

19.3.2012 in the 2nd page of the “T2” of the English news daily “The Telegraph’ under the ‘Twit Of the day ‘column’ a picture pertaining to the cricketing field was published which deeply hurt the religious sentiments of people following Islam. Furthermore the publication was made intentionally with the motive of hurting religious sentiments of Muslims’. On the basis of the aforesaid written complaint the case was registered initially against the Editor, printer and publisher of ‘The Telegraph’ Newspaper. The petitioner immediately after being aware of the complaint filed an application for anticipatory bail before the High court which was allowed. On completion of investigation, the investigating agency submitted the charge sheet against all the three petitioners, in spite of the fact that none of the petitioners were named in the first information report. Vide an order dated 14 January 2015, the learned Chief Judicial Magistrate at Howrah took cognizance on the basis of such charge sheet and directed to issue process against the petitioners. The petitioners have come before this court for quashing of the proceeding.

2. It is submitted on behalf of the petitioner by the learned Senior advocate Mr. Ganguly that the First Information Report was made on 19th March, 2012 was in a section of the supplement to the main newspaper called.t-2” and it would be evident that the publication was made solely on the strength of views of a particular person and never reflected the view of the newspaper per se. It is specifically submitted by the learned Senior Counsel that the place of publication and size of the same would also would reveal that the newspaper did not intend to publish its own thoughts/views and any or had intend to promote enmity between different groups on the ground of religion or otherwise. Furthermore on the next day that is on 20 March 2012, a

publication was made on the front page of the newspaper there in tendering unconditional apology to the public at large. The apology was made on the front page of the newspaper to ensure that no class of people, having specific religious believe, felt insulted and humiliated in any form or manner. That apart the publication was a reproduction of a publication which had already surfaced over the internet by a third person.

3. It is strenuously argued by the Learned Senior advocate that section 153 A of the penal code, which lays down the punishment for “promoting enmity between different groups, on grounds of religion, race, etc. Place of birth, residence, language etc. and doing acts prejudicial to maintenance of harmony.” is subject to the bar under Section 196 of the code of criminal procedure, 1973, which restrict the power of a court from taking cognizance in respect of an offence punishable under Section 153A of the Indian Penal Code, except with previous sanction of the state government or the central government as the case maybe. In the instant case, even if the allegation are taken at face value that the publication made in the column ‘twit pic of the day.’ Was a reproduction of a publication which has already been otherwise published over the internet and associate forums by the maker, “Poonam Pandey.” Jaipur, so the petitioners are not the makers of sign, word or visible representation which partly offended a class of persons. Therefore section 153A of the Indian penal code is not applicable as there is no allegation that by virtue of publication or reproduction of the tweeted post made by someone else, any enmity or hatred was created between two or more communities or classes of individual as both the F.I.R and charge-sheet are absolutely silent in this regard.

4. It is further argued that the concept of vicarious liability in respect of an offence under the Indian Penal Code is unknown and in absence of any direct or individual role or specific allegation attributed against the petitioners, they cannot be made an accused for an offence under section 153 A of the Indian Penal Code despite not having a specific provision to attract vicarious liability
5. Furthermore on the self-same allegation pertaining to the publication dated November 19, 2012 another case was registered at Park Street Police Station being P.S case number 192 of 2012 dated March 20, 2012 under section 295A of the Indian Penal Code and the prayer for further investigation was allowed, and the case was transferred to Bow Bazar Police Station on the ground of lack of territorial jurisdiction of Park Street Police Station. In this case, also the learned Court of Chief Judicial Magistrate, Howrah does not possess the requisite territorial jurisdiction to enquiry and try the instant case and thereby had no power to issue process.
5. The learned Senior Advocate has relied upon a decision of the Supreme Court deputed in¹ ***Bilal Ahmed Kallu versus State of A. P*** in order to show the distinction between Section 153 A. (1) (a)& (b) and 505(2) of Indian penal code. He has further relied decision reported in², Patricia Mukhim versus State of Meghalaya and others³, ***Pooja Mehta and others versus State of West Bengal and another.***
6. The learned advocate representing the state/prosecution also submits that admittedly, no sanction order was obtained before initiating the proceeding and further the nature of complaint failed to attract the provision under

¹ (1977) 7 SCC 431

² (2021) 15 SCC 35

³ 2020 3 SC online CaL 2301

Section 153 A of the Indian Penal Code. Moreover, since the unqualified apology was tendered in the front page of the newspaper immediately after the alleged date of publication, the issue was set rests at the very moment.

7. Having heard both the learned advocate, and going through the materials on record it appears that on the basis of a complaint lodged by one Ali Mohammad on March 19, 2012, alleging publication of distorted picture in the daily newspaper, "The Telegraph" in order to hurt the sentiments of the communities who are the believer of Islamic religion. On the basis of the said complaint, the Domjur PS case number 176/12 dated 19 March 2012, under section 153A I.P.C started and after completion of investigation, the charge-sheet was submitted before the court of learned CJM at Howrah under section 153A against three accused persons. The petitioner No.1 got the order of anticipatory bail and therefore was not arrested and other two persons were also shown as not arrested. Accordingly, the learned Court took the cognizance of the said charge-sheet and directed to issue Summons against all the three charge sheeted accused persons to appear before the court on the next day. The proceeding under section 482 of the code of criminal procedure, 1973 has been filed for quashing of the said proceeding.

8. Before delving into the bottom of the case, considering the nature of allegation levelled, the provision under 153A of the Indian penal code is to be look into. It reads as follows.

Section 153 A ; promoting 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

b) commits any act, which is pre-judicial 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 tranquillity or

c) organises 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 3 years, or with fine, or with both.

9. It is settled proposition of law that the ingredients of the offence of disharmony is Mens rea on the part of the accused. Furthermore the basic structure of the provision is to discourage promoting enmity between different groups on the grounds of religion, race, etc. Therefore, there must be two groups or two communities of different religious groups, the member of whom feels in secured because of any action by anybody. The decision relied upon by the learned Senior advocate in Patricia Mukhim versus State of Meghalaya and others, (*supra*), where it was observed by the Supreme Court that '*freedom of speech and expression guaranteed by article 19 (1) a of the Constitution is a very valuable fundamental right, but the right is not absolute and reasonable restrictions can be placed on the right of free speech and expression in the interest of sovereignty and integrity of India*'. In the said case, a press release was issued by the Assistant Inspector, General of police with reference to an incident about an attack on youngsters playing basketball, by the unidentified boys with iron rugs and sticks, which led to registration of a crime and an appeal was made to the public to assist the investigating team in identifying the perpetrator of the crime. On the same day, a post on Facebook was uploaded alleging the attackers as tribal boys and non-tribal in Meghalaya. On

the basis of the FIR notice was issued to the applicant under section 41A Cr.Pc directing her to appear ,against such order the criminal revision petition was filed before the High Court of Meghalaya at, Shillong for quashing of such FIR. The legality of the judgement of the High Court was challenged before the Hon'ble Supreme Court where the judgement of the High Court was set aside and the prayer was allowed. The observation of the Supreme Court in that case was

'In our understanding, there was no intention on the part of the appellant even to promote class/community hatred. As there is no attempt made by the appellant to insight, people belonging to a community to indulge in any violence, the basic ingredients of the offence under section 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 constitute any offence or make out a case against the accused, the FIR is to be quashed.'

10. In the decision of Bilal Ahmed Kallu (*supra*) the complainant was an active member of a militant outfit called Al-Jehad, which was formed with the ultimate object of liberating Kashmir from the Indian union and in order to spread communal hatred among the Muslim youths in the old city of Hyderabad and exhorted them to undergo training in armed militancy and offered them arms and ammunitions. He was propagating among the Muslims that in Kashmir, Muslims were being subjected to cities by the Indian Army personnel. After investigation, he was challaned before the designated court at

Hyderabad for offences inter alia under Section 153A and 505 (2) of the Indian penal code. It was observed by the Hon'ble Supreme Court that the common ingredients in both the offences is promoting feeling of enmity hatred, or ill will between different religious or racial linguistic regional groups castes 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. It was further observed that the feeling of enmity, hatred, or ill-will "between different' religious called racial linguistic, or regional groups or castes or communities should be involved. 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.

11. The Hon'ble Supreme Court in paragraph 24 of the same judgement observed;

24; before parting with this judgement, we wish to observe that the manner in which conviction have been recorded for offences under sections 153 A, 124 - A and 505(2), has exhibited a very casual approach of the trial court. Let alone the absence of any evidence which may attract the provisions of the sections, as already observed, even the charges framed against the applicant.

For these offences did not contain the essential ingredients of the offences under the three Sections. The apple end strictly speaking should not have been put to trial for those offences. A mechanical order conflicting a

citizen for offences of such serious nature like seduction and promoting, enmity and hatred, etc. does harm to the cause. It is expected that the graver the offence, greater should be the care taken so that the liberty of citizen is not likely interfered with”

- 12.** The decision of the coordinate bench of this court in Pooja Mehta and others took note of the decisions of Balwant Singh versus State of Punjab⁴, ***Bilal Ahmed Kaloo vs State of A. P*** and ***State of A. P versus Bilal Ahmed Kaloo and Manzar***⁵ ***Sayeed Khan*** versus ***State of Maharashtra with Vinod Hansraj Goyal versus State of Maharashtra*** ⁶ and ***Patricia Mukhim versus State of Meghalaya***⁷ and quashed the proceeding with the observation that further proceeding in this case would result in an abuse of process of Court and will not serve the ends of justice.
- 13.** In the instant case, the publication was made about a content which was already surfaced in the internet, and on the very next day, the unqualified apology was tendered in the front page of the said newspaper by the publishers to the public at large in the event the publication of the aforesaid article had by any means affected and/or insulted any class of people having a particular religious belief. The complaint was launched by a person alleging a feeling of hurt of religious sentiment of a community having different religious faith which was done intentionally. The charge-sheet was submitted under section 153A I.P.C against the present petitioners who are the editor, printer and

⁴ (1995) 3 SCC 214

⁵ (1970) 7 SCC 431

⁶ (2007) 5 SCC 1

⁷ (2021) 15 SCC 35

publisher of The Telegraph /Anandabazar Patrika and TT Metro Calcutta after completion of investigation. Over the same issue, another complaint was lodged before the learned Chief Judicial Magistrate, 24 Parganas South at Alipur emanated from Garden Reach Police Station case number 53 dated 20 March 2012 under Section 295 A of the Indian Penal Code, 1860 and the order of the Learned CJM Alipore directing the issuance of warrant of arrest against the present petitioner number1. In the said case, the specific point was raised placing reliance on Section 196 (1) CRPC, which contains that Section. 196(1); Prosecution for offences against the state and for criminal conspiracy to commit such offence ;(1) no court shall take cognizance of

a) any offence punishable under section VI or under Section 153 A, Section 295 A or subsection (1) of section 505 of the penal code, 1860 or

(b) a criminal conspiracy to commit such offences, or

(c) any such abatement, as is described in Section 108 A of the Indian Penal code, 1860, except with the previous sanction of the central government or of the state government”

14. In the said decision, the coordinate bench of the High Court observed that having regard to the language of Section 196 Cr.PC, the use of the expression shall has make the intention of the legislature clear. Therefore, in the absence of such previous sanction and with the use of the expression ‘Shall’ no Court has been given the authority to take cognizance. The Court held that *‘while section 190 specifies the genus of the procedure to be adopted for taking cognizance, Section 196 is a species of such genus specifying the particular*

procedure for a particular offence. Since the genesis of the ever mentioned decision emanated from the same cause of action, that is the publication of the image which created reaction to a particular religious community coupled with the provision itself it is clear that in this case also no order of sanction in tune with Section 196 was obtained.'

15. The cognizance of offences taken by the magistrate is in terms of section 190 of the Code of Criminal Procedure, 1973, which is as follows:-

190 (1) subject to the provisions of this chapter, any magistrate of the first class and any magistrate of the second class, specially empowered in this behalf under subsection (2) may take cognizance of any offence. -

- a. Upon receiving a complaint of facts, which constitute such offence.
- b. Police report of such facts.
- c. upon information received from any person, other than a police officer, or his own knowledge, that such offence has been committed.

16. It is a settled law that when the magistrate is satisfied about the prime facie grounds and after application of judicial mind in order to find out whether prima facie materials exist for summoning the accused. In⁸ State versus Pastor. P. Raju, it was observed by the Hon'ble Supreme Court that the process is at a subsequence stage. When after considering the material placed before it, the court decides to proceed against the offender against whom a prima facie case is made out, in order to have the satisfaction, the Magistrate must look into the materials and must express a reason of such satisfaction

⁸ AIR 2006 SC 2825

before issuance of the process. In the instant case, the learned Magistrate did not discuss any reason as to the requirement of having a sanction before adopting the procedure for taking cognizance and about the satisfaction of sufficient prima facie material for issuance of such process.

17. Therefore in summation it can be seen that firstly the contents of the complaint failed to satisfy the mens rea or the basic ingredient to attract Section 153 A of IPC. Secondly, no order of sanction was obtained before initiating the case under section 153A I.P., which is mandatory in terms of Section 196 Cr.Pc. Lastly, the Learned Magistrate failed to apply his judicial mind by taking cognizance and directing to issue process against the accused persons/ petitioners, despite the fact they were not the FIR named accused.

18. In this case, the observation made by the Hon'ble Supreme Court in Billal Ahmed Kaloo becomes relevant and accordingly this Court also finds if the proceeding is allowed to be proceeded with it would be the abuse of the process of Court.

19. In view of the disposal of this revisional application all the connected applications are hereby disposed of.

20. Hence this revisional application stands allowed. The proceeding pending before the learned court of Chief Judicial Magistrate is hereby quashed.

21. Urgent Photostat copy of the order be supplied upon compliance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)