2024 INSC 187

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.886 OF 2024
(Arising out of Special Leave Petition (Crl.) No.11122 of 2023)

Javed Ahmad Hajam **... Appellant**

versus

State of Maharashtra & Anr. **... Respondents**

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. A First Information Report (for short, 'the impugned FIR') was registered against the appellant for the offence punishable under Section 153-A of the Indian Penal Code, 1860 (for short, 'the IPC'). The appellant filed a writ petition before the High Court of Judicature at Bombay for quashing the FIR. By the impugned judgment dated 10th April 2023, the High Court has dismissed the writ petition.

2. The appellant was a Professor at Sanjay Ghodawat College in District Kolhapur, Maharashtra. He came to Kolhapur for employment. Earlier, he was a permanent resident of District Baramulla, Kashmir. The appellant was a member of a WhatsApp group. The allegation of commission of

offence is based on what was seen on his WhatsApp status. The State Government has set out the precise text appearing on the WhatsApp status of the appellant in its counter affidavit. Clauses (c) and (d) of paragraph 3 of the counter affidavit read thus:

> **"3. .. ..**
>
> **a. .. ..**
>
> **b. .. ..**
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> **c.** During the incident, the Petitioner was employed as a Professor at Sanjay Ghodavat College. The Petitioner was a member of a WhatsApp group that consisted of parents and teachers. Between August 13, 2022, and August 15, 2022, while being part of this WhatsApp group, the Petitioner posted two messages as their status:
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> 1. "August 5 – Black Day Jammu & Kashmir."
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> 2. "14th August – Happy Independence Day Pakistan."
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> **d.** Furthermore, after aforementioned status, the Petitioner WhatsApp status on their mobile included the message: **"Article 370 was abrogated, we are not happy."** Based on these allegations, the present FIR was registered under Section 153-A of the Indian Penal Code, 1860, by the Hatkanangale Police Station in Kolhapur.
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> .. .."

3. By the impugned judgment, the Division Bench of the High Court held that what was stated by the appellant regarding celebrating Independence Day of Pakistan will not come within the purview of Section 153-A of the IPC. However, the other objectionable part can attract the offence punishable under Section 153-A of the IPC.

SUBMISSIONS

4. The learned counsel appearing for the appellant submitted that by no stretch of the imagination, the words written on WhatsApp status by the appellant will promote disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities. He relied upon a decision of this Court in the case of ***Manzar Sayeed Khan v. State of Maharashtra & Anr***[1]. He submitted that the prosecution of the appellant was a complete abuse of the process of law. The learned counsel representing the respondent-State of Maharashtra submitted that whether the words or signs of the appellant on his WhatsApp status promoted disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities or not, is a matter of evidence. He submitted that it is only after examining the witnesses that the prosecution can establish the effect of these writings or signs on the minds of people. He submitted that at this stage, no conclusion regarding the impact of what is written by the appellant on the minds of the members of the

[1] (2007) 5 SCC 1

public can be drawn. He would, therefore, submit that no interference is called for with the impugned judgment, and the trial may be allowed to proceed.

CONSIDERATION OF SUBMISSIONS

5. The only offence alleged against the appellant is the one punishable under Section 153-A of the IPC. Section 153-A of the IPC, as it exists with effect from 4th September 1969, reads thus:

> **"153-A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—**(1) Whoever—
>
> (a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or
>
> (b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity,

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Offence committed in place of worship, etc.—Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.**"**

In this case, clause (c) of sub-section (1) of Section 153-A of the IPC is admittedly not attracted.

6. In the case of ***Manzar Sayeed Khan***[1], while interpreting Section 153-A, in paragraph 16, this Court held thus:

> **"16.** Section 153-A IPC, as extracted hereinabove, covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities or acts prejudicial to the maintenance of harmony or is likely to disturb the public tranquillity. **The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153-A IPC and the prosecution has to prove prima facie the existence of mens rea on the part of the accused. The intention has to be judged primarily by the language of the book and the circumstances in which the book was written and published. The matter complained of within the ambit of Section 153-A must be read as a whole. One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning."**
>
> **(emphasis added)**

This Court referred to the view taken by Vivian Bose, J., as a Judge of the erstwhile Nagpur High Court in the case of

Bhagwati Charan Shukla v. Provincial Government[2]. A Division Bench of the High Court dealt with the offence of sedition under Section 124-A of the IPC and Section 4(1) of the Press (Emergency Powers) Act, 1931. The issue was whether a particular article in the press tends, directly or indirectly, to bring hatred or contempt to the Government established in law. This Court has approved this view in its decision in the case of ***Ramesh v. Union of India***[3]**.** In the said case, this Court dealt with the issue of applicability of Section 153-A of IPC. In paragraph 13, it was held thus:

> **"the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view**. … It is the standard of ordinary reasonable man or as they say in English law 'the man on the top of a Clapham omnibus'.**"**
>
> **(emphasis added)**

Therefore, the yardstick laid down by Vivian Bose, J, will have to be applied while judging the effect of the words, spoken or written, in the context of Section 153-A of IPC.

7. We may also make a useful reference to a decision of this Court in the case of ***Patricia Mukhim v. State of Meghalaya & Ors***[4]**.** Paragraphs 8 to 10 of the said decision read thus:

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[2] AIR 1947 Nag 1
[3] (1988) 1 SCC 668
[4] (2021) 15 SCC 35

8. "*It is of utmost importance to keep all speech free in order for the truth to emerge and have a civil society*."— Thomas Jefferson. Freedom of speech and expression guaranteed by Article 19(1)(*a*) of the Constitution is a very valuable fundamental right. However, the right is not absolute. Reasonable restrictions can be placed on the right of free speech and expression in the interest of sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence. Speech crime is punishable under Section 153-A IPC. Promotion of enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony is punishable with imprisonment which may extend to three years or with fine or with both under Section 153-A. As we are called upon to decide whether a prima facie case is made out against the appellant for committing offences under Sections 153-A and 505(1)(*c*), it is relevant to reproduce the provisions which are as follows:

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.....
.....
.....

9. Only where the written or spoken words have the tendency of creating public disorder or disturbance of law and order or affecting public tranquility, the law needs to step in to prevent such an activity. **The intention**

> **to cause disorder or incite people to violence is the sine qua non of the offence under Section 153-A IPC and the prosecution has to prove the existence of mens rea in order to succeed.** [*Balwant Singh* v. *State of Punjab*, (1995) 3 SCC 214 : 1995 SCC (Cri) 432]
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> **10. The gist of the offence under Section 153-A IPC is the intention to promote feelings of enmity or hatred between different classes of people.** The intention has to be judged primarily by the language of the piece of writing and the circumstances in which it was written and published. The matter complained of within the ambit of Section 153-A must be read as a whole. One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning [*Manzar Sayeed Khan* v. *State of Maharashtra*, (2007) 5 SCC 1:(2007) 2 SCC (Cri) 417].**"**
>
> **(emphasis added)**

8. Now, coming back to Section 153-A, clause (a) of sub-section (1) of Section 153-A of the IPC is attracted when by words, either spoken or written or by signs or by visible representations or otherwise, an attempt is made to promote disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities. The promotion of disharmony, enmity, hatred or ill will must be on the grounds of religion, race, place of birth, residence, language, caste, community or any other analogous

grounds. Clause (b) of sub-section (1) of Section 153-A of the IPC will apply only when an act is committed which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities and which disturbs or is likely to disturb the public tranquility.

9. Now, coming to the words used by the appellant on his WhatsApp status, we may note here that the first statement is that August 5 is a Black Day for Jammu and Kashmir. 5th August 2019 is the day on which Article 370 of the Constitution of India was abrogated, and two separate Union territories of Jammu and Kashmir were formed. Further, the appellant has posted that "Article 370 was abrogated, we are not happy". On a plain reading, the appellant intended to criticise the action of the abrogation of Article 370 of the Constitution of India. He has expressed unhappiness over the said act of abrogation. The aforesaid words do not refer to any religion, race, place of birth, residence, language, caste or community. It is a simple protest by the appellant against the decision to abrogate Article 370 of the Constitution of India and the further steps taken based on that decision. The Constitution of India, under Article 19(1)(a), guarantees freedom of speech and expression. Under the said guarantee, every citizen has the right to offer criticism of the action of abrogation of Article 370 or, for that matter, every decision of the State. He has the right to say he is unhappy with any decision of the State.

10. In the case of ***Manzar Sayeed Khan***[1], this Court has read "intention" as an essential ingredient of the said offence. The alleged objectionable words or expressions used by the appellant, on its plain reading, cannot promote disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities. The WhatsApp status of the appellant has a photograph of two barbed wires, below which it is mentioned that "AUGUST 5 – BLACK DAY – JAMMU & KASHMIR". This is an expression of his individual view and his reaction to the abrogation of Article 370 of the Constitution of India. It does not reflect any intention to do something which is prohibited under Section 153-A. At best, it is a protest, which is a part of his freedom of speech and expression guaranteed by Article 19(1)(a). Every citizen of India has a right to be critical of the action of abrogation of Article 370 and the change of status of Jammu and Kashmir. Describing the day the abrogation happened as a "Black Day" is an expression of protest and anguish. If every criticism or protest of the actions of the State is to be held as an offence under Section 153-A, democracy, which is an essential feature of the Constitution of India, will not survive. The right to dissent in a legitimate and lawful manner is an integral part of the rights guaranteed under Article 19(1)(a). Every individual must respect the right of others to dissent. An opportunity to peacefully protest against the decisions of the Government is an essential part of democracy. The right to dissent in a lawful manner must be treated as a part of the right to lead a dignified and meaningful life guaranteed by Article 21. But the protest

or dissent must be within four corners of the modes permissible in a democratic set-up. It is subject to reasonable restrictions imposed in accordance with clause (2) of Article 19. In the present case, the appellant has not at all crossed the line.

11. The High Court has held that the possibility of stirring up the emotions of a group of people cannot be ruled out. The appellant's college teachers, students, and parents were allegedly members of the WhatsApp group. As held by Vivian Bose, J, the effect of the words used by the appellant on his WhatsApp status will have to be judged from the standards of reasonable women and men. We cannot apply the standards of people with weak and vacillating minds. Our country has been a democratic republic for more than 75 years. The people of our country know the importance of democratic values. Therefore, it is not possible to conclude that the words will promote disharmony or feelings of enmity, hatred or ill-will between different religious groups. The test to be applied is not the effect of the words on some individuals with weak minds or who see a danger in every hostile point of view. The test is of the general impact of the utterances on reasonable people who are significant in numbers. Merely because a few individuals may develop hatred or ill will, it will not be sufficient to attract clause (a) of sub-section (1) of Section 153-A of the IPC.

12. As regards the picture containing "Chand" and below that the words "14th August–Happy Independence Day Pakistan", we are of the view that it will not attract clause (a) of sub-section (1) of Section 153-A of the IPC. Every citizen has the

right to extend good wishes to the citizens of the other countries on their respective independence days. If a citizen of India extends good wishes to the citizens of Pakistan on 14th August, which is their Independence Day, there is nothing wrong with it. It's a gesture of goodwill. In such a case, it cannot be said that such acts will tend to create disharmony or feelings of enmity, hatred or ill-will between different religious groups. Motives cannot be attributed to the appellant only because he belongs to a particular religion.

13. Now, the time has come to enlighten and educate our police machinery on the concept of freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution and the extent of reasonable restraint on their free speech and expression. They must be sensitised about the democratic values enshrined in our Constitution.

14. For the same reasons, clause (b) of sub-section (1) of Section 153-A of the IPC will not be attracted as what is depicted on the WhatsApp status of the appellant cannot be said to be prejudicial to the maintenance of harmony among various groups as stated therein. Thus, continuation of the prosecution of the appellant for the offence punishable under Section 153-A of the IPC will be a gross abuse of the process of law.

15. Accordingly, we set aside the impugned judgment dated 10th April 2023 of the High Court of Judicature at Bombay and quash the impugned FIR bearing no. 295 of 2022 registered at

PS Hatkanangle, District Kolhapur, Maharashtra and the proceedings based on the impugned FIR.

16. The Appeal is, accordingly, allowed.

.....J.
(Abhay S. Oka)

.....J.
(Ujjal Bhuyan)

New Delhi;
March 7, 2024.