



CNR: KAHC010645422025

NC: 2026:KHC:47232
CRL.P No. 13695 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF AUGUST, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 13695 OF 2025

BETWEEN:

1. SRI. T. NARAYANASWAMY @
CHALAVADI NARAYANASWAMY
(LEADER OF OPPOSITION,
KARNATAKA LEGISLATIVE COUNCIL)
AGED ABOUT 66 YEARS,
S/O LATE THIMAYYA,
NO. 604, CHALAVADI NIVASA,
VAYUNANDANA LAYOUT,
YOGESHNAGARA, HEBBAL,
KEMPAPURA, BANGALORE NORTH - 560 024.

2. SRI T.S. SRIVATSA
(SITTING MEMBER OF LEGISLATIVE ASSEMBLY)
AGED ABOUT 59 YEARS,
S/O T.N. SRINIVASATHATHACHAR,
NO.311/2, RAMANUJA ROAD,
K.R. MOHALLA, MYSURU - 570 004.

...PETITIONERS

(BY SRI. M. ARUNA SHYAM, SR. ADVOCATE A/W
SRI. SUYOG HERELE E, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THROUGH VIDHANA SOUDHA P.S,





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REPRESENTED BY SPP,
HIGH COURT OF KARNATAKA BUILDING,
BENGALURU - 560 001.

2. SRI. SIDDANNA TEJI
S/O DUNDANNA TEJI
AGED ABOUT 50 YEARS
KANAKA NIVAS, MANJUNATHA NAGAR,
GOKULA ROAD, HUBBALLI DHARWAD CITY,
KARNATAKA - 580 001.

...RESPONDENTS

(BY SRI. ANOOP KUMAR, ADDL. SPP FOR R1;
R1 - SERVED)

THIS CRL.P IS FILED U/S 482 OF CR.PC (FILED U/S 528 BNNS) PRAYING TO QUASH THE FIR AND COMPLAINT IN CRIME NO0097/2025 REGISTERED WITH THE RESPONDENT POLICE FOR ALLEGED OFFENCES P/U/S 353(2) OF BNS 2023 ON THE FILE OF LEARNED XLII ADDL.CJM, BENGALURU CITY, PRODUCED AS DOCUMENT NO.1 AND 2.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: **HON'BLE MR. JUSTICE M.NAGAPRASANNA**

ORAL ORDER

The petitioners/accused Nos.1 and 2 are before the Court calling in question registration of a crime in Crime No. 97/2025 for offence punishable under Section 353(2) of the Bharatiya



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Nyaya Sanhita, 2023 ('the BNS' for short), pending before the XLII Additional Chief Judicial Magistrate, Bengaluru City.

2. Heard Sri. M. Aruna Shyam, learned Senior counsel along with Sri. Suyog Herele E., learned counsel appearing for the petitioners and Sri. Anoop Kumar, learned Additional State Public Prosecutor appearing for respondent No.1.

3. Facts in brief germane are as follows:

It is the case of the prosecution that the first petitioner in his office and the second petitioner in Mysore have made statements and posted them on social media opposing reservation to Kuruba community to be granted Scheduled Tribe status and reservation accordingly and in the course of opposing, the said reservation have made certain statements against the Chief Minister of Karnataka. Therefore, have humiliated the entire Kuruba community. Based upon this fact, a crime comes to be registered in Crime No.97/2025. Registration of the crime is what has driven the petitioners to this Court in the subject petition.



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4. Sri. Aruna Shyam, learned Senior counsel appearing for the petitioners would vehemently contend that the petitioners have not indulged in anything that could become the ingredients of the crime under Section 353(2) of the BNS, which is Section 153A of the earlier regime, the IPC. He would seek to place reliance upon plethora of judgments rendered by the Apex Court to buttress his submission.

5. *Per contra*, Sri. Anoop Kumar, learned Additional State Public Prosecutor appearing for respondent No.1 would vehemently refute the submissions in contending that the matter is still at the stage of investigation, *prima facie* the ingredients of Section 353(2) are entirely met in the case at hand. Therefore, would submit that it is a matter of investigation in the least. The proceedings must not be permitted to be terminated at this nascent stage.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.



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7. The afore-narrated facts are a matter of record. The entire issue gets triggered from registration of a complaint. The complaint reads as follows:

"ಇಂದ,
ಶ್ರೀ ಸಿದ್ದಣ್ಣ ತೇಜಿ ಬಿನ್ ದುಂಡಪ್ಪ ತೇಜಿ, 50 ವರ್ಷ
ಉದ್ಯೋಗ: ಶೇತ್ರಿ, ಹಿಂದೂ: ಕುರುಬ.
ಶ್ರೀ ಕನಕ ನಿವಾಸ. ಸಾ: ಮಂಜುನಾಥ ನಗರ
ಗೋಕುಲ ರೋಡ ಹುಬ್ಬಳ್ಳಿ ಜಿಲ್ಲಾ.
ಧಾರವಾಡ.
mob.[9845609897](tel:9845609897) [email:kambaliraviraj1111@gmail.com](mailto:kambaliraviraj1111@gmail.com)

ರವರಿಗೆ,
ಇನ್ನಪೆಕ್ಕರ ಸಾಹೇಬರು
ವಿಧಾನ ಸೌಧ ಪೋಲಿಸ್ ರಾಣಿ
ಬೆಂಗಳೂರು.

ವಿಷಯ : ಪಿರ್ಯಾಧಿ ನೀಡುವ ಕುರಿತು.

ಮಾನ್ಯರೇ,

ನಾನು ಮೇಲ್ಕಂಡ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ತಮ್ಮಲ್ಲಿ ದೂರು ಸಲ್ಲಿಸುವುದೆಂದರೆ, ನಮ್ಮ ಕುರುಬ ಸಮುದಾಯಕ್ಕೆ ಅವಹೇಳನ ಮತ್ತು ದೌರ್ಜನ್ಯ ಎನ್ನುವ ರೀತಿಯಲ್ಲಿ ದಿನಾಂಕ: 15.09.2025 ಮತ್ತು 16.09.2025 ರಂದು ಭಾರತೀಯ ಜನತಾಪಾರ್ಟಿಯ ಛಲವಾದಿ ನಾರಾಯಣ ಸ್ವಾಮಿ ರವರು ಬೆಂಗಳೂರಿನ ವಿಧಾನ ಸೌಧ ಕಛೇರಿಯಲ್ಲಿ ಹಾಗೂ ಮೈಸೂರು ನಗರ ಶಾಸಕ ಶ್ರೀವಾತ್ಸವ ಅವರು ಮೈಸೂರು ಹಾಗೂ ಬೆಂಗಳೂರಿನಲ್ಲಿ ತಮ್ಮ ಹೇಳಿಕೆಗಳಲ್ಲಿ ಮತ್ತು ಸಾಮಾಜಿಕ ಜಾಲತಾಣಗಳಲ್ಲಿ ಕುರುಬರ ST ಮೀಸಲಾತಿ ವಿಚಾರ ವಾಗಿ ಕರ್ನಾಟಕ ಸರ್ಕಾರ ಕುಲ ಶಾಸ್ತ್ರೀಯ ಅಧ್ಯಯನ ಮೂಲಕ ಕೇಂದ್ರ ಸರ್ಕಾರಕ್ಕೆ ಶಿಫಾರಸ್ಸು ಮಾಡಲು ಸಿದ್ಧತೆಯಲ್ಲಿರುವಾಗ BJP ಪಕ್ಷದ ಜನಪ್ರತಿನಿಧಿಗಳಾದ ಛಲವಾದಿ ನಾರಾಯಣ ಸ್ವಾಮಿ ಹಾಗೂ ಶ್ರೀವಾತ್ಸವ ಇವರು ಕುರುಬ ಸಮಾಜದ ST ಮೀಸಲಾತಿ ನೀಡಿಕೆಯ ವಿಚಾರ ದಲ್ಲಿ ವಿರೋಧಿ ಸುತ್ತಿದ್ದು ಅಲ್ಲದೇ ರಾಜ್ಯದ ಮುಖ್ಯಮಂತ್ರಿ ವಿರೋಧಿಸುವ ಬರದಲ್ಲಿ ಇಡಿ ರಾಜ್ಯದಲ್ಲಿ ಇರುವ ಕುರುಬ ಸಮಾಜಕ್ಕೆ ಅವಮಾನ ಹಾಗೂ ದೌರ್ಜನ್ಯ ಮಾಡಿರುತ್ತಾರೆ ಹಾಗೂ ಸಮಾಜಿಕ



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ಜಾಲತಾಣದಲ್ಲಿ ಮತ್ತು ಮಾಧ್ಯಮ ಮೂಲಕ ಪರಿಶಿಷ್ಟ ಪಂಗಡ ದವರು ಹಾಗೂ ವಾಲ್ಮೀಖಿ ಸಮಾಜದವರು ಕುರುಬ ಸಮಾಜದ ಮೇಲೆ ದಂಗೆ ಎಳೆಬೇಕು ಎಂದು ಪ್ರಚೋದನೆ ಮಾಡುವುದಲ್ಲದೇ ಕೋಮು ಗಲಭೆ ಯಾಗಬೇಕು ಎಂದು ಹೇಳಿಕೆ ನೀಡಿದ್ದಾರೆ ಇದಲ್ಲದೆ ಛಲವಾದಿ ನಾರಾಯಣ ಸ್ವಾಮಿ ಅವರು ಕುರುಬ ಸಮಾಜಕ್ಕೆ ST ಮೀಸಲಾತಿ ನೀಡಬಾರದು ಎಂದು ಹೇಳಿದ್ದಾರೆ ಕೇಂದ್ರ ಹಾಗೂ ರಾಜ್ಯ ಸರಕಾರ ಕುರುಬ ಸಮಾಜಕ್ಕೆ ST ಮೀಸಲಾತಿಯನ್ನು ನೀಡುವ ವಿಚಾರದಲ್ಲಿ ಇರುವಾಗ ಇವರ ಹೇಳಿಕೆ ಯಿಂದ ಕುರುಬ ಸಮಾಜಕ್ಕೆ ST ಮೀಸಲಾತಿ ತಪ್ಪುವ ಆತಂಕ ದಲ್ಲಿ ಇದ್ದು ರಾಜ್ಯದ ಕುರುಬ ಸಮಾಜದ ವಿದ್ಯಾರ್ಥಿಗಳಿಗೆ ಮಹಿಳೆಯರಿಗೆ ರೈತರಿಗೆ ಘಾಸಿಯಾಗಿದೆ ಇವರ ಹೇಳಿಕೆ ಯಿಂದ ಕುರುಬ ಸಮಾಜದವರ ಮೇಲೆ ಮಾನಸಿಕವಾಗಿ ಪರಿಣಾಮ ಬೀರಿದ್ದು ಸಮಾಜದವರು ಬೀದಿಗಿಳಿದು ಹೋರಾಟ ಮಾಡುವ ಹಂತದಲ್ಲಿ ಇದ್ದು ಕಾನೂನು ಸುವ್ಯವಸ್ಥೆ ಹದಗೆಡಲು ಒಂದು ಸಮಾಜ ದಿಂದ ಮತ್ತೊಂದು ಸಮಾಜವನ್ನು ಪುಚ್ಛೋದಿಸುವ ಮೂಲಕ ರಾಜ್ಯದಲ್ಲಿ ಶಾಂತಿ ಸುವ್ಯವಸ್ಥೆ ಕದಡಿಸಲು ಪ್ರಯತ್ನದಲ್ಲಿ ಇದ್ದಾರೆ ಇದೆ ರೀತಿ ಮುಂದುವರೆದರೆ ರಾಜ್ಯದಲ್ಲಿ ಅಶಾಂತಿ ಜೀವಹಾನಿ ಸಾರ್ವಜನಿಕ ಕಟ್ಟಡ ಆಸ್ತಿಪಾಸ್ತಿ ಹಾನಿಯಾಗಿ ಜನಜೀವನ ಅಸ್ತವ್ಯಸ್ತ ವಾಗುವ ಸಾಧ್ಯತೆ ಇದೆ ಮಾನ್ಯರು ನಮ್ಮ ದೂರು ದಾಖಲಿಸಿಕೊಂಡು ಇವರನ್ನು ಕೂಡಲೇ ಬಂಧಿಸಬೇಕು ಇವರ ಮೇಲೆ ಸೂಕ್ತ ಕಾನೂನು ಕ್ರಮವನ್ನು ಕೈಗೊಳ್ಳಬೇಕು ಎಂದು ಬರೆದು ಕೊಟ್ಟ ಪಿರ್ಯಾದಿ."

A perusal at the complaint would indicate that the petitioners did protest against the reservation / Scheduled Tribe - Kuruba reservation. Talks that were going on at that point in time, this by itself would not make an offence under Section 353(2) of the BNS / Section 505 of the IPC.

8. What should be the ingredients of the afore-quoted offences need not detain this Court for long as the Apex Court in the case of **IMRAN PRATAPGADHI v. STATE OF**



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GUJARAT¹, following its earlier judgment in the case of **JAVED AHMAD HAJAM v. STATE OF MAHARASHTRA²**, interprets Sections 353 of the BNS, and holds as follows:

"

Ingredient of mens rea

43. In *Manzar Sayeed Khan* [Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1 : (2007) 2 SCC (Cri) 417] and *Patricia Mukhim v. State of Meghalaya* [Patricia Mukhim v. State of Meghalaya, (2021) 15 SCC 35] , the ingredient of mens rea has been read into Section 153-AIPC by this Court. Paras 8 to 14 of the decision in *Javed Ahmad Hajam* [Javed Ahmad Hajam v. State of Maharashtra, (2024) 4 SCC 156 : (2024) 2 SCC (Cri) 383], which analyses both the above decisions, read thus: (*Javed Ahmad Hajam case* [Javed Ahmad Hajam v. State of Maharashtra, (2024) 4 SCC 156 : (2024) 2 SCC (Cri) 383], SCC pp. 161-64)

"8. This Court in *Manzar Sayeed Khan* [Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1: (2007) 2 SCC (Cri) 417] referred to the view taken by Vivian Bose, J., as a Judge of the erstwhile Nagpur High Court in *Bhagwati Charan Shukla v. Provincial Govt., C.P. & Berar* [Bhagwati Charan Shukla v. Provincial Govt., C.P. & Berar, 1946 SCC OnLine MP 5] . A Division Bench of the High Court dealt with the offence of sedition under Section 124-AIPC and Section 4(1) of the Press (Emergency Powers) Act, 1931. The issue was whether a particular article in the press tends, directly or indirectly, to bring hatred or contempt to the Government established in law. This Court has approved this view

¹ (2026) 1 SCC 721

² (2024) 4 SCC 156



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in its decision in *Ramesh v. Union of India* [Ramesh v. Union of India, (1988) 1 SCC 668 : 1988 SCC (Cri) 266] . In the said case, this Court dealt with the issue of applicability of Section 153-AIPC. In para 13, it was held thus: (Ramesh case [Ramesh v. Union of India, (1988) 1 SCC 668 : 1988 SCC (Cri) 266] , SCC p. 676)

'13. ... the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. ... It is the standard of ordinary reasonable man or as they say in English law "the man on the top of a Clapham omnibus".'

Therefore, the yardstick laid down by Vivian Bose, J., will have to be applied while judging the effect of the words, spoken or written, in the context of Section 153-AIPC.

9. We may also make a useful reference to a decision of this Court in *Patricia Mukhim v. State of Meghalaya* [Patricia Mukhim v. State of Meghalaya, (2021) 15 SCC 35] . Paras 8 to 10 of the said decision read thus: (SCC pp. 41-43)

'8. "It is of utmost importance to keep all speech free in order for the truth to emerge and have a civil society."— Thomas Jefferson. Freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution is a very valuable fundamental right. However, the right is not absolute. Reasonable restrictions can be placed on the right of free speech and expression in the interest of sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence. Speech



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crime is punishable under Section 153-AIPC. Promotion of enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony is punishable with imprisonment which may extend to three years or with fine or with both under Section 153-A. As we are called upon to decide whether a prima facie case is made out against the appellant for committing offences under Sections 153-A and 505(1)(c), it is relevant to reproduce the provisions which are as follows:

* * *

9. Only where the written or spoken words have the tendency of creating public disorder or disturbance of law and order or affecting public tranquillity, the law needs to step in to prevent such an activity. *The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153-AIPC and the prosecution has to prove the existence of mens rea in order to succeed.* [Balwant Singh v. State of Punjab, (1995) 3 SCC 214 : 1995 SCC (Cri) 432]

10. *The gist of the offence under Section 153-AIPC is the intention to promote feelings of enmity or hatred between different classes of people.* The intention has to be judged primarily by the language of the piece of writing and the circumstances in which it was written and published. The matter complained of within the ambit of Section 153-A 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 [Manzar



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**Sayeed Khan v. State of
Maharashtra, (2007) 5 SCC 1 :
(2007) 2 SCC (Cri) 417].”**

10. Now, coming back to Section 153-A, clause (a) of sub-section (1) of Section 153-AIPC is attracted when by words, either spoken or written or by signs or by visible representations or otherwise, an attempt is made to promote disharmony or feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities. The promotion of disharmony, enmity, hatred or ill will must be on the grounds of religion, race, place of birth, residence, language, caste, community or any other analogous grounds. Clause (b) of sub-section (1) of Section 153-AIPC will apply only when an act is committed 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.

11. Now, coming to the words used by the appellant on his WhatsApp status, we may note here that the first statement is that August 5 is a Black Day for Jammu and Kashmir. 5-8-2019 is the day on which Article 370 of the Constitution of India was abrogated, and two separate Union Territories of Jammu and Kashmir were formed. Further, the appellant has posted that “Article 370 was abrogated, we are not happy”. On a plain reading, the appellant intended to criticise the action of the abrogation of Article 370 of the Constitution of India. He has expressed unhappiness over the said act of abrogation. The aforesaid words do not refer to any religion, race, place of birth, residence, language, caste or community. It is a simple protest by the appellant against the decision to abrogate Article 370 of the Constitution of India and the further steps taken based on that decision. The Constitution of India, under Article 19(1)(a), guarantees freedom of speech and expression. Under the said guarantee, every citizen has the right to offer criticism of



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the action of abrogation of Article 370 or, for that matter, every decision of the State. He has the right to say he is unhappy with any decision of the State.

12. *In Manzar Sayeed Khan [Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1 : (2007) 2 SCC (Cri) 417], this Court has read "intention" as an essential ingredient of the said offence. The alleged objectionable words or expressions used by the appellant, on its plain reading, cannot promote disharmony or feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities. The WhatsApp status of the appellant has a photograph of two barbed wires, below which it is mentioned that "AUGUST 5 — BLACK DAY — JAMMU & KASHMIR". This is an expression of his individual view and his reaction to the abrogation of Article 370 of the Constitution of India. It does not reflect any intention to do something which is prohibited under Section 153-A. At best, it is a protest, which is a part of his freedom of speech and expression guaranteed by Article 19(1)(a).*

13. Every citizen of India has a right to be critical of the action of abrogation of Article 370 and the change of status of Jammu and Kashmir. Describing the day the abrogation happened as a "Black Day" is an expression of protest and anguish. If every criticism or protest of the actions of the State is to be held as an offence under Section 153-A, democracy, which is an essential feature of the Constitution of India, will not survive.

14. The right to dissent in a legitimate and lawful manner is an integral part of the rights guaranteed under Article 19(1)(a). Every individual must respect the right of others to dissent. An opportunity to peacefully protest against the decisions of the



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Government is an essential part of democracy. The right to dissent in a lawful manner must be treated as a part of the right to lead a dignified and meaningful life guaranteed by Article 21. But the protest or dissent must be within four corners of the modes permissible in a democratic set up. It is subject to reasonable restrictions imposed in accordance with clause (2) of Article 19. In the present case, the appellant has not at all crossed the line."

(emphasis in original and supplied)

44. Hence, mens rea will have to be read into Section 196 BNS. In this case, looking to the text of the words spoken and the context in which those were spoken, it is impossible to attribute any mens rea to the appellant.

....

53. Following is the summary of our conclusions:

53.1. Sub-section (3) of Section 173 BNSS makes a significant departure from Section 154CrPC. It provides that when information relating to the commission of a cognizable offence which is made punishable for 3 years or more but less than 7 years is received by an officer in charge of a police station, with the prior permission of a superior officer as mentioned therein, the police officer is empowered to conduct a preliminary inquiry to ascertain whether there exists a *prima facie* case for proceeding in the matter. However, under Section 154CrPC, as held in *Lalita Kumari* [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524], only a limited preliminary inquiry is permissible to ascertain whether the information received discloses a cognizable offence. Moreover, a preliminary inquiry can be made under CrPC only if the information does not disclose the commission of a cognizable offence but indicates the necessity for an inquiry. Sub-section (3) of Section 173 BNSS is an exception to sub-section (1) of Section 173. In the category of cases covered by sub-section (3), a police officer is empowered to make a preliminary inquiry to ascertain whether a *prima facie* case is made out for



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proceeding in the matter even if the information received discloses commission of any cognizable offence.

53.2. Under sub-section (3) of Section 173 BNSS, after holding a preliminary inquiry, if the officer comes to a conclusion that a *prima facie* case exists to proceed, he should immediately register an FIR and proceed to investigate. But, if he is of the view that a *prima facie* case is not made out to proceed, he should immediately inform the first informant-complainant so that he can avail a remedy under sub-section (4) of Section 173.

53.3. In case of the offence punishable under Section 196 BNS to decide whether the words, either spoken or written or by sign or by visible representations or through electronic communication or otherwise, lead to the consequences provided in the section, the police officer to whom information is furnished will have to read or hear the words written or spoken, and by taking the same as correct, decide whether an offence under Section 196 is made out. Reading of written words, or hearing spoken words will be necessary to determine whether the contents make out a case of the commission of a cognizable offence. The same is the case with offences punishable under Sections 197, 299 and 302 BNS. Therefore, to ascertain whether the information received by an officer in charge of the police station makes out a cognizable offence, the officer must consider the meaning of the spoken or written words. This act on the part of the police officer will not amount to making a preliminary inquiry which is not permissible under sub-section (1) of Section 173.

53.4. The police officers must abide by the Constitution and respect its ideals. The philosophy of the Constitution and its ideals can be found in the Preamble itself. The Preamble lays down that the people of India have solemnly resolved to constitute India into a sovereign, socialist, secular, democratic republic and to secure all its citizens liberty of thought, expression, belief, faith and worship. Therefore, liberty of thought and expression is one of the ideals of our Constitution. Article



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19(1)(a) confers a fundamental right on all citizens to freedom of speech and expression. The police machinery is a part of the State within the meaning of Article 12 of the Constitution. Moreover, the police officers being citizens, are bound to abide by the Constitution. They are bound to honour and uphold freedom of speech and expression conferred on all citizens.

53.5. Clause (2) of Article 19 of the Constitution carves out an exception to the fundamental right guaranteed under sub-clause (a) of clause (1) of Article 19. If there is a law covered by clause (2), its operation remains unaffected by sub-clause (a) of clause (1). We must remember that laws covered by clause (2) are protected by way of an exception provided they impose a reasonable restriction. Therefore, when an allegation is of the commission of an offence covered by the law referred to in clause (2) of Article 19, if sub-section (3) of Section 173 is applicable, it is always appropriate to conduct a preliminary inquiry to ascertain whether a *prima facie* case is made out to proceed against the accused. This will ensure that the fundamental rights guaranteed under sub-clause (a) of clause (1) of Article 19 remain protected. Therefore, in such cases, the higher police officer referred to in sub-section (3) of Section 173 must normally grant permission to the police officer to conduct a preliminary inquiry.

53.6. When an offence punishable under Section 196 BNS is alleged, the effect of the spoken or written words will have to be considered based on standards of reasonable, strong-minded, firm and courageous individuals and not based on the standards of people with weak and oscillating minds. The effect of the spoken or written words cannot be judged on the basis of the standards of people who always have a sense of insecurity or of those who always perceive criticism as a threat to their power or position.

53.7. There is no absolute rule that when the investigation is at a nascent stage, the High Court cannot exercise its jurisdiction to quash an offence by exercising its jurisdiction under Article 226 of the Constitution of India or under Section 482CrPC



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equivalent to Section 528 BNSS. When the High Court, in the given case, finds that no offence was made out on the face of it, to prevent abuse of the process of law, it can always interfere even though the investigation is at the nascent stage. It all depends on the facts and circumstances of each case as well as the nature of the offence. There is no such blanket rule putting an embargo on the powers of the High Court to quash FIR only on the ground that the investigation was at a nascent stage.

53.8. Free expression of thoughts and views by individuals or group of individuals is an integral part of a healthy civilised society. Without freedom of expression of thoughts and views, it is impossible to lead a dignified life guaranteed by Article 21 of the Constitution. In a healthy democracy, the views, opinions or thoughts expressed by an individual or group of individuals must be countered by expressing another point of view. Even if a large number of persons dislike the views expressed by another, the right of the person to express the views must be respected and protected. Literature including poetry, dramas, films, stage shows including stand-up comedy, satire and art, make the lives of human beings more meaningful. The Courts are duty-bound to uphold and enforce fundamental rights guaranteed under the Constitution of India. Sometimes, we, the Judges, may not like spoken or written words. But, still, it is our duty to uphold the fundamental right under Article 19(1)(a). We Judges are under an obligation to uphold the Constitution and respect its ideals. If the police or executive fail to honour and protect the fundamental rights guaranteed under Article 19(1)(a) of the Constitution, it is the duty of the Courts to step in and protect the fundamental rights. There is no other institution which can uphold the fundamental rights of the citizens.

53.9. 75 years into our republic, we cannot be seen to be so shaky on our fundamentals that mere recital of a poem or for that matter, any form of art or entertainment, such as, stand-up comedy, can be alleged to lead to animosity or hatred amongst different communities. Subscribing to such a view would stifle all legitimate



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expressions of view in the public domain which is so fundamental to a free society.

(Emphasis supplied)

9. A little earlier to the afore-quoted judgments, the Apex Court in the case of **PATRICIA MUKHIM v. STATE OF MEGHALAYA**³ interprets Section 505 of the IPC and holds as follows:

" "

11. In *Bilal Ahmed Kaloo v. State of A.P.* [*Bilal Ahmed Kaloo v. State of A.P.*, (1997) 7 SCC 431 : 1997 SCC (Cri) 1094] , this Court analysed the ingredients of Sections 153-A and 505(2)IPC. It was held that Section 153-A covers a case where a person by "words, either spoken or written, or by signs or by visible representations", promotes or attempts to promote feeling of enmity, hatred or ill will. Under Section 505(2) promotion of such feeling should have been done by making a publication or circulating any statement or report containing rumour or alarming news. Mens rea was held to be a necessary ingredient for the offence under Sections 153-A and 505(2). The common factor of both the sections being promotion of feelings of enmity, hatred or ill will between different religious or racial or linguistics or religious groups or castes or communities, it is necessary that at least two such groups or communities should be involved. **It was further held in Bilal Ahmed Kaloo [Bilal Ahmed Kaloo v. State of A.P., (1997) 7 SCC 431 : 1997 SCC (Cri) 1094] that merely inciting the feelings of one community or group without any reference to any other community or group cannot attract any of the two sections. The Court went on to highlight the distinction between the two offences, holding that publication of words or representation is sine qua non under Section 505. It**

³ (2021) 15 SCC 35



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is also relevant to refer to the judgment of this Court in Ramesh v. Union of India [Ramesh v. Union of India, (1988) 1 SCC 668 : 1988 SCC (Cri) 266] in which it was held that words used in the alleged criminal speech should be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. The standard of an ordinary reasonable man or as they say in English law "the man on the top of a Clapham omnibus" should be applied.

12. This Court in *Pravasi Bhalai Sangathan v. Union of India* [*Pravasi Bhalai Sangathan v. Union of India*, (2014) 11 SCC 477 : (2014) 3 SCC (Cri) 400] had referred to the Canadian Supreme Court decision in *Saskatchewan (Human Rights Commission) v. William Whatcott* [*Saskatchewan (Human Rights Commission) v. William Whatcott*, 2013 SCC OnLine Can SC 6 : (2013) 1 SCR 467] . In that judgment, the Canadian Supreme Court set out what it considered to be a workable approach in interpreting "hatred" as is used in legislative provisions prohibiting hate speech. The first test was for the Courts to apply the hate speech prohibition objectively and in so doing, ask whether a reasonable person, aware of the context and circumstances, would view the expression as exposing the protected group to hatred. The second test was to restrict interpretation of the legislative term "hatred" to those extreme manifestations of the emotion described by the words "detestation" and "vilification". This would filter out and protect speech which might be repugnant and offensive, but does not incite the level of abhorrence, delegitimation and rejection that risks causing discrimination or injury. The third test was for the Courts to focus their analysis on the effect of the expression at issue, namely, whether it is likely to expose the targeted person or group to hatred by others. Mere repugnancy of the ideas expressed is insufficient to constitute the crime attracting penalty.

13. In the instant case, applying the principles laid down by this Court as mentioned above, the question that arises for our consideration is whether the Facebook post dated 4-7-2020 was intentionally made for promoting



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class/community hatred and has the tendency to provoke enmity between two communities. A close scrutiny of the Facebook post would indicate that the agony of the appellant was directed against the apathy shown by the Chief Minister of Meghalaya, the Director General of Police and the DorbarShnong of the area in not taking any action against the culprits who attacked the non-tribals youngsters. The appellant referred to the attacks on non-tribals in 1979. At the most, the Facebook post can be understood to highlight the discrimination against non-tribals in the State of Meghalaya. However, the appellant made it clear that criminal elements have no community and immediate action has to be taken against persons who had indulged in the brutal attack on non-tribal youngsters playing basketball. The Facebook post read in its entirety pleads for equality of non-tribals in the State of Meghalaya. In our understanding, there was no intention on the part of the appellant to promote class/community hatred. **As there is no attempt made by the appellant to incite people belonging to a community to indulge in any violence, the basic ingredients of the offence under Sections 153-A and 505(1)(c) have not been made out. Where allegations made in the FIR or the complaint, even if they are taken on their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, the FIR is liable to be quashed [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426].**

(Emphasis supplied)

The Apex Court holds that the basic ingredient of the offence under Sections 353 of the BNS or Sections 505 of the IPC is an attempt to incite people belonging to a community to indulge in any violence being made out. This ingredient has also not been met in the present case.



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10. For the aforesaid reasons, the following:

ORDER

- (i) The criminal petition is ***allowed***.
- (ii) The investigation in Crime No.97/2025 pending on the file of XLII Additional Chief Judicial Magistrate, Bengaluru City stands quashed.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

JY
List No.: 1 Sl No.: 21