

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH
AT SRINAGAR**

Reserved on: 05.04.2022
Pronounced on:22.04.2022

**CRMC No.443/2018
CrIM No.1133/2018**

MUZAMIL BUTT **... PETITIONER(S)**

Through: - Mr. M. A. Qayoom, Advocate.

Vs.

STATE OF J&K & OTHERS **...RESPONDENT(S)**

Through: - Ms. Asifa Padroo, AAG

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

- 1) The petitioner has challenged FIR No.187/2018 for offence under Section 13 ULA(P) Act registered with Police Station, Kulgam
- 2) It is averred in the petition that the petitioner is an advocate practicing in District Court, Kulgam, for last about 10 years. On 21.10.2018, six civilians were killed and more than sixty injured including men, women and children in a blast at a gunfight site at Laroo Village in Kulgam triggering outrage across Kashmir. It is further averred that even Union Home Minister of India condemned these unfortunate killings and expressed his heartfelt condolence to the families of the deceased and announced relief of Rs.5.00 lacs to each

family of the deceased. It is also contended that the Governor of Jammu and Kashmir also termed the killing of six civilians as unfortunate. Similar views were published and expressed by several local and national newspapers. It is averred that the petitioner, being a resident of the village in which the tragedy had happened, made certain comments regarding the incident on the Facebook. According to the petitioner, the theme of these posts was that there has been negligence which led to the killing of these civilians and that District Police, Kulgam, and the local administration were principally responsible for the same. The petitioner is stated to have expressed his outrage and shock on similar other incidents in his Facebook posts and has also made comment that India has lost opportunity to resolve the issue with Pakistan by not responding to the offer of the Prime Minister of Pakistan.

3) According to the petitioner, there is nothing illegal in the posts which were uploaded by him on his Facebook but still then on the basis of letter dated 13.11.2018, issued by respondent No.2 to respondent No.3, the impugned FIR has been registered by branding him as an anti-national element. It is contended that the action of the petitioner does not come within the definition of 'unlawful activity' as contained in Section 2(o) of ULA(P) Act. Thus, according to the petitioner, on the face of it, the allegations made in the FIR do not constitute an offence against the petitioner and, as such, the same is liable to be quashed.

4) The respondents have resisted the petition by filing a reply thereto. In their reply, respondents have submitted that Police Station,

Kulgam received a letter dated 13.11.2018 from District Police, Kulgam, along with extracts of Facebook posts pertaining to the petitioner and other advocates. It was found that the petitioner and other advocates are uploading /spreading seditions, pro-separatist contents through Social Media especially on Facebook, as such, there was an apprehension of disruption of peaceful atmosphere in South Kashmir, particularly in District Kulgam. On receiving this letter, the impugned FIR came to be registered but due to the stay of investigation ordered by this Court, the investigation could not proceed further

5) I have heard learned counsel for the parties and perused the record including the Case Diary.

6) Learned counsel for the petitioner has vehemently argued that the posts which were uploaded by the petitioner on his Facebook were not intended to create any disaffection or encourage any anti-national activities but he had only expressed his outrage at the happenings which had taken place in his native village. Learned counsel has submitted that even the responsible functionaries of the Government of India including Home Minister and the Governor of Jammu and Kashmir had expressed shock and outrage at the incident and most of the local and national daily newspapers had expressed similar views in the matter. Learned counsel, while buttressing his arguments, has referred to the judgment of the Supreme Court in the case of **Vinod Dua v. Union of India and others**, AIR 2021 SC 3239, in which it has been laid down that a citizen has a right to criticize or comment upon the measures

undertaken by the Government and its functionaries, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder. According to the learned counsel, the posts on the basis of which the petitioner has been booked for offence under Section 13 of ULA(P) Act do not in any manner incite public to violence against the Government nor do they create an apprehension of public disorder. Therefore, no offence is made out against the petitioner.

7) Before testing the merits of the contention raised by learned counsel for the petitioner, it would be apt to refer to the provisions contained in Section 13 of ULA(P) Act. It reads as under:

"13. Punishment for unlawful activities.—(1) Whoever—

(a) takes part in or commits, or

(b) advocates, abets, advises or incites the commission of,

any unlawful activity, shall be punishable with imprisonment for a term which may extend to seven years and shall also be liable to fine.

(2) Whoever, in any way, assists any unlawful activity of any association, declared unlawful under section 3, after the notification by which it has been so declared has become effective under sub-section (3) of that section, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.

(3) Nothing in this section shall apply to any treaty, agreement or convention entered into between the Government of India and the Government of any other country or to any negotiations therefor carried on by any person authorised in this behalf by the Government of India."

8) From a perusal of the aforesaid provision, it is clear that a person can be punished for unlawful activities if he takes part in or commits,

advocates, abets, advises or incites the commission of any unlawful activity. Even if a person assists any unlawful activity of any association declared as unlawful, he can be subjected to punishment under the aforesaid provision

9) ‘Unlawful activity’ has been defined in Section 2(0) of the ULA(P) Act. It reads as under:

“unlawful activity”, in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),—

- (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or*
- (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or*
- (iii) which causes or is intended to cause disaffection against India;*

10) From a perusal of the aforesaid provision, it is clear that ‘unlawful activity’ means any action taken by an individual, whether by committing an act or by words, either spoken or written or otherwise, which is intended or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India from the Union or which incites any individual or group of individuals to bring about such cession or session. ‘Unlawful activity’ also includes any action which disclaims, questions, disrupts or is intended to disrupt the

sovereignty and territorial integrity of India or if it is intended to cause disaffection against India.

11) “Cession” has been defined in Section 2(1)(b) to include admission of the claim of any foreign country to any such part of territory of India whereas ‘secession’ has been defined in Section 2(1)(i) to include the assertion of any claim to determine whether such part will remain a part of the territory of India.

12) In the light of the aforesaid provisions of law, let us now consider as to whether the Facebook posts of the petitioner, on the basis of which the impugned FIR has been registered, make out a case of ‘unlawful activity’ which is punishable under Section 13 of the Act. In this regard, it would be apt to refer to the contents of the posts allegedly uploaded by the petitioner on the basis of which the impugned FIR has been lodged. The Case Diary contains print out of a number of posts allegedly uploaded by the petitioner on his Facebook account but some of these posts are not being reproduced here as in those posts the petitioner has only expressed outrage and condemnation of certain incidents which comes within the ambit of his legitimate right to freedom of expression as guaranteed under Article 19 of the Constitution. The two posts which require to be considered for the purpose of determining the issue at hand are reproduced as under:

(i) “Karbala in Laroo.

Genocide and mayhem in my native hamlet Laroo. One of the most intense gunfights in my village culminated into mass massacre, bloodshed, cries, wailings, and brutal carnage.

A military operation culminated into an organised state negligence which led to killings of 8teenagers and injuring 60 others.

The military establishment and district police Kulgam, including local administration is principally and directly responsible for the murder of eight sweethearts in my village.

No combing and non-sanitization of the encounter site sprinkled hot blood of my fellow brothers in every corner of the damaged house and the roads of village Laroo.

One cannot even imagine the nature of horror and misery the poor and broken inhabitants of my village were confronted with and broken inhabitants of my village were confronted with and the senses were so scary and heart wrenching that we were not in a position to carry the coffins of these budding brothers to the graveyards.

I could witness people of my village from 8 to 80 tearing their clothes and stroking their faces hard for hours together.

The hot blood clots and soaked jeans of talib and rest brothers will haunt me for decades together.

*For the first time in my life, I felt broken and weak and I could acknowledge that **were are slaves and slaves have no life of their own.***

Talib was my next door neighbour and distinction holder who used to do labour during the day and study during night.

Father of Talib Dr. Maqbool laway died when talib was a baby and since then talib and his mom contained the quagmire and hardships of life together.

Every passing hour I can hear the cries of talibs Mom who lost her only hope in life.

I feel so shattered for the best friends of Talib, mugeem and rest other martyrs.

I could see one of their common friends dying with Shrieks at their graves.

I feel so broken for that toddler that went I left the grave that friend of talib and his shrieks created and an indelible mark in my mind and I could remember few verse for that surviving friends and buddy

*Jawoo jo laut k tum
Ghar ho Khushi se Bhara
Bus itna yaad rahe
Ek Saathi aur b tha.*

My village is not that busy hustle bustle hamlet anymore now the blood soaked roads are testament to a genocide perpetuated and organized by colonial establishment.

The highest that I could sum up from his disaster is the quote of Dr. Manan Wani

Occupation is like a cancer which will consume everyone of us."

*(ii)"Manan's finger on trigger is more than the mechanism that sets off the firing action of a gun. It is not an isolated incident. **If reflects the culmination of systemic failure. If reflects on those heartless structures that celebrate occupation of military bonhomie in cozy champagne** circuits and page three parties of gupkar. He may be a loser in the natural lottery called life, but his death reflects a writing on the wall. With his death, may God answer our silent prayers ad change the frigid ad uncaring hearts of those who perpetuate this war and enjoy its franchise."*

13) The highlighted portions of the first post quoted above indicate that the petitioner advocates that the people of Kashmir are slaves and it is under occupation which is like a cancer. The highlighted portions of the other post quoted above indicate that the petitioner is advocating that this part of the Country is under the occupation of Indian military.

14) In my opinion, the freedom of speech and expression guaranteed under the Constitution cannot be stretched to such a limit as to allow a person to question the status of a part of the Country or its people. It is one thing to criticize the Government for its negligence and express outrage on the violation of human rights of the people but it is quite

another to advocate that the people of a particular part of the Country are slaves of the Government of India or that they are under occupation of armed forces of the Country. While the former i.e., expression of outrage at the negligence and inhuman attitude of the security forces, police and establishment would come within the ambit of freedom of expression of an individual which includes freedom to criticize the Government of the day which is permissible under law but the same may not be the position if an individual questions the fact of a State being a part of the Country by using the expression 'occupation of military or the people being slaves etc.'. The petitioner, who happens to be an advocate, can very well understand the import of these expressions. By making these comments, he is certainly advocating and supporting the claim that Jammu and Kashmir is not a part of India and that it is occupied by Indian military with the people having being reduced to the status of slaves. Thus, he is questioning the sovereignty and territorial integrity of the Country.

15) The petitioner by uploading these posts has crossed the Lakshman Rekha which demarcates the freedom of expression guaranteed under Article 19 of the Constitution of India from the reasonable restrictions imposed on such freedom on the ground of sovereignty and integrity of India. The intention of a person can be gathered from the words spoken or written or other expressions. Therefore, the expressions used by the petitioner, who happens to be a law knowing person, clearly show that he intended to advocate a particular ideology which supports the claim

of cessions of Jammu and Kashmir, which is an integral part of India. This act of the petitioner, therefore, prima facie, falls within the definition of 'unlawful activity' as contained in Section 2(o) of the ULA(P) Act punishable under Section 13 of the Act.

16) The ratio laid down by the Supreme Court in **Vinod Dua's** case (supra), on which learned counsel for the petitioner has placed reliance, is not applicable to the facts of the instant case. This is so because in **Vinod Dua's** case (supra), the petitioner therein who happened to be a journalist, had criticized the functioning of the Government of the day and he had not supported and advocated any claim relating to cession of a part of the Country whereas, in the instant case, the petitioner by uploading the posts on his Facebook, has supported the claim of cession of a particular part of the Country. Besides this, in **Vinod Dua's** case, the petitioner was booked for offence of sedition defined in Section 124A of IPC whereas in this case, the petitioner has been booked for commission of offence under Section 13 of ULA(P) Act. The ingredients of two offences are distinct from each other. Thus, the ratio laid down in **Vinod Dua's** case is not applicable to the facts of the instant case.

17) For the forgoing reasons, it cannot be stated that no offence is made out from the contents of the impugned FIR and the material annexed thereto. Therefore, this is not a fit case where this Court should exercise its power under Section 482 of Cr. P. C to quash the proceedings at this stage. Quashing the proceedings at this stage would

amount to stifling a genuine prosecution, which is not permissible in view of the ratio laid down by the Supreme Court in the case of **Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and others**, 2021 SCC Online SC315.

18) Thus, there is no merit in this petition. The same is, accordingly, dismissed. The interim order shall stand vacated.

19) Case Diary be returned to the learned counsel for the respondents.

(SANJAY DHAR)
JUDGE

Srinagar,
22.04.2022
"Bhat Altaf, PS"

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

