Court No. - 10

Case :- MISC. BENCH No. - 10941 of 2021

Petitioner :- Surya Pratap Singh
Respondent :- State Of U.P. Thru Prin. Secy. Home And Ors.
Counsel for Petitioner :- Amrendra Nath Tripathi,Abhinav Nath Tripathi
Counsel for Respondent :- G.A.

Hon'ble Ramesh Sinha,J.
Hon'ble Jaspreet Singh,J.

1. The Court has convened through ***Video Conferencing.***
2. Heard Shri Amrendra Nath Tripathi, learned counsel for the petitioner and Shri S.N. Tilhari, learned AGA for the State and perused the impugned F.I.R. as well as material brought on record.
3. Invoking the jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner, namely, Surya Pratap Singh, prays for quashing of FIR dated 13.05.2021 registered as case crime no.0386 of 2021, under Sections 153, 465 and 505 of I.P.C., Section 21 of the Uttar Pradesh Public Health and Epidemic Diseases Control Act, 2000, Section 54 of the Disaster Management Act, 2005 and Section 67 of the Information Technology as Amended Act, 2000, Police Station-Kotwali, District Unnao. He also prays that a writ of mandamus be also issued to the respondents no. 1 and 2 not to arrest the petitioner in pursuance of the impugned F.I.R.

4. The impugned F.I.R. has been registered against the petitioner for a ‘tweet’, which he posted on the social medial website known as ‘Twitter’ on 13.05.2021.

5. The allegation levelled against the petitioner in the impugned F.I.R. is that photographs, which have been attached with the tweet, were of 13.01.2014 and are deliberately used to spread hatred and resulted in spreading tension among different sections in the locality.

6. Learned counsel for the petitioner has next argued that the petitioner is a retired IAS officer. He has devoted his life in service of the society and has served the nation with full dedication. He has only raised the issues of public and social concerns through various social media and that during the outbreak of COVID-19 pandemic, he has raised the grievances of citizens on social media like ‘Twitter’. The petitioner being I.A.S. has no intention to malign the image of the Government but only, by posting the contents and news items, wants to draw the attention of the Government towards the problems faced by the citizens during the outbreak of COVID-19 pandemic.

7. While drawing our attention towards Section 153A of the I.P.C., learned Counsel for the petitioner has submitted that the ingredients of Section 153A are not made out even upon considering all materials on record. He argued

that the allegations in the F.I.R., in their face value and in their entirety, do not prima facie constitute any offence or make out any case against the petitioner under Section 153A of I.P.C. He further placed reliance on the decision of the Apex Court in the case of **State of Haryana Vs. Bhajan Lal :** 1992 Supp. (1) SCC 335 and argued that applying the principles laid down in **State of Haryana Vs. Bhajan Lal (supra)** to the instant case, the materials accompanying the FIR in the instant case (tweet and news items) do not make out any offence against the petitioner.

8. Learned Counsel for the petitioner has drawn our attention to Sections 465 and 463 I.P.C. and has contended that Section 465 I.P.C. deals with punishment of forgery, whereas Section 463 I.P.C. deals with forgery. In the present case, neither any false document or electronic record was made with intent to cause damage or injury to public or to any person, or made in order to support his claim or title in any property. Furthermore, the impugned F.I.R. has not been registered by any person aggrieved but by the police suo moto on its own, hence, no offence under Sections 463 and 465 I.P.C. is made out.

9. Learned Counsel for the petitioner has next drawn our

attention to Section 505 I.P.C., Section 21 of the Uttar Pradesh Public Health and Epidemic Diseases Control Act, 2020, Section 54 of the Disaster Management Act, 2005 and Section 67 of the Information Technology as amended Act, 2000 and has argued that the petitioner is a responsible citizen and in his tweet had never intended to spread any rumour or panic among people but the objective of the tweet was that bodies of dead persons, be treated with respect and be cremated as per religious rituals. He also argued that National Human Rights Commission had taken cognizance of the burial of dead bodies and dead bodies floating in river Ganga and issued notice to the State Government. Therefore, his submission is that the impugned F.I.R. is nothing but an attempt to throttle the voice of dissent and is violative of freedom of speech guaranteed by the Constitution to the citizen of India.

10. Learned Counsel for the petitioner has also pointed out that on coming to know the fact that the representative photograph, though was real but could be misused, the petitioner immediately deleted the tweet in the interest of society. The said fact has been mentioned in paragraph-31 of the writ petition.

11. Learned Counsel for the petitioner has argued that for the

same allegation and for the same cause of action, another F.I.R., bearing No. 0417 of 2021, under Sections 270, 505 I.P.C., Section 67 of the Information Technology as Amended Act, 2008 and Section 3 of the Epidemic Act, 1897 at police station Lanka, District Varanasi has also been lodged against the petitioner, which is at all not permissible. He argued that no F.I.R. could be lodged for reporting and ventilating the grievances on social media as has been held by the Apex Court in **Suo Moto Writ Petition (Civil) No.3 of 2021 titled in Re: Distribution of Essential Supplies and Services During Pandemic**, vide order dated 30.04.2021. He has drawn our attention towards para-61 of the aforesaid judgment, which reads as under :

> *"61 It is only appropriate then that when many cities in India are suffering through the second wave of the COVID-19 pandemic, many have turned to the internet, using applications/ websites to find critical support. On these platforms, online communities led by members of the civil society and other individuals, have assisted the needy in multiple ways – often by helping them procure oxygen, essential drugs or find a hospital bed through their own networks or by amplifying original requests, and even by offering moral and emotional support. However, it is with deep distress that we note that individuals seeking help*

on such platforms have been targeted, by alleging that the information posted by them is false and has only been posted in social media to create panic, defame the administration or damage the "national image". We do not hesitate in saying that such targeting shall not be condoned, and the Central Government and State Governments should ensure that they immediately cease any direct or indirect threats of prosecution and arrest to citizens who air grievances or those that are attempting to help fellow citizens receive medical aid. If this does keep happening even after the current order, this Court shall be constrained to use the powers available to it under it contempt jurisdiction. We also direct that all Directors General of Police shall ensure compliance down the ranks of the police forces within their jurisdictions."

12. Learned Counsel for the petitioner assures the Court that being a responsible citizen, the petitioner would be careful in making such type of tweets on social media/platform in future and shall not misuse the same on any account.

13. Having examined the submissions advanced by the learned counsel for the parties and going through the record and the assurance given by learned counsel for the petitioner that he would be careful in future, *prima facie*, a case for interim relief is made out.

14. Learned A.G.A. has accepted notice on behalf of the opposite party nos.1 to 2.

15. Issue notice to respondent no. 3.

16. Each of the respondent is granted four weeks time to file counter affidavit.

17. Rejoinder affidavit, if any, may also be filed within two weeks thereafter.

18. **List after six weeks.**

19. Till the next date of listing or till submission of police report under section 173 (2) Cr.P.C., if any, before the Competent Court, whichever is earlier, the arrest of the petitioner- Surya Pratap Singh in case crime no.0386 of 2021, under Sections 153, 465 and 505 of I.P.C., Section 21 of the Uttar Pradesh Public Health and Epidemic Diseases Control Act, 2000, Section 54 of the Disaster Management Act, 2005 and Section 67 of the Information Technology as Amended Act, 2000, Police Station- Kotwali, District Unnao shall remain stayed of course subject to the restraint that the petitioner shall fully cooperate with the investigation and shall appear as and when called upon to assist in the investigation.

20. The party shall file computer generated copy of order downloaded from the official website of High Court

Allahabad, self attested by it along with a self attested identity proof of the said person(s) (preferably Aadhar Card) mentioning the mobile number(s) to which the said Aadhar Card is linked before the concerned Court/ Authority/ Official.

21. The concerned Court/ Authority/ Official shall verify the authenticity of the computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order Date :- 31.5.2021
Arnima

Digitally signed by JASPREET SINGH
Date: 2021.06.01 19:47:08 IST
Reason: Document Owner
Location: High Court of Judicature at Allahabad, Lucknow Bench

Digitally signed by Justice Ramesh Sinha
Date: 2021.06.01 19:47:30 IST
Reason: Document Owner
Location: High Court of Judicature at Allahabad, Lucknow Bench