

Order below Exh. 1

Through the present application, the applicant seeks an action under Section 156(3) of the Criminal Procedure Code, 1973 (hereinafter referred to as 'CrPC'), against the respondent in connection with offences punishable under Sections 153A and 505 (2), Indian Penal Code, 1860.

2. It is pertinent to mention that on 13.11.2019, my learned predecessor rejected the application under Section 156 (3), CrPC, and posted the matter for verification after registering it as a warrant triable case. Hence, the Cri.M.A. 1550/2019 was re-registered as R.C.C. 2749/2024. The order dated 13.11.2019 was challenged before the Hon'ble Bombay High Court in Criminal W.P 4476/2021. On 06.09.2024, the Hon'ble Bombay High Court remanded the matter to this court for passing a fresh order on the application, in accordance with law, after hearing both the sides. The said order of the Hon'ble Bombay High Court was challenged through Special Leave to Appeal (Criminal) No. 14801 of 2024. The same was dismissed on 18.11.2024. Hence, in compliance of the directions of the Hon'ble Bombay High Court in Criminal W.P 4476/2021, the application under Section 156 (3), CrPC, is being decided afresh after calling say of the other side and hearing the complainant in person as well as learned advocate of the respondent.

3. The applicant stated that he is an advocate by profession and is also the National President of the Youth Wing of Hindustan National Party. The respondent was an MLA from the Mumbra-Kalwa constituency of National Congress Party at the time of the alleged incident. It is the applicant's case that on 11.08.2018, while he was at his residence in Bhayander, he received a five-minute long video on WhatsApp which featured the respondent. In the said video, the respondent is seen commenting upon the arrest of one Vaibhav Raut made on 09.08.2018 by the Anti-Terrorist Squad (ATS), Mumbai Police, for having possession of arms and ammunitions. The respondent stated that the bombs recovered from Raut were made by him to cause blast in the Maratha Morcha rally of the Maratha community. The respondent also commented upon the people who came in support of Raut and upon the action taken by police when Muslim offenders are arrested in relation to terrorist activities and Hindu community's reaction about it. As per the applicant, such a statement was made with the intention of promoting enmity between the Marathas and Bhandari community. The respondent also made the same statement on various news channels during panel debates.
4. The applicant submitted that chargesheet is filed against Vaibhav Raut and others. Neither during investigation nor in the chargesheet has the investigating authority mentioned that the bombs were meant to be used to disrupt the Marathan Morcha. He argued that the respondent did not have any proof while making the statements that he did and his intention was to promote hate and enmity between the Maratha, Hindu and Muslim communities. Hence, the applicant approached the Bhayander police

station for registration of FIR. Thereafter, he forwarded the complaint copy to DGP, Maharashtra and Superintendent of Police, Thane Rural, but to no avail.

5. Thereafter, in compliance of the 2016 Maharashtra amendment to Section 156 (3), CrPC, the applicant wrote a letter to the Governor of Maharashtra on 13.10.2018 to obtain sanction to proceed against the respondent. The same was received on 16.10.2019. However, as no decision was taken on it within 90 days, the applicant has now obtained a deemed sanction. He submitted that investigation into aspects like where and from which device the video was recorded and circulated can be investigated into only by the police. Hence, the present application. In support of the present application, he submitted a CD as well as a pen drive containing the video statement of respondent and photocopies of the police complaint dated 12.08.2018 along with postal receipts and acknowledgment and of the proposal letter to the sanctioning authority dated 13.10.2018 along with its postal receipts, acknowledgment, and track report.
6. On the other hand, learned advocate of the respondent submitted that the alleged statement made by the respondent is pointed out to the court after taking it out of context and cannot be said to result in commission of any offence. It is politically motivated and is filed only to harass the respondent. He argued that the allegations made by the applicant are baseless as he has failed to disclose how aspects like what is stated by the ATS in the chargesheet filed against Vaibhav Raut came to his knowledge. The said matter is still subjudice. Moreover, the applicant has not submitted any evi-

dence in proof of the place where he saw the video and when he saw it. As per him, no investigation took place or was directed by the Superintendent of Police as the concerned officer may not have been 'satisfied' that the information discloses the commission of a cognizable offence. The application is also barred by limitation. He argued that the respondent is a responsible citizen who will never intend to make statements as would cause the effect of creating or promoting hate or unpleasantness between religious communities. Hence, he prayed for rejection of the present application.

7. The pen drive containing the statement of the respondent was played on the computer available on the dais. From a *prima facie* perspective, it does appear that the statements made therein are such that attract the offences punishable under Section 153A and 505(2), IPC. The question of whether the respondent is guilty of the alleged offences can be found only after evidence is led. Hence, at this stage, it does not appear expedient to discuss, in much detail, the arguments advanced by both sides regarding the intention and objective of accused while making video statement.
8. The compliance of Section 154(1) and 154(3), CrPC, is evident from the documents annexed with the present application. Record reveals that deemed sanction is also taken. The offences alleged are cognizable in nature. As regards the aspect of whether this court has jurisdiction, Chapter XIII, CrPC, deals with the jurisdiction of criminal courts in inquiries and trials. The applicant submitted that as per Section 178 (a), CrPC, when it is uncertain in which of several local areas an offence was committed, it may be

inquired into or tried by a Court having jurisdiction over any of such local areas. Further, Section 179 states that when an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued. From the facts on record, it is clear that where the video was made is not known but the applicant has received it at his residence in Bhayander. Hence, Bhayander is one of the areas in which consequence of the video statement has ensued. Thus, this court has jurisdiction over the present application.

9. Further, the nature of the offences alleged is such that it is only investigation by the police machinery that would be expedient. Hence, this is a fit case to allow the registration of FIR. As regards the aspect of limitation, the offences punishable under Section 153A and 505(2), IPC, are punishable with a maximum imprisonment of three years. As per Section 468(2)(c), CrPC, the limitation period for taking cognizance of an offence punishable with imprisonment exceeding one year but not exceeding three years is three years. However, the limitation prescribed therein is for the stage of taking cognizance. When an application under Section 156 (3), CrPC, is decided, the court is only directing the registration of an FIR and not taking cognizance. Hence, the question of limitation does not arise in the present case. There is, therefore, no impediment in granting the relief sought by the applicant. Hence, the following order.

ORDER

1. Application is allowed.
2. The officer in-charge of Bhayander Police Station is directed to register FIR against the respondent for offences punishable under Sections 153A and 505 (2), IPC.
3. The officer in-charge of the said police station is further directed to investigate into the matter and submit its report before the court.

Thane.
Date: 03.02.2025

Sd/-
Mahima Saini)
10th J.M.F.C., Thane.