IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

Present:

The Hon'ble **Justice Kausik Chanda**

C.R.R. NO. 1345 OF 2021

MITHUN CHAKRABORTY

-VERSUS-

THE STATE OF WEST BENGAL AND ANOTHER

For the petitioner : Mr. Mahesh Jethmalani, Sr. Adv.,
Ms. Gunjan Mangla, Adv.,
Mr. Ayan Bhattacharya, Adv.,
Mr. Partha Ghosh, Adv.,
Mr. Satadru Lahiri, Adv.,
Mr. F. Samson Correa, Adv.,
Mr. Rajdeep Majumdar, Adv.,
Ms. Kiran Kumari Mahato, Adv.

For the State : Mr. Saswata Gopal Mukherjee, Ld. P.P,
Mr. Saryati Datta, Adv.

For the de-facto complainant : Mr. Hareram Singh, Adv.

Hearing concluded on : 24.09.2021

Judgment on : 09.12.2021

Kausik Chanda, J.:-

The petitioner, a septuagenarian actor, has filed this application for quashing of an F.I.R. registered against him under Sections 153A/504/505/34 of the Indian Penal Code, 1860.

2. The F.I.R. maker, in his complaint, described himself as a whole-time worker of the political party in ruling dispensation of the State.

3. He alleged in his F.I.R. dated May 6, 2021, that after the announcement of the West Bengal Assembly Election, 2021, a large number of full-time workers of the said party, all over West Bengal, have been subjected to physical torture, and immense violence by the party workers of the rival political party in the State. The workers of the political party in opposition have burned down and destroyed the houses of the workers of the ruling political party and the said workers were roaming around the State homeless and helpless.

4. The F.I.R. maker alleges that said violence and harm were done due to the instigation of the petitioner, who in various public meetings, appearances and speeches during his election campaign delivered two dialogues namely, "মারবো এখানে, লাশ পড়বে শ্মশানে" (will hit you here and your body will fall in the crematorium) and "এক ছোবলে ছবি" (one snake bite will turn you into a photograph). The utterance of those dialogues provoked the opposition party workers to perpetrate violence and brutality against the party workers of the ruling party. The F.I.R. maker also made some

allegations against another leader of the said opposition party. In this case, we are not concerned with those allegations.

5. The F.I.R. suggests that the petitioner being a public figure and icon of Bengal, his statement and in the manner in which such statement was made instigated and provoked the opposition party workers.

6. On the basis of the said F.I.R, a case was registered being Maniktala Police Station Case No. 95 dated 06.05.2021 under Sections 153A/504/505/34 of the Indian Penal Code, 1860, being G.R. Case No. 1174 of 2021.

7. Mr. Mahesh Jethmalani, learned senior advocate appearing in support of this application for quashing, suggests that the petitioner is a well-known actor of the country, and those words are only dialogues of two films namely, “Abhimanyu” and “M.L.A. Fatakeshto”. Those two dialogues were very popular amongst the people of Bengal, and the petitioner, in fact, said those dialogues on many occasions only to entertain the audience. Mr. Jethmalani suggests that the petitioner had no intention to incite anyone for the commission of any crime. He, further, suggests that this present case has been registered with utter *mala fide* intention since the petitioner has changed his political allegiance from the ruling political dispensation to the party in opposition in the State.

8. By referring to Sections 153A/504/505/34 of the Indian Penal Code, 1860, Mr. Jethmalani suggests that none of the ingredients of the aforesaid

Sections are present in the F.I.R. and the F.I.R. in question, therefore, is liable to be quashed.

9. Mr. Jethmalani in support of his argument places reliance on the judgments reported at **(1988) 1 SCC 668 (*Ramesh v. Union of India*), (1997) 7 SCC 431 (*Bilal Ahmed Kaloo v. State of A.P.*),** and **(2021) SCC OnLine SC 258 (*Patricia Mukhim v. State of Meghalaya*)**.

10. Mr. Saswata Gopal Mukherjee, learned Public Prosecutor appearing on behalf of the State has argued that a distinction lies between "free speech" and "hate speech". Free speech includes the right to comment, favour or criticize the government policies whereas hate speech spreads hatred against a targeted community or group. The object of criminalizing hate speech is to protect the dignity and to ensure political and social equality between different identities and groups regardless of caste, creed, religion, sex, gender identity, sexual orientation, linguistic preference, etc. The petitioner in this case in a calculating manner has chosen the word which in one way can be termed as the dialogue of a film and in the other way it would spread hatred against a targeted group. The petitioner being a person of influence, keeping in view his reach, impact, and authority he wields on the general public owes a duty and has to be more responsible. It is expected that he would be careful in using the words that convey his intent.

11. It has further been argued by the State that the petitioner did not stop by uttering the said two dialogues but he continued with the words "এবার কিন্তু এটাই হবে" (and now this will happen). If the said movie dialogues are taken along with the said additional words, it would fall under the category of "hate speech."

12. Mr. Mukherjee places reliance upon the judgment reported at **(2021) 1 SCC (Cri) 247 (*Amish Devgan v. Union of India*)** to argue that the intention as to whether the accused person promoting enmity is to be collected from the internal evidence of the words themselves, but it is not to say that other evidence cannot be looked into. While examining the question of likelihood to promote ill-feelings the facts and circumstances of that time must be taken into account.

13. It has, further, been argued by Mr. Mukherjee that the judgment of the Supreme Court in ***Amish Devgan*** case makes it clear that any evaluation of "hate speech" would require examination and consideration of the variable "context" as well as the "intent" and the "harm/impact". These have to be evaluated before the Court can form an opinion on whether an offence is made out. The evaluation on the judgment of these aspects would be based upon facts, which have to be inquired into and ascertained by a police investigation. Mr. Mukherjee argues that the petitioner has offered an apology, which is an indication of his implied acceptance of the commission of the offences.

14. Mr. Mukherjee, further, relied upon a judgment reported at **(2014) 11 SCC 477 (*Pravasi Bhalai Sangathan v. Union of India*)** for the proposition that hate speech is an effort to marginalize individuals based on their membership in a group. Hate speech rises beyond causing distress to individual group members. Hate speech also impacts a protected group's ability to respond to the substantive ideas under debate.

15. Mr. Mukherjee then relied upon a judgment reported at **(2018) 3 SCC 104 (*Dineshbhai Chandubhai Patel v. State of Gujarat*)** to argue that the Court has no power to stop the investigation of the police to investigate into cognizable offences. If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and generally allow the investigation into the offence to be completed for collecting materials for proving the offence. For the same proposition, further reliance had been placed upon the judgments reported at **AIR 1960 SC 866 (*R.P. Kapur v. State of Punjab*), (2021) SCC OnLine SC 315 (*Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra*),** and **JT 2002 (3) SC 89 (*M.L. Bhatt v. M.K. Pandita*)**.

16. Mr. Mukherjee argued that the judgments relied upon by the petitioner reported at **(1988) 1 SCC 668 (*Ramesh v. Union of India*), (1997) 7 SCC 431 (*Bilal Ahmed Kaloo v. State of A.P.*),** and **(2021) SCC OnLine SC 258 (*Patricia Mukhim v. State of Meghalaya*)** are not

applicable in the facts of the present case. In the present case, the investigation is going on and there are, *prima facie*, materials to make out an offence under Sections 153A and 505(2) of the Indian Penal Code, 1860.

17. Mr. Mukherjee has argued that no ground of *mala fide* being made out, in exercise of jurisdiction of the investigating officer, the relevant F.I.R. cannot be quashed and the investigating agency cannot be preempted from carrying on the investigation to its logical conclusion. In this regard, Mr. Mukherjee relied upon a judgment reported at **(2019) 9 SCC 24 (*P. Chidambaram v. Directorate of Enforcement*)**.

18. To appreciate the controversy, Sections 153A, 504, and 505 of the Indian Penal Code, 1860 are quoted below:

> "[**153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.**—(1) Whoever—
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> (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, racial, language or regional groups or castes or communities, or
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> (b) commits any act which is 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 tranquillity, [or]
>
> [(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be

likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,]

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

Offence committed in place of worship, etc.—(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]"

"**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)] Whoever makes, publishes or circulates any statement, rumour or report,—

(a) with intent to cause, or which is likely to cause, any officer, soldier, [sailor or airman] in the Army, [Navy or Air Force] [of India] to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment which may extend to [three years], or with fine, or with both.

[(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.]

[(3) **Offence under sub-section (2) committed in place of worship, etc.**—Whoever commits an offence specified in sub-section (2) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.]

Exception.—It does not amount to an offence, within the meaning of this section when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it [in good faith and] without any such intent as aforesaid.]"

19. The Supreme Court has dealt with the scope, ambit and distinction between the Section 153A and 505 of the Indian Penal Code 1860, in the case reported at **(1997) 7 SCC 431 (*Bilal Ahmed Kaloo v. State of A.P.*).** The relevant paragraphs of the said judgment are quoted below:

"**11.** This Court has held in *Balwant Singh* v. *State of Punjab* that mens rea is a necessary ingredient for the

offence under Section 153-A. Mens rea is an equally necessary postulate for the offence under Section 505(2) also as could be discerned from the words "with intent to create or promote or which is likely to create or promote" as used in that sub-section.

12. The main distinction between the two offences is that while publication of the words or representation is not necessary under the former, such publication is sine qua non under Section 505. The words "whoever makes, publishes or circulates" used in the setting of Section 505(2) cannot be interpreted disjunctively but only as supplementary to each other. If it is construed disjunctively, anyone who makes a statement falling within the meaning of Section 505 would, without publication or circulation, be liable to conviction. But the same is the effect with Section 153-A also and then that section would have been bad for redundancy. The intention of the legislature in providing two different sections on the same subject would have been to cover two different fields of similar colour. The fact that both sections were included as a package in the same amending enactment lends further support to the said construction.

13. Yet another support to the above interpretation can be gathered from almost similar words used in Section 499 of the Penal Code as "whoever by words … makes or publishes any imputation …".

14. In *Sunilakhya Chowdhury* v. *H.M. Jadwet* it has been held that the words "makes or publishes any imputation" should be interpreted as words supplementing each other. A maker of imputation without publication is not liable to be punished under that section. We are of the view that the same interpretation is warranted in respect of the words "makes, publishes or circulates" in Section 505 IPC also.

15. The common feature in both sections being promotion of feeling of enmity, hatred or ill will "between different" religious or racial or linguistic or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved. 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."

20. It was held in the case reported at **(1988) 1 SCC 668 (*Ramesh v. Union of India*)** 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. It is the standard of ordinary reasonable man or as they say in English law "the man on the top of a Clapham omnibus".

21. The Supreme Court in the judgment reported at **(2014) 11 SCC 477 (*Pravasi Bhalai Sangathan v. Union of India*)** referred to the judgment of the Canadian Supreme Court where the three following tests have been laid down to determine a hate speech:

> "**7.** … *First*, the courts must apply the hate speech prohibition objectively. The question courts must ask is whether a reasonable person, aware of the context and circumstances, would view the expression as exposing the protected group to hatred. *Second*, the legislative term "hatred" or "hatred or contempt" must be interpreted as being restricted to those extreme manifestations of the emotion described by the words "detestation" and "vilification". This filters out expression which, while repugnant and offensive, does not incite the level of abhorrence, delegitimisation and rejection that risks causing discrimination or other harmful effects. *Third*, the tribunals must focus their analysis on the effect of the expression at issue, namely, whether it is likely to expose the targeted person or group to hatred by others. …"

22. It was held in ***Amish Devgan*** (supra) that the ordinary reasonable meaning of the matter complained of may be either the literal meaning of

the published matter or what is implied in that matter or what is inferred from it. A particular imputation is capable of being conveyed means and implies it is reasonably so capable and should not be strained, forced or subjected to utterly unreasonable interpretation. A deliberate and malicious intent is necessary and can be gathered from the words itself—satisfying the test of top of *Clapham omnibus*, the who factor—person making the comment, the targeted and non-targeted group, the context and occasion factor—the time and circumstances in which the words or speech was made, the state of feeling between the two communities, etc. and the proximate nexus with the protected harm, to cumulatively satiate the test of "hate speech".

23. If the aforesaid tests as evolved by the Supreme Court in ***Amish Devgan*** case are applied in the present case, one cannot come to a conclusion that the ingredients of the hate speech are present.

24. There is, perhaps, no need to take resort to any complex theories to appreciate whether the utterance of these two dialogues would amount to hate speech. The petitioner is a popular matinee idol. The involvement of film stars in politics in the country is nothing new. It is also well known that film stars try to entertain and attract voters by saying cinematic dialogues in political rallies. The case in hand is no exception. It is a matter of fact that the dialogues "Marbo Ekhane Laash Porbe Shoshaney" and "Ek

Choboley Chobi" are the two popular dialogues of the petitioner from the Bengali movies namely, "M.L.A. Fatakeshto" and "Abhimanyu" respectively.

25. The utterance of the said dialogues and the context in which the petitioner uttered the said dialogues are not in dispute. The petitioner does not deny the fact that he said the said two movie dialogues in the public meeting on March 7, 2021, held at Kolkata Brigade Parade Ground organized by the opposition political party of the State. The petitioner admits that on many occasions, on public demand, he has said the said dialogues in different public functions to entertain the general public.

26. The two dialogues in question are fundamentally funny, hilarious, and entertaining; it is futile to try to find the elements of hate speech in them. A reasonable man in the context or circumstances in which the said two dialogues were uttered cannot view them as an expression of hatred.

27. Admittedly, in this case, there was no publication of words or representations, and in view of the judgment in ***Bilal Ahmed Kaloo*** (supra) the Section 505 of the Indian Penal Code, 1860 cannot be attracted.

28. The petitioner did not utter those dialogues to promote the feeling of enmity, hatred, or ill-will between different religious, racial, linguistic or regional groups or castes or communities, and, therefore, the ingredients of offences under Sections 153A, 504, and 505 of the Indian Penal Code, 1860 are absent in this case.

29. The petitioner uttered the dialogues on March 7, 2021, whereas the present complaint before the police was registered on May 6, 2021, after the announcement of the West Bengal Assembly Election result on May 2, 2021. Even if the effect of such utterance is judged from the standard of weak and vacillating minds, it cannot be said that there is any proximate nexus between the dialogues uttered by the petitioner and the widespread violence that took place in the State after the Assembly Election.

30. The allegations in the F.I.R. with regard to the utterance of the dialogues and the context in which the said dialogues were delivered are not denied by the petitioner and I have already held that such facts do not disclose the commission of any cognizable offence under Sections 153A, 504 and 505 of the Indian Penal Code, 1860.

31. Needless to mention that if allegations made in the F.I.R, even if taken at the face value do not, *prima facie*, constitute any offence justifying an investigation by the police, the High Court in the exercise of power under Section 482 of the Code of Criminal procedure, 1973 can quash the investigation to prevent the abuse of the process of law. The law in this regard has been settled by the judgment of the Supreme Court in a number of cases. There has been no departure from this proposition of law in ***Neeharika Infrastructure*** (supra).

32. I am of the view that since the petitioner does not deny the fact that he uttered the said dialogues and the context in which the said dialogues

were delivered is also not denied, any further police investigation of the present case will be an unnecessary and vexatious exercise.

33. In view of the aforesaid discussion, the revisional application being C.R.R. No. 1345 of 2021 is allowed and the G.R. Case No. 1174 of 2021 arising out of Maniktala Police Station Case No. 95 dated 06.05.2021 under Sections 153A/504/505/34 of the Indian Penal Code, 1860, pending before the Court of the learned Additional Chief Judicial Magistrate at Sealdah stands quashed.

34. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)