

A.F.R.
RESERVED

Court No. - 80

Case :- APPLICATION U/S 482 No. - 28742 of 2021

Applicant :- Niyaz Ahmad Khan

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Jitendra Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh,J.

1- By means of this application under Section 482 of the Code of Criminal Procedure, the applicant has invoked the inherent jurisdiction of this Court for quashing the charge-sheet dated 27.01.2020 arising out of Case Crime No. 296 of 2019, cognizance/summoning order dated 22.07.2020 and proceedings of Criminal Case No. 2887 of 2020 (State Vs. Niyaz Ahmad Khan), under Section 67 Information Technology (Amendment) Act, 2008 and Section 500 IPC, Police Station Mehndawal, District Sant Kabir Nagar pending in the court of Additional Chief Judicial Magistrate, Sant Kabir Nagar.

2- Heard Mr. Jitendra Kumar Srivastava, learned counsel for the applicant, Mr. Manish Goyal, learned Senior Advocate/Additional Advocate General, assisted by Mr. Rabindra Kumar Singh, learned Additional Government Advocate and Mr. Prashant Kumar Singh, learned Brief Holder, for the State of U.P./opposite party no.1 and perused the record.

3- A succinct recapitulation of the facts of the case are that on 28.11.2019, opposite party no. 2, namely, Awadesh Pandey (Senior Sub Inspector), has lodged a first information report against the applicant-Niyaz Ahmad Khan and two others, namely, Anil Sharma and Akhilesh Yadav Samarthak, which has been registered as Case Crime No. 0296 of 2019, under Section 67 Information Technology (Amendment) Act, 2008 and Section 500 IPC at Police Station Mehndawal, District Sant Kabir Nagar. The contents of the first information report, which are in Hindi, are also reproduced as under:-

“आज दिनांक 28.11.19 को मैं SSI अवधेश पाण्डेय मय हमराह हे0का0 नुरुद्दीन खान व का0 संदीप चौहान मय सरकारी वाहन बोलेरो UP58G0214 चालक रामअचल के शिकायत प्रा0पत्र-59 (टिवटर) 2019 दिनांक नवम्बर की जांच हेतु थाना हाजा से प्रस्थान कर सर्विलांस सेल सन्त कबीर नगर जा कर जांच कराया गया @DURGESH SAURABH द्वारा नियाज अहमद खान जो प्राथमिक विद्यालय समोगर विकाश क्षेत्र मेहदावल जनपद सन्त कबीर नगर उ0प्र0 में प्रधानाध्यापक है। इन्होंने आतंकवादी हाफिज सईद की पीएम @NARENDRA MODI जी के साथ हाथ मिलाते हुए एवं @AMITSHAH जी की भी फोटो का आपत्तिजनक तस्वीर अपने फेस बुक से शेयर किया है जांच से पाया गया कि अनिल शर्मा द्वारा फेस बुक पर दिनांक 17 अक्टूबर 2017 को समय 21.46 बजे भारत का छुपा असली गद्दार कौन-? संघ और बी.जे.पी. क्यों है मौन आजम खान ने जारी की फोटो हाफिज सईद और मोदी पाकिस्तान में मिलते हुए देखो देश द्रोहियों गद्दार कौन कमेन्ट के साथ भारत के प्रधानमंत्री नरेन्द्र मोदी जी को आतंकवादी हाफिज सईद को हाथ मिलाते हुए फोटो इडिट किया हुआ पोस्ट डाला था जिसको नियाज अहमद खान द्वारा 24 अप्रैल 2018 को समय 19.58 बजे शेयर किया गया है। तथा दुसरी पोस्ट जिसको अखिलेश यादव समर्थक के नाम से दिनांक 1 अप्रैल 2018 को समय 15.23 बजे डाला गया है जिसमें भारत के प्रधानमंत्री मोदी जी एवं केन्द्रीय गृह मंत्री अमित शाह जी की फोटो है। जिसमें दोनों लोगों को कुत्तों को जिन पर इण्डिया टी.वी. आज तक टी.वी. जी टी.वी. लिखा है। बिस्किट खिलाते हुए फोटो शाप द्वारा इडिट कर दर्शाया गया है। कमेन्ट में सारे देश की मिडिया का हाल कुछ ऐसा ही हो गया है लिखा गया है जिसको नियाज अहमद खान उपरोक्त द्वारा दिनांक 5 अप्रैल 2018 को समय 15.54 बजे अपनी आईडी पर शेयर किया गया है। भारत के प्रधानमंत्री जैसे सम्मानित पदों पर आसीन व्यक्तियों के उपर इस प्रकार का आपत्तिजनक फोटो एवं अपमानित टिप्पणी शेयर करना अन्तर्गत धारा 67 आई.टी. एक्ट व 500 भा0द0वि0 का दण्डनीय अपराध है। अतः HM को निर्देशित किया जाता है कि उक्त के सम्बन्ध में अभियोग पंजीकृत करें।”

The Investigating Officer after investigation submitted charge-sheet on 27.01.2020 against the applicant, on which the learned Additional Chief Judicial Magistrate, Sant Kabir Nagar took cognizance on 22.07.2020 and summoned the applicant to face trial under Section 67 Information Technology (Amendment) Act, 2008 and Section 500 IPC. The said charge-sheet and summoning order are the subject matter of challenge in the present application.

4- The main substratum of argument of learned counsel for the applicant is that during the investigation, Inspector In-charge, Police Station Dharamsinghwa, District Sant Kabir Nagar submitted a surveillance report dated 13.01.2020 mentioning that on account of non-availability of Uniform Resource Locator (URL) of ID, it is not possible to trace the details of unknown person, who made the objectionable photo viral. As per the prosecution case, the applicant has only shared the objectionable posts in question. Charge-sheet has been submitted against the applicant without proper investigation. Lastly, it is submitted that the applicant has been falsely implicated in this case, therefore, aforesaid impugned charge-sheet and summoning order against the applicant is liable to be quashed.

5- Per contra, Mr. Manish Goyal, learned Senior Advocate/ Additional Advocate General for the State of U.P. vehemently opposed and refuting the submissions advanced on behalf of the applicant submitted that:-

(5.1)- The applicant-Niyaz Ahmad Khan is Headmaster, at Primary School, Samogar Development Area, Sant Kabir Nagar, Uttar Pradesh.

(5.2)- On 17.10.2017 at 21:46 hours, Anil Sharma posted a morphed photo on Facebook which showed the Hon'ble Prime Minister Narendra Modi shaking hands with dreaded and wanted terrorist Hafiz Saeed. The following comments were added to the photograph- "भारत का छुपा असली गद्दार कौन-?", "संघ और बी.जे.पी. क्यों है मौन", "आजम खान ने जारी की फोटो", "हाफिज सईद और मोदी पाकिस्तान में मिलते हुए देखो", "देश द्रोहियों गद्दार कौन".

(5.3)- The applicant, Niyaz Ahmad Khan, shared the post on 24.04.2018 at 19:58 hours. Another post (a photograph), in the name of the supporter of Akhilesh Yadav, was posted on 01.04.2018 at 15:23 hours. This photograph was also morphed, and it showed Hon'ble Prime Minister Narendra Modi ji and Cabinet Minister Amit Shah Ji are feeding biscuits to dogs, on whom "Aaj Tak TV", "Zee TV" and "India TV" was

written. The following comment was added to the photograph, "सारे देश की मीडिया का हाल कुछ ऐसा ही हो गया है". The applicant-Niyaz Ahmad Khan shared this post on 05.04.2018 at 15:54 hours on his Facebook ID.

(5.4)- the act of sharing such objectionable contents (morphed photo) regarding people holding esteemed positions like that of Prime Minister or a Cabinet Minister was deliberate and is an offence under Section 67 of Information Technology Act, 2000 and Section 500 of IPC, 1860.

(5.5)- upon perusal of F.I.R. and the allegations made therein as well as material against the applicant, as per prosecution case, the cognizable offence against the applicant is made out. The criminal proceedings against the applicant cannot said to be abuse of the process of the Court. Hence, this application is liable to be dismissed. Mr. Manish Goyal, learned Additional Advocate General in support of his submissions, placed reliance on the following judgments, which are quoted herein below :-

(i) *Nikhil Racheti Vs. State of Maharashtra, (2006) SCC Online Bom. 1650.* The relevant para is reproduced herein below :-

"9. While considering the ingredients of Section 67 of the Information Technology Act, 2000, it can be said that firstly there must be a publication or transmission of any material in the electronic form. Secondly, such material must be lascivious or appeals to the prurient interest. Thirdly such transmission and publication must be such as to tend to deprave and corrupt persons, who are likely to read, see or hear the matter contained or embodied in it. While considering the terms 'publication' and 'transmission', it is to be established that the person charged with the offence, must have published or transmitted such material. The material, will include written material as well as the pictures, including photographs, cartoons and or drawn material. The nature of material, lascivious, however, needs to be taken into consideration as opposed to the standards of the decency. So far as the obscenity is concerned, such publication of material in the electronic form, will not cover only the internet, but also storage on floppy/CD and distribution thereof. In the internet, who is publisher assumes importance and is also complex. So far as Publication through print media is concerned it is easy to see in the index page, where the name and the address of the publisher and the editor is required to be given in accordance with the provisions of law."

(ii) **Manoj Oswal v. State of Maharashtra, (2013) SCC OnLine Bom 978.** The relevant paras of the judgment are reproduced herein below :-

“The freedom of speech and expression is not absolute, but subject to some restrictions. That freedom is subject to reasonable restrictions and anything that is indecent or contemptuous or defamatory cannot be said to be covered in this right or freedom, is too well settled to require any reference to either the Indian Constitution or any case law. It is settled principle that just as every citizen is guaranteed freedom of speech and expression, every citizen also has a right to protect his reputation, which is regarded as a property. Hence, nobody can so use his freedom of speech and expression as to injure another's reputation. In the context of right to seek information or right to publish or circulate the views in periodicals, magazines, journals or through electronic media, what has been held is that this freedom must, however, be exercised with circumspection and care must be taken not to trench on the rights of other citizens or to jeopardise public interest. (See Life Insurance Corporation of India v. Manubhai D. Shah (1992) 3 SCC 637).”

39. In the above circumstances, we do not find that the present act of the Petitioner as termed by him is merely causing inconvenience and therefore, he is sought to be proceeded against. It is only a false information which causes inconvenience and if it is sent persistently and not otherwise. That is the offence. Such construction of the provision in question would avoid any person sending the messages being hauled up and punished unnecessarily as apprehended by the Petitioner. Ultimately, whether any offence within the meaning of this section has been committed or not will depend upon the facts and circumstances in each case. Whether the allegations in the complaint are proved beyond reasonable doubt will depend upon the evidence led by parties. It is open for the Trial Court to arrive at an independent conclusion in each case as to whether the charge is proved by satisfying itself that the essential ingredients of the section are established or not.

40. As a result of the above discussion and when we find that there is no material which would vitiate the registration of the First Information Report in this case nor can it be said to be lacking in particulars or vague, then, our discretionary and equitable jurisdiction under Article 226 of the Constitution of India r/w Section 482 of the Code of Criminal Procedure, 1973 cannot be invoked by the Petitioner. The Petitioner cannot request us to interfere in our such jurisdiction merely because in his opinion the First Information Report is delayed. That is a plea which the Petitioner can raise at appropriate stage and during the trial. Therefore, such general and vague plea need not detain us.

(iii) **Ekta Kapoor v. State of M.P., (2020) SCC OnLine MP 4581.** The relevant paras are reproduced herein below :-

35. Before dwelling on the applicability of Section 294 of Penal Code, 1860, it would be appropriate to first consider as to whether provisions of Section 67 of Information Technology Act are attracted or not because Section 294 IPC talks of obscene acts etc and concept of obscenity figures in Section 292 of Penal Code, 1860

and Section 67 of Information Technology Act is based on the same principle as Section 292 of Penal Code, 1860. The Hon'ble Apex Court in the case of *Sharat Babu Digumarti v. Government of Delhi (NCT)*, (2017) 2 SCC 18 has held that Information Technology Act, 2000, being a special legislation dealing with obscenity in electronic form has overriding effect on the proceedings under general provisions of Section 292 of Penal Code, 1860 and an activity emanating from electronic form which may be obscene is exclusively punishable under Section 67 of Information Technology Act and not under Section 292 of Penal Code, 1860, nor both under Section 67 of Information Technology Act and Section 292 of Penal Code, 1860.

54. The aforesaid concept is importable while interpreting Section 67 of Information Technology Act, 2000. In the aforesaid provision, there are no such words that the person who publishes or transmits or caused to be published or transmitted in the electronic form any lascivious material or such material which appeals to prurient interest was having or supposed to be having the knowledge about the content of the material. Thus, even if the content is not known and a person publishes or transmits or caused to do so even without knowledge, provisions of Section 67 of Information Technology Act, 2000, would be attracted. Presumption of knowledge on the part of petitioner shall have to be assumed and onus will be upon the petitioner to rebut such presumption by leading evidence.

60. Reverting back to the consideration regarding applicability of Section 67 of I.T. Act, the prosecution should be able to show that the material which is published or transmitted in electronic form "is lascivious or appeals to the prurient interest or if its effect is such as tend to deprave and corrupt persons who are likely having regard to all relevant circumstances, to read, see or hear the matter content or embodied in it.....". As already seen, the aforesaid words contained in Section 67 of I.T. Act are imported from Section 292 of IPC, which deals with obscenity.

91. Regarding such disclaimer and the terms of use preventing the subscriber from complaining do not insulate the petitioner from action against her if the material itself invokes application of Section 67 of Information Technology Act, 2000. Section 67 of Information Technology Act is a cognizable offence and no condition such as disclaimer etc can prevent a person from lodging the FIR. in respect of such offence. In *Ranjit D. Udeshi's* case (*supra*), it has been observed by Hon'ble Apex Court that the offence of obscenity involves strict liability and once the material is *prima facie* considered to be obscene, there can be no escape from the liability.

96. Thus, at this stage it cannot be stated that provisions of Section 67 of IT Act are not attracted. Regarding Section 67-A of IT Act also, one has to decide as to what is the true meaning of sexually explicit acts i.e. whether a graphic depiction would only constitute "explicit Act" or whether a simulated act of copulation may also result in invoking this provision.

110. After due consideration in view of the aforesaid discussions, it appears that the facts of the case are not such that this

court may exercise its extraordinary powers under Section 482 of Cr.P.C. for quashing the FIR atleast in respect of Section 67, 67-A of I.T. Act and Section 294 of IPC. Although, it would be fair enough to state that provision of Section 298 of IPC and the provision of the State Emblem Act are not found to have been breached.

(iv) On the issue of impact of twitter handle, Mr. Manish Goyal, learned Senior Advocate cited the judgment of **Queen's Bench Division** in the case of **Chambers Vs. Director of Public Prosecutions**, [(2013) 1 WLR 1833]. The relevant observations made therein are as under :-

“Following an alert on the internet social network, Twitter, the defendant became aware that, due to adverse weather conditions, an airport from which he was due to travel nine days later was closed. He responded by posting several ‘tweets’ on Twitter in his own name, including the following: ‘Crap! Robin Hood Airport is closed. You have got a week and a bit to get your shit together otherwise I am blowing the airport sky high!!’ None of the defendant's ‘followers’ who read the posting was alarmed by it at the time. Some five days after its posting the defendant's tweet was read by the duty manager responsible for security at the airport on a general internet search for tweets relating to the airport. Though not believed to be a credible threat the matter was reported to the police. In interview the defendant asserted that the tweet was a joke and not intended to be menacing. The defendant was charged with sending by a public electronic communications network a message of a menacing character contrary to Section 127(1)(a) of the Communications Act, 2003. He was convicted in a Magistrates' Court and, on appeal, the Crown Court upheld the conviction, being satisfied that the message was ‘menacing per se’ and that the defendant was, at the very least, aware that his message was of a menacing character.”

6- Considering the merit of this case, I find that as per allegations levelled in the F.I.R. on 17.10.2017 at 21:46 hours, a morphed photo showing Hon'ble Prime Minister Narendra Modi shaking hands with dreaded and wanted terrorist Hafiz Saeed was posted on Facebook in the name of Anil Sharma and said objectionable post in question was shared by the applicant Niyaz Ahmad Khan on 24.04.2018 at 19:58 hours. Similarly, another post (a morphed photograph), in the name of the supporter of Akhilesh Yadav, which was posted on 01.04.2018 at 15:23 hours showing Hon'ble Prime Minister Narendra Modi and Cabinet Minister Amit Shah are feeding biscuits to dogs, on whom “Aaj Tak TV”, “Zee TV” and “India TV” was written was also shared by the applicant-Niyaz Ahmad Khan on 05.04.2018 at 15:54 hours on his Facebook ID.

The grounds taken in the application reveal that many of them relate to disputed question of fact. This Court is of the view that at the stage of summoning the accused, the court below is not required to go into the merit and demerit of the case. Genuineness or otherwise of the allegations cannot be even determined at the stage of summoning the accused. The appreciation of evidence is a function of the trial court. This Court in exercise of power under Section 482 Cr.P.C. cannot assume such jurisdiction and put an end to the process of trial provided under the law. It is also settled by the Apex Court in catena of judgments that the power under Section 482 Cr.P.C. at pre-trial stage should not be used in a routine manner but it has to be used sparingly, only in such appropriate cases, where allegations made in First Information Report or charge-sheet and the materials relied in support of same, on taking their face value and accepting in their entirety do not disclose the commission of any offence against the accused. The disputed question of facts and defence of the accused cannot be taken into consideration at this pre-trial stage, which can be more appropriately gone into by the trial court at the appropriate stage.

7- This Court does not find this case falling in the categories as recognized by the Apex Court for quashing the criminal proceeding of the trial court at pre-trial stage. Considering the facts, circumstances and nature of allegations against the applicant in this case, the cognizable offence is made out. At this stage, only prima facie satisfaction of the Court about the existence of sufficient ground to proceed in the matter is required. The impugned criminal proceeding under the facts of this case cannot be said to be abuse of the process of the Court. There is no good ground to invoke inherent power under Section 482 Cr.P.C. by this Court.

8- I find no illegality or material irregularity in the impugned cognizance/summoning order dated 22.07.2020 to intervene. Consequently, the relief as sought by the applicant through the instant application is hereby **refused**.

9- Having examined the matter in its entirety, here it would be apposite to mention that this Court is of the view that it is beyond the shadow of doubt that social media is a global platform for exchange of thoughts, opinions and ideas. The internet and social media has become an important tool through which individuals can exercise their right to freedom of expression but the right to freedom of expression comes with its own set of special responsibilities and duties. It does not confer upon the citizens the right to speak without responsibility nor does it grant unfettered licence for every possible use of language. There is an immediate need to check the exploitation of social media platforms that has political and societal reverberations that go well beyond hacked systems and stolen identities. Use of Cyberspace by some people to vent out their anger and frustration by travestyng the Prime Minister, Key-figures holding the highest office in the country or any other individual is abhorrent and violates the right to reputation of others. These kind of acts, posting and sharing unhealthy materials with unparliamentary language and remarks, etc. on social media without any solid basis cause a deleterious effect on the society at large, ergo in order to protect the reputation and character of individuals, it should be completely stopped. Since such incidents are on rise in a civilized society day by day and are polluting the minds of people, therefore, now it is high time to evolve some more and full proof screening mechanism to regulate, check and control the unhealthy posts on social media. It would be fair enough to state that such persons who are deliberately involved in such acts directly or behind the curtain with oblique motive or to settle their score adopting different modus-operandi are hazardous to the civilized society and they are not entitled for any sympathy in justice delivery system. High Courts are sentinels of justice with extraordinary and inherent power to ensure that rights and reputation of people are duly protected. Considering the gravity and nature of offence as well as misuse of social media platforms, this Court cannot shut its eyes. The Government is also not expected to act as a silent spectator.

10- Accordingly, Government is directed to take appropriate remedial measures/steps in order to control and eradicate such proliferating and booming devastating menace, to stop the misuse of social media platforms and to maintain healthy atmosphere in the society, which is the most important and essential factor for a civilized society.

11- With the aforesaid observations and directions, this application is **disposed of**.

12- Registrar General of this Court is directed to communicate the facsimile of this order to the Secretary, Ministry of Information and Technology, Government of India, New Delhi, Chief Secretary, State of U.P. and the concerned Court below within a week.

Order Date :- 21.02.2022
Shubham