

MANZAR SAYEED KHAN
v.
STATE OF MAHARASHTRA AND ANR.

APRIL 05, 2007

[K.G. BALAKRISHNAN CJ., LOKESHWAR SINGH PANTA AND
D.K. JAIN, JJ.]

Penal Code, 1860—ss. 153, 153A and 34—Publication of a book—Due to some objectionable portion thereof, public unrest—FIR against the author, publisher and printer—Writ Petition seeking quashing of FIR—Stay of investigation—Pursuit for compromise—Compromise having failed, vacation of stay order ordering further investigation—On appeal, held: In the facts of the case, the act of the author, publisher and printer would not attract penal consequences under the provisions—The intention to cause disorder or incite the people to violence is the sine qua non for the offence u/s 153A—The book was purely a scholarly pursuit—An FIR can be quashed if it does not disclose an offence—FIR—Quashing of.

The Oxford University Press India entered into an agreement with Oxford University Press, USA for publishing in India a paper bound book entitled “Shivaji” Hindu King in Islamic India” authored by a Professor of Religious studies. The book was published and some copies of the same were also sold. The Oxford University Press, India and the appellant (Managing Director of the Press) received letter from historians asking the publisher and the author to retract objectionable statement complained of and tender an apology. The Oxford University Press, India through the appellant expressed regrets and informed that instructions had been issued to all its offices in India to immediately withdraw all copies of the book from circulation. Thereafter, a mob at Pune blackened the face of Sanskrit Scholar, whose name had appeared in the acknowledgement of the book, having helped the author. The author sent a fax apologizing for the mistake and stated that it was he and not the publisher, who was responsible. A mob also destroyed a huge number of rare manuscripts of Bhandarkar Oriental Research Institute (BORI). The author in an interview expressed deep anguish at the destruction of books and manuscripts and explained the reason for writing the book.

A Respondent registered an FIR against the author and the appellants herein (the Publisher and Printer) u/ss 153, 153A and 34 IPC. Thereafter, Public Interest Litigation was filed in High Court demanding action for extradition of the author and for coercive action against the publisher. Appellant-Publisher moved application for grant of anticipatory bail, wherein High Court granted him time to approach concerned court for appropriate relief.

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C Appellant filed Writ Petitions praying for quashing the investigation in the FIR. Pursuant to suggestion of compromise whereby the author would withdraw the objectionable portion from the book, an affidavit was filed by the author to the same effect. But the State filed an affidavit stating therein that the State would investigate as to whether there was an organized attempt to destroy the social tranquility or was it a freak occurrence; and that it would not be in the larger public interest to drop the charges. High Court vacated the interim stay whereby further proceedings in the FIR were stayed. Hence the present appeals.

D Disposing of the appeals, the Court

E HELD: 1.1. The intention to cause disorder or incite the people to violence is the *sine qua non* of the offence under Section 153A of 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.

F [Para 16] [916-B-C]

Ramesh Chotalal Dalal v. Union of India and Ors., AIR (1988) SC 775 and *Bilal Ahmed Kaloo v. State of A.P.*, [1997] 7 SCC 431, relied on.

G 1.2. The author of the book has exercised his reason and his own analytical skills before choosing any literature, which he intends to include in his book. Even if the appellant-publisher and the appellant-printer or the persons whose names are mentioned in the acknowledgement by the author, have provided information for the purpose, including the said paragraph in the book. It is important and worth observing that the author has mentioned that the library (BORI) has been his scholarly home in India and many people

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therein helped him for collecting the material. The author has given the names of many persons, who had helped him in one way or the other and enlightened him about the history of the historical hero 'Shivaji'. The author has also mentioned in the book about the International Conference on Maharashtra, etc., which has given him a lot of material for inclusion in his book. It is very improbable to imagine that any serious and intense scholar will attempt to malign the image of this glorious Institute. The author thought his work to be worth of dedication to his mother, which was purely a scholarly pursuit, and without any intention or motive to involve him in trouble. It is the sole responsibility of the State to make positive efforts to resolve every possible conflict between any of the communities, castes or religions within the State and try every possible way to establish peace and harmony within the State under every and all circumstances. [Para 19] [916-H; 917-B-D]

2.1 FIR can be quashed if it does not disclose an offence and there is no need for any investigation or recording of any statement. [Para 20] [917-E]

State of Haryana v. Chaudhary Bhajanlal, AIR [1992] SC 604, relied on.

2.2. The respondents shall not proceed against the author of the book, for offences under Sections 153, 153A and 34 IPC being the subject matter of F.I.R. in question. [Para 21] [917-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 491 of 2007.

WITH

CrI. A. No. 496 of 2007.

From the Judgment and Order dated 06.05.2004 of the High Court of Judicature at Bombay in CrI. Writ Petition No. 280 of 2004.

Soli J. Sorabjee Sr. Adv., Kamini Jaiswal, Shomila Bakshi, Rani Mishra and Sunita Dwivedi for the Appellant.

G.F. Vahanvati, Sol. Gen. for India, Shekhar Naphade Sr. Adv., S.S. Shinde, A.P. Mayee, Ravindra Keshavrao Adsure and H. Baruah (for Sushma Suri) for the Respondents.

The Judgment of the Court was delivered by

LOKESHWAR SINGH PANTA, J. 1. Leave granted.

2. Manzar Sayeed Khan and Vinod Hansraj Goyal have filed these two appeals against the common order dated 06.05.2004 of a Division Bench of

A the High Court of Judicature at Bombay in Criminal Writ Petition No.280 of 2004 and 370 of 2004. By the impugned order, the High Court vacated the interim order granted on 23.02.2004 and directed the Crime Branch of the State of Maharashtra to complete the investigation in FIR No.10 of 2004 registered at the Deccan Police Station, Pune, against the appellants and author of the book titled "Shivaji Hindu King in Islamic India" under Sections 153, 153A and 34 of the Indian Penal Code [for short 'IPC'].

3. The brief facts in both these appeals are practically identical.

C 4. Manzar Sayeed Khan, appellant herein, is a constituted Attorney of the Oxford University Press India, having been appointed on 21.06.2001 for a period of three years or for so long as he is employed as the Managing Director of the Oxford University Press India, which is a department of the University of Oxford, a legal entity with charitable status. It furthers the University's objective of excellence in research, scholarship and education, by publishing worldwide in Oxford, New York, Auckland, Bangkok, Buenos Aires, Cape Town, Chennai, Dar-es-Salaam, Delhi, Hong Kong, Istanbul, Karachi, Kolkata, Kuala Lumpur, Madrid, Melbourne, Mexico City, Mumbai, Nairobi, Sao Paulo, Shanghai, Taipei, Tokyo, Toronto, etc. The Oxford University Press India entered into an agreement for five years with the Oxford University Press, USA, for publishing in India a paper bound book entitled "*Shivaji : Hindu King in Islamic India*" authored by Prof. James W. Laine, a Professor of Religious Studies, Macalester College, USA, on 28.05.2003. The said book was originally published by the Oxford University Press Inc., USA. As per the terms of the agreement, the Oxford University Press, India agreed to reprint the book without any changes or deletions. In all, 803 copies of the book were published, i.e., 488 copies in June and 315 copies in October 2003. The book was released in July 2003. 215 copies had been sold in July, 25 copies in August, 29 copies in September, 52 copies in October and 19 copies in November from the records available from the States of Maharashtra, Gujarat and Karnataka.

G 5. The Oxford University Press, India and the appellants had received a letter on 10.11.2003 from four Historians whereby the publisher and the author had been asked to retract the objectionable statement complained of and tender an apology. The Oxford University Press, India through appellant-Manzar Sayeed Khan, expressed regrets for the said statement and informed the objectors that instructions had been issued to all its offices in India to immediately withdraw all copies of the book from circulation. The copies of

the letters dated 10.11.2003 and 21.11.2003 are annexed with the appeals and marked as Annexure P-3(Colly.). It is the case of the appellants that sometime after withdrawal of the book from circulation, the appellants learnt that a mob at Pune had blackened the face of a Sanskrit Scholar, Shri Shashikant Bahulkar whose name appeared in the acknowledgement of the book, having helped the author Prof. James W. Laine, by providing him with some information during his visit to Pune. This incident was widely reported in the press. Prof. James W. Laine was pained by the unforeseen incident. On 28.12.2003, he sent a fax apologizing for the mistake, if any, committed in writing the passage and further stated that he only was responsible for the said statement written in the book, and the publisher was not at all responsible for the same. On 05.01.2004, a mob of 100 to 125 persons allegedly belonging to the Shambhaji Brigade ransacked the Bhandarkar Oriental Research Institute (BORI), Pune, and destroyed 18,000 books and 30,000 rare manuscripts. This incident was also widely reported in the press.

6. Prof. James W. Laine had given an interview to the 'Mid-Day' (Newspaper) on 07.01.2004 and had explained the reason for writing the book and expressed deep anguish at the destruction of books and rare manuscripts in BORI, Pune. Four days after the alleged incident, the State of Maharashtra, respondent herein, registered a First Information Report No. 10 of 2004 at the Deccan Police Station, Pune, on 09.01.2004 against the author Prof. James W. Laine and the appellants herein - the publisher and the printer of the book, under sections 153, 153A and 34 of the IPC. During the course of the investigation of the case, a Senior Police Inspector, Deccan Police Station, Pune, sent a communication dated 12.01.2004 [Annexure P-6(Colly.)] to the Manager, Oxford University Press, Vijaynagar, Pune with a copy endorsed to Managing Director, Oxford University Press, New Delhi asking for a copy of the book since no copy of the book was available in the market. In response to the said letter, the Manager, Oxford University Press, Pune vide letter dated 14.01.2004 (Annexure P-6) had sent one copy of the book to the Senior Police Inspector, Deccan Police Station, Pune. Thereafter, the Maratha Vikas Sangh filed a Public Interest Litigation (PIL) in the Bombay High Court demanding action to be taken for extradition of Prof. James W. Laine and some coercive action against the publisher etc., of the book. A team of Policemen had arrested Vinod Hansraj Goyal, appellant, a partner of the Rashtriya Printing Press, Shahdara, Delhi, for having printed the book. He was granted 6 days transit remand by Metropolitan Magistrate, Court No. 35, Shahdara, Delhi (now Karkardoma Court). When the appellant-Manzar Sayeed Khan came to know about the arrest of Vinod Hansraj Goyal, he filed an application for grant

A of an anticipatory bail in the High Court of Judicature, at Bombay. On 03.02.2004, the High Court granted 2 weeks' time to the appellant to approach the concerned court for appropriate relief.

B 7. Both the appellants filed separate Criminal Writ Petition Nos. 280 of 2004 and 370 of 2004 in the High Court of Judicature, at Bombay, praying *inter alia* for quashing the investigation in FIR No. 10 of 2004 lodged at the Deccan Police Station, Pune, and summoning of the records and proceedings before the Court of Magistrate and quashing the same.

C 8. The High Court issued a notice to the State of Maharashtra on 14.02.2004 and the matter was adjourned to 23.02.2004 directing the State not to arrest the appellant Manzar Sayeed Khan. On 23.02.2004, no reply was filed by the State and after hearing the learned counsel for the parties, a Division Bench of the High Court was pleased to issue rule returnable within 4 weeks and stayed all the proceedings in FIR No. 10/2004 till then. The matter was listed on 23.03.2004 and on that date, the State of Maharashtra had filed an affidavit in reply. The writ petitions were taken up for arguments on 07.04.2004 and 08.04.2004 and later on adjourned to 14.04.2004. It appears from the record that the writ petitions were heard on 15.04.2004 and 16.04.2004 when it was felt by the learned Judges that it would be better to settle the controversy finally at that stage expeditiously and in the interest of the State to put the matter to an end instead of allowing the controversies to precipitate and, therefore, the publisher's counsel was requested to try and establish contact with the author and obtain his consent whether he was willing to withdraw the allegedly objectionable portion from the book published all over the world and he should submit an affidavit as per the suggestions orally observed in the court room. It was also suggested that if the affidavit was obtained, it would be without prejudice to the rights of the author, printer and publisher and the affidavit would be used only to enable the State to close the matter and put an end to the entire controversy. The appellants stated that a draft affidavit was placed before the learned Judges of the High Court in the presence of all the learned counsel representing the parties, wherein certain corrections were made in hand and the learned counsel were directed to incorporate the corrections and submit the affidavit to the counsel of the State to enable him to obtain instructions from the Government and in the meantime, the publisher would get the original affidavit signed and attested from USA, where the author was residing. The matter was adjourned to 27.04.2004 to give sufficient time to the author to file the original affidavit. The signed affidavit of the author was handed over to the learned counsel

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representing the State in advance before the next date of hearing of the writ petitions on 27.04.2004. When the matters came up for hearing before the High Court, the attested and authenticated copies of the affidavit were presented before the learned Judges without prejudice to the defence of the parties. The counsel for the State appeared, but he expressed his inability to give any definite reply and made a statement in the Court that there was a very positive response to the affidavit filed by the author and since the decision had to be taken at the highest level and as the Chief Minister and the Deputy Chief Minister both were busy with the General Assembly Elections in the State of Maharashtra, he would require few more days time before making any statement. On the request of the learned counsel for the State, the matter was adjourned to 30.04.2004.

9. On 30.04.2004, the counsel for the State of Maharashtra filed an affidavit of the Principal Secretary (Special), Government of Maharashtra, Home Department, submitting that the State would want to investigate whether there was an organised attempt to destroy the social tranquility or was it a freak occurrence. In the said affidavit, it was stated that one passage of the book had hurt the sentiments of the people of all sections of the society and that it would not be in the larger public interest to drop the charges. Since the State had expressed its inability to accept the suggestions of the Court and the compromise formula, the matter was heard on merits. The arguments could not be concluded on 30.04.2004 and the petitions were adjourned to 05.05.2004.

10. On 05.05.2004, the counsel for the appellant submitted written submissions that no offence under Sections 153 and 153A was made out against the appellants. During the pendency of the writ petitions, *interim* order of stay of further proceedings in FIR No. 10 of 2004 was granted. The affidavit dated 16.04.2004 filed by Prof. James W. Laine, the author of the book, was taken on record on 27.04.2004 and the affidavit dated 20.04.2004 filed by the appellant-publisher of the book, was also taken on record on 27.04.2004. The High Court on 06.05.2004 recorded an order that the undertakings given by Prof. James W. Laine as well as by the appellants were accepted by the Court, but the *interim* stay order granted on 23.02.2004, whereby further proceedings in the FIR were stayed, was vacated holding that the investigation was not complete and the Court has to see all the statements recorded after full investigation. The Criminal Writ Petitions filed by the appellants were kept pending. Now, the order dated 06.05.2004 is impugned before us by the appellants.

A 11. We have heard the learned counsel for the parties and perused the material on record.

B 12. Mr. Soli J. Sorabjee, learned senior counsel appearing on behalf of Manzar Sayeed Khan, vehemently contended that on reading of the FIR it becomes clear that it does not disclose any offence under Sections 153, 153A and 34 of IPC since Section 153A requires that there should be some element of *mens rea* in doing acts contemplated in the Section. He contended that the FIR was registered by the Senior Police Officer without even going through the offending contents of the paragraph of the book as it is an admitted position that the book was supplied to the Investigating Officer by the publisher on his demand after the registration of FIR. He next contended that there is no allegation in the FIR to prove *prima facie* that a paragraph complained causes enmity between different classes of the society or creates any situation of hatred between or among the different religions/castes/social groups as contemplated in Section 153A, whereas Section 153 IPC is not at all attracted in this case. According to the learned senior counsel, it was during the review of the historical facts that the allegedly offending paragraph was written and as soon as it was brought to the notice of the appellants and the author that one section of the society had raised some objections in regard to the statement in one passage of the book, the entire stock of the book was withdrawn immediately from the market in the country. He lastly submitted that the book was written with its objective to review the historical facts of a great historical figure, therefore, the book has to be read and examined as a whole and a solitary paragraph does not provide any cogent ground to file FIR against the appellants, being publisher and printer of the book.

F 13. Ms. Kamini Jaiswal, learned counsel appearing on behalf of the appellant Vinod Hansaj Goyal has adopted the arguments advanced by Mr. Soli J. Sorabjee, learned senior counsel.

G 14. Mr. Shekhar Naphade, learned senior counsel appearing on behalf of the State of Maharashtra, contended that *prima facie* the FIR discloses the commission of the offence under Section 153A of IPC against the appellants and the author of the book as the offensive paragraph in the book is the wanton piece of writing and had disturbed the social tranquility of the State. According to the learned senior counsel, the order of the High Court directing further investigation does not suffer from any perversity or illegality and the State, as a conscious keeper of law and order, would want to investigate the

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case whether there was any attempt to disturb any social tranquility in the State and other parts of the country because of writing the alleged offensive paragraph in the book. He further submitted that everything which is an offence or which is prohibited by law or which furnishes ground for a civil action is 'illegal' as defined under Section 43 of IPC. Hence, according to learned senior counsel, after the investigation of the case is complete, the State Government would be in a better position to have an objective assessment of the whole situation and take appropriate action on the subject-matter in controversy and at this initial stage no relief should be granted to the appellants as prayed for.

15. We have given our thoughtful consideration to the respective contentions of the learned counsel for the parties. The question to be decided now is whether the paragraph complained of would attract the penal consequences envisaged in Section 153A of IPC. Section 153A of IPC was amended by the Criminal Law (Amendment) Act, 1969 (Act 35 of 1969). It consists of three clauses of which clauses (a) and (b) alone are material for the case on hand, which read as under:

"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) * * *

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

16. Section 153A of IPC, as extracted hereinabove, covers a case where a person by words, either spoken or written, or by signs or by visible

A 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

B 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 153A of 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

C 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.

D 17. In *Ramesh Chotalal Dalal v. Union of India & Ors.*, AIR (1988) SC 775, this Court held that TV serial "Tamas" did not depict communal tension and violence and the provisions of Section 153A of IPC would not apply to it. It was also not prejudicial to the national integration falling under Section 153B of IPC. Approving the observations of Vivian Bose, J. in *Bhagvati Charan Shukla v. Provincial Government*, AIR (1947) Nagpur 1, the Court

E 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". (Emphasis supplied).

F 18. Again in *Bilal Ahmed Kaloo v. State of A.P.*, [1997] 7 SCC 431, 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

G community or group without any reference to any other community or group cannot attract either of the two Sections.

H 19. Prof. James W. Laine, the author of the book, has exercised his reason and his own analytical skills before choosing any literature which he intends to include in his book. Even if the appellant-Manzer Sayeed Khan,

a constituted Attorney of the Oxford University Press, India and the appellant-Vinod Hansraj Goyal, Proprietor of the Rashtriya Printing Press, Shahdara, Delhi, or the persons whose names are mentioned in the acknowledgement by the author, have provided information for the purpose, including the said paragraph in the book, it is important and worth observing that the author has mentioned that BORI, Pune has been his scholarly home in India and many people therein helped him for collecting the material. The author has given the names of many persons, who had helped him in one way or the other and enlightened him about the history of the historical hero 'Shivaji'. The author has also mentioned in the book about the International Conference on Maharashtra, etc., which has given him a lot of material for inclusion in his book. As it appears from the records, BORI, Pune was established almost 90 years back and it has a great tradition of scholarly work. It is very improbable to imagine that any serious and intense scholar will attempt to malign the image of this glorious Institute. The author thought his work to be worth of dedication to his mother Marie Whitwell Laine, which was purely a scholarly pursuit and without any intention or motive to involve himself in trouble. It is the sole responsibility of the State to make positive efforts to resolve every possible conflict between any of the communities, castes or religions within the State and try every possible way to establish peace and harmony within the State under every and all circumstances.

20. In *State of Haryana v. Chaudhary Bhajanlal*, AIR (1992) SC 604, this Court has observed that an FIR can be quashed if it does not disclose an offence and there is no need for any investigation or recording of any statement.

21. In the result, for the above-said reasons, the respondents shall not proceed against Professor James W. Laine, the author of the book, for offences under Sections 153, 153A and 34 of the IPC being the subject matter of F.I.R. No. 10 of 2004 registered at the Deccan Police Station, Pune.

22. Both the appeals accordingly stand disposed of.

K.K.T.

Appeals disposed of. G