

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

W.P.No.23859 of 2022

ORDER:

The petitioner is an accused in C.C.No.93 of 2020 on the file of the Judicial I Class Magistrate, Palakol, for offences punishable under Sections 153-A, 500, 505(1)(b)(c) IPC and Section 67 of the Information Technology Act, 2000.

2. The allegations in the complaint are that the petitioner had posted messages on the social media criticizing the Government and various social welfare schemes being undertaken by the Government, the Grama Sachivalayam system etc., which shows opposition to the people of Andhra Pradesh, democracy and the Indian Constitution. On the basis of this complaint, given by the 3rd respondent herein, Crime No.155 of 2020 was registered with the Palakol Town Police Station and a charge sheet was filed after investigation. Cognizance of this charge sheet was taken and proceedings were initiated in C.C.No.93 of 2020 by the Judicial I Class Magistrate, Palakol.

3. The petitioner has approached this Court to quash and set aside the said case on the ground that the allegations in the charge sheet would not make out a case against the petitioner in terms of the above offences.

4. Smt. Jagarlamudi Koteswari Devi, learned counsel appearing for the petitioner would submit that the posts made on social media were

criticizing the Government and not trying to bring anybody into disrepute or cause defamation to any person. She would submit that such criticism cannot be treated as an offence under the law.

5. Sri Ashok Kondeti, learned counsel appearing for the 3rd respondent would submit that the messages which were the subject matter of the investigation were not properly mentioned in the writ petition and sought to place additional messages which are said to be the subject matter of the investigation. He would submit that the contents of the posts of social media by the petitioner would clearly show that the intention of the petitioner was to bring disrepute to the Government and cause ill-will between various groups of persons. He would further submit that the petitioner who has admitted to being a member and sympathizer of a political party, in the opposition in the State, has made the social posts only for the purpose of creating ill-will between groups and to bring the Government into disrepute. He would submit that in such circumstances, the offences set out in the charge sheet are clearly made out and, in any event, a trial in the matter would resolve these issues. He relies upon a judgment of the Hon'ble Supreme Court in the case of **State of State of Uttar Pradesh and Anr., vs. Akhil Sharda and Ors.**,¹ to contend that consideration of the allegations in the posts made in social media by the petitioner, would amount to a mini trial and the same is not permissible.

¹ 2022 SCC OnLine SC 820

Consideration of the Court:

6. The relevant provisions of law are:

153A. Promoting enmity between different groups on ground 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. Statements conducing to public mischief.—

(1) Whoever makes, publishes or circulates any statement, rumour or report,—

(a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army, Navy or Air Force of India to mutiny or otherwise disregard or fail in his duty as such; or

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Section 67 of the Information Technology Act, 2000

67. Punishment for publishing or transmitting obscene material in electronic form:- Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are

likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.

7. The contours of Section 153A IPC have been considered by this Court in the case of **Kantamaneni Ravishankar vs. State of Andhra Pradesh**² and in **Kollu Ankababu vs. Tirupathi Ramesh and Anr.**, in Crl.P.No.8348 of 2022 dated 02.12.2022. This Court, in both the judgments had held that the provisions of Section 153-A IPC would be applicable only where two groups exists and ill-will is created between those two groups divided on the basis of religion, race, place of birth, residence, language etc. It was also held that this enmity should be caused between the groups, defined on the above parameters, on grounds of similar nature that is on the basis of religion, race, place of birth etc.

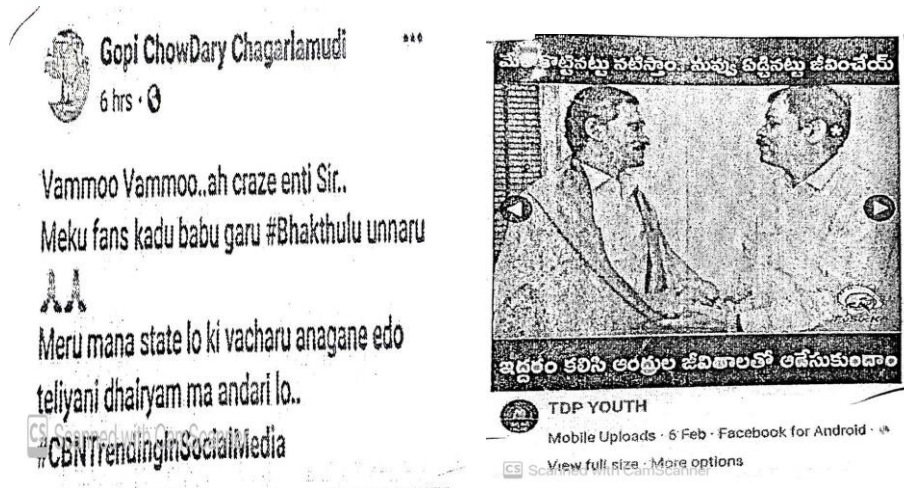
8. Section 505 (1) (b) and (c) of IPC would be attracted where a person with an intent to cause or which is likely to cause fear or alarm to the public or does anything which induces the commission of an offence against the State or against public tranquility with an intent to incite or

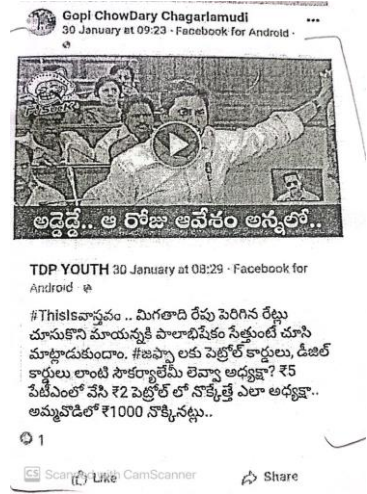
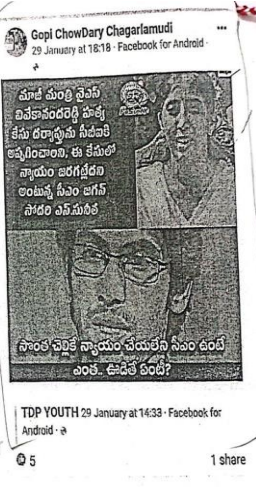
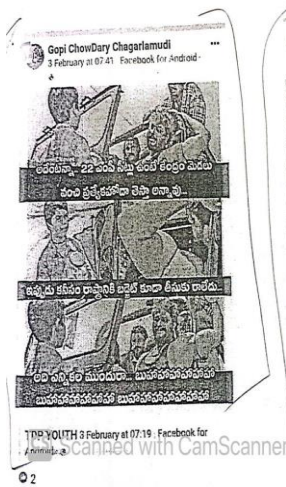
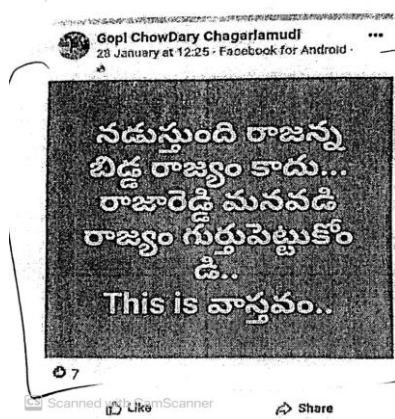
² AIR Online 2020 AP 70

likely to incite any class or community of persons to commit offences against any persons of another class or community. This would again mean that there should be existence of two classes or communities. Apart from this, Section 505(1)(b) would be attracted when the actions of a person would induce any other person to commit an offence against the State or against the public tranquility.

9. Section 67 of the Information Technology Act, 2000 applies to obscene messages which could invoke lascivious or appeals to the prurient interest.

10. In the present case, the messages, which are said to be the subject matter of investigation, are as follows:





11. A perusal of these messages would show that they are, at best, messages criticizing the Government to the extent of defaming the Government. Even if such a situation is taken to be true, the offences would be, offences of defamation and not an offence either under Section 153A IPC or Section 67 of the Information Technology Act, 2000.

12. As far as the offences under Section 505(1)(b)(c) IPC are concerned, the test for determining whether the messages or actions of persons can incite people to commit offences against the state or public tranquility or against any other class or community would have to be tested against the effect of such messages or actions on persons who are

mature and balanced. The effect of such messages on volatile or unbalanced people cannot be the test for determining whether the messages under consideration can bring about such behaviour. Tested on that standard, it is obvious that none of those messages would amount to offences under section 505 of IPC. Consequently, there can be no trial under Section 505 IPC.

13. The contention of the 3rd respondent has been that the messages are highly defamatory. Even if the said provision is to be applied, a complaint would have to be made by the person who has been defamed or by a Government officer authorized for that purpose where a state functionary is defamed in relation to the discharge of his official duties. In the present case, the 3rd respondent is neither the person, who is alleged to have been defamed, or a person empowered under Section 199 of Cr.P.C.

14. The contention of the petitioner that this exercise will amount to a mini trial cannot be accepted. In the present case, the allegations in the complaint are being taken on their face value. Even on that basis, no case is made out in view of the above discussion.

15. In these circumstances, continuation of C.C.No.93 of 2020 on the file of the Judicial I Class Magistrate, Palakol, would be an exercise in futility.

16. Accordingly, this writ petition is allowed quashing the proceedings in C.C.No.93 of 2020 on the file of the Judicial I Class Magistrate, Palakol. There shall be no order as to costs.

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

15th December, 2022
Js.

R. RAGHUNANDAN RAO, J.

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

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Js.