

A.F.R.

Court No. - 15

Case :- APPLICATION U/S 482 No. - 1531 of 2023

Applicant :- Manish Kumar Pandey

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And 2 Others

Counsel for Applicant :- Prince Lenin

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed,J.

Heard Shri Prince Lenin, the learned counsel for the applicant as well as Shri Vinod Kumar Sahi, learned Additional Advocate General assisted by Sri Diwakar Singh, the learned A.G.A. for the State-opposite party No. 1 and perused the record.

The instant application has been filed by the applicant-Manish Kumar Pandey for quashing of the charge-sheet dated 30.09.2021 bearing No.1 of 2021 and the proceedings related to the applicant in Case No. 1730 of 2022, pending in the Court of Special Chief Judicial Magistrate, Custom, Lucknow arising out of Crime No. 228 of 2020, under Sections 419, 420, 465, 469, 471, 153-A, 153-B, 505 (1) (b), 505 (2) I.P.C. and Section 66 of the Information Technology Act, Police Station Hazratganj, District Lucknow as well as summoning order dated 12.01.2022 passed by the Special CJM Custom, Lucknow.

Learned counsel for the applicant submits that as per the prosecution case on 21.08.2020 an F.I.R. was registered against unknown persons by the informant/Sub Inspector of Police Station Hazratganj, District Lucknow bearing FIR No. 0228 under Sections 419, 420, 465, 469, 471, 153-A, 153-B, 505(1) (b), 505 (2) I.P.C. and under Section 66 of Information and Technology Act, 2008, while being on duty noticed circulation of a letter on the social media platform, namely, whatsapp/twitter issued in the name of MLA (BJP) Sri Dev Mani Dwivedi on a letter pad bearing Serial No. Ka-6, No. 459473 and

letter no.UPMLA/2/87 dated 20.08.20 addressed to the Additional Chief Secretary, Home, regarding providing information of criminal cases registered against various political persons. It is further alleged that on perusal it was noticed that the signature was in different name in the letter pad and on verification sought it was found to be forged. It is further alleged that forged letter pad was prepared for spreading communal hatred in the State of Uttar Pradesh and to defame the image of the present Government.

Learned counsel for the applicant submits that the allegations made in the impugned F.I.R. are absolutely false, frivolous and are not made out against the applicant.

Learned counsel for the applicant further submits that the applicant is a Journalist by profession and is also having several social media accounts including Twitter account wherein several posts pertaining to political as well as social events are being shared and the information in the form of news is shared by the applicant on issues existing in the social media and elsewhere.

Learned counsel for the applicant further submits that on 21.08.2020 the applicant received a copy of the letter dated 20.08.2020 from a reputed media person working as Editor/State Head of a Regional News Channel named India News U.P./U.K.. alleged to be issued by Sri Dev Mani Dwivedi, Member of Legislative Assembly, U.P. from the present ruling party was spreading in the social media addressed in the name of Additional Chief Secretary, Home, Government of U.P. wherein certain names of the political persons of one community with number of criminal cases against their name were mentioned thereby seeking explanation regarding action taken within last three years. Copy of the Letter Pad is filed as Annexure No. 1 to the applicant filed in support of the application.

Learned counsel for the applicant further submits that the applicant shared the aforesaid letter issued by the BJP MLA on his Twitter account. Thereafter, the applicant had made another post. The copy of the post on Twitter account is filed as Annexure No.3 and 4 to the affidavit filed in support of the application.

Learned counsel for the applicant further submits that the letter shared by the applicant on his twitter was purely in form of a news report and was not shared with any intention to spread communal terror or to defame the image of the present Government.

Learned counsel for the applicant further submits that on 30.09.2021 the impugned Charge Sheet No.1 of 2021 under Sections 419, 420, 465, 469, 471, 153-A, 153-B, 505 (1) (b), 505 (2) I.P.C. and Section 66 of the Information Technology Act was filed by the Investigating Officer before the court concerned after due investigation and on 12.01.2022, learned court below had taken cognizance and issued process against the applicant and seven other accused persons on the basis of the material that the applicant on his Twitter account posted and shared the letter of the BJP MLA only with the intention to spread communal terror and to defame the image of the present Government.

Further contention of the learned counsel for the applicant is that no offence against the applicant is disclosed and the present prosecution has been instituted with a malafide intention for the purposes of harassment and defaming the image of the applicant in the society.

Per contra, the learned Additional Advocate General has contended that the applicant claims himself to be Journalist, but he has not annexed any relevant document or licence issued to him regarding his profession by any authority. The applicant himself admitted this fact in the instant application that he had shared the aforesaid letter pad of the MLA Sri Dev Mani Dwivedi on his Twitter handle. Learned Additional Advocate General has drawn attention of this Court

towards the tweet shared by the applicant on his tweeter handle on 21 August, which is reproduced as under:

“# बीजेपी के लंभुआ विधायक देवमणि द्विवेदी का सरकार पर एक और हमला। 16 माननीयों की लिस्ट उनके मुकदमों के साथ जारी कर अपर मुख्य सचिव गृह से इनके ऊपर लंबित मुकदमों में पिछले तीन सालों की करवाई का ब्यौरा मांगा।”

Learned Additional Advocate General further submits that the applicant had tweeted the aforesaid letter pad of Sri Dev Mani Dwivedi, Member of Legislative Assembly of the ruling party (BJP) with the intention to defame the image of the ruling party in the State and to create communal terror and the said action of the applicant helped him in creating a ploy for him. He tried to defame the image of the U.P. Government led by the Chief Minister. The Government is working in the State for the peace and harmony of the people and for overall development in the State. The said action of the applicant is crime against the State and does not deserve any sympathy by this Court.

Having heard learned counsel for the parties and after perusal of the materials on record and looking into the facts of the case, it could not be stated that no offence has been made out against the applicant. Every person including the present applicant has the freedom of speech and the right to express his thoughts and ideas in general public as guaranteed by the Constitution of India, but such freedom should not be used in such a way that it would result in affecting the peace and tranquillity in the society. No such word or remark should be uttered that would create disharmony in the society. The allegation for spreading incorrect facts, without verifying and sharing the same through twitter handles, has also been levelled against the applicant. On account of sharing of incorrect facts on twitter handles, there was a chance of violation of public peace and tranquillity in the Society. The intention of the applicant was just to defame the image

of the present Government in the State and to create communal terror which is direct attack to disturb the peace and harmony of the State. No one can be given the licence to disturb the peace and tranquillity in the society, even though the applicant was not given authority under the law to do all such type of act for which he has no authority. There is already State machinery to look after the law and order of the State, even though from the action of the applicant it appears that his intention was not fair and wants to disturb the peace of the State and after due investigating the charge-sheet has been filed and the learned Magistrate took cognizance on the charge sheet, which reflects that cognizable offence is made out against the applicant.

The applicant in para 9 and 10 of the affidavit in support of the application himself stated this fact that during the course of investigation the statement of the MLA Sri Dev Mani Dwivedi was recorded by the Investigating Officer on 23.08.2022 and the MLA denied the issuance of the letter and his signature, thus this shows that the Blank Letter Pad of the concerned MLA was obtained and to gain undue advantage and with the intention to disturb the peace and harmony of the State, the material was written and forged signature was made and posted on Twitter handle account, which is a very serious matter.

From the allegations made in the FIR/Charge-sheet and cognizance order, prima facie offence is made out against the applicant. The innocence of the applicant cannot be adjudged at the pre trial stage. Therefore, the applicant does not deserve any indulgence. There also appears force in the argument of learned Additional Advocate General that the present Government is working in the interest of the State and for the peace and harmony of the people and for the overall development in the State.

At the stage of issuing process the court below is not expected to examine and assess in detail the material placed on record, only this has to be seen whether prima facie cognizable offence is disclosed or not and in the present case there is an allegation for spreading incorrect facts, without verifying and sharing the same through twitter handles and there was a chance of violation of peace and tranquility in the Society. The Apex Court has also laid down the guidelines where the criminal proceedings could be interfered and quashed in exercise of its power by the High Court in the following cases:-(i) **R.P. Kapoor Vs. State of Punjab, AIR 1960 S.C. 866**, (ii) **State of Haryana Vs. Bhajanlal, 1992 SCC (Cri.)426**, (iii) **State of Bihar Vs. P.P. Sharma, 1992 SCC (Cri.)192** and (iv) **Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cri.)283**.

From the aforesaid decisions the Apex Court has settled the legal position for quashing of the proceedings at the initial stage. The test to be applied by the court is to whether uncontroverted allegation as made prima facie establishes the offence and the chances of ultimate conviction is bleak and no useful purpose is likely to be served by allowing criminal proceedings to be continue. In **S.W. Palankattkar & others Vs. State of Bihar, 2002 (44) ACC 168**, it has been held by the Hon'ble Apex Court that quashing of the criminal proceedings is an exception than a rule. The inherent powers of the High Court under Section 482 Cr.P.C itself envisages three circumstances under which the inherent jurisdiction may be exercised:-(i) to give effect an order under the Code, (ii) to prevent abuse of the process of the court ; (iii) to otherwise secure the ends of justice. **The power of High Court is very wide but should be exercised very cautiously to do real and substantial justice for which the court alone exists.**

The High Court would not embark upon an inquiry as it is the function of the Trial Judge/Court. **The interference at the threshold**

of quashing of the charge sheet, proceeding of the case and summoning order in the case in hand cannot be said to be exceptional as it discloses prima facie commission of an cognizable offence. In the result, the prayer for quashing is refused. There is no merit in this application filed under Section 482 Cr.P.C. and is liable to be dismissed.

In view of the discussions made above, this application filed under Section 482 Cr.P.C., for the relief as prayed for, is **dismissed**.

Order Date :- 16.02.2023

Arvind