IN THE COURT OF SH. HARJEET SINGH JASPAL: ACMM-04, ROUSE AVENUE DISTRICT COURTS, NEW DELHI

CNR No.DLCT12-000088-2022
Ct. C. No. 08/2022

G.S. Mani Vs. Commissioner of Police Delhi & Ors.

11.11.2022

ORDER

1. Vide this order, I shall decide the application filed by the complainant/applicant Sh. G.S. Mani (Practicing Advocate, Supreme Court of India) hereinafter referred to as the applicant.

2. In brief, the contention of the applicant is that the accused herein i.e. one Sh. K.T. Jaleel, MLA, Kerala Legislative Assembly, hereinafter referred to as the accused, through his tweet has committed various offences under IPC and the same needs to be investigated upon and thus the applicant has sought registration of FIR against the accused, through his application u/s 156 (3) Cr.PC. The applicant has sought FIR u/s 124 A, 153 A, 153 B, 504, 505 (1) and 505(2) IPC for the alleged anti national remarks of the accused, made through a social media post on a common social media platform called twitter.

3. As per the application filed by the applicant the accused has made following remark through his social media post :

> *"the territory of Jammu Kashmir as Indian Occupied Jammu Kashmir in which people living are not happy & the territory of Pakistan Occupied Jammu Kashmir as Azad Kashmir which mean independence territory."*

4. It is worth mentioning here that as per the applicant the aforesaid tweet has already been deleted by the accused and admittedly the originally tweet is not on record.

5. Subsequent to the receipt of the aforementioned application, an ATR was called and the same has been received under signature of SI Suresh Chand, PS Tilak Marg. A perusal of the said ATR reveals that the applicant herein made a complaint before PS Tilak Marg vide DD entry dated 13.08.2022, bearing no. 55 and that the matter at hand i.e. the allegations of the applicant have already been sent to the Cyber Crime Cell of Delhi Police. The said ATR further divulges that a Ld. Court in Kerala, at Pathanamthitta District, Kerala has already ordered the registration of FIR against the accused qua the aforementioned controversial remarks on the issue of Jammu and Kashmir. The said report has been duly forwarded by the SHO concerned and a letter addressed to the DCP, Cyber Cell, written under the signatures of DCP, New Delhi has also been annexed alongwith the ATR.

6. An additional ATR was called from DCP Cyber Cell, which revealed that the complaint of the present complainant/applicant has already been transferred to DGP, Kerala for taking further necessary action into the matter.

7. At length arguments have been heard on the said application.

8. It has been argued by the applicant that multiple FIRs at different places qua the same statement or 'the tweet' can be ordered and in support of his arguments he placed on record the following judgments:

i) 2017 SCC OnLine Hyd.240 :

ii) (2017) 5 ALT 342 (DB) tilted as Jakir Hussain Kosangi & Ors. Vs. State of Andhra Pradesh & Ors.

iii) 2022 SCC OnLine SC 1003 titled as N.V. Sharma Vs. Union of India & Ors.

iv) 2021 SCC OnLine MP 1040 titled as Dr. Pawan Tamrakar & Another Vs. M.P. Special Police Establishment & Ors

v) (2020) 14 Supreme Court Cases 51 titled as Arnab Ranjan Goswami Vs. Union of India & Ors.

vi) (2019) 10 Supreme Court Cases 800 Satinder Singh Bhasin Vs. Government (NCT of Delhi) & Ors.

9. It has thus been prayed that FIR be registered against the accused under the aforementioned sections of law, as his tweet is anti-national, seditions and is likely to cause/promote enmity between different religions, groups, namely Hindu and Muslims. It is argued that the tweet of the accused is likely to cause disharmony and feeling of hatred/ill-will and may cause riots between different religious groups.

10. At this stage, it is worth mentioning here that Ld. Counsel Sh. Sh. Subhash Chandran K.R., Ld. Counsel for Sh. K.T. Jaleel also appeared before the court, though the accused has not been summoned and no notice was ever issued to him. As the record would reflect, he remained present during majority of the proceedings.

11. Having heard the submissions and having considered the record, including the judgments as aforementioned, I shall now proceed to decide the application at hand.

12. For a better understanding and better adjudication I deem it appropriate to frame following two questions:

(i) Firstly, whether there can be 2nd FIR or subsequent FIR on the very same tweet/statement, since admittedly an FIR has already been registered?

(ii) Secondly, whether the aforementioned statement/tweet of the accused, as mentioned herein above, if taken to be true, does attract the aforementioned provisions of IPC, so as to say that a cognizable offence is made out, necessitating registration of FIR and a consequent investigation?

13. In the chronology, to begin with I shall decide the first question, however, before everything else it is absolutely necessary to take on record the observations of Hon'ble Higher Courts qua the said issue.

14. The judgment of Hon'ble Supreme Court in **T.T. Antony Vs. State {(2001) 6 Supreme Court Cases 181, HMJ SSM Quadri and SN Phukan}** is of much relevance, wherein it was held that there cannot be a second FIR in respect of same cognizable offence and same incident or occurrence. Since there cannot be a second FIR, there cannot be a fresh investigation, on receipt of every subsequent information in respect of same cognizable offence or the same occurrence or incident. A single offence cannot be investigated repeatedly by different police stations.

15. The contextually relevant portion in **TT Antony (supra)** is reproduced herein:

> *"The right of the police to investigate into a cognizable offence is a statutory right over which the court does not possess any supervisory jurisdiction under CrPC. This plenary power of the police to investigate a cognizable offence is, however, not unlimited. It is a subject to certain well-recognised limitations. A just balance between fundamental rights of the citizens under*

Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. The sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, nay, a case of abuse of the statutory power of investigation in a given case. A case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 CrPC or under Articles 226/227 of the Constitution."

16. In the judgment titled as ***Akbaruddin Owaisi Vs. State of Andhra Pradesh (2014 Cri. LJ 2199)*** a similar question arose before the Hon'ble Andhra Pradesh High Court. The facts of the said case were that Sh. Akbaruddin Owaisi, a politician and a member of Legislative Assembly of Andhra Pradesh, made certain remarks in the course of his speech at Nizamabad, Andhra Pradesh and qua that speech multiple FIRs were registered. The question before the Hon'ble High Court was whether registration of multiple FIRs for the same offence are barred u/s 154 Cr.PC or can it done as a permissible exercise. In the course of its at length discussion on law the Hon'ble High Court talked about the concept of '*sameness'*.

17. The Hon'ble Court held that the distinction between two FIRs relating to the same incident, and two FIRs relating to different incidents or occurrences of the same incident, should be carefully examined. The merits of each case must be considered to

determine whether a subsequently registered FIR is a second FIR relating to the same incident or an offence or is based upon distinct and different facts and whether its scope of inquiry is entirely different or not. The Hon'ble High Court observed that it will not be appropriate for the Court to lay down one straight jacket formula uniformly applicable to all cases, this will always be a mixed question of law and fact depending on the merits of a given case; the test, to determine whether two FIRs can be permitted to exist, is whether the two incidents are identical or not.

18. In para no.40 and 41 of the said judgment the Hon'ble AP High Court categorically observed the following :

> *"40. The concept of "sameness" has been given a restricted meaning. In order to examine the impact of one or more FIRs, the Court has to rationalise the facts and circumstances of each case and then apply the test of 'sameness' to find out whether both FIRs relate to the same incident and to the same occurrence; and whether they are in regard to incidents which are two or more parts of the same transaction or relate completely to two distinct occurrences. It is only if the second FIR relates to the same cause of action, the same incident, there is sameness of occurrence and an attempt has been made to improvise the case, would the second FIR be liable to be quashed. In cases where every FIR has a different spectrum, and the allegations made are distinct and separate, it may be regarded as a counter complaint, but it cannot be stated that an effort has been made to improve the allegations that find place in the first FIR or that the principle of "sameness" is attracted. (Babubhai2; Surendra Kaushik v. State of Uttar Pradesh58)"*
>
> *41. It is not possible to enunciate any formula of universal application to determine whether two or more acts constitute the same transaction. They are to be gathered from the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design. For several offences to be part of the same transaction, the test to be applied is whether they are so related to one another in point of purpose or of cause and effect or as principal and subsidiary, so as to result in one continuous action. Where there is commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences "committed in the course of the same transaction". Where two incidents are of*

different times with involvement of different persons, there is no commonality, the purpose thereof is different, they emerge from different circumstances, and would not form part of the same transaction."

19. The observations of Hon'ble Andhra Pradesh High Court in ***Akbaruddin Owaisi (Supra)*** remain incomplete till I mention the concluding paragraphs of the said judgments i.e. paragraph 109 which is as under :

> 109. It is not difficult to foresee instances, in the not too distant future, of multiple complaints being lodged in different police stations by different complainants for the same incident. A "movie", screened in different theatres across the country, could be considered offensive by some viewers. A tweet on 'twitter' or a posting on 'face-book' may result in some of those, who view it, feeling outraged thereby. All these could result in multiple complaints being filed by different complainants in different police stations spread all over the country. The plight of an M.F. Hussain or a S. Khushboo may well be the plight of several others who, in the absence of adequate provisions and a specific remedy under the Code, can only invoke the jurisdiction of the High Court under Article 226 of the Constitution or under Section 482 Cr.P.C."

20. In **Surender Kaushik Vs. State of U.P.** (Criminal Appeal NO.305 of 2013**,** Arising out of S.L.P. (Crl.) No. 9276 of 2012), one of the two issues before the Supreme Court was whether a second FIR could have been lodged and entertained, when on similar and identical cause of action and allegations, one FIR had already been registered. After taking note of the decisions in **T.T. Antony (supra), Upkar Singh Vs. Ved Prakash (Supreme Court, (2004) 13 SCC 292), Kari Choudhary Vs. Most. Sita Devi (2002 1SCC 714) and Babu Bhai Vs. State of Gujarat (2010 12 SCC 254),** the Supreme Court summed up the position in paragraph-24 of its judgment as follows:

> *"From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing*

of a counter FIR relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint."

21. **In Amitbhai Anilchandra Shah v. CBI** (Writ petition (CRIMINAL) no. 149 OF 2012) the Supreme Court reiterated the principle laid down in TT Antony (Supra) that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution.

22. At a careful look at the observations of the Hon'ble Supreme Court in **T.T. Antony (supra)** would show that the bar to the registration of a second FIR was read into the Code of Criminal Procedure, whenever there is the second or subsequent information related to the same cognizable offence or the same occurrence or same incident giving rise to one or more cognizable offences. The emphasis laid by the Supreme Court was on the sameness of the truth and substance of the gravamen of the charges and in **Akbarudin Owaisi (supra)**, the Hon'ble A.P. High Court held that a single speech propagated or published through television in different places cannot result in prosecution of individual in different cases/different courts, since the transmission of a single message cannot tantamount to different offences or crimes.

23. The court, in order to examine the impact of one or more FIRs, has to rationalise the facts and then apply the test of sameness and where both the FIRs are relating to same incident such that the transaction itself is same, the second FIR is not permissible.

24. Having considered the relevant law on the subject, it is now time to discuss the matter at hand on its factual merits. At the cost of brevity, I deem appropriate to once again mention the facts, though in utmost brief. The applicant seeks registration of FIR u/s 124A, 153A, 153B 504, 505 (1) and 505(2) IPC for the alleged anti national remarks of the accused, made through a social media post on a common social media platform called twitter, against the accused for the tweet, which is described in following words in the complaint:

> *"the territory of Jammu Kashmir as Indian Occupied Jammu Kashmir in which people living are not happy & the territory of Pakistan Occupied Jammu Kashmir as Azad Kashmir which mean independence territory."*

25. It is once again worth of mentioning here that as per the application, the tweet in question has already been deleted and hence the original content/the exact text has not come on record.

26. The term FIR, though not defined under Cr.P.C., is often construed to mean an information, earliest in time, given before an SHO or an officer deputed therein qua commission of a cognizable offence. It is this instrument of FIR which puts into motion the entire criminal justice system and occasions the commencement of an investigation.

27. As has abundantly come on record an FIR has already been registered at Kerala qua the very same tweet, as aforementioned. This court is mindful of the fact that the possibility of other FIRs apart from the one at Kerala, (upon the orders of the court) cannot be ruled out. A question that arises here is whether second FIR/subsequent FIR on very same tweet can be allowed to be registered in Delhi on account that the applicant, i.e., Adv. Mr. G.S. Mani states that he saw/read the tweet in his chamber at

Supreme Court and thus, as per him, the cause of action (term loosely borrowed from the Civil Law) arose in Delhi. Keeping in mind the mandate of the Hon'ble Supreme Court in **T.T. Antony (Supra)** the answer is an unequivocal no. It has been made abundantly clear in the said judgment that there cannot be a second FIR in respect of same cognizable offence and same incident or occurrence. The Hon'ble Supreme Court in most clear terms has held that since there cannot be a second FIR, there cannot be a fresh investigation, on receipt of every subsequent information in respect of same cognizable offence or the same occurrence or incident, a single offence cannot be investigated repeatedly by different police stations.

28. Applying the test of *'sameness'*, as discussed by Hon'ble Supreme Court in **Surender Kaushik (Supra)** and by Hon'ble Andhra Pradesh High Court in **Akbarudin Owaisi (supra),** it can be said that the FIR already registered and the FIR sought to be registered by way of present application relate to the same occurrence and the same incident, they do not relate to distinct occurrences and thus it cannot be said that there was separate cause of action. The allegations are not distinct or separate and thus the cause of action can be said to be identical.

29. The observation of the Hon'ble Supreme Court in **Amit Bhai Anil Chander Shah (Supra)** cannot be forgotten that a second FIR in respect of the same offence is not only impermissible but rather it is a violation of article 21 of the Constitution.

30. Thus in view of the aforesaid observations of the Hon'ble Supreme Court and the other judgments cited herein above, this court observes that since an FIR has already been registered qua the very same tweet of the accused, a second or a subsequent FIR is not permissible as per law. Furthermore, this court is mindful

of the fact that as per the ATR filed by Delhi Police, under signatures of ACP, IFSO, Special Cell, New Delhi, the complaint of the applicant has already been transferred to DGP Kerala, meaning thereby that the allegations and the averments of the applicant shall form the part of the investigation already being undertaken by the Kerala Police. Ergo, in conclusion of this discussion, the application u/s 156 (3) Cr.PC filed by the applicant seeking a second FIR/subsequent FIR is found *sans* merits.

31. Since the first question has been decided in negative, the second question i.e. whether the aforementioned statement/tweet of the accused, as mentioned herein above, does attract the aforementioned provisions of IPC, so as to say that a cognizable offence is made out, necessitating registration of FIR and a consequent investigation, become largely infructuous for the purposes of the application u/s 156(3) Cr.P.C., however, I still believe that the contention of the applicant ought to be discussed at length, in the larger interest of justice, as a complaint u/s 200 Cr.P.C. is also on record.

32. The applicant has contended that by way of aforementioned tweet the accused has committed offence u/s 124 A, 153 A, 153 B, 504 and 505 IPC.

33. The question is whether making a statement that the people of Kashmir are not happy or that part of Kashmir which is under occupation of Pakistan is 'Azad', amounts to sedition.

34. In a recent judgment titled as **S.G. Vombatker Vs. Union of India** (decided on 11.05.2022), the Hon'ble Supreme Court of India, through a three judge bench, headed by the then Hon'ble Chief Justice N.V. Ramana, has put a hold to the application of Section 124 A IPC. Vide the said order, the said

provision of law has been put in abeyance till the Central Government reviews it. The Hon'ble Supreme Court of India pointed out that the individual liberties/civil liberties need to be balanced with sovereignty of the State, in view of the several instances, in the recent past where the law was misused. The Hon'ble Apex Court specifically observed and through said order conveyed its expectation that "the Centre and the State will desist from registering any FIR u/s 124 A."

35. In view of the said observations /directions of the Apex Court the request of the applicant qua registration of FIR u/s 124 A IPC stands denied.

36. Before proceeding further I deem appropriate to take on record the relevant law agitated by the applicant i.e. Section 153 A, 153 B, 504 and 505 IPC:

> **153A. Promoting enmity between different groups on grounds 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 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.

153B. Imputations, assertions prejudicial to national-integration.—

(1) Whoever, by words either spoken or written or by signs or by visible representations or otherwise,—

(a) makes or publishes any imputation that any class of persons cannot, by reason of their being members of any religious, racial, language or regional group or caste or community, bear true faith and allegiance to the Constitution of India as by law established or uphold the sovereignty and integrity of India, or

(b) asserts, counsels, advises, propagates or publishes that any class of persons shall, by reason of their being members of any religious, racial, language or regional group or caste or community, be denied or deprived of their rights as citizens of India, or

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(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.

504. Intentional insult with intent to provoke breach of the peace.—Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

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 6[three years], or with fine, or with both.
(2) Statements creating or promoting enmity, hatred or ill-will between classes.—Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.
(3) Offence under sub-section (2) committed in place of worship, etc.—Whoever commits an offence specified in sub-section (2) in any place of worship or in an 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.
(Exception) —It does not amount to an offence, within the meaning of this section when the person making, publishing or circulating any such statement, rumour or report, has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it in good faith and without any such intent as aforesaid.

37. Whereas, Article 19 of the Constitution of India gives a fundamental freedom of speech and expression to all its citizens yet the said freedom, though fundamental, cannot be called an absolute freedom and it is subject to just and reasonable restrictions. The fundamental freedom under sub-clause 1 are subject to restrictions in sub-clause 2 of Article 19, consequently, if there is any law in relation to incitement of an offence, the said legislation/law would act as 'restriction' to the 'freedom' under Article 19, for it will be a 'reasonable restriction' within the meaning of Article 19(2) Constitution of India.

38. Talking about Section 153A and Section 153B IPC, historically speaking the said two provisions were added in the year 1969 and in the year 1972 respectively, the object of these Sections being to prevent racial and sectarian quarrels entailing the disturbance of public peace.

39. Sections 153A and 153B of the Indian Penal Code, 1860 make any act which promotes enmity between the groups on grounds of religions and race etc. or which are prejudicial to national integration, punishable. The purpose of enactment of such a provision was to *"check fissiparous communal and separatist tendencies and secure fraternity so as to ensure the dignity of the individual and the unity of the nation"*. Undoubtedly, religious freedom may be accompanied by liberty of expression of religious opinions together with the liberty to reasonably criticise the religious beliefs of others, but as has been held by courts time and again, with powers come responsibility (reliance is placed on the observation of the Hon'ble Supreme Court in **Pravasi Bhalai Sangathan Vs. Union of India AIR 2014 SC 1591**).

40. In order to attract the offence under aforesaid provisions of the Indian Penal Code, the act of the accused must be made with an intention to promote enmity between two groups on the grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to the maintenance of harmony and it must instigate the feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities and it ought to be something which is likely to disturb public tranquility. Similarly for an offence u/s 153 B there must be imputation prejudicial to national integration; Section 504 IPC requires provoking breach of peace and Section 505 IPC encompasses statements made to promote enmity/hatred by way of rumours/news etc.

41. If the writing is calculated to promote feelings of enmity or hatred, it is no defence to a charge under section 153-A/153-B/504/505 of the Indian Penal Code, 1860 that the writing contains a truthful account of past events or is otherwise supported by good authority.

42. The words "promotes or attempts to promote feelings of enmity" are to be read as connoting a successful or unsuccessful attempt to promote feelings of enmity. It must be the purpose or part of the purpose of the accused to promote such feelings and, if it is not part of his purpose, the mere circumstance that there may be a tendency is not sufficient.

43. '*Malice*' or ill-will is not to be imputed without definite and solid reason. The words used and their true meaning are never more than evidence of intention and it is the real intention of the accused which is the real test.

44. Moving to Section 504 and 505 IPC, the said two provisions covers a situation where statement or insult has been conveyed to provoke breach of public peace or to cause mischief or to promote hatred/enmity.

45. The common feature of Section 153 A and 505 IPC being promotion of feeling of enmity, hatered or ill-will '*between different'* religious or racial groups or caste of communities. It has been held in plethora of judgments that there must necessarily be two groups or communities involved, for the application of these provisions. Merely inciting the feeling of one community or group or religion, without any reference to other community or group or religion would not attract either of the two sections. Reliance is placed on the observations of the Hon'ble Supreme Court in **Manzar Sayeed Khan Vs. State of Maharashtra AIR 2007 SC 2074 and Sajjan Kumar Vs. CBI (2010) 9 SCC 368**.

46. The main distinction between the two offences is that vide publication of words or representation is not necessary under Section 153-A IPC, such obligation is sine-qua non under section

505 IPC.

47. It may be kept in mind that u/s 504 IPC abusive language which may lead to breach of public peace is not an offence, there must be an intentional insult with the specific intention of causing breach of public peace; the words must amount to something more than a 'vulgar abuse'.

48. Hon'ble Kerala High Court in AIR 1960 Ker. 236 held that not every insult can be classed as 'intentional insult' within the meaning of Section 504 IPC, for a mere breach of 'good manners' does not constitute an offence under this section. If the insult is of such nature then it may give provocation which may rouse a man to act either to break the public peace or to commit any other offence only then it would be covered under the said law (**Mohd. S.Ali Vs. Thuleswar Borah, (1954) 6 Ass. 274**).

49. Coming to the matter at hand, it may once again be highlighted here that the original tweet of the accused is not on record, admittedly the same has already been deleted.

50. The court finds no merits in the arguments of the applicant that the aforementioned statement/the tweet of the accused amounts to an offence u/s 153 A/153 B IPC etc. The alleged statement was admittedly made in August 2022, despite lapse of more than three months, there is nothing on record to show any breach of public peace, violence etc.

51. The statement of the accused, even if it is assumed to be made in the manner and in terms as the applicant suggests (original tweet unavailable), though completely incorrect, politically, factually and socially, it cannot be called an offence under the aforesaid provisions of law, for the plain reading does not suggest a

calculation to promote a feeling of enmity or hatred between different religions/castes/groups or an imputation prejudicial to national integration or a call to raise arms against the sovereign state etc. It appears to be a statement made in haste with aim to get undue political mileage, sacrificing the factual correctness and the truth itself. The maker of the statement ought to be a person of misconceived knowledge, misconstrued facts and misplaced beliefs. Thus the statement by itself ought to be condemned in strictest words. Albeit, this court is not here to teach history or nationalism or to correct misplaced beliefs or facts. This court has been called upon to adjudicate, strictly in terms of the applicable law whether the aforesaid statement is bad in law and warrants criminal prosecution. Without getting into the questions of political and factual correctness of the statement, the question that arises here is that whether this statement, as alleged by the applicant, if taken to be true, amounts to an offence under the aforementioned provisions of IPC; the answer appears to be a clear no.

52. As has been discussed earlier, in order to attract the offence under section 153A/153 B IPC etc. of the Indian Penal Code, the act of the accused must be made with an intention to promote enmity between two groups on the grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to the maintenance of harmony and it must instigate the feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities and likely to disturb public tranquility or there ought to be breach of public peace.

53. It is a settled law that for application of Section 153 A, 505 IPC etc. there must be a clear allegation of promotion of feeling of enmity, hatred or ill-will '*between different'* religious or racial groups or caste of communities. As discussed above, in **Sajjan**

Kumar (Supra) and Manzar S. Khan (Supra) it has been held that there must necessarily be two groups or communities involved, for the application of these provisions. Merely inciting the feeling of one community or group or religion, without any reference to other community or group or religion would not attract either of the said sections.

54. At this juncture, it is pertinent to highlight para 8 of the complaint at hand, the same is quoted hereunder :

> "*That the said CPI (M) MLA KT Kaleel had deliberately and wantonly made this dangerous, venomous anti-national derogatory remarks & social media posting against the integrity & sovereignty of the country in order to promote and create anti national feelings among the Indians & innocent public living in all over the country including in the territory of Jammu& Kashmir. His remarks are creating law and order situation is in danger in the state. His remarks promoting enmity between two groups and religions. He creating enmity between Hindu Muslims peoples."*

55. In the aforesaid paragraph the applicant categorically highlights that the tweet in question is likely to create a law and order situation, it will promote enmity between Hindus and Muslims.

56. The submission of the applicant that the remark of the accused concerning Kashmir and/or the Pakistan occupied Kashmir is likely to create enmity between Hindus and Muslims, is far from being correct. It is absolutely incorrect and rather foolish to believe that either of the two communities does not consider Kashmir as an integral part of India. Both Hindus and Muslims and all citizens of all religions, idolize the idea of the Kashmir being an unalienable part of the territory of India and the idea of Pakistan Occupied Kashmir being called "Azad Kashmir" will equally anguish and disgust both the communities or rather every Indian of every community. This court places on record its anguish over both, the

statement of the accused and even the averments of the applicant in his complaint , which suggests that there can be a law and order situation and enmity between two religious communities namely Hindus and Muslims merely on a loose and incorrect statement of an irresponsible politician. The social set up, the secular thread and fraternity in democratic Indian back ground cannot be assumed to be that feeble that it would break or get bruised on random statements of selfish politicians and I can proudly say the same about national integration as well. It is once again taken on record that there is no breach of public peace etc. consequent to the alleged tweet and the tweet in question has already been deleted.

57. At this stage, I deem it appropriate to take on record the observation of the Hon'ble Supreme Court of India in **Khushboo Vs. Kanniammal and Ors. (2010) 5 SCC 600.** It was held by Hon'ble three Judge Bench, headed by the then Chief Justice **K.G. Balakrishnan** that it is not task of criminal law to punish individuals for expressing unpopular views. The contextually relevant portion is as under :

> *"It is not the task of the criminal law to punish individuals merely for expressing unpopular views. The threshold for placing reasonable restrictions on the "freedom of speech and expression" is indeed a very high one and there should be a presumption in favour of the accused in such cases. It is only when the complainants produce materials that support a prima facie case for a statutory offence that Magistrates can proceed to take cognizance of the same. We must be mindful that the initiation of a criminal trial is a process which carries an implicit degree of coercion and it should not be triggered by false and frivolous complaints, amounting to harassment and humiliation to the accused".*

58. It would be apt to refer to the following observations made by the Apex Court in **S.Rangarajan v. P. Jagjivan Ram** which spell out the appropriate approach for examining the scope of "reasonable restrictions" under Article 19(2) of the Constitution that can be placed on the freedom of speech and expression : (SCC

pp.595-96, para 45)

> "45…….Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a 'spark in a power keg'."

59. Even though the constitutional freedom of speech and expression is not absolute and can be subjected to reasonable restrictions, the Framers of our Constitution recognized the importance of safeguarding this right since the free flow of opinions and ideas is essential to sustain the collective life of the citizenry. While an informed citizenry is a precondition for meaningful governance in the political sense, albeit not every incorrect political statement, even those concerning geographical boundaries of the India, unleashes the wrath of criminal prosecution.

60. Further, the Delhi High Court through Hon'ble Justice Sh. Sanjay Kishan Kaul in **M.F. Hussain Vs. Raj Kumar Pandey** decided on 08.05.2008, observed that our Constitution by way of Article 19(1) which provides for freedom of thought and expression underpins a free and harmonious society. It helps to cultivate the virtue of tolerance. It is said that the freedom of speech is the matrix, the indispensable condition of nearly every other form of freedom.

61. In the matter at hand, the alleged statement "the people of Kashmir are not happy" etc. can be called the opinion of the author (though unsupported by any authority or survey etc. and is arguably incorrect) and is thus protected by the fundamental freedom of article 19.

62. Freedom of speech is the bulwark of democratic government. This freedom is essential for the proper functioning of the democratic process. The freedom of speech and expression is regarded as the first condition of liberty. It occupies a preferred position in the hierarchy of liberties giving succour and protection to all other liberties. It has been truly said that it is the mother of all other liberties.

63. In a democracy, freedom of speech and expression opens up channels of free discussion of issues. Freedom of speech plays a crucial role in the formation of public opinion on social, political and economic matters. Freedom of speech and expression, just as equality clause and the guarantee of life and liberty has been very broadly construed by the Supreme Court right from the 1950s. It has been variously described as a "basic human right", "a natural right" and the like. It embraces within its scope the freedom of propagation and interchange of ideas, dissemination of information which would help formation of one's opinion and view point and debates on matters of public concern.

64. In *Maneka Gandhi v Union of India,* BHAGWATI, J., has emphasized on the significance of the freedom of speech and expression in these words:

> "Democracy is based essentially on free debate and open discussion, for that is the only corrective of government action in a democratic set up. If democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his right of making a choice, free and general discussion of public matters is absolutely essential."

65. The court is mindful of the fact that the alleged statements of the accused are unpopular, outrages and are rather offensive views of the author however, it must be kept in mind that the freedom of speech protects actions that the society may find very offensive. The society's outrage alone is not justification for suppressing free speech.

66. Before calling Omega, I am tempted to mention the historic judgment of US Supreme Court in **Texas Vs. Johnson 491 US 397**. wherein on a controversial question of flag burning, the Hon'ble Supreme Court through majority verdict held that free speech ought to be protected, though it may be against the popular beliefs of the society or may even be offensive to some. The matter at hand is no different.

67. Thus, to sum up, in the light of the aforesaid discussion, it can be concluded that the aforesaid sections of IPC, as alleged by the applicant, are not made out, cognizance is thus declined. The application and the complaint are accordingly disposed of as dismissed.

Announced in open court
on 11.11.2022

(Harjeet Singh Jaspal)
ACMM-04/RADC/New Delhi