R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF SEPTEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO. 5694 OF 2024

BETWEEN:

1 . SRI SURESHA
AGED ABOUT 35 YEARS
S/O VISHWANATHA POOJARY
RESIDING AT HOUSE NO.3/39
MAJISITE MANE, POST: BOLIYAR
MANGALURU, D.K. DISTRICT – 574 153.

2 . SRI VINAYA KUMAR M.,
S/O SHANKARA NAYAK,
AGED ABOUT 38 YEARS,
RESIDING AT NO. 3-101,
MAGANDADI HOUSE,
BOLIYAR, MANGALURU,
D.K. DISTRICT – 574 153.

3 . SRI SUBHAS,
S/O GOPALA PUJARI,
AGED ABOUT 41 YEARS,
RESIDING AT 2-63/1,
BORUGADDE HOUSE,
MANGALURU TALUK,
BOLIYAR, MANGALURU,
D.K. DISTRICT – 574 153.

4 . SRI RANJAN @ RANJITH
S/O RAMAPPA POOJARY,
AGED ABOUT 36 YEARS,
RESIDING AT NO. 1-102,
ODANA KATTE, BOLIYAR,
MANGALURU,
D.K. DISTRICT – 574 153.

5 . SRI DHANANJAYA,
S/O BABU POOJARY,
AGED ABOUT 39 YEARS,
RESIDING AT NO. 1-14-3(1),
KUMMOTU, BOLIYAR,
MANGALURU,
D.K. DISTRICT – 574 153.

... PETITIONERS

(BY SRI M.ARUNA SHYAM, SR.ADVOCATE FOR
SRI SUYOG HERELE E., ADVOCATE)

AND:

1 . THE STATE OF KARNATAKA
THROUGH KONAJE P.S.,
MANGALURU CITY,
REPRESENTED BY SPP
HIGH COURT BUILDING,
BENGALURU – 560 001.

2 . SRI P.K. ABDULLA,
S/O ABDUL KHADAR P.K.,
AGED ABOUT 44 YEARS,
PRESIDENT, MUHYUDDEEN JUMA MASJID,
BOLIYAR, UJJALA VILLAGE,
MANGALURU TALUK,
D.K. DISTRICT – 574 153.

... RESPONDENTS

(BY SRI B.N.JAGADEESH, ADDL.SPP FOR R-1
R-2 SERVED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C.,(528 OF BNSS) PRAYING TO QUASH THE FIR AND COMPLAINT IN CR.NO.81/2024 REGISTERED BY RESPONDENT NO.1 KONAJE P.S. SOUTH SUB DIVISION, MANGALORE CITY (ON THE FILE OF THE LEARNED 7TH J.M.F.C COURT,

MANGALORE CITY, D.K DISTRICT) FOR THE ALLEGED OFFENCES P/U/S 143, 147, 148, 153A, 504, 506, 149 OF IPC.

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

CORAM: HON'BLE MR JUSTICE M.NAGAPRASANNA

ORAL ORDER

The petitioners are before this Court calling in question registration of a crime in Crime No.81 of 2024 of Konaje Police Station for offences punishable under Sections 143, 147, 148, 153A, 504, 506 and 149 of the IPC.

2. Heard Sri M. Aruna Shyam, learned senior counsel appearing for the petitioners and Sri B.N. Jagadeesh, learned Additional Special Public Prosecutor appearing for respondent No.1.

3. The facts, in brief, adumbrated are as follows:-

On 09-06-2024 between 8.45 p.m. and 9.15 p.m. one Harish, Nanda Kumar, Subhash and Kishan Kumar were

returning back after finishing the celebrations of victory and taking of oath by the Prime Minister. When they reached Samadan Bar of Boliyar Grama, Ullal Taluk, it is the case of the petitioners, that they were attacked by 25 persons alleging how they raised slogans of Bharath Matha Ki Jai and one of them is said to have stabbed into stomach of Harish and back of Nanda Kumar. Based on the said incident, on the very night Kishan Kumar lodged a complaint at 11.00 p.m. against 23 persons. This becomes a crime in Crime No.80 of 2024 for offences punishable under Sections 341, 143, 147, 148, 504, 506, 323, 324, 307 and 149 of the IPC. It is after registration of the crime, the next day a complaint comes to be registered not by the accused but by one P.K. Abdulla alleging that the petitioners came near Mohiuddin Jumma Masjid in Boliyar and threatened him and others with dire consequences and asked them to leave the country. On the said allegation, the Police register a crime in Crime No.81 of 2024 for offences punishable under Sections 143, 147, 148, 153A, 504, 506 and 149 of the IPC. After registration of the crime, the petitioners are before this Court calling in question the said registration of crime.

4. The learned senior counsel Sri M.Aruna Shyam appearing for the petitioners would vehemently contend that the petitioners were shouting slogans of Bharath Matha Ki Jai and also taking the name of the Prime Minister after the oath taking ceremony of the Prime Minister was over. This was not tolerated by several persons who launched an attack upon these petitioners and stabbed them even for the reason that the petitioners were shouting slogans of Bharath Matha Ki Jai. This immediately becomes a crime, but as a counterblast the next day some person, who was not even involved in the incident, lodges a complaint alleging that the petitioners have threatened them to leave the country and go. He would submit that, if investigation in such cases is permitted, it would be permitting investigation into shouting of slogan of Bharath Matha Ki Jai, which the learned senior counsel submits, is by no stretch of imagination can generate communal hatred.

5. Per contra, the learned Additional State Public Prosecutor Sri B.N. Jagadeesh would vehemently refute the submissions to contend that this is a classic case where Section 153A of the IPC would get completely attracted. No doubt, the

petitioners were assaulted, but that is a separate crime which is being investigated into. However, the act of these petitioners in threatening the complainant or others would clearly attract Section 153A of the IPC for the allegations that are made. He would, therefore, contend that it is a matter of investigation in the least. He seeks dismissal of the petition.

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

7. The afore-narrated facts lie in a narrow compass. On the evening of 09-06-2024, after the Prime Minister takes oath between 9.15 p.m. and 10.35 p.m. the petitioners were celebrating the victory and oath taking ceremony and were raising slogans in praise of Hon'ble Prime Minister Sri Narendra Modi and also raising louder slogans of Bharath Matha Ki Jai. It appears that at that point in time about 25 persons attacked the petitioners for the reason that they were raising slogans of 'Bharath Matha Ki Jai' and they were even stabbed and beaten ruthlessly. On the very night the petitioners register a

complaint before the Konaje Police Station for the afore-quoted offences. The complaint so registered by the petitioners reads as follows:

"ರಿಂದ,

ಕಿಶನ್ ಕುಮಾರ್ (Age – 30)
ತಂದೆ: ಕೋಪಿಯಪ್ಪ ಪೂಜಾರಿ
ವಾಸ: ಧರ್ಮ ಕಲ್ಕಾರ್ ಮನೆ
ಬೋಳಿಯಾರು ಗ್ರಾಮ
ಉಳ್ಳಾಲ ತಾಲೂಕು ದ.ಕ PH: 9591414902

ರಿಗೆ

ಠಾಣಾಧಿಕಾರಿ
ಕೊಣಾಜೆ ಪೋಲಿಸ್ ಠಾಣೆ
ಕೊಣಾಜೆ.

ಮಾನ್ಯರೇ,

ನಾನು ಈ ಮೇಲಿನ ವಿಳಾಸದಲ್ಲಿ ವಾಸವಾಗಿದ್ದು ನಾನು ಕೋಳಿ ಪಾರಂನಲ್ಲಿ ಕೆಲಸ ಮಾಡಿರುತ್ತೇನೆ. ಈ ದಿನ ದಿನಾಂಕ: 09.06.2024ನೇ ಆದಿತ್ಯವಾರ ಸಂಜೆ ಪ್ರಧಾನಮಂತ್ರಿ ಯವರ ಪ್ರಮಾಣ ವಚನದ ಪ್ರಯುಕ್ತ ವಿಜಯೋತ್ಸವವನ್ನು ಬೋಳಿಯಾರು ಗ್ರಾಮ ಸಮಿತಿಯ ವತಿಯಿಂದ ಆಯೋಜಿಸಿದ್ದು ಸಂಜೆ 7.00 ಗಂಟೆಗೆ ಬೋಳಿಯಾರು ಜಂಕ್ಷನ್‌ನಲ್ಲಿ ಭಾರತೀಯ ಜನತಾ ಪಕ್ಷದ 40 ರಿಂದ 50 ಮಂದಿ ಕಾರ್ಯಕರ್ತರು ಸೇರಿ ವಿಜಯೋತ್ಸವವನ್ನು ಆಚರಿಸಿ ಭಾರತ ಮಾತೆಗೆ ಹಾಗೂ ಪ್ರಧಾನಮಂತ್ರಿಯವರಿಗೆ ಜೈಕಾರ ಹಾಕಿ ಸಂಭ್ರಮಿಸಿ ತೆರಳುವ ಸಂಧರ್ಭದಲ್ಲಿ ನನ್ನ ತಮ್ಮನಾದ ನಂದಕುಮಾರ್, ನನ್ನ ಮಾವನಾದ ಹರೀಶ್ ಹಾಗೂ ಸ್ನೇಹಿತರಾದ ಉದಯ್ ಹಾಗೂ ಸುಭಾಷ್ ಜೊತೆ ಸೇರಿ ಬೋಳಿಯಾರ್ ಜಂಕ್ಷನ್ ಬಳಿ ಇದ್ದಾಗ ಹಿಂದಿನಿಂದ ಬೆನ್ನಟ್ಟಿ ಬಂದ ಪಿಂಡಿ ಬಸೀರ್, ಸಿದ್ದೀಕ್, ಮೋನು, ಅಬೂಬಕ್ಕರ್ ಯಾನೆ ಅಬ್ಬು, ಮತ್ತು ಸರಿಸುಮಾರು 20 ಮಂದಿಯ ತಂಡ ನಮ್ಮನ್ನು ತಡೆದು ನಿಲ್ಲಿಸಿ ಬ್ಯಾವರ್ಸಿ, ಬೋಳಿ ಮಕ್ಕಳೇ ನೀವುಗಳು ನರೇಂದ್ರ ಮೋದಿಯವರಿಗೆ ಜೈಕಾರ ಹಾಕುತ್ತೀರಾ, ನಿಮ್ಮನ್ನು ಜೀವ ಸಮೇತ ಬಿಡುವುದಿಲ್ಲ ಎಂಬುದಾಗಿ ಹೇಳಿ ಕೊಲೆ ಮಾಡುವ ಉದ್ದೇಶದಿಂದ ತಾವು ತಂದಿದ್ದ ಚಾಕುವಿನಿಂದ ನನ್ನ ಮಾವನಾದ ಹರೀಶ್‌ರವರ ಹೊಟ್ಟೆ ಭಾಗಕ್ಕೆ ತಿವಿದು ನೆಲಕ್ಕೆ ದೂಡಿ ಎದೆಗೆ ತುಳಿದಿರುತ್ತಾರೆ. ಅಲ್ಲದೇ, ನನ್ನ ತಮ್ಮನಾದ ನಂದ ಕುಮಾರ್‌ರವರು ತಡೆಯಲು ಬಂದಾಗ ಬೋಳಿ ಮಗನೇ, ನಿನ್ನನ್ನು ಸಾಯಿಸುತ್ತೇವೆ ಎಂದು ಹೇಳಿ ಚೂರಿಯಿಂದ ಬೆನ್ನಿಗೆ ತಿವಿದಿರುತ್ತಾರೆ ಹಾಗೂ ನನ್ನನ್ನು ಸೇರಿಸಿ ಒಟ್ಟಿಗೆ ಇದ್ದ ಸುಭಾಷ್ ಹಾಗೂ ಹರೀಶ್‌ರವರಿಗೂ ಒಡೆದಿರುತ್ತಾರೆ. ಈ ಸಂದರ್ಭದಲ್ಲಿ ನಮ್ಮ ಜೊತೆಗಿದ್ದ ಉಳಿದ ಕಾರ್ಯಕರ್ತರೂ ಜಮಾಯಿಸಿದಾಗ ನಿಮ್ಮನ್ನು ಕೊಲ್ಲದೇ ಬಿಡುವುದಿಲ್ಲ ಎಂಬುದಾಗಿ ಬೆದರಿಕೆ ಹಾಕಿ ತಮ್ಮ ವಾಹನದಲ್ಲಿ ಪರಾರಿಯಾಗಿರುತ್ತಾರೆ. ನಂತರ ನಾನು ಹಾಗೂ

ಗಾಯಗೊಂಡ ನನ್ನ ಮಾವ ಮತ್ತು ತಮ್ಮನನ್ನು ನಮ್ಮ ಕಾರ್ಯಕರ್ತರ ಸಹಾಯದಿಂದ ದೇರಳಕಟ್ಟೆ ಕೆ.ಎಸ್ ಹೆಗ್ಡೆ ಆಸ್ಪತ್ರೆಗೆ ದಾಖಲಿಸಿರುತ್ತೇನೆ.

ಈ ಘಟನೆಯ ರಾತ್ರಿ ಸುಮಾರು 9–15 ಗಂಟೆಗೆ ಸಮಾಧಾನ್ ಬಾರ್ ಬೋಳಿಯಾರು ಎದುರುಗಡೆ ಆಗಿರುತ್ತದೆ.

ನಮ್ಮನ್ನು ಕೊಲೆ ಮಾಡಲು ಯತ್ನಿಸಿದವರ ಹಾಗೂ ಅವರೊಂದಿಗೆ ಕೈಜೋಡಿಸಿದ ಇತರರ ಮೇಲೆಯೂ ಕೂಡ ಸೂಕ್ತ ಕಾನೂನು ಕ್ರಮ ಜರಗಿಸಿ ನ್ಯಾಯ ದೊರಕಿಸಿಕೊಡಬೇಕಾಗಿ ವಿನಂತಿ.

ನಾನು ಈ ಘಟನೆಯಿಂದ ಗಾಬರಿಗೊಂಡು ಮಿತ್ರರಾದ ವಿಜೇತರವರಲ್ಲಿ ಹೇಳಿಕೆಯನ್ನು ಬರೆಸಿರುತ್ತೇನೆ.

ಸ್ಥಳ: ದೇರಳಕಟ್ಟೆ *ತಮ್ಮ ವಿಶ್ವಾಸಿ*

ದಿನಾಂಕ:09/06/2024 *ಸಹಿ/–*

ಇದು ನನ್ನ ಬರಹ
ಸಹಿ/–

ಈ ದಿನ ದಿನಾಂಕ: 09/06/2024 ರಂದು 23:00 ಗಂಟೆಗೆ K.S.ಹೆಗ್ಡೆ ಆಸ್ಪತ್ರೆಯಲ್ಲಿ ಗಾಯಾಳುಗಳು ಆರೈಕೆಯಲ್ಲಿದ್ದ ಪಿರ್ಯಾದುದಾರರು ನೀಡಿದ ದೂರನ್ನು ಪಡೆದು 00:15 ಗಂಟೆಗೆ ಠಾಣಾ ಅ.ಕ್ರ 80/2024 ಕಲಂ 341, 143, 147, 148, 504, 323, 324, 307 R/w 149 IPC ರಂತೆ ಪ್ರಕರಣ ದಾಖಲಿಸಿದೆನು.

ಸಹಿ/–
Sub-Inspector of Police
KONAJE POLICE STATION."

The allegation was clear that they had been stabbed. The narration was in minute details of the incident that happened between 7.00 p.m. and 10.15 p.m. The crime is registered at 11.00 p.m. on 09-06-2024. The petitioners were assaulted and they were in the hospital can be gathered from the Sub-

Inspector of Police recording the statements of the petitioners in the hospital at about 12.15 a.m. on the wee hours of the next day. After registration of the crime and recording of statements of the petitioners, one Mr. P.K. Abdulla/2nd respondent herein registers a complaint on 10-06-2024. Though it is dated 09-06-2024, it is presented before Konaje Police Station at 8.00 a.m. on 10-06-2024. The complaint reads as follows:

"Dated:09/06/2024

P.K.ಅಬ್ದುಲ್ಲ S/o ಅಬ್ದುಲ್ ಖಾದರ್ P. K
ಅಧ್ಯಕ್ಷರು ಮತ್ತು ಸರ್ವ ಸದಸ್ಯರು ಮುಹಿಯುದ್ದೀನ್
ಜುಮಾ ಮಸೀದಿ, ಬೋಳಿಯಾರ್

ರಿಗೆ,

ಠಾಣಾಧಿಕಾರಿಯವರಿಗೆ
ಪೊಲೀಸ್ ಠಾಣೆ, ಕೊಣಾಜೆ.

ಉಲ್ಲೇಖ: ದಿನಾಂಕ: 09/06/2024ರ ರಾತ್ರಿ ಸಮಯ 20–45ರ ಗಂಟೆಗೆ ಬೋಳಿಯಾರು ಮೊಹಿಯುದ್ದೀನ್ ಜುಮಾ ಮಸೀದಿಯ ಎದುರುಗಡೆಯಿಂದ ಬಿ.ಜೆ.ಪಿ ಪಕ್ಷದ ಕಾರ್ಯಕರ್ತರಿಂದ ವಿಜಯೋತ್ಸವ ಹಾದು ಹೋಗುವ ಸಂದರ್ಭದಲ್ಲಿ ಮಸೀದಿ ಎದುರುಗಡೆ ಮಸೀದಿಯಲ್ಲಿ ಪ್ರಾರ್ಥನೆ ನಡೆಯುತ್ತಿತ್ತು ಅಲ್ಲದೆ ಮದರಸ ಮಕ್ಕಳನ್ನು ಬಿಡುವ ಸಮಯವಾಗಿದ್ದು ಅದೇ ಸಂದರ್ಭ ನೋಡಿ ಅವ್ಯಾಚ ಶಬ್ದಗಳಿಂದ ಬೈದು ಪ್ರಚೋದನೆಕಾರಿ ಘೋಷಣೆ ಕೂಗಿ ಗಲಾಟೆ ಮಾಡುವ ಉದ್ದೇಶ ಹಾಗೂ ಕೋಮು ಪ್ರಚೋದನೆಗೆ ಪ್ರೇರೇಪಣೆ ಮಾಡಿರುತ್ತಾರೆ. ತದನಂತರ ಸುಮಾರು ಮಸೀದಿಯಿಂದ 500 ಮೀಟರ್ ದೂರ ಸಾಗಿದ ಮೆರವಣಿಗೆಯಲ್ಲಿ ಇದ್ದಂತ ಸುರೇಶ್, ವಿನಯ್, ಸುಭಾಷ್, ರಂಜೀತ್, ದನಂಜಯ, ವಾಪಸ್ ಬಂದು ಅವಾಚ್ಯ ಶಬ್ದಗಳಿಂದ ಬೈದು ನಿಮ್ಮನ್ನು ನಿಮ್ಮ ಮಸೀದಿಯನ್ನು ಹೊಡೆದು ಹಾಕುತ್ತೇನೆ. ನಿಮ್ಮನ್ನು ಪಾಕಿಸ್ತಾನಕ್ಕೆ ಕಳುಹಿಸುತ್ತೇವೆ ಎಂದು ಬೊಬ್ಬೆ ಹಾಕಿ ಮಸೀದಿಗೆ ನುಗ್ಗಲು ಯತ್ನಿಸಿದ ಸಂದರ್ಭ ಅವರೊಂದಿಗೆ ಪುನ: ಕೆಲವರು ಅವರೊಂದಿಗೆ ಸೇರಿ ಗಲಾಟೆ ಮಾಡಿ ಬ್ಯಾರಿಗಳಿಗೆ ಬುದ್ಧಿ ಕಲಿಸುತ್ತೇವೆ ಎಂದು ಮೈಮೇಲೆ ಎರಗಿ, ಅವರ ಕೈಯಲ್ಲಿದ್ದ ಮಾರಕ ಆಯುಧಗಳಿಂದ ಕೆಲವೊಂದು

ಯುವಕರಿಗೆ ಹಲ್ಲೆ ಮಾಡಲು ಯತ್ನಿಸಿರುತ್ತಾರೆ. ಆದುದರಿಂದ ಅವರ ಮೇಲೆ ಸೂಕ್ತ ಕಾನೂನು ಕ್ರಮ ಜರುಗಿಸಿ ನ್ಯಾಯ ಒದಗಿಸಬೇಕಾಗಿ ವಿನಂತಿ.

Sd/- Sd/-

MUHYUDDEEN JUMA MASJID MUHYUDDEEN JUMA MASJID

BOLIYAR BOLIYAR

MANGALURU TALUK, 574153, D.K MANGALURU TALUK, 574153, D.K

PH:915-60337 PH:915-60337

9901252829 9686556695

ಈ ದಿನ ದಿನಾಂಕ:10/06/2024 ರಂದು ಸಮಯ ಬೆಳಗ್ಗೆ 8–00 ಗಂಟೆಗೆ ನೀಡಿ ಲಿಖಿತ ಪಿರ್ಯಾದಿಯನ್ನು ಠಾಣೆಯಲ್ಲಿ ಸ್ವೀಕರಿಸಿಕೊಂಡು ಠಾಣಾ ಅ.ಕ್ರ ನಂ.81/2024 ಕಲಂ 143, 147, 148, 153A, 504, 506 R/w 149 IPC ರಂತೆ ಪ್ರಕರಣ ದಾಖಲಿಸಿಕೊಂಡಿರುತ್ತೇನೆ."

The complainant here is not an accused. He claims to be the President of Mohiuddin Jumma Masjid, Boliyar. The issue now is, what stopped the complainant from registering the complaint on the very day i.e., on 09-06-2024 if the petitioners had threatened in whatever manner that is narrated in the complaint. The complaint registered by the petitioners narrates minute details. They being assaulted is a matter of record, as statements of the petitioners were taken from the hospital where they were undergoing treatment for injuries. For having

done the act of assaulting the petitioners, it cannot but be construed that the complaint made by the complainant is a counterblast, to the complaint made by the petitioners.

8. The offences alleged are the ones punishable under Sections 153A, 504, 506 and others relating to unlawful assembly. Whether this would become the ingredients of Section 153A of the IPC is to be noticed. Section 153A of the IPC reads as follows:

> "***153-A. 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*
>
> *(c) organises 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."*

Section 153A makes it an offence if enmity is promoted between different groups of religion. The present case is a classic illustration of misuse of Section 153A of the IPC. It is a case of counterblast to a complaint registered by these petitioners. The defence is that the petitioners were shouting Bharath Matha Ki Jai and praising the Prime Minister of the nation. The allegation by the complainant does not even refer to any of those things. To protect the skin of the complainant and others, the skin of the petitioners is sought to be ripped off. It does not meet even a single ingredient of Section 153A

of the IPC. A pure case of counterblast is sought to be projected as a crime under Section 153A of the IPC. The ingredients that are necessary to bring home the complaint under Section 153A need not detain this Court for long or delve deep into the matter.

9. The Apex Court in the case of ***JAVED AHMAD HAJAM v. STATE OF MAHARASHTRA***[1], has held as follows:

> *"…. …. ….*
>
> ***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.*

[1] *(2024) 4 SCC 156*

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 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 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.

15. *The High Court has held [Javed Ahmed Hajam v. State of Maharashtra, 2023 SCC OnLine Bom 819] that the possibility of stirring up the emotions of a group of people cannot be ruled out. The appellant's college teachers, students, and parents were allegedly members of the WhatsApp group. As held by Vivian Bose, J., the effect of the words used by the appellant on his WhatsApp status will have to be judged from the standards of reasonable women and men. We cannot apply the standards of people with weak and vacillating minds. Our country has been a democratic republic for more than 75 years. The people of our country know the importance of democratic values. Therefore, it is not possible to conclude that the words will promote disharmony or feelings of enmity, hatred or ill will between different religious groups. The test to be applied is not the effect of the words on some individuals with weak minds or who see a danger in every hostile point of view. The test is of the general impact of the utterances on reasonable people who are significant in numbers. Merely because a few individuals may develop hatred or ill will, it will not be sufficient to attract clause (a) of sub-section (1) of Section 153-AIPC.*

16. *As regards the picture containing "Chand" and below that the words "14th August-Happy Independence Day Pakistan", we are of the view that it will not attract clause (a) of sub-section (1) of Section 153-AIPC. Every citizen has the right to extend good wishes to the citizens of the other countries on their respective Independence Days. If a citizen of India extends good wishes to the citizens of*

Pakistan on 14th August, which is their Independence Day, there is nothing wrong with it. It is a gesture of goodwill. In such a case, it cannot be said that such acts will tend to create disharmony or feelings of enmity, hatred or ill will between different religious groups. Motives cannot be attributed to the appellant only because he belongs to a particular religion.

17. *Now, the time has come to enlighten and educate our police machinery on the concept of freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution and the extent of reasonable restraint on their free speech and expression. They must be sensitised about the democratic values enshrined in our Constitution.*

18. *For the same reasons, clause (b) of sub-section (1) of Section 153-AIPC will not be attracted as what is depicted on the WhatsApp status of the appellant cannot be said to be prejudicial to the maintenance of harmony among various groups as stated therein. Thus, continuation of the prosecution of the appellant for the offence punishable under Section 153-AIPC will be a gross abuse of the process of law."*

(Emphasis supplied)

The Apex Court, in a subsequent judgment, in the case of ***SHIV PRASAD SEMWAL v. STATE OF UTTARAKHAND***[2]***,*** has held as follows:

"…. …. ….

22. *It may be noted that the entire case as set out in the impugned FIR is based on the allegation that the Facebook news post uploaded by one journalist Mr. Gunanand Jakhmola was caused to be published on Parvatjan news portal being operated by the appellant.*

23. *Thus, essentially, we are required to examine whether the contents of the news report constitute any*

[2] *2024 SCC OnLine SC 322*

cognizable offence so as to justify the investigation into the allegations made in the FIR against the appellant.

24. *For the sake of ready reference, the contents of the disputed news article are reproduced hereinbelow:—*

> *"Gunanand Jakhmola*
> *17th March 2020 at 30.05*
>
> *Trivender Uncle what amazing things you are doing?*
>
> *Uncle you are laying foundation stone of Art Gallery which is going to construct by acquiring government land.*
>
> *Uncle you are associating the mafias who are violating the decisions of Modi Government.*
>
> *Don't trap yourself with mafias, have you forgot the problems arisen out of marriage of Gupta brother's.*
>
> *Uncle you were not like this, what happened to you? Was the troubles arisen out of marriage of Gupta Brothers was not enough that you are now going to laying foundation stone of the Art Gallery which is going to construct by acquiring government land. Just think over it, or take report from LIU and other agencies about this Art Gallery which is going to construct on the acquired government land. This is a government land which is dismantled by mafias and your officers. Uncle you are innocent, anybody can use you. Advisers and officers surrounding you they are cunning.*
>
> *This cunning persons have brought you forward against the decisions of Modi Government.*
>
> *Uncle let I inform you for your knowledge that Modi Government means your honour has given sanction to planning for Singtali Project near Rishikesh. This project will reduce the distance between Kumau and Garhwal and also it will arrange sources of employment in mountains. World bank is also giving money, but the program of Mafias in which you are going to participate on 20 March, that is an enemy of mountains. It has no concern with the well being of mountains. It is against the proposed project of Modi Government and your officers and advisers are in collusion with that. Please inquire it and then only you go.*

Note: Kindly see the invitation card given by mafias."

25. *As per the counter affidavit filed on behalf of the State, after investigation, two substantive offences were retained by the Investigating Officer against the appellant, which are Sections 153A and 504 read with Sections 34 and 120B IPC.*

26. From a bare reading of the language of Section 153A IPC, it is clear that in order to constitute such offence, the prosecution must come out with a case that the words 'spoken' or 'written' attributed to the accused, created enmity or bad blood between different groups on the ground of religion, race, place of birth, residence, language, etc., or that the acts so alleged were prejudicial to the maintenance of harmony.

27. *Upon careful perusal of the offending news article, reproduced (supra), it is crystal clear that there is no reference to any group or groups of people in the said article. The publication focuses totally on the complainant imputing that he had encroached upon public land where the foundation stone laying ceremony was proposed at the hands of Hon'ble Chief Minister of Uttarakhand. Apparently, the post was aimed at frustrating the proposed foundation stone laying ceremony on the land, of which the complainant claims to be the true owner. The post also imputes that the person who was planning the foundation stone ceremony was an enemy of mountains and had no concern with the well-being of the mountains.*

28. Learned standing counsel for the State tried to draw much water from these lines alleging that this portion of the post tends to create a sense of enmity and disharmony amongst people of hill community and the people of plains. However, the interpretation sought to be given to these words is far-fetched and unconvincing. The lines referred to supra only refer to the complainant, imputing that his activities are prejudicial to the hills. These words have no connection whatsoever with a group or groups of people or communities. Hence, the foundational facts essential to constitute the offence

under Section 153A IPC are totally lacking from the allegations as set out in the FIR."

29. *In the case of Manzar Sayeed Khan v. State of Maharashtra[1], this Court held that for applying Section 153A IPC, the presence of two or more groups or communities is essential, whereas in the present case, no such groups or communities were referred to in the news article.*

30. The other substantive offence which has been applied by the investigating agency is Section 504 IPC. The said offence can be invoked when the insult of a person provokes him to break public peace or to commit any other offence. There is no such allegation in the FIR that owing to the alleged offensive post attributable to the appellant, the complainant was provoked to such an extent that he could indulge in disturbing the public peace or commit any other offence. Hence, the FIR lacks the necessary ingredients of the said offence as well. Since we have found that the foundational facts essential for constituting the substantive offences under Sections 153A and 504 IPC are not available from the admitted allegations of prosecution, the allegations qua the subsidiary offences under Sections 34 and 120B IPC would also be non est.

31. *The complainant has also alleged in the FIR that the accused intended to blackmail him by publishing the news article in question. However, there is no allegation in the FIR that the accused tried to extract any wrongful gain or valuable security from the complainant on the basis of the mischievous/malicious post.*

32. *In the case of State of Haryana v. Bhajan Lal[2], this Court examined the principles governing the scope of exercise of powers by the High Court in a petition under Article 226 of the Constitution of India and under Section 482 CrPC seeking quashing of criminal proceedings and held as follows:—*

> *"**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the*

exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

> ***33.*** *Tested on the touchstone of the above principles, we are of the firm view that allowing continuance of the proceedings pursuant to the impugned FIR bearing No. 31 of 2020 registered at P.S. Muni Ki Reti, District Tehri Garhwal against the appellant is nothing but gross abuse of process of law because the allegations as set out in the FIR do not disclose necessary ingredients of any cognizable offence. Hence, the impugned FIR and all proceedings sought to be taken against the appellant are hereby quashed and set aside."*
>
> *(Emphasis supplied)*

The Apex Court did not permit further investigation even in a crime before it. The FIR itself was quashed, as the High Court of Uttarakhand had rejected the petition which challenged the FIR.

10. In the light of the judgments of the Apex Court and unequivocal facts narrated hereinabove, what would unmistakably emerge is high improbability of the happening of the incident even, against the 2nd respondent/complainant. The complaint cannot but be held to be a counter-blast to what the petitioners have registered, not against the complainant but against several accused named therein. It would be apposite to refer to a judgment of the High Court of Andhra Pradesh, which lays down certain necessary ingredients to drive home an offence under Section 153A of the IPC even *prima facie*. The

High Court of Andhra Pradesh in ***KOLLU ANKABABU v. TIRUPATHI RAMESH***[3], has held as follows:

"…. …. ….

> ***17.*** *The ingredients necessary for making out an offence under Section 153-A(a) is that the accused person by words either spoken or written etc., promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever.*
>
> ***18. The ingredients necessary for making out an offence under Section 153-A(b) is the commission of 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.***
>
> ***19. The ingredients necessary for an offence under Section 153-A(c) is to organise any exercise, movement, drill etc., so that participates in such activities can be trained to use violence or criminal force 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 communities.***
>
> ***20. The language in all the three sub-clauses of Section 153-A require the following conditions to be met before any offence can be said to have been committed within this provision:—***
>
> ***a) The actions should cause enmity between groups; Ill will against one group would not attract the above provisions.***

[3] *2022 SCC OnLine AP 2812*

b) These actions should be committed with the intention of causing such enmity.

c) This provision would be applicable only where enmity is caused on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever.

d) The term "or any other ground whatsoever" would have to be read in tandem with the preceding words and as such the scope of this term would be that the grounds would only have to be grounds akin to the preceding grounds set out in the provision.

e) The groups between whom such enmity or disharmony or hatred or ill-will is caused would be groups defined on the basis of their religion, race, language, place of birth, caste or community.

f) Differences or ill-will caused between two groups which are not defined on the basis of the above requirements would not attract the provisions of Section 153-A IPC."

(Emphasis supplied)

In the light of the afore-narrated facts and the judgments extracted *supra*, permitting even investigation into the case at hand would be *prima facie* permitting investigation into the sloganeering of Bharath Matha Ki Jai *inter alia*, which can by no stretch of imagination be promoting disharmony or enmity amongst religions. ***Sloganeering Bharath Matha Ki Jai would only lead to harmony and never a discord.***

11. For the aforesaid reasons, the following:

O R D E R

(i) Criminal Petition is allowed.

(ii) FIR registered in Crime No.81 of 2024 against the petitioners at Konaje Police Station, South Sub-Division, Mangalore City stands quashed.

Sd/-
(M.NAGAPRASANNA)
JUDGE

BKP
List No.: 1 Sl No.: 13