

HIGH COURT AT CALCUTTA**Bench: The Hon'ble Justice Shampa Dutt (Paul)****Date of Decision: 8th February 2024**

(Criminal Revisional Jurisdiction)

CRR 1575 of 2020 With CRAN 1 of 2021

Nityananda Chatterjee @ NitaiPetitioner**Vs****Respondents: The State of West Bengal & Anr.Respondent****Legislation and Rules:**

Indian Penal Code, 1860 - Sections 115, 505(1)(b)

Subject: Quashing of proceedings in a case involving alleged abetment and spreading of rumors leading to public mischief against the petitioner, Nityananda Chatterjee @ Nitai.

Headnotes:

Abetment and Public Mischief Allegations - Quashing of Proceedings - Petitioner, Nityananda Chatterjee @ Nitai accused of abetment and spreading rumors to incite violence and public mischief against a political leader – Case registered under Sections 115/505(1)(b) of IPC – Allegations stemmed from voice messages indicating a personal dispute over money and differences within the political party [Paras 1-3, 8, 16, 22].

Legal Analysis of Charges - Court reviewed Sections 115 and 505(1)(b) of IPC, finding no prima facie case for alleged offences - Transcriptions of telephonic conversations revealed a personal dispute without intent to cause public fear or alarm [Paras 13-14, 16, 21].

Precedents and Legal Reasoning - Reference to Supreme Court rulings in Jamuna Singh vs State of Bihar and Patricia Mukhim vs State of Meghalaya & Ors. - Emphasized the necessity of specific intent and elements in offences of abetment and public mischief [Paras 18, 20].

Quashing of Proceedings - High Court exercised inherent powers to quash proceedings against petitioner - Decision based on absence of prima facie case and prevention of abuse of legal process [Paras 22-24].

Decision: CRR 1575 of 2020 allowed - Proceedings against Nityananda Chatterjee @ Nitai in Ausgram Police Station Case No. 298/2020 dated 22.09.2020 under Sections 115/505(1)(b) IPC quashed [Para 24].

Referred Cases:

Jamuna Singh vs State of Bihar (1967 AIR 553)

Patricia Mukhim vs State of Meghalaya & Ors., Criminal Appeal No. 141 of 2021 (@ SLP (Cr.) No. 103 of 2021)

Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceedings being Ausgram Police Station Case No. 298/2020 dated 22.09.2020 under Sections 115/505(1)(b) of the Indian Penal Code, 1860 (corresponding to G. R. No. 3179/2020), now pending before the Court of the Learned Chief Judicial Magistrate, Purba Bardhaman.
2. FACTS:-

The petitioner states that one Sk. Sujauddin (hereinafter referred to as the "informant") lodged a complaint with the Officer-in-Charge of Ausgram Police Station, alleging that:-

A few days prior to the lodging of the complaint, hate-mongering rumours had been spread with an intention to kill the local AITMC leader, Anubrata Mondal @ Keshto. In fact, the informant came across a voice message, in which a person called Nitai Chatterjee was found to be instigating to kill Anubrata Mondal @ Keshto and extort money. Subsequently, the informant and his associates gathered information and came to learn that the petitioner, who is otherwise a dangerous man, had spread such inflammatory rumours. The petitioner has previously been implicated in several Criminal cases. Consequently, the informant suspected that the petitioner might cause harm to the local AITMC leader, Anubrata Mondal @ Keshto.

3. On the basis of the aforementioned complaint, Ausgram Police Station Case No. 298/2020 dated 22.09.2020 was registered against the petitioner under Sections 115/505(1)(b) of the Indian Penal Code, 1860 for investigation.
4. On 05.10.2020, a voice sample of the petitioner was recorded by the investigating agency before the Learned Judicial Magistrate, 3rd Court, Purba Bardhaman.

5. The petitioner states that the petitioner held a licence (being No. 124/81 of Ausgram Police Station) to use .12 Bore DBBL Gun No. 4046 manufactured by Khurmi Gun & Co. The petitioner also held a licence (being No. 426/81 of Ausgram Police Station) to use .32 Bore Revolver bearing No. C-0510 manufactured by Small Arms Co. The petitioner has been in lawful possession of the gun and the revolver under proper licence for about 40 years. The petitioner has been duly renewing the licenses from time to time and both the licences were valid till 31.12.2021.
6. A search and seizure at the house of the petitioner when he was in police custody led to seizure of a .32 Bore Revolver bearing No. C-0510 and .12 Bore DBBL Gun No. 4046. Two bullets of .12 Bore were also recovered. On the basis of the said reports, the officers prayed for revoking the arms licences of the petitioner, which the District Magistrate, Purba Bardhaman was pleased to allow vide order dated 28.09.2020 with a direction upon the petitioner to deposit the arms and the licences with the District Magistrate. However, the petitioner could not do so, because on 26.09.2020, during the course of the investigation of the instant case, the investigating agency had already seized both the arms and their licences from the house of the petitioner under a formal seizure list on 26.09.2020. On 01.10.2020 another raid was held at the house of the petitioner, however no seizure was made. Being aggrieved by the revocation of the arms licenses and the seizure of the arms and the licences by the investigating agency, the petitioner addressed a representation dated 12.10.2020 to the District Magistrate, Purba Bardhaman and the Superintendent of Police, Purba Bardhaman, requesting for cancelling the order of revocation. However, such representation has not been acted upon till date.
7. The petitioner states that in the meantime, vide an order dated 05.10.2020, the Learned Chief Judicial Magistrate, Purba Bardhaman was pleased to enlarge the petitioner on bail, in which the Learned Chief Judicial Magistrate was pleased to observe that there had been no further development in the investigation.
8. The petitioner states that he is a member of an All India Political Party, of which Anubrata Mondal @ Keshto is also a member. There have been differences of opinion amongst the members of the said political party and the petitioner also happened to differ from Anubrata Mondal @ Keshto in terms of his opinion with respect to certain political issues. As a result of such differences of opinion, the petitioner has been implicated in the instant case, only to force the petitioner to endorse the opinion of Anubrata Mondal @ Keshto.

9. **FINDINGS:-**

The present case has been registered against the petitioner for offence punishable under Sections 115/505(1)(b) of the Indian Penal Code.

Seizure list dated 26.09.2020 shows that the petitioner's licenced arms along with the licences were seized.

10. Seizure list dated 22.09.2020 shows that the petitioner's mobile phone with two sim cards were seized.
11. Vide an order dated 28.09.2020 the District Magistrate, Purba Bardhaman revoked the petitioner's arms licence.
12. Supplementary Affidavit filed on behalf of the petitioner has been filed stating that during pendency of this case, Charge Sheet has been filed and that also is required to be quashed.
13. Section 115 of IPC, lays down:-

"115. Abetment of offence punishable with death or imprisonment for life- if offence not committed.- whoever abets the commission of an offence punishable with death or imprisonment for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If act causing harm be done in consequence- and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Ingredients of offence.- The essential ingredients of the offence under Section 115 are as follows:-

- (1) The accused must have abetted the commission of the offence;
- (2) The offence abetted is punishable with death or imprisonment for life;
- (3) The offence abetted was not committed or no hurt was caused to any person in consequence of such abetment; or When the act causing harm is committed."

14. Section 505(1)(b) of IPC, lays down:-

"505. Statements conducing to public mischief.-

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

(a)

- (b) 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;

Ingredients of offence.- The essential ingredients of the offence under Section 505 are as follows:-

(1) Mens rea is the essential ingredient of offence. (2) The accused made, published or circulated any statement, rumour or report;

(3) He did so-

(i) with intent to cause or which he knew to be likely to cause any officer, soldier, sailor or airman to mutiny or otherwise disregard or fail in his duty;

(ii) with intent to cause or which he knew to be likely to cause fear or alarm to the public thereby inducing any person to commit an offence against the State or public tranquility;

(iii) with intent to incite or which he knew to be likely to incite any class or community to commit any offence against any other class or community."

15. As directed by this Court, the following Transcriptions into writing of audio clip in Track-01 and Track-02 prepared before the Learned Judicial Magistrate, 2nd Court, Purba Bardhaman have been placed before this Court:-

i) Transcription of Track - 01 "Ai Khankir Chele Keshto Mondal toke je bollam amartakata ferot de. Ta tor Gustir Gar Mere Chere Debo Bara, Guskara dea perote debo na. Ami more jabo toke guli kore debo Khankir Chele. Tui takata amar ferot patha. Tui to Bara Arup Midda ke dia case dili. Bail to peye gelam. Tui to onek opoman korli I.C. ke. Bail ki kore pelo. Tui amar Bal Chirbi. Shon tor Gustir Gar Mere Debo. Tor bou to bhoot hoye gelo. Bohu meyer sorbonash korechis. Bohu Khun korechis. Parle amakeo khun kore dis. Taka tor kache adai korbo korbo korbo Khankir Chele. Sune rakh. Uttar de. Chup Chap shune jas na recording hoche. Khankir Chele Keshto Mondal tor kache taka Netai Chatterjee adai kore charbe. Tor Bara Mayer Dudh kheyechis to Bara amar ghore ai. "

ii) Track - 02 "Hello hello Netai? Ha. Ki bapar tumi amar somondhe aje baje Facebook a likhecho. Ke? Ami Keshto da bolchi. Aa ami Keshto da bolchi. Ata Keshto dar gola noi. Ami Keshto da bolchi, tumi amar somondhe ato aje baje kotha likhcho keno. Ami ai je ata Keshto dar gola noi. Bolchi to ami Keshto da bolchi. Keshto da jodi hoi tahole amar 20 lakhs taka ferot dea pathao. Acha thik ache. Thik ache, thik ache, thik ache."

16. Form the said Transcriptions it prima facie appears that the parties had some money related dispute. The statements also relate to their personal dispute. The petitioner was asking for the money he had lent. The language though abusive do not contain any of the ingredients to prima facie make out the offences alleged. The said conversations are over phone and as such there has been neither any publication nor any circulation of any statement, rumour or report.

17. The said conversation was being recorded by the petitioner as stated in the third last line of Transcription of Track - 01.
18. In *Jamuna Singh vs State of Bihar*, (1967 AIR 553), on 22.09.1966, the Supreme Court held:-

"..... It cannot be held in law that a person cannot ever be convicted of abetting a certain offence when the person alleged to have committed that offence in consequence of the abetment has been acquitted. The question of the abettor's guilt depends on the nature of the act abetted and the manner in which the abetment was made. Under s. 107 I.P.C. a person abets the doing of an act in either of three ways which can be instigating any person to do an act; or engaging with one or more person in any conspiracy for the doing of that act; or intentionally aiding the doing of that act. If a person instigates another or engages with another in a conspiracy for the doing of an act which is an offence, he abets such an offence and would be guilty of abetment under s. 115 or s. 166 I.P.C., even if the offence abetted is not committed in consequence of the abetment. The offence of abetment is complete when the alleged abettor has instigated another or engaged with another in a conspiracy to commit the offence. It is not necessary for the offence of abetment that the act abetted must be committed. This is clear from Explanation 2 and illustration (a) thereto, to s. 108 I.P.C.

In *Barendra Kumar Ghosh v. The King Emperor*, it was said "Abetment does not in itself involve the actual commission of the crime abetted. It is a crime apart."

This Court reiterated it and said in *Faguna Kanta Nath v. The State of Assam*:-

"Under the Indian law for an offence of abetment it is not necessary that the offence should have been committed. A man may be guilty as an abettor whether the offence is committed or not.".....

..... It is only in the case of a person abetting an offence by intentionally aiding another to commit that offence that the charge of abetment against him would be expected to fail when the person alleged to have committed the offence is acquitted of that offence. The case of *Faguna Kanta Nat*, lays this down. The observations of this Court in that case, at p. 7, bring out clearly the distinction in the case of persons instigating another or engaging in conspiracy with another on the one hand and that of a person aiding the person in committing a certain offence. The observations are:-

"It is not the prosecution case that the appellant abetted the offence by instigating *Khalilur Rahman* to demand the illegal gratification; nor has the prosecution set up or proved a case of conspiracy between the appellant and *Khalilur Rahman* for the commission of an offence under s. 161. On the findings of the Court the appellant received the money for and on behalf of *Khalilur Rahman* and the evidence of the

complainant is that Khalilur Rahman had asked him to hand over the money to the appellant. If Khalilur Rahman is acquitted and therefore the offence under Section 161 is held not to have been committed, then in this case no question of intentionally aiding by an act or omission the commission of the offence arises."....."

19. It is clear from the materials on record that there is no Abetment as required under Section 115 of IPC, as there is neither any instigation nor any conspiracy to commit an offence.
20. In *Patricia Mukhim vs State of Meghalaya & Ors.*, in Criminal Appeal No. 141 of 2021 (@ SLP (Crl.) No. 103 of 2021), on March 25, 2021, the Supreme Court held:-

"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.

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 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.

11. In *Bilal Ahmed Kaloo v. State of A.P.*, (1997) 7 SCC 431, 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 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, (1988) 1 SCC 668, 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."

21. The transcriptions clearly show that the telephonic conversation relates to a personal dispute between the petitioner and the person on the other end of the line. The said conversation does not relate to the public nor is there any inducement against public tranquility. There is also nothing to show that the petitioner had the intention to cause fear or alarm to the public.
22. There thus being no prima facie case against the petitioner of the offences alleged, the present case is liable to be quashed to prevent the abuse of the process of law and this is a fit case where the inherent powers of this court should be exercised for the ends of justice.
23. CRR 1575 of 2020 is allowed.
24. The proceedings being Ausgram Police Station Case No. 298/2020 dated 22.09.2020 under Sections 115/505(1)(b) of the Indian Penal Code, 1860 (corresponding to G. R. No. 3179/2020), now pending before the Court of the Learned Chief Judicial Magistrate, Purba Bardhaman at Bardhaman is hereby quashed in respect of the petitioner namely Nityananda Chatterjee @ Nitai.
25. All connected applications, if any, stand disposed of.
26. Interim order, if any, stands vacated.
27. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
28. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

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