

Court No. - 9

Case :- MISC. BENCH No. - 28388 of 2021

Petitioner :- Muhammad Saghir Khan

Respondent :- State Of U.P. Thru. Prin. Secy. Home
Deptt.Lko.& Ors.

Counsel for Petitioner :- Arshad Ahsan Siddiqui

Counsel for Respondent :- G.A.

Hon'ble Devendra Kumar Upadhyaya,J.

Hon'ble Mrs. Saroj Yadav,J.

Let a counter affidavit be filed by the respondents within four weeks.

Two weeks' time thereafter shall be available to the learned counsel for the petitioner to file rejoinder affidavit.

List the case after expiry of the aforesaid period.

Under challenge in this petition is an F.I.R. dated 08.11.2019, lodged at Case Crime No.887 of 2019, under sections 124-A, 153, 153-A, 153-B, 505 (1)(b)(c) of I.P.C. Police Station-Kotwali Nagar, District-Raebareli.

Submission of the learned counsel for the petitioner is that the petitioner is being unnecessarily harassed by the police and the impugned F.I.R. is one such step. He has stated that on the day the impugned F.I.R. was lodged, the petitioner had received a notice under section 107/116 of Cr.P.C. on 08.11.2019 pursuant to which he submitted personal bond and two sureties of heavy amount of Rs.5 lakh. He has also stated that again on 18.12.2019 the petitioner was again issued a notice under section 107/116 of Cr.P.C. pursuant whereof the petitioner again submitted a personal bond and two sureties of an amount of Rs.1 lakh. The petitioner made a complaint to the State Human Rights Commission before whom an enquiry report was submitted by the Additional Superintendent of Police, Raebareli on 27.07.2020 wherein it has been stated that for unlawfully issuing the second notice under section 107/116 of Cr.P.C, proceedings for censuring the officer concerned under Rule 14(2) of U.P. Subordinate Police Officers (Punishment and Appeal) Rules, 1991 were initiated. He has also submitted that the petitioner no.1 had also lodged some complaint to the National Human Rights Commission. Vide order dated 03.08.2017, the Human Rights Commission had directed the D.G.P. to look into the matter and get the matter enquired into by an officer not below the rank of D.I.G. Learned counsel for

the petitioner has submitted that pursuant to the order dated 03.08.2017 passed by the National Human Rights Commission an enquiry was conducted against certain police officials of District Raebareli, which is pending.

Further submission made by the learned counsel for the petitioner is that the impugned F.I.R. does not disclose any offence under section 124-A of I.P.C.

In the aforesaid background, it has been stated that the petitioner has been unnecessarily harassed for political and other extraneous reasons.

Having heard learned counsel appearing for the parties and having perused the impugned First Information Report, what we *prima facie* notice is that the allegations in the F.I.R. are that the petitioner on 27.10.2019 made a statement in a meeting of muslim youths that the muslims did not have any hope from the present Government and as such in case the judgment of Hon'ble Supreme Court is rendered in favour of one community then muslims should be ready to take steps to counter the same and that they should take revenge in their own manner and that such messages should be circulated through whatsapp messaging. In the allegations made in the F.I/R, we *prima facie* do not find anything which suggests that the petitioner in the meeting addressing the muslims youths appear to have incited the person present there to create disturbance of public peace by taking recourse to violent means. At this juncture, judgment of Hon'ble Supreme Court may be referred to in the case of **Vinod Dua vs. Union of India and others**, reported in [AIR 2021 SC 3239] wherein the scope of section 124-A of Indian Penal Code has been considered after reviewing the past judgments and their Lordships in the said judgment have opined that the tendency of such an offence is to incite the people to rebel by violent means and that any act within the meaning of section 124-A will be constituted as an offence if it has the impact to subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it by violence.

When we examine the allegations made in the impugned First Information Report, what we *prima facie* find is that the speech rendered by the petitioner does not reflect or appeal the youth to indulge into any criminal act by rebelling or by using violence.

Accordingly, having regard to the overall facts and circumstances of the case, it is hereby directed that till the next date of listing the petitioner shall not be arrested in connection with the aforesaid case crime number.

Petitioner shall, however, cooperate with the investigation.

Order Date :- 4.12.2021

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