

A.F.R.

Judgement reserved on 03.12.2021

Judgement delivered on 10.12.2021

(1) Case :- CRIMINAL MISC. WRIT PETITION No. - 851 of 2021

Petitioner :- Ritesh Sidhwani And Another

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Syed Imran Ibrahim

Counsel for Respondent :- G.A.,Rahul Mishra

alongwith

(2) Case :- CRIMINAL MISC. WRIT PETITION No. - 1665 of 2021

Petitioner :- Karan Anshuman And 3 Others

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Syed Imran Ibrahim

Counsel for Respondent :- G.A.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Subhash Vidyarthi,J.

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Gopal Swaroop Chaturvedi, learned Senior Advocate assisted by Sri Imran Ibrahim, learned counsel for the petitioners in Writ Petition Nos. 851 of 2021 and Sri. Manish Tiwari, learned Senior Advocate assisted by Sri Imran Ibrahim, learned counsel for the petitioners in Writ Petition No. 1665 of 2021, Sri Rahul Mishra, learned counsel for the Informant / respondent No. 3 and Sri Arunendra Kumar Singh, learned Additional Government Advocate appearing for the respondent-State of U.P. The writ petition no.851 of 2021 is being treated as the leading case.

2. In both the writ petitions pleadings have been exchanged and with the consent of parties, Writ Petition Nos. 851 of 2021 and Writ Petition No. 1665 of 2021 are being decided by a common judgment as both the Writ Petitions seek quashing of the F.I.R. in Case Crime Number 0016 of 2021, under Sections 295-A, 504, 505 and 34 of the Indian Penal Code¹ and

¹ IPC

Section 67-A of the Information Technology Act² in Police Station Kotwali Dehat, District Mirzapur filed by one Arvind Chaturvedi, who has been arrayed as the respondent number 3 in both the Writ Petitions, in Police Station Kotwali Dehat District Mirzapur against the petitioners, one Bhowmik Gondaliya and OTT platform company web series Amazon Prime. In both the writ petitions, the Court has accorded interim orders on 29.1.2021 (CRLP 851 of 2021) and 18.2.2021 (CRLP 1665 of 2021). For ready reference, the order dated 18.02.2021 is quoted as under:-

“Sri Manish Tiwari, Senior counsel assisted by Sri Syed Imran Ibrahim, Sri Jay Kumar Bhardwaj and Ms. Priyadarshini Arora, learned counsels for the petitioners and Sri J.K. Upadhyay, learned A.G.A. for the State.

This writ petition has been filed by the petitioners seeking quashment of F.I.R. dated 17.01.2021 in respect of Crime No.0016 of 2021 for the offence under Section 295-A, 504, 505, 34 of IPC & Section 67-A of Information Technology Act, Police Station Kotwali Dehat, District Mirzapur.

Issue notice to respondent no. 3.

Steps by 22.02.2021. Failure in taking steps shall lead to automatic vacation of this order.

Heard on stay application.

Learned counsel for the petitioners submits that two co-accused persons, namely, Ritesh Sidhwani and Farhan Akhtar have filed CrI. Misc.Writ Petition No.851 of 2021 before this Court and while entertaining their petition, interim order has also been passed in their favour on 29.01.2021. It has been argued that petitioner no.1 was the director and writer of the first season of the web series, Mirzapur, petitioner no. 2 was the director of the first and second season of web series, Mirzapur, petitioner no. 3 was the writer of the second season of web series, Mirzapur and petitioner no. 4 was the writer of the first season of the said web series, Mirzapur.

It has been further argued that petitioners have not been named in the F.I.R. and they are on better footing as compared to named accused persons in the F.I.R. Learned counsel submits that even if the entire prosecution case is taken as it is, offence under Section 295-A, 504, 505,34 of I.P.C. and Section 67-A of Information Technology Act, is not made out. On the other hand, State Counsel though opposes the writ petition, however, he is not in a position to dispute the fact that in the case of co-accused, interim protection has been granted.

² IT Act

Link this matter with Crl. Misc.Writ Petition No.851 of 2021.

Having regard to the facts of the case and the submissions made, till the next date of listing or till submission of police report under Section 173(2) CrPC, whichever is earlier, no coercive action shall be taken against the petitioners in pursuance of the FIR registered as Case Crime No. 0016 of 2021, under Section 295-A, 504, 505, 34 IPC & Section 67-A of Information Technology Act, Police Station Kotwali Dehat, District Mirzapur.

It is made clear that the investigation shall go on and the petitioners shall cooperate in the investigation and non cooperation on the part of the petitioners may give reasons to the State to file application seeking vacation of the interim order.

The party shall file computer generated copy of this order downloaded from the official website of the High Court, Allahabad, self attested by the petitioner(s) along with a self attested identity proof of the said person(s) (preferably Aadhar Card) mentioning the mobile number(s) to which the said Aadhar Card is linked.

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court, Allahabad and shall made a declaration of such verification in writing.”

3. The allegations levelled in the FIR against the accused persons Ritesh Sidhwani, Farhan Akhtar, Bhaumik Gondaliya and OTT Platform Comany Web Series Amazon Prime, are that Mirzapur is the place of Goddess Vindhyavasini which is the centre of the belief and inspiration for the entire world and the informant is a native resident of Mirzapur. Recently the informant came to know that a series titled 'Mirzapur' is being web casted on the OTT platform Amazon prime and when he watched some episodes he was shocked because against his expectations Mirzapur is presented as an anti-social and criminal place depicting illicit relations in the family, abusive language and caste-based animosity. False and vitiated depiction of the courts, advocates and even that of the judicial system is also shockingly portrayed. Small video clips taken from this web series are also available on Facebook, Instagram and many other social media platforms. Besides being far away from the social structure and normal life of the common man of Mirzapur, the entire series hurts the religious, social and regional feelings of the informant and it spreads hatred and corrupt mindset in the

society.

4. Ritesh Sidhwani, Farhan Akhtar and Bhaumik Gondaliya are the Executive Producers of the web series and their company Excel Entertainment has entered into an agreement with Amazon. The team consisting of such established and reputed persons ought to have produced the web series very thoughtfully. The dialogues and story of the web series have hurt the religious, social and regional sentiments of the informant and some of the informant's friends have started calling him "kaleen bhaiya", who has been shown as a mafia don involved in the trade of country made pistols. Two seasons of the aforesaid web series have already been web casted and the third season has been announced and the informant believes that in continuation of the earlier two seasons it will also depict a story, which would hurt the informant's sentiments.

5. Writ Petition No. 851 of 2021 has been filed by the petitioners- Ritesh Sidhwani and Farhan Akhtar on the grounds that the contents of the F.I.R. are more of a general opinion of the informant and a bare reading, thereof, does not make out any offence. The petitioners have the fundamental right of Freedom of Speech and web series has been produced in exercise of that fundamental right. The F.I.R. has been lodged after an inordinate delay which has not been explained. Each episode of the web series begins with a disclaimer and the web series is not available to the general public at large and can be accessed only by those who are subscribers of the Amazon Prime Video Service.

6. The first informant has filed a counter affidavit in which he has inter-alia pleaded that "the petitioners have chosen the name of sacred town to display violence, nudity, incest, lawlessness, disregard to judicial system, filthy abuses, sexual content, involving a character with his daughter-in-law etc. in the name of art and thus have deliberately brought disrepute and disrespect to the sacred town, thus outraging the religious feelings of a Class of people, which tends to spread hatred amongst communities and is a

big threat to public disorder, just in the name of art. **Things would have been fine if the petitioners would have chosen a fictional name of the town and the title of their web series.”**

(Emphasis supplied by the Court)

7. The State has also filed a counter affidavit inter-alia stating that District Mirzapur is an old famous city of Mata Vindhvasini Dhaam and in the web series namely Mirzapur at different places name of District Mirzapur has been used and in the aforesaid web series family illicit relationship has been shown and it has also featured false information regarding advocates as well as judicial system, which clearly insulted the feelings of a class of citizens. It has been stated in the counter affidavit that the statement of few people were recorded who have stated that the web series has insulted the regional and religious sentiments of the people of Mirzapur in general and Tripathi family in particular. The web series showed illicit relationship and made use of abusive language. A Brahmin family has been targeted just to defame the Brahmin Samaj. Although in the web-series statutory warning has been shown but as the several small parts of the web series are available in different social media platforms including facebook and Instagram and the person, who accessed the aforesaid web series in that platform are not able to see the aforesaid statutory warning.

8. An interim order was passed by the Division Bench of this Court in Writ Petition No. 8516 of 2021 on 29.01.2021 to the effect that till the next date of listing or till submission of police report under Section 173(2) Cr.P.C. whichever is earlier, no coercive action shall be taken against the petitioners in pursuance of the FIR registered as Case Crime No.0016 of 2021, under Sections 295-A, 504, 505, 34 IPC and Section 67-A of the IT Act, Police Station Kotwali Dehat, district Mirzapur.

9. The Writ Petition No. 1665 of 2021 was filed on 09-02-2021 by Karan Sharma - the director of the first season of the web series Mirzapur, Gurmeet Singh - the director of the second season of the web series

Mirzapur, Puneet Krishna - the writer of the second season of Mirzapur and Vineet Krishna the writer of the first season of the series Mirzapur, challenging the same FIR in case crime number 0016 of 2021 under Sections 295, 504, 505, 34 IPC and Section 67 A IT Act, Police Station Kotwali Dehat, District Mirzapur inter alia pleading that when this Court passed an interim order dated 29-01-2021 in Writ Petition No. 815 of 2021 providing that no coercive action shall be taken against the petitioners in that Writ Petition, the Investigating Officer has enlarged the scope and ambit of the investigation and issued notices to the petitioners in Writ Petition No. 1665 of 2021 stating that they are also accused in the case.

10. Shri G.S. Chaturvedi, learned Senior Advocate has submitted that Section 295-A of the IPC does not stipulate everything or anything which offends the religious, regional and social sentiments of the informant to be an offence. Section 295-A penalises only those acts of insult or those varieties of attempt to insult the regional or religious belief of a class of citizens which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class of citizens.

A disclaimer is shown at the beginning of each episode, which is as follows:

“This program is made solely for viewer entertainment and is a work of fiction. Names, characters, business, places, events and incidents are either the author’s imagination or used in a fictitious manner. Any resemblance to actual persons, living or dead, or actual persons events is purely coincidental. Any dialogue characters in the program are not intended to offend the sentiments of any individual, caste, community, race or religion or to denigrate any institution or person, living or dead, Amazon India does not endorse or bear responsibility for any content shown or there views expressed in this program. Viewer discretion advised.”

11. He has submitted that the import of Section 295-A I.P.C. is to curb speech made with malicious intent and not each and every offensive speech. Criminality would not include insult to religion offered unwittingly, carelessly or without any deliberate or malicious intention to outrage the religious feelings. Only an aggravated form of insult to religion when it is perpetuated with deliberate and malicious

intent to outrage the religious feelings of that class is an offence.

12. Shri Chaturvedi has submitted that for attracting the provisions of Section 67-A of the IT Act, the material published must contain sexually explicit act or conduct, whereas, neither any sexually explicit act has been shown in the web series Mirzapur nor has any allegation to this effect being levelled in the First Information Report.

13. The web series portrays the life of a particular family which, as per the disclaimer shown at the start of each episode is the product of the author's imagination. The tone and tenor of the dialogues reflects the nuances locally and habitually used in such families which is not bereft of explicit used for force and effect by way of normal and common parlance in such families. These explicit are not intended to be taken literally. There is nothing sensual or sexual in these explicit, used as they are, in the ordinary and habitual course as a part of the language used in such families and they express anger, race, frustration and the like.

14. Shri Manish Tiwari learned Senior Advocate appearing for the petitioners in Writ Petition 1665 of 2021 has submitted that the web series Mirzapur is a crime drama depicted in a fictional manner. It is in no way related to any religious community and it does not insult any religious community so as to incite any class or community of persons to commit any offence against any other class or promote enmity between different groups on the ground of religion etc. The impugned F.I.R. does not disclose the commission of any offence. The FIR was registered at about midnight at 23:27 hours in a routine and perfunctory manner without any application of mind and without holding a preliminary inquiry mandated by the Hon'ble supreme Court in the case of **Lalita Kumari vs Government of U.P.**³

15. It has been contented on behalf of the petitioners that the depictions made in the web series do not make out any offence, what so ever, under the

³ (2014) 2 SCC 1

laws of the country and neither *mens rea* nor *actus reus* can be attributed to the petitioners for the same. It is the personal opinion of the informant that the impugned content is anti-social and infested with crime, promotes illicit relationships, used abusive language and portrays a wrong and polluted picture of the legal and judicial system in a whimsical hypothetical and unsubstantiated fashion. Even if the allegations are taken to be true, no offence is made out against the petitioners. The impugned F.I.R. is a direct attack on the Fundamental Right of freedom of speech and expression guaranteed under Article 19 (1) (a) of the Constitution of India.

16. The allegations levelled in the impugned F.I.R. regarding the contents of the web series hurting religious, social and regional sentiments of any particular community must be ascertained from the point of view of a reasonable person of ordinary prudence by applying the community standard test and it cannot be judged in an isolated manner.

17. Per contra Sri Rahul Mishra, Advocate, learned Counsel for the informant, has submitted that the First Information Report prima facie discloses commission of cognizable offence which needs to be fairly investigated without any intervention by this Court. He has submitted that there is no censorship for the material to be displayed on OTT platform. Kids have access to all kinds of media and so it needs to be regulated from breaching the boundaries or else, it, like in the present case, amounts to commission of crime against the society at large.

18. He has further submitted that merely by showing a disclaimer at the start of the episode or making it for restricted viewers does not absolve the makers from acting in a responsible manner for if it was a work of fiction, why the series was named “Mirzapur” - a District in the State of Uttar Pradesh, as they could have even opted for a fictional name of the city. Moreover, depicting a resident of Mirzapur- a district more known for its religious fervour, particularly for having Vindhya

Dham (a Shakti Dham) and a prominent and pious place of worship for Hindus, as a goon, vagabond and adulterer, who practises nudity, vulgarity and abusive language, is surely a culpable act of the petitioners and in doing so they have, with full knowledge and intent committed deliberate and malicious acts, intending to outrage the religious feelings of a class of people and thus have committed an offence under Section 295-A of IPC, which is a cognizable and non-bailable offence.

19. Shri Arunendra Kumar Singh, learned Additional Government Advocate appearing for the State of U.P. has submitted that the averments made in the First Information Report make out a case of commission of cognizable offence and this Court should not interfere and quash the First Information Report in exercise of power under Article 226 of the Constitution of India.

20. In the **State of Haryana v. Bhajan Lal**⁴, the Hon'ble Supreme Court has laid down the guidelines for exercise of the extraordinary powers under Article 226 for quashing an F.I.R. in the following words: -

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

4 1992 Supp (1) SCC 335

- (5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.”

21. This Court has to examine the impugned F.I.R. in light of the aforesaid guidelines to ascertain whether it is liable to be quashed. It would be apt to have a glance at Section 295-A of the IPC, which reads as follows:-

“Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.—Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, by words, either spoken or written, or by signs or by visible representations or otherwise, insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

For attracting an offence as defined under Section 295-A IPC, the act must have been done with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India.

22. In **Mahendra Singh Dhoni Vs. Yerraguntla Shyamsundar and another**⁵, the Hon’ble Apex court has held as under: -

“6. On a perusal of the aforesaid passages, it is clear as crystal that Section 295 A does not stipulate everything to be penalised and any and every act would tantamount to insult or attempt to insult the religion or the religious beliefs of a class of citizens. It penalises only those acts of insults to or those varieties of attempts to insult the religion or religious belief of a class of citizens which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class of citizens. 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 section. The Constitution Bench has further clarified that the said provision only punishes the aggravated form of insult to religion when it is perpetrated with the deliberate and

⁵ (2017) 7 SCC 760

malicious intention of outraging the religious feelings of that class. Emphasis has been laid on the calculated tendency of the said aggravated form of insult and also to disrupt the public order to invite the penalty."

23. In the case of **Ramji Lal Modi Vs. State of U.P.**⁶, the Hon'ble Apex Court was pleased to hold that: -

"Section 295-A does not penalise any and every act of insult or to attempt to insult the religion or the religious beliefs of a class of citizens but it penalises only those acts of insults to or those varieties of attempts to insult the religion or religious belief of a class of citizens which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class of citizens."

24. In the case of **Amish Devgan Vs. Union of India and Others**⁷, it has been held as under:

"54. In Arun Ghosh, it was held that a line of demarcation has to be drawn between serious and aggravated forms of breaches of public order which affect life of the community or forms of breaches of public order which endanger the public interest at large, from minor breaches of peace which do not affect the public at large. Acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity do not subvert public order, but are law and order issues. Referring to Ram Manohar Lohia case, it was observed that similar acts in different context may affect law and order in one case and public order in the other. It is always the degree of harm and its effect on the community. The test which is to be examined in each case is whether the act would lead to disturbance of the current life of the community so as to amount to disturbance of public order, or does it affect merely an individual leaving the tranquillity of the society undisturbed. The latter is not covered under and restriction must meet the test of ordre publique affecting the community in the locality.

.....

73. On the aspect of content, Ramesh states that the effect of the words must be judged from the standard of reasonable, strong-minded, firm and courageous men and not by those who are weak and ones with vacillating minds, nor of those who scent danger in every hostile point of view. The test is, as they say in English Law, — "the man on the top of a Clapham omnibus". Therefore, to ensure maximisation of free speech and not create "free speaker's burden", the assessment should be from the perspective of the top of the reasonable member of the public, excluding and disregarding sensitive, emotional and atypical. It is almost akin or marginally lower than the prudent man's test. The test of reasonableness involves recognition of boundaries within which reasonable responses will fall, and not identification of a finite number of acceptable reasonable responses. Further, this does not mean exclusion of particular circumstances as frequently different persons acting reasonably will respond in different ways in the context and circumstances. This means taking into account peculiarities of the situation and occasion and whether the group is likely to get offended. At the same time, a tolerant society is entitled to expect tolerance as they are bound to extend to others."

6 AIR 1975 SC 620

7 (2021) 1 SCC 1

25. A perusal of the impugned First Information Report indicates that the grievance of the petitioner is that in the web series 'Mirzapur' the name of the city Mirzapur has been used and an anti-social and criminal picture of the city has been presented by depicting illicit family relations, abusive language and caste-based animosity which is far away from the social structure and normal life of the common man of Mirzapur.

26. There is no allegation in the entire F.I.R. that any content shown in the Series portrays any particular religion in a bad light and which can possibly hurt the religious feelings of a class of citizens. Even as per the averments made in the First Information Report, it is the informant alone whose religious, social and regional sentiments have been hurt by the web series and not those of any class of citizens. There is nothing on record to indicated that besides the informant, the religious beliefs of any class of citizens were hurt by the web series Mirzapur and what to say about the same having been done with deliberate and malicious intention.

27. Upon a specific query being made from the learned counsel for the informant as well as the learned A.G.A appearing for the State, they could not point out any other complaint, First Information Report, resentment or agitation of any form having been made by any class of citizens showing that the web series has outraged their religious feelings. Examining the facts of the present case in the light of the law as explained by the Hon'ble Supreme Court, this Court is satisfied that there is no allegation to make out a case that the petitioners have, with a deliberate and malicious intention of outraging the religious feelings of any class of citizens of India, insulted or attempted to insult the regional or the religious beliefs of that class through the Web Series Mirzapur so as to make it an offence punishable under Section 295 A IPC.

28. The FIR also mentions Section 504 and 505 (2) of the IPC, which are as follows: -

“504. Intentional insult with intent to provoke breach of the peace.—Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

“505. Statements conducing to public mischief.—(1) * * *

(2) Statements creating or promoting enmity, hatred or ill-will between classes.—Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.”

29. There is no allegation in the F.I.R. to make out a case that the petitioners have intentionally insulted and thereby given provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence. Further, there is no allegation that by making the Series Mirzapur the petitioners with intent to create, on grounds of religion, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities.

30. In **Amish Devgan versus Union on India (Supra)**, the Hon’ble Supreme Court has been pleased to explain the law relating to Sections 295 A and 505 of the IPC as follows: -

“100. The two provisions have been interpreted earlier in a number of cases including *Ramji Lal Modi*, *Kedar Nath*, *Bilal Ahmed Kaloo*. It could be correct to say that Section 295-A of the Penal Code encapsulates of all three elements, namely, it refers to the content-based element when it refers to words either spoken or written, or by signs or visible representation or otherwise. However, it does not on the basis of content alone makes a person guilty of the offence. The first portion refers to deliberate and malicious intent on the part of the maker to outrage religious feeling of any class of citizens of India. The last portion of Section 295-A refers to the harm-based element, that is, insult or attempt to insult religions or religious belief of that class. Similarly, sub-section (2) to Section 505 refers to a person making publishing or circulating any statement or report containing rumour or alarming news. Thereafter, it refers to the intent of the person which should be to create or promote and then refers to the harm-based element, that is, likely to create or promote on the ground of religion, race, place of birth, residence, language, caste, etc. feeling of enmity, hatred or ill-will between different religions, racial language, religious groups or castes or communities, etc.

101. In *Bilal Ahmed Kaloo*, this Court had drawn a distinction between sub-section (2) of Section 505 and clause (a) of Section 153-A(1) of the Penal Code observing that

publication is not necessary in the latter while it is sine qua non under sub-section (2) of Section 505. Sub-section (2) of Section 505 of the Penal Code cannot be interpreted disjunctively and the words “whosoever makes, publishes or circulates” are supplemented to each other. The intention of the legislature in providing two different sections on the same subject vide single amending Act would show that they cover two different fields of same colour.

102. Clauses (a) and (b) to sub-section (1) of Section 153-A of the Penal Code use the words “promotes” and “likely” respectively. Similarly, Section 295-A uses the word “attempts” and sub-section (2) to Section 505 uses the words “create or promote”. The word “likely” as explained above, in our opinion, convey the meaning, that the chance of the event occurring should be real and not fanciful or remote *Tillmanns Butcheries (Pty) Ltd. v. Australasian Meat Industry Employees’ Union*. The standard of “not improbable” is too weak and cannot be applied as it would infringe upon and fall foul of reasonable restriction and the test of proportionality. This is the mandate flowing from the catena of judgments of the Constitution Benches which we have referred to earlier and also the decision in *Shreya Singhal* drawing distinction between advocacy, discussion and incitement and that only the latter i.e. the incitement, is punishable whereas the former two would fall within the domain of freedom to express and convey one’s thoughts and ideas.

103. “Incitement” is a restricted term under the American Speech Law which has been adopted by us and as per *Brandenburg* applies when the incitement is imminent or almost inevitable. There has been some criticism that the said test is too strong, nevertheless, it conveys that the standard has to be strict. Instigation must necessarily and specifically be suggestive of the consequences. Sufficient certainty to incite the consequences must be capable of being spelt out to be incitement. Further, it is for the prosecution to show and establish that the standard has been breached by leading evidence, which can be both oral and documentary. “Promote” does not imply mere describing and narrating a fact, or giving opinion criticising the point of view or actions of another person — it requires that the speaker should actively incite the audience to cause public disorder. This active incitement can be gauged by the content of the speech, the context and surrounding circumstances, and the intent of the speaker. However, in case the speaker does not actively incite the descent into public disorder, and is merely pointing out why a certain person or group is behaving in a particular manner, what are their demands and their point of view, or when the speaker interviews such person or group, it would be a passive delivery of facts and opinions which may not amount to promotion.”

31. The allegations made in the First Information Report do not make out any case under Section 67-A of the IT Act also, which reads as under:-

“67-A. Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form.— Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.”

32. The F.I.R. alleges that illicit relations amongst family members has been shown in the Web Series, but there is no allegation in the F.I.R. that “sexually explicit act or conduct” has been shown in the series. It is settled law of interpretation of Statutes that while interpreting any provision of a

Statute, neither any word can be added nor can it be ignored. This principle is applicable in a more stringent manner while examining the provisions of a penal law. Therefore, no word can be ignored from the phrase “sexually explicit act or conduct” occurring in Section 67 A of the IT Act and if the act or conduct shown in the Series does not contain sexually explicit act and it shows the same only in an implied manner, the same would not attract the provisions of Section 67 A of the IT Act.

33. In view of the aforesaid discussion, the Court is satisfied that as per the averments made in the impugned F.I.R., no offence under Sections 295A, 504 and 505 of the Penal Code and Section 67 A of the IT Act is made out.

34. The present case falls under categories **(1) and (3)** mentioned in **para 102** of the judgment of the Hon’ble Supreme Court in the case of **State of Haryana versus Bhajan Lal** (Supra) and it is liable to be quashed.

35. Accordingly, the both the Writ Petitions nos. 851 of 2021 and 1665 of 2021 are **allowed**. The first information report dated 17.1.2021 registered as Case Crime No. 0016 of 2021, under sections 295-A, 504, 505 and 34 of the IPC and Section 67-A of the IT Act in Police Station Kotwali Dehat, District Mirzapur is hereby quashed.

Order Date :- 10.12.2021

pks/SP/