

RESERVED
A.F.R.

Court No. - 1 **WWW.LIVELAW.IN**

Case :- APPLICATION U/S 482 No. - 13181 of 2020

Applicant :- Tarun Jain

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Kamlesh Kumar Tiwari, Navin Chandra
Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble J.J. Munir,J.

This Application under Section 482 of the Code of Criminal Procedure, 1973¹ seeks to quash proceedings of Case No. 1111 of 2020, State v. Tarun Jain (arising out of Case Crime No. 325 of 2020), under Sections 182, 188 and 271 of the Indian Penal Code, 1860², pending before the court of the Additional Chief Judicial Magistrate-II, Gautam Buddh Nagar.

2. This application was initially heard on 21.09.2020, and an interim stay of further proceedings before the Magistrate was granted pending admission, for reasons indicated in the order of that date. Later on, this application came up on 19.01.2021, when, by a detailed order, it was admitted to hearing and notice was issued not only to the State, but also the second opposite party, requiring both these opposite parties to file a counter affidavit. The time-bound interim order granted on 21.09.2020 was directed to remain in operation until further orders. A counter affidavit was filed on behalf of the State on 01.02.2021. The complainant-opposite party no. 2, who is a Sub-Inspector of Police, and to whom notice was directed to issue, has not been served, with the Office not putting in a report either way. It is a little hard to believe that a Sub-Inspector of Police would not be served through the criminal process that is routed through the Police. In any case, the presence of the second opposite party is not much required in his case, instituted on a Police Report, where the State is before us. For the said reason, this matter was heard on 24.03.2021, and judgment reserved.

¹ for short "the Code"

² for short "the Penal Code"

3. Heard Mr. Navin Chandra Srivastava, learned Counsel for the applicant and Mr. Shashi Shekhar Tiwari, the learned Additional Government Advocate appearing on behalf of the State.

4. The case against the applicant is that the second opposite party lodged a First Information Report³ with Police Station - Sector 49, NOIDA, District - Gautam Buddh Nagar to the effect that the informant, who is a Sub-Inspector and was on duty on 25.03.2020. A tweet by the applicant came to his notice, which said that maid servants and courier boys were entering the society, where the applicant resides, without sanitizing themselves and the maintenance staff have not provided for sanitizers to enable them to do so. The FIR further goes on to say that orders under Section 144 of the Code had been promulgated in the district, looking to the Corona Virus (CoViD-19) pandemic, and the applicant, by his tweet aforesaid, had spread a rumour, violating the prohibitory order. On this short information, an FIR was registered against the applicant, giving rise to Case Crime No. 325 of 2020, under Sections 182, 188 and 271 of the Penal Code, Police Station - Sector 49, NOIDA, District - Gautam Buddh Nagar. The police, after investigation, have submitted the impugned Charge-sheet dated 02.06.2020, saying that offences punishable under Sections 182, 188 and 271 of the Penal Code are disclosed against the applicant from the investigation made, the statement of the complainant, statement of the witnesses, statement of the accused and on an inspection of the place of occurrence. The Magistrate has taken cognizance of the offence, by means of an order dated 07.07.2020 and issued summons to the applicant to stand his trial for the offences alleged.

5. It is argued by learned Counsel for the applicant that though a notice under Section 41A of the Code was issued to the applicant, asking him to attend the police station on 25.03.2020, but when he went there, the Police did not record his statement or ask him any questions; rather they released him on furnishing a personal bond. It is specifically

³ for short "FIR"

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argued with reference to the averments in Paragraph Nos. 6 and 8 of the affidavit filed in support of the application that the Police have not undertaken any investigation worth the name and have filed a charge-sheet, doing a mere show of investigation, recording cyclo-styled statements of policemen alone. The investigation has been castigated as unfair and biased by the learned Counsel for the applicant. It is also argued that no *prima facie* case is made out against the applicant, inasmuch as his act in saying that maid servants were entering the society without sanitizing their hands etc. and that there was no provision made by the society's maintenance staff for the ready availability of sanitizers, the intention of the applicant *ex-facie* was to secure the health of residents of Plot No. 7, Golf City, Sector 75, NOIDA, the society where the applicant resides in Flat No. 604, Tower A3. The purpose of the tweet was not to create any alarm at large in the town or the district, but to caution the other residents of the society against the impending risk that he had observed. There is absolutely no violation of the prohibitory orders promulgated under Section 144 of the Code in the district, even if every word of what the Police have said in the charge-sheet about the applicant's act is to be accepted on its face value; of course, sans the perverse inference of its effect drawn by the Police. The State, in their counter affidavit, have said that the information posted by the applicant on his Twitter account to the effect that maids were entering the society, where the applicant resides, without sanitizing their hands etc. was found to be incorrect and that, therefore, the applicant had violated the prohibitory orders promulgated in the district. It is also very fairly indicated in the counter affidavit that there is no other case registered against the applicant.

6. This Court has perused the statements recorded by the Police under Section 161 of the Code, which say no more than this, that the applicant's tweet was found to be incorrect for a fact, on a visit made to the premises of the society, where sanitizers were available and those entering the society were being required to sanitize. There is an added

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stand in the almost cyclo-styled statements of various witnesses, all policemen, that the aforesaid tweet, carrying an incorrect information, amounts to spreading a rumour that violates prohibitory orders promulgated in the district under Section 144 of the Code. *Ex-facie*, this Court fails to understand as to how a vigilant tweet by the resident of a society about breach of the CoViD-19 protocol in relation to outsiders entering the premises could constitute a violation of prohibitory orders. Assuming that the applicant, a resident of the Golf City Society, was wrong in his information carried in the tweet, how would the tweet amount to a rumour that violated prohibitory orders promulgated under Section 144 of the Code in the district, is beyond comprehension. Suppression of any breach of the CoViD-19 protocol could have devastating consequences, rather than an over zealous misreporting of a fact, even if that stand of the Police were to be believed as true. Though certainly not intending to determine it for a fact, this Court is clear in mind that either the Police might never have visited the society to verify the truth of what the applicant said in his tweet, or else upon the Police appearing on the gates of the society, the maintenance staff put their house in order, to escape penal consequences.

7. A resident of a society like the applicant can never be imagined to harbour any kind of a culpable intention to tweet about a fact, wrong or right, affecting the health of the residents. Even if the applicant went wrong in his observation that maids and courier boys were entering the society without proper sanitization or that the necessary sanitizers were not being made available by the society's management, it can no more than be a human error about a matter affecting health of the residents of the society, or for that matter, the health of a larger section of citizens in the town or district. An information about breach of the CoViD-19 protocol that may, on verification, be found to be wrong, cannot give rise to any offence about furnishing a false information to the Police. At its worst, so far as the applicant goes, it can be regarded as nothing more than erring on the side of caution. The fact that the Police registered that

kind of an FIR and then *ex-facie* did a one-sided, perfunctory and biased investigation mechanically, recording cyclo-styled statements, renders the charge-sheet void on its face.

8. This Court would have thought that the investigation was a serious exercise, if the Police had recorded statements of some residents of the society, and those in charge of the maintenance there, or the security guards at the entrance gates. Whatever of the Case Diary has been annexed by the applicant shows statements of the first informant and other policemen recorded, carrying a parroted version of facts that *ex-facie* do not inspire any confidence. An unfair, biased, one-sided investigation is no investigation in the eyes of law, and vitiates the resultant charge-sheet as held by the Supreme Court in **Babubhai v. State of Gujarat & Others**⁴. In **Babubhai (supra)**, it has been held :

44. The charge-sheets filed by the investigating agency in both the cases are against the same set of accused. A charge-sheet is the outcome of an investigation. If the investigation has not been conducted fairly, we are of the view that such vitiated investigation cannot give rise to a valid charge-sheet. Such investigation would ultimately prove to be a precursor of miscarriage of criminal justice. In such a case the court would simply try to decipher the truth only on the basis of guess or conjectures as the whole truth would not come before it. It will be difficult for the court to determine how the incident took place wherein three persons died and so many persons including the complainant and the accused got injured.

45. Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation.

7. In the opinion of this Court, the impugned charge-sheet is vitiated on account of the entire investigation being a sham to the face of the

4 (2010) 12 SCC 254

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record. Quite apart, the provisions of Sections 182 and 188 of the Penal Code read :

182. False information, with intent to cause public servant to use his lawful power to the injury of another person.—

Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Illustrations

(a) A informs a Magistrate that Z, a police-officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b) A falsely informs a public servant that Z has contraband salt in a secret place knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

(c) A falsely informs a policeman that he has been assaulted and robbed in the neighbourhood of a particular village. He does not mention the name of any person as one of his assistants, but knows it to be likely that in consequence of this information the police will make enquiries and institute searches in the village to the annoyance of the villages or some of them. A has committed an offence under this section.

188. Disobedience to order duly promulgated by public servant.—

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if

such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. Explanation.—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm. Illustration An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

8. A perusal of Section 182 of the Penal Code shows that a person to be liable has to be credited with the act of giving any information to a public servant, which he knows or believes to be false. Here, the applicant never gave any information to the Police or any public servant. What the applicant did was a tweet, that was perhaps a matter of concern for other residents of the society, rather than a busy body like the Sub-Inspector, who lodged the FIR in this case. Thus, the ingredients of Section 182 of the Penal Code are *prima facie* not disclosed. So far as Section 188 of the Penal Code is concerned, it is not even remotely shown as to how the applicant, by his tweet, violated the prohibitory orders promulgated in the district, except for a vague remark that he spread a rumour. The information, to emphasize again, carried in the tweet, was for the safety or intended safety of the residents of society; these were certainly not meant to raise any kind of alarm in the town or district at large. One can hardly envisage a situation where a tweet about the safety of residents of a society would be construed as an obstruction, annoyance, injury or risk, or of all these to any person lawfully employed. To construe the tweet as one within the mischief of Section 188 of the Penal Code would be unacceptable violence to the Statute.

9. Again, the last offence charged is one punishable under Section 271 of the Penal Code. It reads :

271. Disobedience to quarantine rule.— Whoever knowingly disobeys any rule made and promulgated 1[by the 2[***] Government 3[***] for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

10. Now, Section 271 is one about disobedience to a quarantine rule, and that too, largely about vessels or one regulating intercourse of vessels, where an infectious disease prevails at other places, and not about someone warning other residents of a locality that some precaution about an infectious disease, according to medical protocol, is being observed in breach. In the opinion of this Court, a tweet of the kind that is the subject matter of the impugned prosecution can never be regarded as one within the mischief of Section 271; not even remotely.

11. This Court finds that the impugned prosecution not only fails to disclose a cognizable case against the applicant, but is one that is a reckless abuse of the process of Court. The Commissioner of Police, Gautam Buddh Nagar ought to bear caution and ensure that frivolous prosecutions, like the one in question, are not launched against respectable citizens. It is the duty of this Court under Section 482 of the Code to prevent abuse of process of Court. This Court would expect that the Trial Court would also not permit frivolous cases to survive, burdening its already overloaded docket on one hand, and on the other, resulting in utterly uncalled for harassment of a respectable citizen. Cases of this kind ought to be scuttled, whenever and wherever it comes to the notice of a competent court, whether it be at the stage of discharge or in a criminal revision or through an application, asking the proceedings to be quashed. In this regard, reference may be made to the principles laid down by the Supreme Court in **Sanjay Kumar Rai v.**

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State of U.P. & Another⁵. In Sanjay Kumar Rai (*supra*), it has been held :

16. The correct position of law as laid down in *Madhu Limaye*(*supra*), thus, is that orders framing charges or refusing discharge are neither interlocutory nor final in nature and are therefore not affected by the bar of Section 397 (2) of CrPC. That apart, this Court in the above-cited cases has unequivocally acknowledged that the High Court is imbued with inherent jurisdiction to prevent abuse of process or to secure ends of justice having regard to the facts and circumstance of individual cases. As a caveat it may be stated that the High Court, while exercising its afore-stated jurisdiction ought to be circumspect. The discretion vested in the High Court is to be invoked carefully and judiciously for effective and timely administration of criminal justice system. This Court, nonetheless, does not recommend a complete hands off approach. Albeit, there should be interference, may be, in exceptional cases, failing which there is likelihood of serious prejudice to the rights of a citizen. For example, when the contents of a complaint or the other purported material on record is a brazen attempt to persecute an innocent person, it becomes imperative upon the Court to prevent the abuse of process of law.

12. In the considered opinion of this Court, the impugned proceedings cannot be permitted to continue and deserve to be quashed.

13. In the result, this application **succeeds** and stands **allowed**. The proceedings of Case No. 1111 of 2020, State v. Tarun Jain (arising out of Case Crime No. 325 of 2020), under Sections 182, 188 and 271 of the Penal Code, Police Station - Sector 49, NOIDA, District - Gautam Buddh Nagar, pending before the Additional Chief Judicial Magistrate-II, Gautam Buddh Nagar are hereby **quashed**.

14. Let an entry be made in the General Diary of Police Station - Sector 49, NOIDA, District - Gautam Buddh Nagar to the effect that proceedings of Case Crime No. 325 of 2020, under Sections 182, 188 and 271 of the Penal Code stand quashed under orders of this Court. The aforesaid part of the order shall be caused to be carried out in the records of the police station concerned by the Additional Chief Judicial

Magistrate-II, Gautam Buddh Nagar within a week of receipt of a copy of this order.

15. Let a copy of this judgment be communicated to the learned Additional Chief Judicial Magistrate-II, Gautam Buddh Nagar, through the learned Sessions Judge, Gautam Buddh Nagar and the Station House Officer, Sector 49, NOIDA, District - Gautam Buddh Nagar, through the Commissioner of Police, Gautam Buddh Nagar by the Registrar (Compliance).

Order Date : July the 16th, 2021
I. Batabyal