

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.412 of 2014
Arising Out of PS. Case No.-91 Year-2014 Thana- AIRPORT District- Patna

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Giriraj Singh S/o Late Ram Autar Singh Resident of Village Barahiya, P.S. Barahiya, District Lakhisarai, at present 15, Circular Road, P.S. Sachivalaya, District Patna.

... .. Petitioner

Versus

1. The Election Commission of India through District Electoral Officer-cum-district Magistrate, Patna
2. Sub Divisional Officer, Patna Sadar, District Patna.
3. Special Executive Magistrate, District Control Room, Patna.
4. Durgadutta Jha, Special Executive Magistrate, District Control Room, Patna.
5. Senior Superintendent of Police, Patna.
6. Officer Incharge of Hawai Adda Police Station, Patna.

... .. Respondents

Headnotes

Representation of the People Act, 1951 – Sections 123(3), 123(3A) and 125 – Indian Penal code, 1860 – Sections 171-E, 153-A, 153-B, 295-A and 505(2) – Constitution of India – Article 226 – hate speech – petitioners statement that certain group of people were not supporting Narendra Modi and were Pakistanis supporters, there is no place in the country for them, itself would not be a punishable offence under section 171-E of Indian Penal code – If two religious groups or communities are not referred in speech, then there is no offence under section 153-A of IPC – only raising feeling of one community or group cannot draw attention of Section 153-A of IPC – Criminal mentality is essential constituent for attracting offence under Section 153-A of IPC – Petitioner, who is a politician has a right to speak and express his views in public without disturbing communal harmony – Likewise, petitioners statement is not such a statement for which petitioner can be prosecuted under section 153-B If any statement is taken to be the only it is a political statement and is not

against any religion, caste or language or against any state situated within the territory of India – In petitioners statement, there is not mention of any religion or statement made by petitioner does ot insult any religion or group and no offence under Section 295-A of IPC is made out against petitioner – Petitioner cannot be prosecuted under section 505(2) of IPC because for being prosecuted under Section 505(2) of IPC petitioners statement must be against people of a particular religion, race, place of birth, residence, language or regional group or caste of community Ingredients of Section 123(3-A) or representation of People Act are fully looking in case in hand – Similarly, constituents of section 125 of Representation of People Act are not made out against petitioner – First Information Report and all resultant action are dismissed.

(Paragraph nos. 16,19,20,22,24,26,31,32,33 and 34)

Referred cases:

Bilal Ahmed Kaloo versus State of A.P., (1997)7 SCC 431, Manzar Sayeed Khan versus Maharashtra State, (2007) SCC 1, Mahendra Singh Dhoni versus Terraguntla Shyamsundar,(2017) 7 SCC 760, Balwant Singh versus Punjab State, 1995(3) SCC 215, Bilal Ahmad Khan versus State, (1997) 7 SCC 431, Haryana State versus Bhajan Lal, All India Reporter 1992 604 – Relied.

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Appearance :

For the Petitioner/s	:	Mr. Ajay Kumar Thakur, Advocate
		Mr. Malay Kumar Choudhary, Advocate
For the State	:	Mr. S.K. Jha, G.P.-3
For Election Commission:		Mr. Siddhartha Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 21-02-2023

Heard Sri Ajay Kumar Thakur, learned counsel assisted by Sri Malay Kumar Choudhary, learned counsel for the petitioner, Sri Siddhartha Prasad, learned counsel for the Election Commission of India and Sri S.K. Jha, learned counsel for the State.

2. This application has been filed for quashing of the F.I.R. vide Hawai Adda P.S. Case No. 91 of 2014 registered for the offences under Sections 171-E, 153-A, 153-B, 295-A,



505(2) of the Indian Penal Code and under Sections 123(3), 123(3A) & 125 of the Representation of the People Act, 1951.

3. The present F.I.R. has been lodged against the petitioner by one Durga Dutta Jha, Special Executive Magistrate, District Control Room, Patna. Although the F.I.R. runs in several pages but the gist of the F.I.R. is quoted hereinbelow:-

“नरेन्द्र मोदी के समर्थक हैं वो धर्मनिरपेक्ष नहीं हैं, सेक्युलर नहीं हैं, मैं कहता हूँ कि आज नरेन्द्र मोदी के विरोध में जो ताकत आज बिहार में या पूरे देश में एकजुट होकरके नरेन्द्र मोदी को हराने में लगा है वो पाकिस्तान परस्त हैं उसके लिए हिन्दुस्तान में कोई जगह नहीं है।”

4. It has been submitted by Sri Ajay Kumar Thakur, learned counsel for the petitioner that the correct context and complete statements have not been mentioned in the F.I.R. but the statement quoted in the F.I.R. was the answer to a question put to the petitioner that supporters of Narendra Modi are not secular or *Dharmnirpeksha* and in its reply, it was stated that forces which have united to protest against and defeat Narendra Modi in Bihar as well as entire country are “*Pakistan Parast*”, for whom there is no place in India. It has also been submitted that even if the statement of the petitioner is taken as it is then also it is not against any religion, caste, language or



against one or other State situated in India and this statement is an answer to a question put to the petitioner.

5. Sri Thakur, learned counsel for the petitioner has further submitted that Section 171-E of the Indian Penal Code defines punishment for bribery in election, which is not applicable in the present case because Section 171-E of the Indian Penal Code says whoever commits the offences of bribery shall be punished with imprisonment of either description for a term which may extend to one year or with fine or with both and bribery is defined under Section 171-B of the Indian Penal Code and the so called statement of the petitioner will not come in any of the criteria as mentioned under Section 171-B of the Indian Penal Code.

6. The next submission of learned counsel for the petitioner is that Section 153-A of the Indian Penal Code deals with promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony but, the statement of the petitioner, in answer to a question, is not against any group either on the ground of religions, race, place of birth, residence, language etc. nor it is in any way prejudiced to maintenance of harmony because it is not directed against any individual



community and similarly, the ingredients of Section 153-B of the Indian Penal Code is also not attracted in the present case.

7. It has also been submitted that Section 295-A of the Indian Penal Code will not be applicable in this case because it provides that whoever with deliberate or malicious intention of outraging the religious feelings of any class of citizen of India by words either spoken or written or by signs or by visible representations or otherwise, inciting or attempt to incite the religion and religious belief of that class but, in the present case the petitioner has not attempted to outrage the religious feelings of any class of citizen of India by words either spoken or written. Similarly, the ingredients of Section 505(2) of the Indian Penal Code is also not attracted in the present case as Section 505(2) of the Indian Penal Code is with regard to making or publishing any statement or rumour or alarming news with an intent to create or promote, or it is likely to create or promote on groups of religion, race place of birth, residence language caste or community or any other grounds whatsoever.

8. It has been submitted by learned counsel for the petitioner that no offence under Section 123(3) of the Representation of People Act, 1951 is made out as the petitioner was a candidate of Member of Parliament from the Nawada



constituency and his election was already over on 10th of April, 2014 and thus there is no question of bringing him in the category of candidate either in the Representation of People Act, 1951 or under the Indian Penal Code nor there is any allegation that with consent of the candidate, whose election was going to be held, such statement was made by the petitioner. It has also been submitted that the entire statements made by the petitioner have not been quoted in the F.I.R. and only a part portion of the statement has been quoted while lodging the F.I.R and this shows *malafide* action on the part of the respondents.

9. Sri Thakur, learned counsel for the petitioner has relied upon the following decisions in support of his submissions:-

- i. ***Bilal Ahmed Kaloo vs. State of A.P.*** reported in ***(1997) 7 SCC 431.***
- ii. ***Manzar Sayeed Khan vs. State of Maharashtra & Anr.*** reported in ***(2007) SCC 1***
- iii. ***Mahendra Singh Dhoni vs. Yerraguntla Shyamsundar & Anr.*** reported in ***(2017) 7 SCC 760.***

10. By making the aforesaid submissions and by



relying upon the aforesaid decisions, it has been submitted by learned counsel for the petitioner that no offence is made out against the petitioner from reading the statements, which have been quoted in the F.I.R. and therefore, this Court may allow this application and quash the F.I.R.

11. Learned counsel for the respondents have also filed their counter affidavit and it has been argued by them that offences, as alleged in the F.I.R., are made out against the petitioner. They have submitted that the petitioner has given statements which is in violation of the model code of conduct and accordingly, the F.I.R. was registered against the petitioner.

12. It has also been submitted that the statements given by the petitioner can promote enmity between different sections of people and the citizen of India. It has further been stated that the statements of the petitioner made at the time of election could have created widespread tension among different sections of people. It has further been submitted that the allegation of *malafide* action on the part of the respondents is not correct as the F.I.R. was lodged as a result of the statements made by the petitioner.

13. By making the aforesaid submissions, it has been submitted by learned counsel for the respondents that this



application is fit to be dismissed.

14. I have considered the submissions so advanced by the parties. I have also perused the materials available on record including the F.I.R.

15. For better appreciation of the case, it will be useful to examine relevant provisions of the Indian Penal Code as well as the Representation of People Act, 1951. For ready reference, Section 171-E of the Indian Penal Code is reproduced below:-

*“171-E. Punishment for bribery :-
Whoever commits the offence of bribery
shall be punished with imprisonment of
either description for a term which may
extend to one year, or with fine, or with
both;
Provided that bribery by treating shall be
punished with fine only.”*

16. From joint reading of the statements made by the petitioner as well as Section 171-E of the Indian Penal Code, this Court is of the opinion that no offence under Section 171-E of the Indian Penal Code is made out against the petitioner. Hence, this Court is of considered view that that the statement of the petitioner that a group of persons who were not supporting Narendra Modi and were supporters of Pakistan, there is no place in the country for them, itself would not



constitute the offence punishable under Section 171-E of the Indian Penal Code as it does not amount to bribe as defined under Section 171-E Indian Penal Code.

17. Section 153-A of the Indian Penal Code is also reproduced hereinbelow:-

“153A. Promoting enmity between different groups on ground 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,
²*[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.”

18. The applicability of Section 153-A of the Indian Penal Code has been considered by the Hon’ble Supreme Court in the case of ***Manzar Sayeed Khan vs. State of Maharashtra and Ors. (supra)***. Paragraph nos. 16 to 18 of the aforesaid judgment read as under:-

“16. Section 153-A of 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 tranquility. 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 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.

17. In *Ramesh v. Union of India*, this Court held that TV serial "Tamas" did not



depict communal tension and violence and the provisions of Section 153A IPC would not apply to it. It was also not prejudicial to the national integration falling under Section 153B IPC. Approving the observations of Vivian Bose, J. in Bhagvati Charan Shukla v. Provincial Government, the Court observed that

“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". (Ramesh Case, SCC p. 676, para 13).

18. Again in Bilal Ahmed Kaloo v. State of A.P., it is held that the common feature in both the Sections, viz., Sections 153A and 505 (2), being promotion of feeling of enmity, hatred or ill-will "between different" religious or racial or linguistic or regional groups or castes and communities, it is necessary that at least two such groups or communities should be involved. Further, it was observed that



merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two Sections.”

19. From reading of the aforesaid paragraphs, it is clear that the ingredients of Section 153-A of the Indian Penal Code is only applicable when the statement has been made with an intention to promote feeling of enmity or hatred or ill-will between different class of people and there must be persons of two groups or community in the speech. If two religious groups or communities are not mentioned in the speech then no offence under Section 153-A of the Indian Penal Code is made out. Merely inciting the feeling of one community or group without any reference to any other community or group cannot attract Section 153-A of the Indian Penal Code. Further, the Hon'ble Apex Court in the case of ***Balwant Singh & Anr. vs. State of Punjab*** reported in ***1995 (3) SCC 215*** has held that *mens rea* is a necessary ingredient for attracting the offence under Section 153-A of the Indian Penal Code.

20. From the statements quoted in the F.I.R, it appears that there is no mention of any group or community and there is nothing in the statement which will show that the statement was made by the petitioner with an intention to



promote the feeling of enmity and hatred or ill-will between two groups of people and to cause disorder or incite the people to involve in violence against each other, which is a *sine qua non* for the offence under Section 153-A of the Indian Penal Code. The statement of the petitioner is only to the effect that a group of persons were not supporting Narendra Modi, were supporters of Pakistan and for them there is no place in the country. It is important to point out that the petitioner being a politician has a right to speak and express his views in public without disturbing the communal harmony. Therefore, the statements, in question, cannot be leveled as hate speech. Hence, this Court is of the opinion that no offence under Section 153-A of the Indian Penal Code is made out against the petitioner.

21. So far as Section 153-B of the Indian Penal Code is concerned, it is relevant to reproduce the aforesaid Section, which is as under:-

“153- B. Imputations, assertions prejudicial to national integration- (1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise:

(a) makes or publishes any imputation that any class of persons cannot, by reason of their



being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class of persons shall by reason of their being members of any religious, racial, language or regional group or caste or community be denied, or deprived of their rights as citizens of India, or

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons,

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



fine, or with both.”

22. For prosecuting a person under Section 153-B of the Indian Penal Code, the statement made by such person shall be against any class of person, by reason of their being members of any religious, racial, language or regional group for caste or community and they may be deprived of their rights as citizen of India or if the statement of the person is likely to cause the feeling or ill-will of other persons. However, from reading of the statements made by the petitioner, as quoted in the F.I.R., it is clear that the petitioner has said that the opponents of Narendra Modi had united to protest and defeat Narendra Modi in Bihar as well as entire country are the supporters of Pakistan and for whom there is no place in India. In the opinion of this Court, the statement of the petitioner is not such a statement for which the petitioner can be prosecuted under Section 153-B of the Indian Penal Code and no offence under Section 153-B of the Indian Penal Code is made out against the petitioner. If the statement is taken to be true then only it is a political statement and the same is not against any religion, caste or language or against any State situated in India and this is an answer to a question put to the petitioner and without quoting the question, the part of the statement of the



petitioner is being quoted for prosecuting him.

23. The provision of Section 295-A of the Indian Penal Code is quoted hereinabove:-

“Section 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 ²[citizens of India], ³ [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.]”

24. The applicability of Section 295-A of the Indian Penal Code has been considered by the Hon’ble Supreme Court in the case of *Mahendra Singh Dhoni vs. Yerraguntla Shyamsundar and Anr. (supra)* and it has been held that for applying the ingredients of Section 295-A of the Indian Penal Code there must be deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or



religious beliefs by words either spoken or written or by signs or by visible representations or otherwise. In the opinion of this Court, in the present case, the ingredients of Sections 295-A of the Indian Penal Code are completely lacking in the statement of the petitioner which has been quoted in the F.I.R. In the statement of the petitioner, there is no mention of any religion or the statement made by the petitioner does not insult any religion or group and therefore, no offence under Section 295-A of the Indian Penal Code is made out against the petitioner.

25. So far as Section 505(2) of the Indian Penal Code is concerned, it will be relevant to quote the said Section, which is as under:-

“505(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 grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.”



26. On perusal of the aforesaid Section, it is clear that ingredients of Section 505 (2) of the Indian Penal Code is only applicable when the statement has been made with an intent to create or promote or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language caste or community or any other ground whatsoever, felling of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities is punishable. The Hon'ble Apex Court in the case of **Balwant Singh vs. State of Punjab (supra)** has held that *mens rea* is an equally necessary postulate for the offence under Section 505(2) of the Indian Penal Code as could be discerned from the words "with intent to create or promote or which is likely to create or promote" as used in that sub-section. Going through Section 505(2) of the Indian Penal Code, it appears that promotion of such feelings should be publication and circulation. However, in the present case, the petitioner has given statement in public platform in an answer to a question put to him. Further, from perusal of the statements of the petitioner, it appears that the petitioner has not done anything against any religious or racial or linguistic or regional groups or castes or communities rather his statement was an answer to a question put to him. In the



opinion of this Court, the statement made by the petitioner does not fall in the category of the statement made against different religion, racial, language or regional groups or castes or communities and the petitioner cannot be prosecuted under Section 505(2) of the Indian Penal Code as for being prosecuted under Section 505(2) of the Indian Penal Code the statements made by the petitioners must be against people of a particular religion, race, place of birth, residence, language or regional group or caste of community. Hence, the ingredients of Section 505(2) of the Indian Penal Code are not made out against the petitioner.

27. The common ingredient in both the offences i.e. Section 153-A and 505(2) of the Indian Penal Code is promoting feeling of enmity, hatred or ill will between different religious or racial or linguistic or regional groups or castes or communities. 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 such feeling. Under Section 505(2) of the Indian Penal Code, promotion of such feeling should have been done by 'making and publishing or circulating any statement or report' containing rumour or alarming news. The intention of the legislature in providing two different



sections on the same subject would have been to cover two different fields of similar offences. Merely instigating the feeling of a person or community or group without any reference to any other community or group cannot attract the ingredients of Sections 153-A and Section 505-2 of the Indian Penal Code.

28. The Hon'ble Apex Court in the case of *Bilal Ahmad Kalu vs. State* reported in (1997) 7 SCC 431 has held that anyone who has not done anything as against any religious, or racial or linguistic or regional groups or castes or communities cannot be held guilty of either of the offences under Section 153-A or 505-2 of the Indian Penal Code.

29. Now, this Court is considering the various provisions of the Representation of the People Act, 1951. For ready reference, Section 123(3) of the Representation of the People Act, 1951 is reproduced here-in-below:-

“123(3). The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to, religious symbols or the use of, or appeal to, national



symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:

Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.”

30. For prosecuting under the aforesaid Section, a persons should appeal for voting or refrain from voting for any person on the grounds as mentioned in the aforesaid Section. In the opinion of this Court, no such appeal has been made which will make the petitioner liable for prosecution under Section 123(3) of the Representation of the People Act, 1951.

31. Similarly, Section 123(3-A) of the Representation of the People Act, 1951 comes into play only when a person promotes or attempts to promote feelings of enmity or hatred between different classes of citizen of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidates or for prejudicially affecting the election of any candidate. From reading of the statements made by the petitioner, it appears that ingredients of



Section 123(3-A) of the Representation of the People Act are completely lacking in the present case.

32. Similarly, for being prosecuting a person under Section 125 of the Representation of the People Act 1951, the basic requirement is that the person should promote or attempted to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred between different classes of citizens of India. Again, in the opinion of this Court, the ingredients of Section 125 of the Representation of the People Act is not made out against the petitioner as the statements have not been made to promote or attempting to promote on grounds of religions, race, caste, community or language, feelings of enmity or hatred between different classes of citizens of India.

33. From the discussions made above, I find that no offence, as alleged in the F.I.R. is made out against the petitioner and the F.I.R. is fit to be quashed in view of ratio laid down by the Hon'ble Apex Court in the case of *State of Haryana & Ors vs Ch. Bhajan Lal & Ors.* reported in *AIR 1992 604.*

34. Accordingly, this criminal writ application is allowed. Consequently, F.I.R. vide Hawai Adda P.S. Case No.



91 of 2014 registered for the offences under Sections 171-E, 153-A, 153-B, 295-A, 505(2) of the Indian Penal Code and under Sections 123(3), 123(3A) & 125 of the Representation of the People Act, 1951 and all consequential proceedings arising out of the said FIR are quashed in the interest of justice.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	29.03.2023
Transmission Date	

