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

CRIMINAL APPLICATION (APL) NO. 962 OF 2018

Pawandeep @ Pawan S/o. Chotulal
Yadav, Aged about 39 years,
Occupation : Business,
R/o. Nandaphata, Gadchandur,
Tq. Korpana, Distt. Chandrapur. .....APPLICANT

..VERSUS..

1. State of Maharashtra,
through Police Station Officer,
Police Station Gadchandur,
Tq. Korpana, Dist. Chandrapur.

2. Gaus Isak Siddiki,
Aged about 32 years,
Occupation : Business,
R/o. Nandaphata, Gadchandur,
Tq. Korpana, Distt. Chandrapur. ....RESPONDENTS

Mr. A. S. Ambatkar, Advocate for applicant
Ms S. S. Jachak, APP for respondent No.1
Mr V. R. Thote, Advocate for respondent No.2

CORAM : A. S. CHANDURKAR AND
G. A. SANAP, JJ.
DATE : 07/12/2021

ORAL JUDGMENT (Per : G. A. Sanap, J.)

Rule. Rule made returnable forthwith. Heard finally by consent of learned Advocates for the parties.

2] The applicant/accused has made this application for quashing the First Information Report bearing Crime No. 520 of 2018, dated 01.10.2018 registered with Gadchandur Police Station, on the report of respondent No.2, for the offence punishable under Section 505(2) of the Indian Penal Code (For short 'the I.P.C.') and Section 67 of the Information Technology Act, 2000 (For short 'the I. T. Act') on the following facts.

3] The applicant is using the social media app known as 'Facebook'. On 28.09.2018, he received facebook post on his account uploaded and circulated by one Anuj Bharadwaj. The applicant forwarded and circulated the said facebook post. The respondent No. 2 received the said post on his facebook account. On reading the facebook post, the respondent No.2 formed a reasonable belief that it was intended to hurt the sentiments of Muslim community. The respondent No.2, on 01.10.2018, lodged a report with the respondent No.1-Police Station. On the basis of the facts stated in the report and the contents of the facebook post circulated and forwarded by the applicant, the crime as above came to be registered against the applicant.

4] It is the case of the applicant that he has not committed offence either under Section 505(2) of the I.P.C. or under Section 67 of the I. T. Act. He is not the author of the said post. He has simply forwarded the post. It is his case that before forwarding the

post on the facebook account of the others he did not read the same properly. There was a mistake on his part. Besides, it is his case that the facebook post forwarded and circulated is general. It is not intended in any manner to create a tension or enmity between two communities. In the facebook post there was specific reference of Tarik Anwar who hail from Muslim community. It is his case that the fundamental ingredients of Section 505 (2) of the I.P.C. and Section 67 of the I. T. Act have not been made out. On these averments, he has prayed that in order to save him from rigmarole of the criminal trial the FIR in question needs to be quashed.

5] The Investigating Officer has filed the reply and stated therein the progress of the investigation conducted so far. It is stated in the reply that the facts stated in the report, facebook post and the facts discovered during the course of investigation clearly established the commission of the crime by the accused/applicant.

6] The respondent No.2 has filed the reply. Besides reiterating the facts stated in the report, he has contended that when he replied the facebook post circulated by the applicant, the applicant made his stand clear and tendered the apology. It is stated that now the dispute between him and the applicant has been sorted out. He has therefore contended that he would like to give quietus to the present matter as they want to live in the same locality without any grudge against each other. In short, he has contended

that accepting his statement in *juxta position* with the facts stated by the applicant in his application, the application may be allowed, as prayed.

7] We have heard Mr. A.S. Ambatkar, the learned Advocate for the applicant, Ms S. S. Jachak, the learned AGP for the State and Mr V. R. Thote, the learned Advocate for the respondent No.2.

8] The learned Advocate for the applicant took us through the record and particularly the provisions of Section 505(2) of the I.P.C. and Section 67 of the I.T. Act and submitted that the basic ingredients of Section 505(2) of the I.P.C. have not been made out. The learned Advocate submitted that the provisions of Section 67 of the I. T. Act are applicable totally in different context and factual situation. On this point the learned Advocate relied upon the decision in the case of the **Bilal Ahmed Kaloo .v/s. State of Andra Pradesh,** reported in, **1997 AIR (SC) 3483,** wherein, it is held that in order to attract the provision of Section 505(2) of the I.P.C., the promotion of feeling of enmity, hatred or ill will between different religious or racial or language or regional groups or castes and communities, it is necessary that at least two such groups of communities should be involved. It is further held that the material published or circulated must contain rumour or alarming news with intent to create or promote enmity, hatred or ill-will etc. between different religious groups or castes or communities.

9] The learned Advocate for the applicant took us through the disputed facebook post and submitted that it does not indicate a comparison between two communities or groups. The intention of the accused required to be established to invoke the provision of Section 505 (2) of the I.P.C. has been missing. The learned Advocate pointed out that the post circulated by the applicant was already available in public domain and as such merely because of the circulation of the same, the intention as required to be established under Section 505 (2) of the I.P.C. has not been made out. In order to substantiate his submission, he placed reliance on the decision in the case of **Vishwadini Pandey .v/s. State of Chhattisgarh and oths.,** reported in, **2021 Cri.L.J.3894.** The learned Advocate further relied upon the decision in the case of **State of Haryana and Ors. .v/ s. Ch. Bhajan Lal Ors.,** reported in **1992 AIR SC 604** and submitted that the case of the applicant squarely falls in the category No.1 and Category No. 3 as stated in this decision. In order to wriggle out of the fact that the offence alleged to have been committed is a non-compoundable offence, the learned Advocate relied upon the decision in the case of **Kameshwar Himta .v/s. State of H.P. and Anr, Cr.MMO No. 356 of 2020 dated 04.01.2021**. It is submitted that in this case the Himachal Pradesh High Court has considered the decisions of Hon'ble Supreme Court of India in **Gian Singh .v/s. Stage of Punjab,** reported in, **(2012) 10 SCC 303** and **State of Madhya Pradesh .v/s. Laxmi Narayan,** reported in, **(2019) 5 SCC 688** and held that depending upon the nature of the crime, even in

non-compoundable offences the powers under Section 482 of the Code of Criminal Procedure can be exercised and such proceedings can be quashed. The learned Advocate, therefore, submitted that on the facts and in view of the law the continuation of the prosecution against the applicant would be abuse of process of law and would cause unnecessary harassment to the applicant. The learned Advocate further submitted that since the applicant and the informant/respondent No.2 have settled their dispute no fruitful purpose would be served by continuing the prosecution.

10] The learned APP submitted that the facts stated in the report and the contents of the facebook post would clearly indicate that the necessary *mens rea* can be attributed to the applicant. The learned APP in short submitted that for the reasons stated above the prosecution, otherwise well founded against the applicant, cannot be quashed.

11] The learned Advocate for the respondent No.2 in view of the comprise arrived at between the applicant and the respondent No.2 submitted that, the respondent No.2 has no objection for quashing the FIR against the applicant.

12] In order to satisfy ourselves about the correctness of the submissions we have minutely perused the record and proceedings. As held in the case of **Bilal Ahmed Kaloo .v/s. State of Andhra**

Pradesh (cited supra), the intention of the accused must be writ large on the face of record to do the acts contemplated under Section 505(2) of the I. P. C. The foundation of the case of the prosecution is the facebook post circulated by the applicant. The respondent No.2 on reading the facebook post received from the applicant on his facebook account formed the opinion that it was intended to cause the results contemplated under Section 505 (2) of the I. P. C. As held in the case of **Bilal Ahmed Kaloo .v/s. State of Andra Pradesh** (cited supra), to attract the provisions of Section 505 (2) of the I. P. C. two communities must be involved. The facebook post which is the basis of the prosecution needs to be reproduced. It reads thus, 'सिर्फ मोदी जी को शरद पंवार के ईमानदार कहने के कारण तारिक अनवर ने NCP से इस्तीफा दिया. देखा मुस्लिम कितना सुवर होता हे'. On perusal of the facebook post it is seen that there is a reference to the names of three persons. The so called statement alleged to have been attributed to the Muslim community at large cannot be made out from this post. In order to involve a community, the communication in issue on perusal must clearly indicate the plurality. In this case the aspect of plurality involving entire Muslim community is totally missing. The perusal of the facebook post would show that while attributing a particular act to one Tarik Anwar in the context of remaining two persons mentioned in the facebook post the reference of 'Muslim' was singularly co-related with Tarik Anwar. In our opinion, prima facie analysis of this fundamental piece of evidence relied upon by the

prosecution would show that on the basis of the same, the intention as required to be made out or satisfied could not be attributed to the applicant. On prima facie analysis of the facebook post it could be said that it was singularly addressed to Tarik Anwar being a Muslim. It clearly indicates that it was not attributed to Muslim community at large. Besides, one more aspect which needs to be borne in mind and which in our view has paramount relevance vis-a-vis intention of the applicant/ accused is that, this post was already available in public domain. The applicant according to the case of the prosecution is not the author of the said post. He simply circulated the said as received on his facebook account to the other group members of facebook account.

13] We have perused the response to the said facebook post. The perusal of this facebook post and a reply and subsequent clarification on the part of the applicant would greatly reflect upon the intention of the applicant. The stand taken by the applicant in this application could be seen from the response received from the respondent No.2 to this post. On receipt of the response from the respondent No.2 to the said post he clarified that he did not intend to hurt the feelings of the respondent No.2. He further stated that without seeing the relevant part of the post, by mistake he forwarded the same on the facebook account of respondent No.2. In his response he tendered the apology. The applicant has reiterated all these facts in his application. In our opinion, in this context the

statement made by the respondent No.2 in his reply would assume significance. The respondent No.2 has stated that they are residing in the same locality. He has stated that the applicant had tendered the apology and in order to continue their relations and to live in peace and harmony he does not want to proceed further in the matter. This clearly indicates that they have compromised /sorted out their dispute.

14] On prima facie analysis of the material, we are satisfied that the basic ingredients of Section 505 (2) have not been made out in this case. The provision of Section 67 of the I. T. Act cannot be invoked in such a case. Section 67 of the I. T. Act operates in a totally different sphere. In view of this fact, we find substance in the submission of the learned Advocate for the applicant that his case is fully covered by the category No.1 and 3 as laid down in the case of **State of Haryana and Ors. .v/s. Ch. Bhajan Lal Ors**. (cited supra).

15] Before proceeding to deal with the aspects of quashing the proceedings, at this stage it would be necessary to state that on analysis of the facebook post relied upon by the prosecution we are satisfied that it does not contain any material which could be termed as rumour or alarming news. In our view this very crucial link in the prosecution initiated under Section 505 (2) of the I.P.C. In our view, the learned Advocate for the applicant is right in placing reliance on the decisions in the case of **Bilal Ahmed Kaloo .v/s. State**

of Andra Pradesh (cited supra), **Vishwadini Pandey .v/s. State of Chhattisgarh & oths.** (cited supra) and **State of Haryana and Ors. .v/ s. Ch. Bhajan Lal Ors.** (cited supra) In our view, if the proposition of law laid down in the decisions is applied to the facts of the case of the applicant, it would clearly indicate that the continuation of this prosecution would be the abuse of the process of law. No fruitful purpose would be served by continuing the prosecution inasmuch as the said exercise would be futility in view of the compromise arrived at between the applicant and respondent No.2. (Emphasis supplied)

16] Admittedly, the offence punishable under Section 505(2) is non-compoundable. We have minutely perused the decision in the case of **Kameshwar Himta .v/s. State of H. P. and Anr.** (cited supra) In this case the learned Single Judge of the Himachal Pradesh High Court considered the law laid down by the Hon'ble Supreme Court of India in number of decisions. In our opinion the para No. 11 of this decision would be relevant for our purpose. We propose to reproduce the same. It reads thus:

> *"11. It is quite apparent from the aforesaid exposition of law that High Court has inherent power to quash criminal proceedings even in those cases which are not compoundable, but such power is to be exercised sparingly and with great caution. In the judgments, referred herein above, Hon'ble Apex Court has categorically held that Court while exercising inherent power under Section 482 Cr.P.C., 1973 must have due regard to the nature and gravity of offence sought to be*

> *compounded. Hon'ble Apex Court has though held that heinous and serious offences of mental depravity, murder, rape, dacoity etc. cannot appropriately be quashed though the victim or the family of the victim have settled the dispute but it has also observed that while exercising its powers, High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oprression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases. Hon'ble Apex Court has further held that Court while exercising power under Section 482 Cr.P.C., 1973 can also be swayed by the fact that settlement between the parties is going to result in harmony between them which may improve their future relationship."*

17] The law laid down as above on the basis of the judgments of the Hon'ble Supreme Court if applied to the facts of this case it would be clear that the offence alleged to have been committed by the applicant does not involve offences of moral turpitude or any grave or heinous crime. The act alleged to have been committed in our view would fit in the parameters laid down in this judgment. In our view, therefore, the prayer made for quashing the FIR cannot be rejected.

18] Before parting with the matter we deem it appropriate to deal with the issue from another point of view. The report was lodged on 01.10.2018. The investigating officer has placed reliance on the case diary placed on record. It indicates that on account of this unwarranted act and exercise on the part of the applicant the

police machinery has been made to spend its time. In the ordinary course of nature the applicant ought to have given thought to the factual situation before forwarding and circulating the facebook post. In our view repentance for the act committed, after two years could not be said to be aspect reflecting upon the bonafides of person. In our view, in order to take care of this situation which has been created due to the unmindful act on the part of the applicant it would be necessary to compensate the respondent No.1. We, therefore, deem it appropriate to direct the applicant to pay a reasonable compensation to the respondent No.1. In the facts, circumstances and particularly for valuable time spend for this investigation by the police machinery, in our view interest of justice would be met if the applicant is directed to pay compensation of Rs.20,000/- to the respondent No.1. In view of this, we conclude that the case has been made out by the applicant within the parameters of law to quash the FIR. Hence, following order.

ORDER

1] The Criminal application is allowed.

2] The FIR No.520 of 2018 dated 01.10.2018 registered at Gadchandur Police Station, Distt. Chandrapur for the offences punishable under Section 505(2) of the Indian Penal Code and under Section 67 of the Information Technology Act, 2000 is quashed and set aside.

3] In view of the peculiar facts and circumstances, the applicant is directed to pay compensation of Rs.20,000/- to the respondent No. 1. The amount of compensation should be deposited in Police Welfare Fund within two weeks from today.

The criminal application stands disposed of.

Rule made absolute in the above terms.

JUDGE JUDGE

Namrata