

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, LEH

Cr. Challan No. 22 of 2023

CNR No. LDLH030003922023

Date of Institution: 13/07/2023

Date of Disposal: 03/09/2024

In the case of:

State through SHO PS Leh

versus

Tej Singh Tanwar

FIR No. 15/2021 PS Leh; u/Ss. 298, 188, 500 IPC

Appearance

Ld. APP Tsering Phuntsog present for State

Ld. Counsel Adv. Vikas Malik for accused

03/09/2024

ORDER

1. In the instant case, chargesheet has been presented against the accused for alleged commission of offences punishable u/Ss. 188, 298, 500 Indian Penal Code, 1860 (referred to hereinafter as "IPC").
2. Perused the material on record and heard both the sides.
3. Ld. Counsel for the accused, referring to Section 258 of the Code of Criminal Procedure, 1973 (referred to hereinafter as "CrPC"), prayed for discharge of the accused on the grounds that;
 - i. For application of S. 188 IPC, there should be a promulgation of an order by public servant, which does not exist in the present case. The FIR has been registered in Leh for some statement, allegedly defamatory etc, made by the accused

Sd/
Judge
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outside of Leh, therefore, even if some order has been promulgated, same would not apply to the accused making such statement outside of Leh. Even otherwise, cognizance of the offence punishable u/S. 188 IPC, inter alia charged against the accused, can be taken only on the basis of complaint in writing of the public servant concerned, which is missing in the instant case.

- ii. In the complaint, it is alleged that the accused, in a television programme, has stated that an organization by the name of Hazibul Momineen has link with Shia Community of Ladakh. It is a baseless allegation made in the complaint. Thus, the ingredients of offences punishable u/Ss. 298 and 500 IPC are not met with.

4. On the other hand, Ld. APP contended that there are sufficient materials on record to proceed ahead against the accused. The accused, while making the defamatory statement on a TV show was indirectly referring to the Shia Community of Ladakh.

5. In the instant case, the FIR came to be registered against the accused on the basis of written complaint bearing no. AIL/946; Dated: 01/02/21 of Ashraf Ali Barcha, President of Anyuman-E-Imamia Leh (Ladakh), 1st Floor Imamia Complex, Opp. SNM Hospital leh-194010. The complaint reads "Shri S. S. Khandre, Additional Director General of Police, Union Territory of Ladakh Leh. Dear Sir, This is related to TV conversation few days ago, on Aajtak news channel. In which an officer once a special operation in charge in New Delhi revealed an organization by the name of Hizabul Momineen which has link to Shia community of Ladakh as per his statement. He also claimed that

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the chief of the organization has arrest by the intelligence agency. This is absolutely an unfounded statement because there is no such organization in Ladakh and his statement has made community suspicious at large. The video clip of the conversation is viral on the social media and some local anti social elements sharing the same video again and again. The Shia community has been very peaceful and patriotic through all these years and never ever supported anti national activities. Therefore, we seek your intervention for an investigation and to book the culprit under law". The words "an organization by the name of Hizabul Momineen which has link to Shia community of Ladakh", averred in the complaint, suggest Shia community of Ladakh having link with the organization Hizabul Momineen. After culmination of the investigation, chargesheet came to be laid against the accused for commission of offences punishable u/Ss. 188, 298, 500 IPC.

6. Sections 298 and 499 IPC reads as under:

298. Uttering words etc, with deliberate intent to wound the religious feelings of any person.

Whoever, with deliberate intention of wounding the religious feelings of person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places, any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

499. Defamation. Whoever, by words either spoken or intended to be read, or by signs or by

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visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases, hereinafter excepted, to defame that person.

Section 500 IPC prescribes punishment for defamation with simple imprisonment for a term which may extend to two years, or with fine, or with both.

7. During the course of investigation, on being approached by the Investigating Agency, TV Today Network Limited, India Today Group Mediaplex, FC8, Sector 16A, Filmcity, Noida, 201301, disclosed, vide Letter Dated: 06/04/2021, that the remarks "In Ladakh, there is a militant organization that is supported by Iran called Hizbul Momineen" has been made by the accused during a television show of TV Today on 30/01/2021. The TV Today copied the statement made by the accused during the television show on a CD and provided the same to the Investigating Agency.
8. As against what has been averred by the Complainant, the contents of the supra Letter of TV Today and that of the CD, containing the above referred statement of the accused, submitted with the challan, finds no mention of the word 'Shia' much less 'Shia Community of Ladakh', implying thereby that there is nothing in the statement of the accused referring, directly or indirectly, to the Shia

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Community of Ladakh. Pertinently, the statement of the accused made on the television show of TV Today on 30/01/2021 is the basis of the complaint. Thus, considering the material available on the record as a whole, this Court is of the opinion that no case for proceeding ahead against the accused for commission of offences punishable u/Ss. 298 and 500 IPC is made out.

9. Section 188 IPC reads as under:

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 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 tends 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.

In regard of Section 188 IPC, in the instant case neither there is mention of any promulgation in the chargesheet nor is any promulgation annexed thereto. Thus, there is nothing on record to proceed

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ahead against the accused in respect of the offence punishable u/S. 188 IPC also.

10. Having observed so in the preceding two paragraphs, the question which arises for consideration is whether the accused can be discharged at this stage ? Section 258 CrPC reads:

Section 258. Power to stop proceedings in certain cases. In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused and such release shall have the effect of discharge.

In the case of **Kamala Rajaram v. D.Y.S.P office of the SP (Rural) 2005 SCC OnLine Ker 302**, the Hon'ble High Court of Kerala held:

"8. The larger question whether Section 251 would justify discontinuance of the proceedings in all summons cases whether instituted on a police report or otherwise need not be considered in this case. Suffice it to say that in summons case instituted otherwise than upon a complaint, Section 251 read with Section 258 CrPC does clothe the Magistrate with the requisite power to discontinue further proceedings and release the accused at the stage of Section 251 or later if the learned Magistrate feels that the allegations and the

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materials placed before him do not justify continuance of the proceedings against the indicted. Directing continuance of proceedings when the allegations and materials collected do not justify such continuance will be worst form of injustice."

In the case of **In Re: Expeditious Trial of Cases under Section 138 N.I. Act, 1881, Suo Moto Writ Petition (Crl) No. 2 of 2020 D.O.D. 16/04/2021**, the Hon'ble Apex Court observed that:

"20. ... Section 258 of the Code empowers the Magistrate to stop proceedings at any stage for reasons to be recorded in writing and pronounce a judgment of acquittal in any summons case instituted otherwise than upon complaint."

11. As discussed above, there is no material on record to frame notice of accusations against the accused u/S. 251 CrPC for commission of the offences alleged against him in the chargesheet. Therefore, in view of the same and provisions of Section 258 CrPC, the accused is hereby discharged.

Challan stands disposed of accordingly, same be consigned to records after due compilation.

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Announced 03/09/2024
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Mr. Jamnasing
order dt: 3/9/24
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For Recusal
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chief judicial magistrate
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