

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. OF 2018

DIST : PUNE

In the matter of Article
226 of the Constitution of
India;

And

In the matter of Section
482 of the Code of
Criminal Procedure;

And

In the matter for quashing
of FIR No. 2 of 2018 , u/s.
153(A), 505 and 117 of
the Indian Penal Code
registered by Vishrambaug
Police Station, Pune,
Maharashtra against the
Petitioner;

Umar Khalid

)

Age. years,)
Student ,)
632/9 Zakir Nagar,)
New Delhi - 110025)
.... Petitioner

Versus

1. State of Maharashtra)
Through Senior Inspector,)
Vishrambaug Police Station,)
Pune, Maharashtra)

2. Mr. Akshay Gautamrao Bikkad)
Age : 22 years)
Through Mr. Sanjay Pawar)
Shahu Colony, Galli No.2,)
Near Shraddha Hotel, Karve Nagar)
Pune)

Permanent Residence of)

Bikkad Niwas, Prakashnagar,)

Barshi Road, Latur)

... Respondents

In the matter of Article
226 of the Constitution of
India;

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482 of the Code of
Criminal Procedure;

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In the matter for quashing
of FIR No. 2 of 2018 , u/s.
153(A), 505 and 117 of
the Indian Penal Code
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Police Station, Pune,
Maharashtra against the
Petitioner;

TO

THE HON'BLE THE CHIEF
JUSTICE AND THE OTHER
PUISNE JUDGES OF THIS
HON'BLE COURT

THE HUMBLE PETITION
OF THE PETITIONER
ABOVE NAMED.

MOST RESPECTUFLY SHEWETH:

1) The Petitioner is adult Indian law abiding citizen. The Petitioner is a PHD student of the Jawaharlal Nehru University, Delhi and also an activist. The is a permanent resident of New Delhi.

2) The Respondent No.1 is the State of Maharashtra who is responsible for the law and order in the State and the FIR has been filed by the Vishram Baug Police Station, Pune. The Respondent No.2 is the original Complainant in the FIR dated 3.01.2018 filed against the Petitioner.

3) The Petitioner seeks quashing of the FIR No. 2 of 2018 filed with the Vishram Baug Police Station u/s 153(A), 505 and 117 of the Indian Penal Code. The Petitioner is named as the Original Accused No.1 in the FIR.

ISSUE INVOLVED

4) The Petitioner has approached this Hon'ble High Court by way of Writ Petition in its writ jurisdiction under Article 226 of Constitution of India and in its inherent jurisdiction under section 482 of Code of Criminal Procedure for quashing of FIR No. 2 of 2018 registered by Vishram Baug Police Station, Pune, Maharashtra against the Petitioner.

BRIEF FACTS OF THE CASE:

5) The Respondent has registered the FIR No. 2 of 2018 at the instance of one Mr. Akshay Gautamrao Bikkad, aged 22 years [the Respondent No.2] dated. 03.01.2018 at Vishram Baug Police Station, Pune. Petitioners have been wrongfully, mischievously, with ulterior motives and in complete violation to the spirit of freedom of speech been named in the Impugned FIR. A copy of the said FIR is annexed hereto and marked as **EXHIBIT- A**

6) The Complainant in the said FIR alleges that

- a. On 31.12.2107 between 2.00PM to 10.00PM a meeting was organized at Shaniwar Wada, Pune by name 'Yalgar Parishad'.
- b. At the said meet the Petitioner along with Mr. Jignesh Mevani to create enmity between different communities.

c. The Petitioner has stated that, '*Bhima – Koregaon struggle can be made the future, its time to resist, will fight the struggle and win in this struggle will be the homage to the martyrs. The end of new Peshwai will be the homage to martyrs of Bhima-Korgaon*'.

d. The Petitioner made such volatile speeches and created enmity and hate between two communities. Hence some unknown persons got inspired and did stoning in the Bhima-Koregaon area.

7) The Petitioner most respectfully submits that even if the contents of the FIR are taken at face-value, they do not contain allegations of cognizable offences. Hereto annexe is the transcript of the speech of the Petitioner and the same is annexed as "**Exhibit B**".

Brief facts leading to the present petition

8) The petitioner has been vocal opponents of the political party that is presently in power at the Centre and at the state.

9) The Petitioner has addressed numerous public meetings across the country attacking the policies of that political party.

10) The Petitioner has been attacked by members of the ruling political party for his opinions in the print, audio and visual media.

11) The Petitioner states that every year hundreds of people belonging to the Dalit community gather in Bhima – Koregaon to celebrate the victory of the British and the Dalits over the Peshwas in 1818. This year being the 200th Anniversary of the event, a meeting was organized a day prior at Shaniwar Wada, Pune on 31.12.2017. The Petitioners were invited by the organizers of the meeting to speak at the meeting which was known as “Yalgaar Parishad”.

12) The Petitioner also spoke at the event and he basically asked the people to take inspiration from the earlier struggles of the Dalit community in the country.

13) The Petitioner states that the said “Yalgaar” meeting was attended by many dignitaries. Justice Klose Patil (Retired Judge of Bombay High Court) also attended the meeting and spoke during the meeting.

14) The Petitioner states that the meeting ended peacefully and there was absolutely no call for any enmity

between any of the communities nor was there any hate speech or call for violence by the Petitioner.

15) On 1.01.2018 the 200 years of Bhima-Koregaon struggle was celebrated and hundreds of members of the dalit community had gathered in Bhima-Koregaon. People who had gathered to celebrate the event peacefully were attacked by mischief makers; an FIR has since been registered in respect of that attack.

16) The Petitioner states that, on 3.01.2018 a Maharashtra Bandh was called by some of the groups against the violence against the members of the Dalit community.

17) The Petitioner states that no protection was given by the police to the members of the Dalit community when they were attacked nor were any measures taken by the police to control the law and order situation when the call for the bandh was given. As the Respondent No.1 failed on both the counts in maintaining law and order in the State, they have falsely filed an FIR against the Petitioner to put the entire blame of their failure on the Petitioner.

18) The Petitioner states that the FIR is only an afterthought and has been registered after more than 72

hours after the speeches were given and also only under the pressure of certain vested interests.

19) The Petitioner states that there is grave risk to the lives of the Petitioner and he needs to be protected. The Petitioner states that he cant apply for Pre-Arrest bail in Pune, as the situation is volatile there and fear that the police will not protect him if he is attacked if he goes to Pune to seek anticipatory bail there. _

20) The Petitioner states that FIR is completely false and politically motivated silence the opponents of the ruling party and especially because as the Petitioner No.1 has won against the ruling party at the Centre, Gujarat and Maharashtra.

21) That on a bare reading of the facts narrated in the FIR it is evident that it does not narrate the commission of cognizable offences. The FIR has been registered mala fide so that Respondent No.1 can threaten the petitioner and prevent him from exercising his fundamental right to freedom of speech and expression. If Respondent No.1 is allowed to conduct investigation based on such blatant abuse of police power it will have a chilling effect on petitioner's exercise of his right of freedom of expression.

22) Being aggrieved by the aforesaid the Petitioner has approached this Hon'ble Court for quashing of the FIR registered against them on following grounds:

(a) That complaint does not disclose any offense;

(b) That FIR lodged against the present Petitioner does not prima facie constitute any offence.

(c) In the said FIR the Petitioners have been charged with Section 153A of the Indian Penal Code, 1860 however, the allegations in the complaint do not constitute a cognizable offence.

(d) The Petitioner states that his talk at the Yalgaar Parishad has been completely distorted and taken out of context: nothing in the speech by the petitioner makes the "incitement" standard for permissible restrictions on freedom of speech and expression as explicated by the honourable Supreme Court in *Shreya Singhal*.

(e) That the Petitioner has exercised his right under Article 19 of the Constitution of India with due regard to limitations imposed by the said article on the said rights;

(f) It is submitted before this Hon'ble Court that the Petitioner has been alleged to have committed an

offence under section 153A of Indian Penal code, 1860. The said section punishes - Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony and the said offence is against the Public tranquillity. The offence under the above stated section is made out in the following cases.

“(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.

(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,

(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.”

- (i) That for an offence committed under section 153A IPC it is necessary that the intent and outcome of an action would be promoting enmity between different groups on grounds of religion, race, place of birth, resident, language etc. where such actions are prejudicial to maintenance of harmony. It is submitted that nothing done by the petitioner promotes enmity between religious group or is prejudicial to maintenance of harmony.
- (j) Considering the scope of the offences under the above stated section The Hon'ble Supreme Court in the case of *Manzar Sayeed Khan Vs. State of Maharashtra and Anr* (AIR2007SC2074) has held that-

*“11. 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 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 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 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.**”***

(k) A similar opinion was taken by the Apex Court in the case of *Balwant Singh and Anr. v.State of Punjab* (AIR 1995 SC 1785) where the Court opined that-

“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 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 153A IPC....”

(l) That the Hon’ble Courts have held that under Section 153A of the IPC, there must exist two specific, defined groups amongst whom disharmony and enmity is attempted to be spread, and without the identification of the said two groups, the ingredients of the section are not made out. In *State of Maharashtra vs Sangharaj Damodar Rupawate*, (2010) 7 SCC 398, Hon’ble Supreme Court clearly held that if *“it was not known which communities were alienated from each other or whose religious*

beliefs had been wounded...”, Section 153A could not be attracted. That the impugned FIR makes no mention of the two groups or communities that these alleged speeches were intending to drive wedges between. A bare look at the alleged speech by the Petitioner amply demonstrates that the ingredients of the offence are not attracted. Under no circumstances can Petitioner’s speech be said to be creating disharmony or enmity between “communities”.

(m) It is also stated that the circumstances in which the speech was given and the holistic reading of the speech or the consideration of the contentious lines in entirety will prove no ground for the prosecution of the Petitioners under the stated section.

(n) That therefore S. 153A of Indian Penal Code is not attracted and action of invoking the said section against the Petitioner amounts to misuse of the said section and also amounts to violation of rights of the Petitioner protected under Constitution of India.

(o) The Petitioner states that the said FIR also mentions offence u/s. 505. Which deals with, *Statements conducing to public mischief*. Nothing contained in the FIR constitutes the offence described in that section. Further, the exception to the said section states that its not an offence under the said section if

true facts are reported The Petitioner states that not a single false fact or incident was reported by the Petitioner to create any kind of mischief. The Petitioner spoke of atrocities against the Dalit community in the country which is an admitted fact.

(p) The Petitioner has been charged with Section 117 of the Indian Penal Code, which talks about Abetting commission of Offence by the Public or by more than 10 persons: Since the facts stated in the FIR do not constitute an offence, there can be no call to invoke section 117 of the IPC.

(q) That it is an established position in law that Courts can exercise *inherent jurisdiction under section 482 of the Cr. P. C.* and pass such orders *as may be necessary*, to prevent abuse of the process of Court and/or to secure the ends of justice. In *State of Haryana v Bhajan Lal 1992 Supp (1) SCC 335* (hereinafter referred to as "*Bhajan Lal*"), the Hon'ble Supreme Court held that one of the categories of cases fit for the exercise of powers under section 482, CrPC is:

"Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not

prima-facie constitute any offence or make out a case against the accused.”(emphasis supplied)

(r) The life of the Petitioner and his family members is under threat. The Petitioner apprehends that under the cover of the FIR Respondent No.1 will threaten and harass him and expose him and his family to physical harm and danger.

(s) The Petitioner states that the said FIR is clearly politically motivated as the Petitioner has consistently taken public positions against ruling party

(t) That said FIR falls under the aforesaid category laid down by the apex court which warrants quashing of FIR/complaint by invoking the Court’s inherent jurisdiction under section 482, Cr PC. Therefore the said FIR No. 2 of 2018 registered with the Vishram Baug Police Station, Pune amounts to misuse of law and abuse of the process of the Court and should be quashed, in the interest of justice;

(u) That continuance of criminal proceedings against the Petitioner in FIR.No.2 of 2018 registered with the Vishram Baug Police Station, Pune, would not serve any purpose, other than to cause unnecessary hardship to the Petitioner in the abovementioned matter and will have to face the ordeal of facing the trial unnecessarily. The Complaint filed by the Respondents does not disclose the commission of any offence by the Petitioners, and does not make out a case against them;

(v) That if the criminal proceedings against the Petitioners are allowed to continue, it will cause them severe prejudice;

(w) That in the present case, it is necessary in the interest of justice that the FIR filed against the Petitioners be quashed and set aside as being wrong and bad in law;

(x) That the action of the Respondent State is arbitrary and unlawful.

(y) An earlier effort was made to embroil Petitioner in completely unfounded criminal proceedings when an FIR was registered by Delhi police on 11 February, 2016. Petitioner 2 was arrested by the Delhi police in that FIR on__ and was admitted to

bail__ days later, i.e. on 18 March 2016. It is more than__ days since that FIR was registered; no charge sheet has been filed till date. Bail order of 18 March 2016 initially required Petitioner to seek the permission of the court to travel out of Delhi. Petitioner sought the permission of the court and travelled out of Delhi on several occasions and returned without incident. Taking note of the conduct of Petitioner, the stipulation in the bail order of 18 March 2016 that he required the permission of the court to travel outside of Delhi was lifted vide order dated__. Since then, Petitioner has travelled to several places and addressed public meetings where he has been a vocal opponent of the policies of the ruling party.

Hereto annexed is the copy of the FIR registered with Vasant Kunj Police Station and the same is marked as “Exhibit D”. Hereto annexed is the copy of the bail order dated 18.03.2016 and the same is marked as “Exhibit E”. Annexed hereto is also the copy of the modification in the bail condition and the same is marked as “Exhibit F”.

23) — That in light of the facts and circumstances of this case, it is clear that no purpose would be served by having the investigation continue; In *Madhavrao Jiwaji Rao Scindia v Sambhajirao Chandrojirao Angre*, AIR 1988 SC

709, Hon'ble Supreme Court held that *“it is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”*

24) The Petitioner craves leave to add, alter and /or delete the averments in the Petition, if any, as and when necessary with the permission of the Hon'ble Court.

25) The Petitioner submits that the Petitioner resides at addresses given in the cause title of the Petition and the FIR sought to be quashed is filed at Vishram Baug Police Station, Pune, Maharashtra. Therefore this Hon'ble High Court has jurisdiction to adjudicate the writ petition.

26) The Petitioner states that he has not filed any other Writ Petition, Application, Appeal or Revision before this Hon'ble Court or Supreme Court of India or in any other Court pertaining to the subject matter, seeking similar reliefs as in this Petition.

27) The Petitioner submits that he has no alternative remedy but to approach this Hon'ble Court under Article 226 of the Constitution and 482 of Criminal Procedure Code. The reliefs prayed for in this petition if granted shall be adequate remedy for the grievances of the petitioners.

28) The petitioner submits that there has been no delay or laches in filing the present petition.

29) The Petitioner has affixed a fixed court fee of Rs. ____/- on this Petition.

PRAYERS

Under the circumstances, it is prayed that:

- a) That the Hon'ble Court be pleased to quash and set aside the FIR no. 2 of 2018 dated 3rd January 2018 registered by Vishram Baug Police Station, Pune annexed hereinabove as **Exhibit A** filed in respect of the conversation and the contentious Show.;
- b) this Hon'ble Court be pleased to issue a writ of mandamus or a writ, order or direction in the nature of mandamus or any other appropriate writ, order or direction directing Respondent/s to not take any coercive step/action against the Petitioner including that of arresting him in the

FIR no. 2 of 2018 dated 3rd January 2018 registered by Vishram Baug Police Station, Pune annexed hereinabove as **Exhibit A**;

- c) That this Hon'ble Court be pleased to issue a writ of mandamus or a writ, order or direction in the nature of mandamus or any other appropriate order, writ or direction directing the Respondents to not file charge sheet in the FIR no. 2 of 2018 dated 3rd January 2018 registered by Vishram Baug Police Station, Pune annexed hereinabove as **Exhibit A**;
- d) that pending the hearing and final disposal of the petition the Hon'ble Court be pleased to direct the Respondents to not take any coercive step/action against the Petitioner including that of arresting him in the FIR no. 2 of 2018 dated 3rd January 2018 registered by Vishram Baug Police Station, Pune annexed hereinabove as **Exhibit A**;
- e) that pending the hearing and final disposal of the petition the Hon'ble Court be pleased to stay investigation in the FIR no. 2 of 2018 dated 3rd January 2018 registered by Vishram Baug Police Station, Pune annexed hereinabove as **Exhibit A**;
- f) that pending the hearing and final disposal of the petition the Hon'ble Court be pleased to direct the

Respondents to not file charge sheet in in the FIR
no. 2 of 2018 dated 3rd January 2018 registered
by Vishram Baug Police Station, Pune annexed
hereinabove as **Exhibit A**;

- g) For interim and ad-interim reliefs in prayers (d),
(e) and / or (f);
- h) For costs of this Petition;
- i) Any other such order that this Hon'ble Court may
deem fit.

Advocate For The Petitioner

Petitioner

VERIFICATION

I, Umar Khalid, age- _____ years, Indian Inhabitant, Petitioner above-
named _____ having _____ office _____ at

_____ at present at _____, do hereby state and
declare on solemn affirmation that whatever is stated in the
foregoing paragraphs Nos. 1 to _____ of the Petition is true and
correct to my own knowledge and that what is stated in the

remaining paragraphs no. ____ to ____ is stated on information and belief, and I believe the same to be true.

Solemnly affirmed at Delhi)

This ____ day of January 2018)

Petitioner

Identified by me,

Before me,

Advocate for the Petitioner