

(2021) 09 J&K CK 0033

In the Jammu And Kashmir High Court

Case No : Miscellaneous Criminal Cases (CRMC) No. 383 Of 2018

Sushil Pandit

APPELLANT

Vs

State Of J&K And Another

RESPONDENT

Date of Decision : 22-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 19(2)
Code Of Criminal Procedure, 1989 — Section 561A
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 505
Indian Penal Code, 1860 — Section 499, 505
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2021) 09 J&K CK 0033

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

Rajnesh Oswal, J

1. This petition has been filed by the petitioner under section 561-A Cr.P.C.(now 482) for quashing FIR bearing No. 49/2018 dated 21.05.2018 for commission of offence under section 505 RPC registered with Police Station, Pampore, Kashmir.

2. It is stated that the petitioner has been teaching as an adjunct faculty at Indian Institute of Mass Communication at New Delhi for the last twenty years and is a respected member of the society, having clean record and antecedents. It is further stated that the petitioner is an alumnus of the University of Delhi and Jawahar Lal Nehru University and is often invited by numerous universities and colleges, across India for lectures on the history of Kashmir and comments on the current political affairs of India in general and the State of Jammu and Kashmir(now UT) in particular. The petitioner claims to be a familiar face on almost all news channels for panel-discussions and debates on the current affairs and the prevailing security scenario in Kashmir. It is also stated that he has constantly stood by India security forces in their role as the defenders of borders

against the external enemies and supported their needs for a free hand to deal with the day to day challenges on the borders. It is further stated that in all his lectures/discussions/debates, the petitioner highlights the unfair disadvantages, brave jawans are subjected to, for political expedience and staunchly advocates against the concessions to the separatists in the State of Jammu and Kashmir(Now UT) and because of his ideology, the petitioner is hated by number of politicians and separatists.

3. It is further stated that on 21.05.2018, at about 10 AM, a seminar was hosted by Ms. Seema Mustafa on the issue of Kashmir in India International Center, New Delhi. The speakers included Wajahat Habibullah (Retd. Bureaucrat), Siddiq Wahid (Ex. Vice chancellor), Mohd. Yosuf Tarigami (Ex-MLA), Kapil Kak (Air Vice Marshal, Retd.), Gauhar Geelani (Journalist) and several other politicians and activists from Jammu and Kashmir.

4. During the course of this seminar, in the afternoon, one speaker, Sh. Tauseef Raina, while addressing the seminar, paused for a moment to look at his mobile phone and then said ?As I am speaking, 5 CRPF jawans are killed in Pampore? and thereafter resumed his address. The petitioner tweeted from his twitter handle with regard to the killing of 5 CRPF jawans. It is stated that after a couple of hours, a friend of the petitioner from Jammu and Kashmir, called him on his mobile phone and informed him that the tweet was posted by him was, in fact merely a rumor and advised the petitioner to delete the same and on coming to know that it was just a rumor, the petitioner deleted his tweet at about 2.30 PM. It is submitted that the petitioner was not aware that his accidental tweet was probably saved by some persons who would later on use it for their political end to harass the petitioner. It is also stated that after sometime while the petitioner was checking his twitter, he was surprised to see that the Ex-Chief Minister of Jammu and Kashmir who used the tweet of the petitioner as prop on his own tweet, tweeted a fresh tweet. It is further stated that the said Ex-Chief Minister gave the intentional communal meaning to the tweet of the petitioner and if the tweet of the petitioner is taken on its face value to be true, it does not carry any communal inflammatory language, which can create or spread communal hatred between two religious communities.

5. It is averred that SHO Police Station, Pampore, respondent No. 2 herein, under some political pressure or out of the pressure created by Ex-Chief Minister's tweet, lodged FIR under section 505 RPC against the petitioner, which is impugned in the instant petition.

6. The petitioner has sought quashing of the said FIR primarily on the ground that the FIR does not disclose commission of any offence including the offence under section 505 RPC. The petitioner has placed on record copy of the FIR, the copy of the tweet and also the tweet of the Ex-Chief Minister of Jammu and Kashmir.

7. Response stands filed by the respondents, in which besides narrating factual

aspects, it is stated that the act of the petitioner besides creating the fear psychosis and chaos among the security forces deployed in the Valley, also demoralized them and also instilled sense of insecurity in the general public and further that high degree of responsible behavior was expected from the petitioner and was supposed to scrutinize the facts before making the same public but the petitioner has failed to exhibit the said responsible standard and further it is stated that the petitioner cannot be allowed to claim the protection of an exception appended to section 505 RPC.

8. Mr. Ankur Sharma, learned counsel appearing for the petitioner has vehemently argued that the petitioner had posted the tweet believing it to be true but as soon as he found the same to be fake, he immediately deleted his tweet. He further submits that no offence is made out against the petitioner as the essential ingredients of offence under section 505 RPC are missing and further assuming the offence is made out, even then the case of the petitioner falls within the exception appended to section 505 RPC.

9. Per Contra, Mr. Malhotra submits that the FIR discloses the commission of offence under section 505 RPC and the same cannot be quashed and further the defense of the petitioner cannot be considered at this stage.

10. Heard and perused the record.

11. The tweet that was uploaded by the petitioner reads as under:

"Just heard, five CRPF jawans martyred in Pampore. # Ramzan ceasefire is working. Question is who is it working for?

12. The contention of the petitioner is that the allegations leveled in the FIR lack ingredients of section 505 RPC. Section 505 RPC reads as under:

"505. Statement conducting to public mischief-

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

(a) with intent to cause, or which is likely to cause, [any officer, solidier, sailor or airman in the Army, Navy or Air Force of India] to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or

(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 shall not be less than three years but may extent to ten years and shall also be liable to fine.]

(2) Statements creating or promoting enmity, hatred or ill-will between classes:- whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote or which is likely to

create or promote, on ground of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feeling of enmity, hatred or ill-will between different religious, racial language or regional groups or casts or communities, shall be punished with imprisonment [which shall not be less than four years but may extend to ten years].

(3) -----

Exception: It does not amount to an offence, within the meaning of this section when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it [in good faith] and without any such intent as aforesaid."

13. Thus, in order to invoke section 505 RPC, a person must make, publish or circulate any statement, rumour or report with intent to cause, or which is likely to cause any officer, soldier, sailor or Airman in the Army, Navy or Air Force of India to mutiny or otherwise disregard or fail in his duty, or with intent to cause, or which is likely to cause fear or alarm to the public or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility or with an 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.

14. In *Kedar Nath Singh v. State of Bihar*, reported in AIR 1962 SC 955, the Apex Court while upholding the constitutional validity of section 505 IPC has observed:

"29. It is only necessary to add a few observations with respect to the constitutionality of Section 505 of the Indian Penal Code. With reference to each of the three clauses of the section, it will be found that the gravamen of the offence is making, publishing or circulating any statement, rumour or report (a) with intent to cause or which is likely to cause any member of the Army, Navy or Air Force to mutiny or otherwise disregard or fail in his duty as such; or (b) to cause fear or alarm to the public or a section of the public which may induce the commission of an offence against the State or against public tranquility; or (c) to incite or which is likely to incite one class or community of persons to commit an offence against any other class or community. It is manifest that each one of the constituent elements of the offence under Section 505 has reference to, and a direct effect on, the security of the State or public order. Hence, these provisions would not exceed the bounds of reasonable restrictions on the right of freedom of speech and expression. It is clear, therefore, that clause (2) of Article 19 clearly saves the section from the vice of unconstitutionality."

15. The Hon'ble the Supreme Court in *Bilal Ahmad Kaloo vs. State of Andhra Pradesh*, 1997 (3) Crimes 130 (SC), has held that mens rea is a necessary postulate for the offence under Section 505 IPC.

16. Thus mens rea is an essential ingredient of offence under section 505 RPC

and as it provides a reasonable restriction on the fundamental right to freedom of speech and expression therefore the same is required to be strictly construed. The intention to generate the consequences as envisaged by section 505 RPC must be forthcoming from the plain reading of the statement/report or rumour and should not be left at the discretion of a particular person. A perusal of the petitioner's tweet would reveal that it begins with words "JUST HEARD", meaning thereby that what was uploaded by him was just heard by him and he had no personal knowledge of the same. Further the act of the petitioner in deleting the said tweet has not been disputed/denied by the respondents and this subsequent conduct of the petitioner also makes it ample clear that the said tweet was uploaded in a good faith without any criminal intention to generate the consequences as provided by section 505 RPC. At the most from the tweet in question, it can be inferred that the petitioner was not in favour of the ceasefire during the holy month of Ramzan but the same can, by no means, be construed to be an act on the part of the petitioner to generate the consequences as envisaged by the section 505 RPC. As such the essential ingredients of offence under section 505 RPC are lacking in the FIR.

17. Further, exception to section 505 RPC clearly provides that it does not amount to an offence within the meaning of this section when a person making, publishing or circulating such report, rumor or report has reasonable grounds for believing that such statement, rumor or report is true and makes, publishes or circulates in good faith and without any such intent. As already observed merely use of words "Just heard" would demonstrate that the petitioner has not published any statement on his own but on the basis of what he heard. He tweeted in the good faith what he heard, believing it to be true, that was in fact not true and immediately deleted it as soon as he came to know about the falsity of the content of tweet. Even if for the sake of arguments the offence is made out against the petitioner still his case would fall within the exception as well. Reliance is placed upon the decision of Apex Court in *Vinod Dua vs Union of India* and Ors reported in 2021 SCC Online SC 414, where in Apex Court while relying upon number of its earlier decisions quashed the criminal proceedings arising out of FIR on the ground that the statements of the petitioner were covered by Exception 2 and Exception 3 of section 499.

18. In view of what has been discussed above, this court is of the considered view that the FIR impugned, is nothing but an abuse of process of law and the case of the petitioner falls within the category (a) of the cases as laid down by Hon'ble Apex court in *State of Haryana v Bhajan Lal* reported in 1992 Supp(1) 335, in which indulgence can be shown by the Court under section 482 Cr.P.C. As such, the petition is allowed and FIR bearing No. 49/2018 dated 21.05.2018 for commission of offence under section 505 RPC registered with Police Station, Pampore, Kashmir against the petitioner is quashed.

19. Disposed of.