.2021 registered as F.I.R. No.0299 of 2021, under Sections 153-A, 295-A, 505 (1) (b) I.P.C. and Section 3 (1) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Amendment, 2015), police station Hazratganj, District Lucknow Centre (Commissionerate), Lucknow with a further prayer to stay the arrest during the pendency of the investigation of the aforesaid case.

(3) Sri I.B. Singh, learned Senior Advocate, appearing on behalf of the petitioner has argued that the petitioner is the senior citizen

and an Urdu poet of international eminence and repute. He submits that some statement given by the petitioner, during some personal interactions with family and friends, has been twisted and distorted by certain notorious social medial trolls and also by some irresponsible media persons and a deliberate attempt has been made to give it a colour of criminal and communal nature. He argued that the petitioner has not given any derogatory or provoking statement whatsoever as has been alleged in the impugned F.I.R. He further argued that the petitioner, in any of his statements, has not even referred to the name of Lord Valmiki and, thus, the question of him comparing Lord Valmiki with Taliban and, thereby, hurting the statements of his devotee or any other religious sect does not arise at all, hence the allegations levelled in the impugned F.I.R. are absolutely vague and unclear.

(4) Sri Singh, on placing reliance upon the judgment of the Apex Court in **Manzar Sayeed Khan Vs. State of Maharashtra and another :** (2007) 5 SCC 1 and **Ramesh S/O Chotalal Dalal vs Union Of India (Uoi) And Ors** : (1998) 1 SCC 668, has submitted that the impugned F.I.R. fails to mention or disclose the source and particulars of the alleged statement of the petitioner and if at all, there is any such statement of the petitioner as has been alleged in the impugned F.I.R., then, the same should be read as a whole and in entirety and not in isolated passage.

(5) Sri Singh has further submitted that for constitution of an offence under Section 153-A I.P.C., there must be reference to at least two different communities and the accused must be speaking on behalf of one community and the same should be directed to another community but in fact in the instant case, the essential ingredients of offence under Sections 153A I.P.C. are absent, hence the offence under Section 153A I.P.C. is not made out against the petitioner. He further argued that the offence under Section 295-A I.P.C. is also not made out against the petitioner as the pre-requisite for constituting an offence under Section 295-A I.P.C. is use of words with deliberate malicious intention to outrage the religious sentiments of any class of citizens but the petitioner, in the instant case, has not in any manner insulted or attempted to insult the religion or religious feelings of any class of citizens. He, thus, submits that the question of insulting or attempting to insult the religious feelings of any person does not arise at all as the petitioner, in none of the statements, has referred to Lord Valmiki, his followers or any religious denomination or sect.

(6) Lastly, Sri Singh has argued that there is no cogent and reliable evidence to connect the petitioner with the crime in question. In fact, there is veritable dearth of evidence against the petitioner as the impugned F.I.R. fails to disclose the source and the material particulars such as date and time of any such statement, hence the impugned F.I.R. is liable to be quashed. He

has pointed out that the petitioner is suffering from a series of serious aliments which include Chronic Kidney Disease Heart Disease, Hypertension and uncontrolled diabetes.

(7) Learned Additional Government Advocate, on the other hand, has opposed the prayer of the learned Counsel for the petitioner and has stated that it is the petitioner, who has made a derogatory words so as to promote the feelings of enmity, hatred or ill-will against one religion. He argued that by reading of the statement mentioned in the impugned F.I.R. attracts the provisions of Section 153-A of the IPC. He further argued that the statement which has been made the tone and the demeanor of such statement creates hatred, prejudice, enmity, ill-will against one religion. He also argued that the judgments cited by the learned Senior Counsel appearing on behalf of the petitioner are not applicable in the facts and circumstances of the case as in the instant case, the petitioner is the person who has made a derogatory words against one religion without any basis or research, by which the feelings of one community of the society have been violated.

(8) Elaborating his submission, learned AGA has further argued that whether provisions of Section 153A or B of the IPC or any offences made against the petitioner attract or not, is a matter which has to be adjudicated only at the time of full-dressed trial and at this pre-matured stage, it cannot be held that there is no material against the petitioner. He also argued that from perusal

of the impugned F.I.R., it cannot be said that no cognizable offence is made out, hence he prays that the writ petition is liable to be dismissed.

(9) We have carefully and cautiously gone through the submissions advanced by the learned Counsel appearing for the parties and perused the impugned F.I.R. as well as material brought on record.

(10) From perusal of the impugned F.I.R., it reflects that it has been lodged by the respondent no.4, who is the President of one organization, namely, Samajik Sarokar Foundation (U.P.). It has been alleged in the impugned F.I.R. that the petitioner has drawn a comparison of Lord Valmiki with Taliban and as such, hurt the sentiments of the nation. It has been alleged in the impugned F.I.R. that the petitioner has stated that Taliban will become Valmiki after ten years; Valmiki was a writer and in Hindu religion, any one can be said to be a God. These statements of the petitioner has hurt the sentiments of devotees of Lord Valmiki and also not only attacked the Hindu religion but also attacked the dalit society, Lord Valmiki and his disciples.

(11) The much emphasis has been laid down by the learned Senior Counsel for the petitioner upon the judgment of the Apex Court in **Manzar Sayeed Khan Vs. State of Maharashtra and another (Supra)** and **Ramesh s/o Chotalal Dalal Vs. Union of**

India (UOI) and others (supra) and has contended that the petitioner has not made any derogatory or provoking statement whatsoever as has been alleged in the impugned F.I.R. However, he contended that some statement given by the petitioner, during some personal interactions with family and friends, have been twisted and distorted by certain notorious social medial trolls and also some irresponsible media persons. He also contended that none of the offences as alleged in the impugned F.I.R. would be made out against the petitioner, hence the impugned F.I.R. is liable to be quashed.

(12) Appreciating the aforesaid rival submissions of the learned Counsel for the parties, we would like to mention here that the ratio laid down by the Apex Court in **Manzar Sayeed Khan Vs. State of Maharashtra (supra)** and **Ramesh s/o Chotalal Dalal Vs. Union of India (UOI) and others (Supra)**, wherein at the initial stage itself quashed the proceedings arising out of the F.I.R., have been discussed by the Apex Court in a recent case of ***Amish Devgan Vs. Union of India and others :*** (2021) 1 SCC 1 and has observed as under :-

> *"**Manzar Sayeed Khan** was a case, wherein the appellants had published a book titled 'Shivaji: Hindu King in Islamic India' authored by Prof. James W. Laine, a Professor of Religious Studies in Macalester College, United States of America, which had led to registration of FIR against the Indian Publisher and a Sanskrit scholar whose name had appeared in the acknowledgement of the book for having helped the author by providing him some information during the*

> *latter's visit to Pune.* ***The primary reason according to us why the appeal was allowed and the proceedings arising from the FIR were quashed at the initial stage are reflected in paragraph 19 of the judgment which notes that the author was a well-known scholar who had done extensive research before publishing the book. Further, he had relied upon material and records at Bhandarkar Oriental Research Institute (BORI), Pune. It was highly improbable to accept that any serious and intense scholar like the author would have any desire or motive to involve himself in promoting or attempt to promote any disharmony between communities, castes or religions within the State. Good faith and (no) legitimate purpose principle was effectively applied. These principles were also applied by this Court in Ramesh holding that the T.V. Serial 'Tamas' did not depict communal tension or violence to fall foul of Section 153A of the Penal Code and/or was the serial prejudicial to national integration to fall under Section 153B of the Penal Code. Reliance was also placed on the test of 'Clapham omnibus' referred to above. Mahendra Singh Dhoni was a case in which prosecution under Section 295A was initiated by filing a private complaint on the ground that the photograph of the well-known cricketer, as published in the magazine, was with a caption 'God of Big Things'. It was obvious that prosecution on the basis of content was absurd and too farfetched by any standards even if we ignore the intent or the hurt element.***"
>
> *(Emphasis supplied)*

(13) In the instant case, the petitioner though is a famous Urdu poet but the allegation against him in the impugned F.I.R. that he has made a remark against Hindu community to the effect that "….तालिबान भी दस साल बाद बाल्मिकी होंगे। मुनव्वर ने कहा कि

बाल्मिकी एक लेखक थे। हिन्दु धर्म में तो किसी को भी भगवान कह देते है।....”

(14) A perusal of the contents of the aforesaid alleged statements of the petitioner would show that *prima facie,* offences under Sections 153-A, 295-A, 505 (1) (b) I.P.C. are fully made out as sentiments of majority community have been hurt by unnecessary comparison drawn by the petitioner of Lord Valmiki with Taliban in disrespectful manner and without any material basis.

(15) The petitioner has taken all sorts of grounds that the offences alleged against him are not made out. However, the fact remains that the petitioner had not been vigilant and has acted irresponsibly by making the aforesaid derogatory statement.

(16) From the aforesaid, the judgments, which have been relied by the learned Senior Counsel for the petitioner, is not applicable in the facts and circumstances of the case.

(17) Recently, in ***Neeharika Infrastructure Private Limited vs. State of Maharashtra :*** AIR 2021 SC 1918, the Hon’ble Supreme Court considered the powers of the High Court while adjudicating a petition for quashing of the FIR under Article 226 of the Constitution of India and under Section 482 of the Criminal Procedure Code, 1973. In ***Neeharika Infrastructure Private Limited (supra),*** the appellants challenged an interim

order issued by the Bombay High Court, in a quashing petition filed under Section 482 Cr.P.C. and Article 226 of the Constitution. The Bombay High Court issued an interim order directing that "no coercive measures shall be adopted against the petitioners in respect of the said FIR". While examining the correctness of the said interim order, Hon'ble the Supreme Court in para-23 has held as under :

> "*23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:*
>
> *i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;*
>
> *ii) Courts would not thwart any investigation into the cognizable offences;*
>
> *iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;*
>
> *iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).*
>
> *v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or*

otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it

exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive

steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

(18) Keeping in mind the aforesaid dictum of the Hon'ble Supreme Court, we find that in the instant case, it transpires from the impugned F.I.R. that it has been lodged by the respondent no.4, who is the President of one organization, namely, Samajik Sarokar Foundation (U.P.) with the allegation that the petitioner has drawn a comparison of Lord Valmiki with Taliban and as such, hurt the sentiments of the nation and further the petitioner has stated that Taliban will become Valmiki after ten years; Valmiki was a writer and in Hindu religion, any one can be said to be a God. On account of these statements, the sentiments of the Hindu community have been hurt.

(19) It is well settled that this Court has to eschew itself from embarking upon a roving enquiry into the last details of the case. It is also not advisable to adjudge whether the case shall ultimately end in submission of charge sheet and then eventually in conviction or not. Only a *prima facie* satisfaction of the Court about the existence of sufficient ingredients constituting the offence is required in order to see whether the F.I.R. requires to be investigated or deserves quashing. The ambit of investigation into the alleged offence is an independent area of operation and does not call for interference in the same except in rarest of rare cases.

(20) The question whether the alleged statements in the F.I.R. has been made by the petitioner or not, is a question of fact, which can only be ascertained by thorough investigation. Moreso, from perusal of the F.I.R., it appears that the petitioner, *prima facie,* is guilty for making derogatory statements, therefore, at this stage, when the investigation of the case is still pending, it cannot be said that the offences which have been made by means of the impugned F.I.R. are not made out as it is a matter of investigation, which is still pending.

(21) Having given our careful and in-depth consideration, we do not think it would be appropriate at this stage to quash the FIR as it stalls the investigation into all the relevant aspects. However, our observations on the factual matrix of the present case in this decision should not, in any manner, influence the investigation by the police who shall independently apply their mind and ascertain the true and correct facts, on all material and relevant aspects.

(22) In view of the aforesaid, we are of the considered view that the submissions advanced by the learned Senior Counsel for the petitioner call for determination on questions of fact which may be adequately discerned either through proper investigation or which may be adjudicated upon only by the trial court and even the submissions made on points of law can also be more appropriately gone into only by the trial Court in case a charge sheet is submitted in this case. Thus, considering the

allegations made in the FIR and material brought on record, it cannot be said that no *prima facie* offence whatsoever is made out against the petitioner, rather there appears to be sufficient ground for investigation in the matter.

(23) Accordingly, we do not find any justification to quash the impugned F.I.R.

(24) The instant petition lacks merit and is, accordingly, **dismissed**.

(Saroj Yadav, J.) (Ramesh Sinha, J.)

Order Date :- 2.9.2021
Ajit/-