

**Court No. - 68**

**Case :-** APPLICATION U/S 482 No. - 6090 of 2023

**Applicant :-** Dr.Shiv Sidharth @ Shiv Kumar Bharti

**Opposite Party :-** State Of U.P And Another

**Counsel for Applicant :-** Brijesh Kumar Prajapati

**Counsel for Opposite Party :-** G.A.

**Hon'ble Mrs. Manju Rani Chauhan,J.**

1. Heard Mr. Brijesh Kumar Prajapati, learned counsel for the applicant and Mr. Sanjay Singh, learned AGA for the State.

2. This application U/s 482 Cr.P.C. has been filed with a prayer to quash the charge sheet dated 31.10.2021 in Criminal Case No.25 of 2020 arising out of Case Crime No.0304 of 2021, under Sections 295A IPC and Section 67 of I.T. Act, 2008, Police Station-Badlapur, District-Jaunpur, pending before the court of Additional Civil Judge (S.D.), Jaunpur.

3. Brief facts of the case are that an FIR has been lodged by the complainant; Akhand Pratap Singh against the applicant on 08.10.2021 at about 7:41 hrs, under Sections 67 of I.T. Act, which came to be registered as Case Crime No.0304 of 2021 with the allegations that an objectionable message has been posted on social media (Whatsapp) regarding the remarks on "*Maa Durga*", which has hurt the sentiments of the people of the Hindu community and there is a resistance shown by the aforesaid community. After investigation, the Investigating Officer has submitted the charge sheet under Section 295A IPC and Section 67 of I.T. Act, 2008, pursuant to which the applicant has been summoned by the concerned court vide order dated 31.10.2021. Hence, the present petition has been filed.

4. Learned counsel for the applicant submits that the applicant is innocent and has been falsely implicated in the present case. The applicant had received the message, but the same was not sent/forwarded by him. He further submits that the applicant has neither sent any such message nor he could do anything like this and has been falsely implicated by the opposite party no.2, who belongs to Hindu Vahini. He further submits that no ingredient of Section 67 of I.T. Act are existing under the facts and circumstances of the case, therefore, no offence under the relevant sections is made out against the applicant but the court below has utterly failed to consider the above as no *prima facie* case is made

out against the applicant. He further submits that as there are no ingredients to substantiate the said fact as alleged in the FIR, therefore, the proceedings initiated amounts to nothing but abuse of process of law and the same is liable to be quashed.

5. Per Contra, learned AGA for the State submits that after recording the statements of the informant/opposite party no.2 as well as other independent witnesses, namely, Shashi Anand Singh, Sudhir Singh, Vaibhav Singh, Kuldeep Singha and Sarvesh Yadav, the Investigating Officer has submitted the charge sheet against the applicant under Section 295A IPC and Section 67 of I.T. Act, 2008. He further submits that during investigation, two mobile phones have been recovered from the applicants and on examination of whats-app messages of the aforesaid, the allegations as leveled against the applicant regarding the messages are found to be true as the same finds place in the whats-app chat of the applicant. He further submits that on perusal of the first information report as well as the statements as given by the witnesses, cognizable offence is made out against the applicant. As regards the submission made by learned counsel for the applicant regarding the applicant has only received the message, learned AGA submits that he admits that the aforesaid message has been received by him and in the whats-app chat, he admits that he may be excused and forgiven for the fault, which has been committed by him, which means that he admits that he has received the message and sent the same to other groups. From the aforesaid, the offence under Section 67 of I.T. Act is made out as such messages are found in the whatsapp chat of the mobile recovered from the applicant. Therefore, the present application is liable to be dismissed.

6. I have considered the rival submissions advanced by learned counsel for the parties and perused the material available on record.

7. Before proceeding to consider the respective submissions of learned counsel for the parties, it is useful to extract the provisions of Section 295A IPC, which is as under:-

**"295A. Deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs.**—Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of 273 [citizens of India], 274 [by words, either spoken or written, or by signs or by visible representations or otherwise], insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to 4[three years], or with fine, or with both."

8. On close reading of aforesaid Section 295A IPC, it indicates that section 295A does not stipulate everything to be penalized and any and every act would tantamount to insult or attempt to insult the religion or the religious beliefs of class of citizens. It penalize only those acts of insults to or those varieties of attempts to insult the religion or religious belief of a class of citizens which are perpetrated with the deliberate and malicious intention of outraging the religious feelings of that class of citizens. Insults to religion offered unwittingly or carelessly or without any deliberate or malicious intention to outrage the religious feelings of that class do not come within the Section.

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.

10. From the records, the Court finds that the applicant admits that the aforesaid message has been received by him and in the whatsapp chat, he admits that he may be excused and forgiven for the fault, which has been committed by him, which means that he admits that he has received the message and sent the same to other groups.

11. 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. Perusal of charge sheet submitted against the applicant shows that after investigation, the investigating officer has submitted charge sheet after collecting cogent and reliable evidence against the applicant and thereafter the learned Magistrate has rightly summoned the applicant to face trial.

12. In view of the aforesaid, the application lacks merit and is, accordingly, **dismissed**.

**Order Date :- 16.5.2023**

Jitendra/-