Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No.141 of 2021
(@ SLP (Crl.) No.103 of 2021)

PATRICIA MUKHIM .... **Appellant**

Versus

STATE OF MEGHALAYA & ORS. …. **Respondent (s)**

JUDGMENT

L. NAGESWARA RAO, J.

1. This Appeal is filed against the rejection of an application filed by the Appellant under Section 482 of the Code of Criminal Procedure, 1973 for quashing FIR Laban PS Case No.72(7)2020 dated 06.07.2020 registered under Sections 153 A, 500 and 505 (1) (c) of the Indian Penal Code, 1860.

2. A press release was issued by the Assistant Inspector General of Police (A) on 04.07.2020 in which there was a reference to an incident on the day prior. The incident had led to registration of a crime at Laban Police Station under Sections 326/307/506/34 IPC. It was mentioned in the press release that around 12:30 pm, about 25 unidentified boys

had assaulted youngsters playing basketball in Block 4, Lawsohtun with iron rods and sticks. Arindam Deb, Subharashi Das Paspurkayastha, Saptarshi Das Purkayashta, Binak Deb, Bishal Ghosh and Prittish Deb had sustained injuries in the incident. The injured had been rushed to Woodland Hospital for medical assistance. It was stated in the press release that some suspects had already been arrested and that interrogation was in progress. An appeal was made to the public to assist the investigation team in identifying the perpetrators of the crime. A warning was given that nobody should breach communal peace and harmony.

3. On the same day, the Appellant uploaded a post on Facebook, which reads as follows:

> *Patricia Mukhim*
> *4 July at 04:07. Facebook for Android*
>
> *Conrad Sangma CM Meghalaya, what happened yesterday at Lawsohtun where some Non-Tribal youth playing Basketball were assaulted with lethal weapons and are now in Hospital, is unacceptable in a state with a Government and a functional Police Force. The attackers allegedly tribal boys with masks on and should be immediately booked. This continued attack of Non-Tribals in Meghalaya whose ancestors have lived here for decades, some having come here since the British period is reprehensible to say the least. The fact that such attacker and trouble mongers since 1979 have never been arrested and if arrested never*

penalized according to law suggests that Meghalaya has been a failed State for a long time now.

We request your government and the police force under the present DGP, R. Chandranathan, to take this matter with the seriousness it deserves. Show us the public that we have a police force we can look up to.

And what about the Dorbar Shnong of the area? Don't they have their eyes and ears to the ground? Don't they know the criminal elements in their jurisdiction? Should they not lead the charge and identify those murderous elements? This is the time to rise above community interests, caste and creed and call out for justice.

We hope that this will not be yet another case lost in the Police files. We want action. Criminal elements have no community. They must be dealt with as per the law of the land.

Why should our Non-Tribal brethren continue to live in perpetual fear in their own state? Those born and brought up here have as much right to call Meghalaya their State as the indigenous Tribal does. Period.

4. On 06.07.2020, the Headman and the Secretary, Dorbar Shnong, Lawsohtun, Shillong filed a complaint with the Superintendent of Police, East Khasi Hills, Shillong, Meghalaya that the statement made by the Appellant on Facebook incited communal tension which might instigate a communal conflict. The Dorbar Shnong also complained of

defamation. Acting on the said complaint, FIR was registered at Laban Police Station and notice was issued to the Appellant under Section 41 A Cr. PC, directing her to appear before the Kench's Trace Police Beat House under Laban Police Station, District East Khasi Hills Shillong, Meghalaya.

5. The Appellant filed Criminal Petition No. 9 of 2020 in the High Court of Meghalaya at Shillong for quashing the FIR. The High Court by its judgment dated 10.11.2020 dismissed the Criminal Petition No. 9 of 2020, the legality of which is challenged in this Appeal. The High Court was of the opinion that reference to the attack on the non-tribals in the State of Meghalaya by the tribals has propensity to cause a rift between two communities. Observing that the Facebook post sought to arouse feelings of enmity and hatred between two communities, the High Court held *prima facie* an offence under Section 153 A IPC was made out.

6. We have heard Ms. Vrinda Grover, learned counsel for the Appellant and Mr. Avijit Mani Tripathi, learned counsel for the State of Meghalaya. The contention of the Appellant was that ingredients of the offence under Section 153 A IPC have not been made out and the FIR registered against the

Appellant deserves to be quashed. It was urged on behalf of the Appellant that the Facebook post should be read in its entirety. The brutal attack on non-tribals was highlighted calling for suitable action against the culprits. It was submitted on behalf of the Appellant that there was no intention to promote any feeling of enmity or hatred

between two communities. Reliance was placed on judgments of this Court to argue that the comment made by the Appellant should be judged from the stand point of a reasonable, strong minded and courageous man. The Appellant asserted her right guaranteed under Article 19 (1)

(a) of the Constitution of India. She voiced her concern about the criminal prosecution resulting in a chilling effect on her fundamental right to free speech.

7. The learned counsel for the Respondent-State argued that the Appellant is a renowned journalist and is expected to be more responsible when making public comments. The learned counsel for the State submitted that the comment of the Appellant has the tendency of provoking communal disharmony. He submitted that the High Court was right in dismissing the application filed under Section 482 Cr. PC and requested this Court to not interfere as the investigation is in progress.

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:

> **153A. 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 tranquility, or

(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.

Offence committed in place of worship, etc.— (2) 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.

505. Statements conducing to public mischief. —

(1) Whoever makes, publishes or circulates any statement, rumour or report, —

*** *** *** ***

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community,

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

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.[1]

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 153A must

[1] Balwant Singh v. State of Punjab, (1995) 3 SCC 214

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[2].

11. In ***Bilal Ahmed Kaloo v. State of A.P.***[3], this Court analysed the ingredients of Sections 153 A and 505 (2) IPC. It was held that Section 153 A covers a case where a person by "words, either spoken or written, or by signs or by visible representations", promotes or attempts to promote feeling of enmity, hatred or ill will. Under Section 505 (2) promotion of such feeling should have been done by making a publication or circulating any statement or report containing rumour or alarming news. *Mens rea* was held to be a necessary ingredient for the offence under Section 153 A and Section 505 (2). The common factor of both the sections being promotion of feelings of enmity, hatred or ill will between different religious or racial or linguistics or religious groups or castes or communities, it is necessary that at least two such groups or communities should be involved. It was further held in ***Bilal Ahmed Kaloo*** (supra) that merely inciting the feelings of one community or group without any reference to any other community or group

[2] Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1
[3] (1997) 7 SCC 431

cannot attract any of the two sections. The Court went on to highlight the distinction between the two offences, holding that publication of words or representation is *sine qua non* under Section 505. It is also relevant to refer to the judgment of this Court in ***Ramesh v. Union of India***[4] in which it was held that words used in the alleged criminal speech should 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. The standard of an ordinary reasonable man or as they say in English law "the man on the top of a Clapham omnibus" should be applied.

12. This Court in ***Pravasi Bhalai Sangathan v. Union of India & Ors.***[5] had referred to the Canadian Supreme Court decision in ***Saskatchewan (Human Rights Commission) v. Whatcott***[6]. In that judgment, the Canadian Supreme Court set out what it considered to be a workable approach in interpreting "hatred" as is used in legislative provisions prohibiting hate speech. The first test was for the Courts to apply the hate speech prohibition objectively and in so doing, ask whether a reasonable person, aware of the context and circumstances, would view the expression as

[4] (1988) 1 SCC 668
[5] (2014) 11 SCC 477
[6] [2013] 1 SCR 467

exposing the protected group to hatred. The second test was to restrict interpretation of the legislative term “hatred” to those extreme manifestations of the emotion described by the words “detestation” and “vilification”. This would filter out and protect speech which might be repugnant and offensive, but does not incite the level of abhorrence, delegitimization and rejection that risks causing discrimination or injury. The third test was for Courts to focus their analysis on the effect of the expression at issue, namely, whether it is likely to expose the targeted person or group to hatred by others. Mere repugnancy of the ideas expressed is insufficient to constitute the crime attracting penalty.

13. In the instant case, applying the principles laid down by this Court as mentioned above, the question that arises for our consideration is whether the Facebook post dated 04.07.2020 was intentionally made for promoting class/community hatred and has the tendency to provoke enmity between two communities. A close scrutiny of the Facebook post would indicate that the agony of the Appellant was directed against the apathy shown by the Chief Minister of Meghalaya, the Director General of Police and the Dorbar Shnong of the area in not taking any action

against the culprits who attacked the non-tribals youngsters. The Appellant referred to the attacks on non-tribals in 1979. At the most, the Facebook post can be understood to highlight the discrimination against non-tribals in the State of Meghalaya. However, the Appellant made it clear that criminal elements have no community and immediate action has to be taken against persons who had indulged in the brutal attack on non-tribal youngsters playing basketball. The Facebook post read in its entirety pleads for equality of non-tribals in the State of Meghalaya. In our understanding, there was no intention on the part of the Appellant to promote class/community hatred. As there is no attempt made by the Appellant to incite people belonging to a community to indulge in any violence, the basic ingredients of the offence under Sections 153 A and 505 (1) (c) have not been made out. Where allegations made in the FIR or the complaint, even if they are taken on their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused, the FIR is liable to be quashed[7].

14. India is a plural and multicultural society. The promise of liberty, enunciated in the Preamble, manifests itself in various provisions which outline each citizen's rights; they

[7] State of Haryana & Ors. v. Bhajan Lal & Ors., 1992 Supp (1) SCC 335

include the right to free speech, to travel freely and settle (subject to such reasonable restrictions that may be validly enacted) throughout the length and breadth of India. At times, when in the legitimate exercise of such a right, individuals travel, settle down or carry on a vocation in a place where they find conditions conducive, there may be resentments, especially if such citizens prosper, leading to hostility or possibly violence. In such instances, if the victims voice their discontent, and speak out, especially if the state authorities turn a blind eye, or drag their feet, such voicing of discontent is really a cry for anguish, for justice denied – or delayed. This is exactly what appears to have happened in this case.

15. The attack upon six non-locals, carried out by masked individuals, is not denied by the State; its reporting too is not denied. The State in fact issued a press release. There appears to be no headway in the investigations. The complaint made by the Dorbar Shnong, Lawsohtun that the statement of the Appellant would incite communal tension and might instigate a communal conflict in the entire State is only a figment of imagination. The fervent plea made by the Appellant for protection of non-tribals living in the State of Meghalaya and for their equality cannot, by any stretch

of imagination, be categorized as hate speech. It was a call for justice - for action according to law, which every citizen has a right to expect and articulate. Disapprobation of governmental inaction cannot be branded as an attempt to promote hatred between different communities. Free speech of the citizens of this country cannot be stifled by implicating them in criminal cases, unless such speech has the tendency to affect public order. The sequitur of above analysis of the Facebook post made by the Appellant is that no case is made out against the Appellant for an offence under Section 153 A and 505 (1) (c) IPC.

16. For the aforementioned reasons, the Appeal is allowed and the judgment of the High Court is set aside. FIR PS Case No.72 (7) 2020 dated 06.07.2020 registered at Police Station Laban is quashed.

…….J.
[L. NAGESWARA RAO]

…….J.
[S. RAVINDRA BHAT]

New Delhi,
March 25, 2021.