

IN THE HIGH COURT OF ANDHRA PRADESH

Crl.P.No.8348 of 2022

BETWEEN:

Kollu Ankababu S/o. Late Venkatadri
R/o. D.No.29-7-50, A-5, Rama Krishna Towers,
Behind State Guest House, Vijayawada,
N.T.R. District, Andhra Pradesh

... Petitioner

AND

\$ 1. Tirupathi Ramesh, S/o. Venkata Narayana, (De facto complainant)
C/o. Manohar Reddy, R/o. D.No.3-515/2, Tulasi Nilayam, Opp:
Vinukonda Ankammathalli Devalayam, Undavalli Centre, Tadepalli
Mandal, Guntur District.

2. The State of A.P. rep. by its Special Public Prosecutor, High Court of
A.P., Amaravati, through CID Police of Andhra Pradesh, Amaravati,
Mangalagiri, Guntur District.

... RESPONDENTS

Date of Judgment pronounced on : 02.12.2022

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO****+ Crl.P.No.8348 of 2022****% Dated:02.12.2022****BETWEEN:**

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! Counsel for Petitioners : Sri T. Sreedhar

^Counsel for Respondents : Learned Public Prosecutor

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? Cases referred:

1. (1997) 7 SCC 431
2. 2021 SCC Online SC 258
3. (1995) 3 SCC 214

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**Crl.P.No.8348 of 2022****ORDER:**

Heard Sri T. Sreedhar, learned counsel for the petitioner and Smt. Y.L. Siva Kalpana Reddy, learned Special Public Prosecutor for CID appearing for the 2nd respondent.

2. This criminal petition has been filed to quash Crime No.61 of 2022 of CID Police Station, Amaravati, Mangalagiri, Guntur District. The allegations in the complaint are that the petitioner, who is a journalist, and who was the administrator of a Whatsapp group, had forwarded a media post that a large amount of gold had been seized by the authorities in Gannavaram Airport from a passenger, who had arrived from Dubai. The social media post further stated that a special team from Hyderabad had arrived and was conducting an enquiry which showed that the wife of a key-officer in the Chief Minister's office is said to be the person from whom the gold had been seized and that this person had assistance of two senior officers, who were all being investigated. This message is said to have been forwarded from a Whatsapp group called "Time to Time News".

3. The aforesaid complaint was given by a person said to be working in the Chief Minister's office as assistant manager. Apart from setting out the contents of the above message, the de facto complainant had also stated that the petitioner herein, who had posted this message in

social media, had a history of posting such messages which were untrue and designed to create enmity between various groups in the State.

4. On the basis of this complaint, a case in Crime No.61 of 2022 was registered with the CID Police Station, Amaravati, Mangalagiri, Guntur District, and investigation has been taken up for offences punishable under Sections 153-A, 505(2) read with Section 120-B IPC. The petitioner was also arrested in the course of the investigation and was sought to be remanded to judicial custody. However, the Magistrate refused to remand the petitioner and the petitioner was set at liberty.

5. Sri T. Sreedhar, learned counsel for the petitioner would submit that the allegations in the complaint and also the contents of the remand report would show that the said allegations would not amount to an offence under Section 153-A nor Section 505 (2) IPC. He would further submit that there is no allegation of any conspiracy entered by the petitioner with any other person to set up a case under Section 120-B IPC.

6. Sri T. Sreedhar would rely upon the judgment of the Hon'ble Supreme Court in the case of **Bilal Ahmed Kaloo vs. State of A.P.**,¹; **Patricia Mukhim vs. State of Meghalaya and Ors.**,² and **Balwant Singh and Anr., vs. State of Punjab**³.

7. Smt. Y.L. Siva Kalpana Reddy, learned Special Public Prosecutor for CID appearing for the 2nd respondent, on the other hand,

¹ (1997) 7 SCC 431

² 2021 SCC Online SC 258

³ (1995) 3 SCC 214

would contend that the petitioner is habituated to posting messages and news items on the social media denigrating the dignity of the office of the Chief Minister and its officials and the same is being done in pursuance of his political ideology as he belongs to a political party which is presently in opposition. She would further submit that the contents of the message clearly attract the offences under Section 153-A and Section 505 (2) IPC. She contends that the said offence has been committed with a view to downgrade the image of the office of the Chief Minister and connected officials in conjunction with other persons who hold similar views and consequently, the provisions of Section 120-B IPC would be applicable.

8. Sections 153-A and Section 505(2) IPC read 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 tranquillity, 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(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.

9. These provisions have come up for consideration before the Hon'ble Supreme Court in various judgments. However, a review of the three judgments cited by the learned counsel for the petitioner would suffice, for the purpose of this case. In the case of **Balwant Singh and Anr., vs. State of Punjab**, a person had been arrested and sentenced to imprisonment and a fine on the ground that the said persons had raised slogans such as "Khalistan Zindabad; Raj Karega Khalsa; and Hinduan Nun Punjab Chon Kadh Ke Chhadange, Hun Mauka Aya Hai Raj Kayam Karan Da" on the day the late Smt. Indira Gandhi had been assassinated. Dealing with this aspect, the Hon'ble Supreme Court had held as follows:

9. Insofar as the offence under Section 153-A IPC is concerned, it provides for punishment for promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever or brings about disharmony or feeling of hatred or ill-will between different religious, racial, linguistic or regional groups or castes or communities. In our opinion only where the written or spoken words have the tendency or intention of creating public disorder or disturbance of law and order or affect public tranquillity, that the law needs to step in to prevent such an activity. The facts and circumstances of this case unmistakably show that there was no disturbance or semblance of disturbance of law and order or of public order or peace and tranquillity in the area from where the appellants were apprehended while raising slogans on account of the activities of the appellants. 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. In this case, the prosecution has not been able to establish any mens rea on the part of the appellants, as envisaged by the provisions of Section 153-A IPC, by their raising casually the three slogans a couple of times. The offence under Section 153-A IPC is, therefore, not made out.

10. In **Bilal Ahmed Kaloo vs. State of A.P.**, the accused was charged with the offences under Sections 153-A and 505(2) IPC on the ground that the accused person was telling others that army personnel have been committing atrocities on the Muslims in Kashmir. The Hon'ble Supreme Court, after considering the distinction between Section 153-A and Section 505(2) IPC, had held as follows:

15. The common feature in both sections 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. 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.

16. The result of the said discussion is that the appellant who has not done anything as against any religious, racial or linguistic or regional group or community cannot be held guilty of either the offence under Section 153-A or under Section 505(2) of 1PC.

11. In **Patricia Mukhim vs. State of Meghalaya and Ors.**, the accused person was charged with offences under Section 153-A, 500 and 505(1)(c) of the Indian Penal Code on the ground that she had uploaded a post on Facebook condemning the assault committed on

certain non-tribal youth playing basket ball by tribal boys in very strong words. The Hon'ble Supreme Court had held as follows:

13. In the instant case, applying the principles laid down by this Court as mentioned above, the question that arises for our consideration is whether the Facebook post dated 04.07.2020 was intentionally made for promoting class/community hatred and has the tendency to provoke enmity between two communities. A close scrutiny of the Facebook post would indicate that the agony of the Appellant was directed against the apathy shown by the Chief Minister of Meghalaya, the Director General of Police and the Dorbar Shnong of the area in not taking any action against the culprits who attacked the non-tribals youngsters. The Appellant referred to the attacks on nontribals in 1979. At the most, the Facebook post can be understood to highlight the discrimination against nontribals in the State of Meghalaya. However, the Appellant made it clear that criminal elements have no community and immediate action has to be taken against persons who had indulged in the brutal attack on non-tribal youngsters playing basketball. The Facebook post read in its entirety pleads for equality of non-tribals in the State of Meghalaya. In our understanding, there was no intention on the part of the Appellant to promote class/community hatred. As there is no attempt made by the Appellant to incite people belonging to a community to indulge in any violence, the basic ingredients of the offence under Sections 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 *prima facie* constitute any offence or make out a case against the accused, the FIR is liable to be quashed

12. The learned Special Public Prosecutor relying upon the judgment of the Hon'ble Supreme Court in **Balwant Singh and Anr., vs. State of Punjab**, would contend that the petitioner had a clear intention to create ill-will against the Government and the Chief Minister's office while posting the message which is under consideration and as such the petitioner is liable to be prosecuted and convicted under the above provisions of law. She would further submit that in similar circumstances, a learned Single Judge of this Court, by an order dated 18.01.2021 in Crl.P.No.6278 of 2020 had held that even if a case is not properly made out in the complaint, the investigation into an offence punishable under Section 153-A IPC should not be stalled at the stage of investigation.

13. While, it is true that this Court is reluctant to intervene the investigation in progress, it must also be noted that the Court would intervene, in the interests of justice, where no offence could be made out against the accused even if all the facts of the complaint and probable facts coming out of investigation are taken into account.

14. The petitioner is said to have committed offences under Sections 153-A, 505(2) read with Section 120-B IPC. The question of considering Section 120-B IPC would arise only if it is found that there is a case made out under Section 153-A and 505(2) IPC. The Hon'ble Supreme Court, in the above passages, has already considered the distinction between Section 153-A and 505(2) IPC and had held that both the provisions are dealing with the same kind of offences.

15. It would therefore, be necessary to look at whether any offence is made out on the basis of the message in question. The substance of the message is that :

(a) a large amount of gold was seized from a passenger travelling from Dubai to Gannavaram;

(b) the passenger who was caught with the gold is the wife of a senior officer in the Chief Minister's office; and

(c) the said issue is being investigated by a special team which has come from Hyderabad and the enquiry which is in progress was considering the question of whether any senior official was involved in the said incident.

16. Smt. Y.L. Siva Kalpana Reddy, learned Special Public Prosecutor for CID contends that the purport of the said message is that the Chief Minister's office is somehow involved in all this and the intention behind posting this message is to bring the office of the Chief Minister into disrepute and cause ill-will between different groups of people.

17. The ingredients necessary for making out an offence under Section 153-A (a) is that the accused person by words either spoken or written etc., 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 on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever.

18. The ingredients necessary for making out an offence under Section 153-A(b) is the commission of 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 tranquillity.

19. The ingredients necessary for an offence under Section 153-A (c) is to organise any exercise, movement, drill etc., so that participates in such activities can be trained to use violence or criminal force 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 communities.

20. The language in all the three sub-clauses of Section 153-A require the following conditions to be met before any offence can be said to have been committed within this provision:-

- a) The actions should cause enmity between groups; Ill will against one group would not attract the above provisions.
- b) These actions should be committed with the intention of causing such enmity.
- c) This provision would be applicable only where enmity is caused on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever.

- d) The term "or any other ground whatsoever" would have to be read in tandem with the preceding words and as such the scope of this term would be that the grounds would only have to be grounds akin to the preceding grounds set out in the provision.
- e) The groups between whom such enmity or disharmony or hatred or ill-will is caused would be groups defined on the basis of their religion, race, language, place of birth, caste or community.
- f) Differences or ill-will caused between two groups which are not defined on the basis of the above requirements would not attract the provisions of Section 153-A IPC.

21. In the present case, the social media message which is said to have been forwarded by the petitioner, even if it is said to have caused ill-will or hatred between the members of the office of the Chief Minister and other persons, would not attract the provisions of Section 153-A could not attract the aforesaid provisions of Section 505(2) for the following reasons.

- a) The primary requirement of existence of two groups is not available in this case.
- b) At best, creation of ill-will against the Chief Minister's office would not amount to creation of ill-will or hatred between the two groups.

- c) Even if such ill-will is said to have been created between two groups, the provisions as relied upon by the prosecution would not be attracted as the groups should have been on the basis of religion, race, etc., which is not the case herein.

22. For the aforesaid reasons, it must be held that the provisions of Section 153-A and 505(2) IPC are not attracted and consequently Section 120-B IPC would not arise.

23. In the circumstances, this Criminal Petition is allowed and Crime No.61 of 2022 of CID Police Station, Amaravati, Mangalagiri, Guntur District, is quashed.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

2nd December, 2022.
Js.

R. RAGHUNANDAN RAO, J.

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

Crl.P.No.8348 of 2022

2nd December, 2022

Js.