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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 11013 of 2020
With
R/CRIMINAL MISC.APPLICATION NO. 11130 of 2020
With
R/CRIMINAL MISC.APPLICATION NO. 11587 of 2020
With
R/CRIMINAL MISC.APPLICATION NO. 11834 of 2020
With
R/CRIMINAL MISC.APPLICATION NO. 11129 of 2020
With
R/CRIMINAL MISC.APPLICATION NO. 11017 of 2020
With
R/CRIMINAL MISC.APPLICATION NO. 11068 of 2020
With
R/CRIMINAL MISC.APPLICATION NO. 11589 of 2020
With
R/CRIMINAL MISC.APPLICATION NO. 11114 of 2020
With
R/CRIMINAL MISC.APPLICATION NO. 11373 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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KALPESH VAGHABHAI CHAUDHARY
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR RB THAKOR(6743) for the Applicant(s) No. 1
DS AFF.NOT FILED (N) for the Respondent(s) No. 2
MR HARDIK DAVE, PUBLIC PROSECUTOR with MR TRUPESH KATHIRIYA, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1
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CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Date : 20/08/2024

COMMON ORAL JUDGMENT

[1.0] Since all these petitions are filed seeking quashing of respective FIRs concerning same set of allegations for the offence punishable under Sections 120(B) and 505(1)(B) of the Indian Penal Code, 1860; section 54 of the Disaster Management Act and section 3 of the Police (Incitement to Disaffection) Act, 1922, all these petitions are heard, decided and disposed of by this common oral order.

[2.0] By way of present petitions under Section 482 of the Code of Criminal Procedure, 1973 (for short “CrPC”), respective petitioners are seeking quashing of FIRs, details of which are shown in table below, alleging offence punishable under Sections 120(B) and 505(1)(B) of the Indian Penal Code, 1860; section 54 of the Disaster Management Act and section 3 of the Police (Incitement to Disaffection) Act, 1922 alongwith all its consequential proceedings.

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CR.MA No.	Petitioner's Name	FIR No.	Police Station
11013/2020	Kalpesh Vaghabhai Chaudhary	11822021202449/2020	Navsari Rural Police Station, Navsari
11017/2020	Kalpesh Vaghabhai Chaudhary	11200010201748/2020	Valsad Town Police Station, Valsad
11129/2020	Kalpesh Vaghabhai Chaudhary	11214023201364/2020	Kadodara GIDC, Surat Rural
11068/2020	Kalpesh Vaghabhai Chaudhary	11824001201061/2020	Vyara Police Station, Tapi
11589/2020	Kalpesh Vaghabhai Chaudhary	11219002200780/2020	Aahva Police Station, Dang
11373/2020	Vadher Rajesh Hamir	11822021202449/2020	Navsari Rural Police Station, Navsari
11130/2020	Kapil Bhagvanbhai Desai	11214023201364/2020	Kadodara GIDC, Surat Rural
11587/2020	Kapil Bhagvanbhai Desai	11219002200780/2020	Aahva Police Station, Dang
11834/2020	Kapil Bhagvanbhai Desai	11822021202449/2020	Navsari Rural Police Station, Navsari
11114/2020	Kapil Bhagvanbhai Desai	11200010201748/2020	Valsad Town Police Station, Valsad

For the sake of brevity, Special Criminal Application No.11013 of 2024 is taken as a lead matter and facts of the said petition are considered.

[3.0] The impugned FIRs are filed at the instance of police officials alleging therein that the accused persons by

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hatching criminal conspiracy made the complainant a member by some admin of the group namely "2800police_SRPF_Districtwise" (hereinafter referred to as "said group") without the knowledge of the complainant on 18.07.2020 and when the complainant checked the account on 22.07.2020, the account was deleted. It is further alleged that in the said group, different issues as mentioned in the FIRs were raised. Pursuant to the same, the complainant verified the admin of the said group and other details and found that the said link was forwarded through www.kapsnet.in. Further, details of the website were checked and different posts regarding grade pay of police were found. In this regard, the FIRs came to be filed.

[4.0] Heard learned advocate for the petitioner and learned APP for respondent No.1 – State of Gujarat.

[5.0] Learned advocate for the petitioner has submitted that petitioner is innocent and has been falsely enroped in the present offence and he has nothing whatsoever to do with the alleged offence. Further, recently the primary teachers have made huge movement and protest against the government through different social platforms like twitter, whatsapp, facebook, instagram etc. and at last government was ready to give them grade pay of Rs.4200/-. He has further submitted that just to express the views by way of creating group or by circulating the

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rights of the police is not an offence. Further, after the movement of the teachers for the grade pay of Rs.4200/-, police constables also became hopeful and have started the movement for grade pay of Rs.2800/- and circulated the agenda of said demand by way of keeping status as “police2800”, which fact came to the knowledge of the government and Director General of Police, who by way of notification dated 20.07.2020 announced that whoever made groups and are circulating such posts will be punished and complaint would be registered. It is submitted that the present petitioner has not posted any thing in the form of threat or creating any panic situation in the COVID-19 pandemic period and the FIR is nothing but an attempt to suppress the voice of the public.

[5.1] He has further submitted that police have registered many FIRs for one and the same accused – petitioner for the same set of acts and the contents of different FIRs are also same and it is settled law that for same set of acts different FIRs cannot be registered. Further, many MLAs have written to the government regarding grant of several service benefits to the police constables and also demanded their rights, which was circulated by the present petitioner and no any other posts have been made by the petitioner which can create panic situation. He has further submitted that even TV media has also broadcast current situation of police constables and therefore, even

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if it is assumed without admitting that petitioner has done any act then also it was nothing but expression of his views for the rights of police constable, which is a fundamental right of an individual being the citizen of this country. Further, freedom of speech and expression is enshrined under Article 19(1)(a) of the Constitution of India and therefore, the petitioner has not committed any offence as alleged. Hence, he has requested to allow the present petitions.

[6.0] Learned Public Prosecutor Mr. Hardik Dave assisted by learned Additional Public Prosecutor Mr. H.K. Patel has vehemently opposed the present petitions and submitted that the present petitioners have committed the breach of public tranquility and fear in the minds of general public during the COVID-19 pandemic period. Further, he has submitted that present petitioners have nothing to do with the grade pay or police union though they have formed the group and generated one link and tried to form an association and tried to create a separate class to cause alarm in general public due to which law and order situation was put under peril and petitioners have incited likely to commit the offence. Considering the aforesaid fact, *prima facie,* offence under Section 505(1)(B) of the IPC is made out and for that actual commission of offence is not required.

[6.1] Further, he has submitted that even in many cases

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investigation is going on and *prima facie* involvement of the petitioners is made out. Further, petitioners are not denying that they had formed the group and though police personnel were not interested in raising their grievance or voice against the government, the petitioners have created the said group and without their permission, petitioners have added 33000 of police personnel in the group and tried to create alarming situation against the government without any authority under various political agenda. No police officer or any other person has ever raised any demand *qua* their grade pay. Hence, as the petitioners have formed the group without the consent of complainant and other police constables, complaints have been filed by police constables in their individual capacity.

[6.2] Further, he has relied on the decision of the Hon'ble Supreme Court in the case of **Kedar Nath Singh vs. State of Bihar** reported in **1962 SCC OnLine SC 6** and submitted that merely preparation and likely cause of any offence or breach of public tranquility itself is an offence and preparation itself is an offence and constitutional validity of section 505(1)(B) of the IPC is upheld by the Hon'ble Supreme Court. Hence, he has requested to dismiss the present petitions.

[7.0] Having heard learned advocates for the respective parties and going through the record it appears that the allegations leveled against the petitioners is that the

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present petitioner is one of the members of Telegram viz."2800police_SRPF_Districtwise" wherein about 1300 police constables were added as group members of by the petitioner and he has posted various posts regarding demand of higher grade pay of Rs.2800/- for police constable and other service benefits required to be paid to the police constables. Further, it is the case of the petitioner that the petitioner has not created any group or he has not added any member in the said group as the petitioner was not knowing all the police personnel but police personnel themselves by way of clicking the link became the member of the said group. As none of the police personnel is added by the present petitioner, question does not arise to create group or form any union or association on behalf of the police personnel.

[7.1] The second limb of argument of learned advocate is that the petitioner is not having any personal interest and no any malafide intention behind creating such group unlike other government employee right of police constable and in peaceful manner without any intention to breach the public peace or causing any alarming situation against the government. The petitioner has sent the message and he has expressed his fair opinion and subsequently government has also accepted the said legitimate demand pursuant to various complaints and representations made by various leaders and MLAs and then subsequently the

Director General of Police issued the circular directing the subordinate police officials not to join any group and prior to that there was no any retraction. At the relevant point of time, other government officials including the primary teachers also had raised a grievance against the grade pay and government employees having right to ask for their legitimate right and increment in salary. Hence, there was no any malafide intention and in this regard, on the same set of facts, five different FIRs have been filed in different districts.

[7.2] Perusing the tenor of the allegations made in the FIRs, it appears that the FIRs are filed for the offence under Section 505(1)(B) read with Section 120(B) of the IPC and section 54 of the Disaster Management Act and section 3 of the Police (Incitement to Disaffection) Act, 1922. To invoke the provisions of offence under Section 120(B) of the IPC, more than two persons are required and knowledge of meeting of minds is important.

[7.3] Further, it is pertinent to note that, in order to invoke charges of criminal conspiracy under section 120 of the IPC, the first ingredient is agreement between two or more persons. This agreement is the crux of the offence and can be explicit or implicit, written or oral. The second essential component is the intention to commit an illegal act or a legal act by illegal means. The intent should be directly related to the outcome that the conspirators plan

to achieve. The essential ingredients of criminal conspiracy are: (i) An agreement between two or more persons; (ii) The agreement must be related to doing or causing to be done either (a) an illegal act and (b) an act that is not illegal in itself but is done by illegal means; (iii) The agreement may be expressed or implied or partly expressed and partly implied; (iv) As soon as the agreement is made, the conspiracy arises, and the offence is committed and (v) the same offence is continued to be committed so long as the combination persists.

[7.4] Herein, it is an admitted fact that there is no any evidence or communication which reveals meeting of minds of three accused i.e. present petitioners as they are unknown to each other and from different places. Nonetheless, merely to form a group and subsequently to join the said group by clicking the link or by any other means by the police personnel which were also admittedly unknown to the present petitioners and merely for volunteering themselves to join as member of the said group cannot be termed as conspiracy and it is *sine qua non* to conspire. There must be an agreement between two persons to act or omit to do any illegal act. Herein, if we accept the allegations as it is, even though demand for the police personnel or on behalf of police personnel or government servant was a legitimate demand *qua* enhancement of the grade pay and other ancillary service benefits and cannot

in any manner be termed as illegal demand as it was collective duty of employees and to raise any genuine or grievance or to ask for any right against employer cannot be termed as illegal demand. Hence, question does not arise to invoke the provisions of section 120(B) of the IPC against the present petitioners.

[8.0] Now, coming back to the facts of the case, in support of contention as regards invocation of provision of offence under Section 505(1)(B) of the IPC, learned Public Prosecutor Mr. Dave has relied on the decision of Hon'ble Supreme Court in the case of ***Kedar Nath Singh (Supra)*** and submitted that act must be such that it must be intended to cause fear or alarm to public whereby any person may be induced to commit an offence against the State or against public tranquility. Herein, no any act or any allegation in the FIRs which discloses or suggests that the petitioner intended to cause fear or alarm to the public at large. Further, tendency to induce any person to commit the offence against the State or disrupt public tranquility. In the case of Kedar Nath Singh (Supra), Hon'ble Apex Court has been pleased to observe in paragraph 29 which reads as under:

> *"29. It is only necessary to add a few observations with respect to the constitutionality of Section 505 of the Indian Penal Code. With reference to each of the three clauses of the section, it will be found that the gravamen of the offence is making, publishing or circulating any statement, rumour or report (a) with intent to cause or which is likely to cause any member of the Army, Navy or*

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> *Air Force to mutiny or otherwise disregard or fail in his duty as such; or (b) to cause fear or alarm to the public or a section of the public which may induce the commission of an offence against the State or against public tranquillity; or (c) to incite or which is likely to incite one class or community of persons to commit an offence against any other class or community. It is manifest that each one of the constituent elements of the offence under s. 505 has reference to, and a direct effect on, the security of the State or public order. Hence, these provisions would not exceed the bounds of reasonable restrictions on the right of freedom of speech and expression. It is clear, therefore, that cl. (2) of Art. 19 clearly save the section from the vice of unconstitutionality."*

A plain reading of the aforesaid observations suggests that to establish essential ingredients of the offence under Section 505 of the IPC, the act must have the direct effect on the security of the State or public order. In the present case, the said essential element is missing and not found. The essential ingredients of Section 505 of the IPC are as under:

(i) That the accused made (published or circulated) any statement, rumour or alarming news;

(ii) That the accused did so with intent to,

(a) Create or promote (or which he knew it likely to create or promote) any member of the Army, Navy or Air Force to mutiny or otherwise disregard or fail in his duty as such;

(b) Cause fear or alarm to the public or a section of the public which may induce the commission of an offence against the State or against public

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tranquility;

(c) To incite (or which is likely to incite) one class or community of persons to commit an offence against any other class or community."

In backdrop of aforesaid fact, "to cause or likely to cause fear or alarm to the general public" or a particular section of people whereby any person may be convinced to commit an offence against the State or against the public tranquility must be proved.

[8.1] Herein, neither the police personnel nor any other government employee have committed any offence against the State or public tranquility. Merely based on apprehension or assumption, the petitioners cannot be booked for an offence under Section 505(1)(B) of the IPC. Even exception to section 505(1) of the IPC reads as under:

> *"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."*

Perusing the aforesaid exception also, section 505 of the IPC states that if a person makes, publishes or circulates any statement, rumour or report with some reasonable ground for believing that such statement, report or rumour is true and makes, publishes or ciruclates

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it in good faith and without any malice or intention then it is not an offence under this section. The term "good faith" is defined under section 52 of the IPC and under this provision, only due care and attention are required to constitute "good faith". Herein, bare reading of the FIR or evidence does not suggest any malice or intention on the part of the present petitioners and merely to form a group or to post any message *qua* legitimate demands of grade pay or any issue related to service would not implicate the present petitioners under Section 505(1)(B) of the IPC. Even, in absence of any malafide or malice on the part of the petitioners, no offence is made out under Section 505(1)(B) of the IPC. Even if, for the sake of argument it is assumed that there was a chance of breach of public tranquility or any commission of offence, even in that event also, police had ample power to take appropriate recourse or preventive measures under Section 107 of the CrPC. Even, this is not a case wherein there is possibility of commission of cognizable offence.

[8.2] Even, it is not a case of the prosecution that, there was a rumour spread by petitioners and there was an act on the part of the petitioners so to create fear or alarm between two group or class of people. Merely because police officials are involved in the group is not a ground that, there was a possibility to create class of two group of people. It is also pertinent to note that police officers will

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never lose their status of government servant unlike the primary teachers and other government employees who had made a demand of grade pay. They were also intending to get their legal right and grade pay. Subsequently, considering various representations of MLAs and various government employees, unions, State has also increased the grade pay and extended the benefit to police officials also. Hence, question does not arise that said message has spread as a rumour and said act is also justifying that the demand made in messages was genuine one. Considering the aforesaid fact, the act on the part of the petitioners even if taken at it is it is nothing but amounts to fair and bonafide demand or criticism of government. Except this, no any inference could be drawn hence, no any offence is culled out from the allegations leveled in the FIRs.

[9.0] Even, going through the un-controverted facts and allegations leveled in the FIR does not establish any essential ingredients of the offence under Section 505(1)(B) of the IPC and to constitute an offence, there must be four suggestions viz. (1) intention; (2) preparation; (3) attempt and (4) accomplishment. Barring few offences under the IPC, merely preparation is not an offence. In normal circumstances, intervening only at the third and fourth stage, no any offence is made out. Herein, message is also sent and subsequently volunteering police

personnel had abetted to join the said group. There was no compulsion on the part of the petitioners to join the group and even the complainant had an option if there was no compulsion or force to join the group. If complainant did not want to join the said group, he could have abstained himself from joining the said group. Hence, no any offence is made out under Section 505(1)(B) of the IPC. 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. Merely because message is spread, it cannot be termed that due to the said message, public tranquility is put in the peril and create fear in the minds of people and that too such police personnel having strong mind and being employee of disciplined department.

[10.0] Further, for one offence, five different FIRs have been filed which itself is nothing but amounts to abuse of process of law and such FIRs are required to be clubbed. In this regard, reference is required to be made to the decision of Hon'ble Supreme Court in the case of **Arnab Ranjan Goswami vs. Union of India** reported in **(2020) 14 SCC 12** and in the case of **N.V. Sharma vs. Union of India** reported in **2022 SCC OnLine (SC) 1003** wherein it has been held that no subsequent FIR in respect of the same or connected cognizable offence or occurrence or incident

is permissible. Herein, on the same ground, five FIRs are registered. Herein, as discussed above, no offence is made out.

[10.1] Further, in the FIRs, the allegations for the offence under Section 3 of the Police (Incitement to Disaffection) Act, 1922 is also leveled against the petitioners in the FIR. Section 3 of the said Act reads as under:

> *"3. Penalty for causing disaffection, etc.- Whoever intentionally causes or attempts to cause, or does any act which he knows is likely to cause disaffection towards the Government established by law in India amongst the members of a Police Force, or induces or attempts to induce, or does any act which he knows is likely to induce any member of a police force to withhold his service or to commit a breach of discipline shall be punished with imprisonment which may extend to six months or with fine which may extend to two hundred rupees, or with both."*

Upon bare perusal of the aforesaid provision it is clear that mere intention to form an association of a member of police force would not attract any penalty under Section 3 of the Police (Incitement to Disaffection) Act, 1922. In this regard, reference is required to be made to the decision of the Hon'ble Supreme Court in the case of **N. Sengodan vs. State of Tamil Nadu** reported in **(2013) 8 SCC 664.** Herein, in the case on hand also perusing various representations and applications of MLAs and different employee unions, subsequently benefit is extended to the police personnel and circular is also issued by the DGP not

to form any group, association or be active on social media. In the case of N. Sengodan (Supra), the Hon'ble Supreme Court has observed and held that, the statement or message is not likely to incite the police personnel. Even, if the allegation leveled against the petitioners is accepted even though it amounts to calling upon the police officials fight for their rights which cannot be termed as aforesaid incitement under section 3 of the Police (Incitement to Disaffection) Act, 1922. Merely because the petitioners without any consent have floated any self-styled message is not a ground to book the petitioners for the offence under Section 505(1)(B) of the IPC.

[10.2] As discussed above, petitioners have not committed any offence under Section 505(1)(B) of the IPC as it was a fair and bonafide attempt and legitimate demand and subsequently government has also accepted the same and hence, it was not a rumour. Merely to express any opinion or to exercise the fundamental right or to make any criticism under Article 19(1)(a) of the Constitution of India is not an offence. Going by the allegations made in the FIRs and other attending circumstances, no offence is made out against the present petitioners.

[10.3] Further, the Hon'ble Apex Court in the case of **Vinod Dua vs. Union of India and others** reported in **2021 SCC OnLine (SC) 414** elaborately discussing the scope of

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fundamental right enshrined under Article 19(1)(a) of the Constitution of India has explained the word "public order" and observed as under in paragraph No.35:

> *"35. Reliance was also placed on the decision of the Constitution Bench of this Court in The Superintendent, Central Prison, Fatehgarh and another v. Dr. Ram Manohar Lohia [AIR 1960 SC 633], which dealt with the expression "Public Order" appearing in Article 19 (2) of the Constitution, the relevant portion being :-*
>
> > *"9. …… The expression "public order" has a very wide connotation. Order is the basic need in any organised society. It implies the orderly state of society or community in which citizens can peacefully pursue their normal activities of life. In the words of an eminent Judge of the Supreme Court of America "the essential rights are subject to the elementary need for order without which the guarantee of those rights would be a mockery". The expression has not been defined in the Constitution, but it occurs in List II of its Seventh Schedule and is also inserted by the Constitution (First Amendment) Act, 1951 in clause (2) of Article 19. The sense in which it is used in Article 19 can only be appreciated by ascertaining how the Article was construed before it was inserted therein and what was the defect to remedy which the Parliament inserted the same by the said amendment. The impact of clause (2) of Article 19 on Article 19(1)(a) before the said amendment was subject to judicial scrutiny by this Court in Romesh Thappar v. State of Madras [1950 SCR 594]. There the Government of Madras, in exercise of their powers under Section 9(1-A) of the Madras Maintenance of Public Order Act, 1949, purported to issue an order whereby they imposed a ban upon the entry and circulation of the journal called the "Cross Roads" in that State. The petitioner therein contended that the said order contravened his fundamental right to freedom of speech and expression. At the time when that order was issued the expression "public*

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order" was not in Article 19(2) of the Constitution; but the words "the security of the State" were there. In considering whether the impugned Act was made in the interests of security of the State, Patanjali Sastri, J., as he then was, after citing the observation of Stephen in his Criminal Law of England, states:

> *"Though all these offences thus involve disturbances of public tranquillity and are in theory offences against public order, the difference between them being only a difference of degree, yet for the purpose of grading the punishment to be inflicted in respect of them they may be classified into different minor categories as has been done by the Indian Penal Code. Similarly, the Constitution, in formulating the varying criteria for permissible legislation imposing restrictions on the fundamental rights enumerated in Article 19(1), has placed in a distinct category those offences against public order which aim at undermining the security of the State or overthrowing it, and made their prevention the sole justification for legislative abridgement of freedom of speech and expression, that is to say, nothing less than endangering the foundations of the State or threatening its overthrow could justify curtailment of the rights to freedom of speech and expression …."*

The learned Judge continued to state:

> *"The Constitution thus requires a line to be drawn in the field of public order or tranquility marking off, may be, roughly, the boundary between those serious and aggravated forms of public disorder which are calculated to endanger the security of the State and the relatively minor breaches of the peace of a purely*

local significance, treating for this purpose differences in degree as if they were differences in kind."

The learned Judge proceeded further to state:

"We are therefore of opinion that unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the State or the overthrow of it, such law cannot fall within the reservation under clause (2) of Article 19, although the restrictions which it seeks to impose may have been conceived generally in the interests of public order."

This decision establishes two propositions viz. (i) maintenance of public order is equated with maintenance of public tranquillity; and (ii) the offences against public order are divided into two categories viz. (a) major offences affecting the security of the State, and (b) minor offences involving breach of purely local significance. This Court in Brij Bhushan v. State of Delhi [AIR 1950 SC 129 : 1950 SCR 605] followed the earlier decision in the context of Section 7(1)(c) of the East Punjab Public Safety Act, 1949. Fazl Ali, J., in his dissenting judgment gave the expression "public order" a wider meaning than that given by the majority view. The learned Judge observed at p. 612 thus:

"When we approach the matter in this way, we find that while 'public disorder' is wide enough to cover a small riot or an affray and other cases where peace is disturbed by, or affects, a small group of persons, 'public unsafety' (or insecurity of the State), will usually be connected with serious internal disorders and such disturbances of public tranquillity as jeopardize the security of the State."

This observation also indicates that "public order" is equated with public peace and safety. Presumably in an attempt to get over the effect of these two decisions, the expression "public order" was inserted in Article 19(2) of the Constitution by the Constitution (First Amendment) Act, 1951, with a view to bring in offences involving breach of purely local significance within the scope of permissible restrictions under clause (2) of Article 19. After the said amendment, this Court explained the scope of Romesh Thapper's case20 in State of Bihar v. Shailabala Devi [(1952) SCR 654]. That case was concerned with the constitutional validity of Section 4(1)(a) of the Indian Press (Emergency Powers) Act, 1931. It deals with the words or signs or visible representations which incite to or encourage, or tend to incite to or encourage the commission of any offence of murder or any cognizable offence involving violence. Mahajan, J., as he then was, observed at p. 660:

> *"The deduction that a person would be free to incite to murder or other cognizable offence through the press with impunity drawn from our decision in Romesh Thapper case could easily have been avoided as it was avoided by Shearer, J., who in very emphatic terms said as follows:*
>
> > *'I have read and re-read the judgments of the Supreme Court, and I can find nothing in them myself which bear directly on the point at issue, and leads me to think that, in their opinion, a restriction of this kind is no longer permissible.'*

The validity of that section came up for consideration after the Constitution (First Amendment) Act, 1951, which was expressly made retrospective, and therefore the said section clearly fell within the ambit of the words "in the interest of public order". That apart the observations of Mahajan, J., as he then was, indicate that even without the amendment that section would have been good inasmuch as it aimed

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to prevent incitement to murder.

10. The words "public order" were also understood in America and England as offences against public safety or public peace. The Supreme Court of America observed in Cantewell v. Connecticut [(1940) 310 US 296, 308] thus:

> *"The offence known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquillity. It includes not only violent acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot … When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order appears, the power of the State to prevent or punish is obvious."*

The American decisions sanctioned a variety of restrictions on the freedom of speech in the interests of public order. They cover the entire gamut of restrictions that can be imposed under different heads in Article 19(2) of our Constitution. The following summary of some of the cases of the Supreme Court of America given in a well-known book on Constitutional law illustrates the range of categories of cases covering that expression. "In the interests of public order, the State may prohibit and punish the causing of 'loud and raucous noise' in streets and public places by means of sound amplifying instruments, regulate the hours and place of public discussion, and the use of the public streets for the purpose of exercising freedom of speech; provide for the expulsion of hecklers from meetings and assemblies, punish utterances tending to incite an immediate breach of the peace or riot as distinguished from utterances causing mere 'public inconvenience, annoyance or unrest'. In England also Acts like Public Order Act, 1936, Theatres Act, 1843 were passed: the former making it an offence to use threatening, abusive or insulting words or behaviour in any public

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place or at any public meeting with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be caused, and the latter was enacted to authorise the Lord Chamberlain to prohibit any stage play whenever he thought its public performance would militate against good manners, decorum and the preservation of the public peace. The reason underlying all the decisions is that if the freedom of speech was not restricted in the manner the relevant Acts did, public safety and tranquillity in the State would be affected.

11. But in India under Article 19(2) this wide concept of "public order" is split up under different heads. It enables the imposition of reasonable restrictions on the exercise of the right to freedom of speech and expression in the interests of the 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. All the grounds mentioned therein can be brought under the general head "public order" in its most comprehensive sense. But the juxtaposition of the different grounds indicates that, though sometimes they tend to overlap, they must be ordinarily intended to exclude each other. "Public order" is therefore something which is demarcated from the others. In that limited sense, particularly in view of the history of the amendment, it can be postulated that "public order" is synonymous with public peace, safety and tranquillity."

(Emphasis supplied)"

[11.0] Insofar as offence under Section 54 of the Disaster Management Act is concerned, provision of section 54 reads as under:

"54. Punishment for false warning.- Whoever makes or circulates a false alarm or warning as to disaster or its severity or magnitude, leading to panic, shall on conviction, be punishable with imprisonment which

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may extend to one year or with fine.

Herein, as discussed in earlier part, petitioners have not circulated any false alarm or warning *qua* disaster or its severity or magnitude, leading to panic and due to such alleged message, no panic or rumour has been spread by the petitioners. Even otherwise, to invoke the provision of section 54 of the Disaster Management Act, the compliance of section 195(1)(a) of the CrPC is mandatory and complaint is required to be filed by the superior public servant under the statutory requirement. The Hon'ble Supreme Court in the case of Vinod Dua (Supra) considering the decision in the case of Kedar Nath Singh (Supra) has observed in paragraph No.51(B) as follows:

> *"Section 52 of the DM Act deals with the lodging of a false claim by a person for obtaining any relief, assistance, etc., which provision has nothing to do with the present fact situation. Section 54 deals with cases where a person makes or circulates a false alarm or warning as to disaster or its severity or magnitude, leading to panic. We have already held that the statements made by the petitioner were within the limits prescribed by the decision of this Court in Kedar Nath Singh and that the statements were without any intent to incite people for creating public disorder. It was not even suggested that as a result of statements made by the petitioner any situation of panic had resulted in any part of the country."*

Hence, offence under Section 54 of the Disaster Management Act is also not made out.

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[12.0] Further, it is necessary to consider whether the power conferred by the High Court under section 482 of the Code of Criminal Procedure is warranted. It is true that the powers under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. In the case of ***Bhajan Lal (Supra)***, the Apex Court has set out the categories of cases in which the inherent power under Section 482 CrPC can be exercised and held as under:

> *"(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."*

Even if the uncontroverted allegations in the FIRs are perused, offences as alleged are not made out. In this regard, reference is required to be made to the decision of the Hon'ble Supreme Court in the case of **Patricia Mukhim vs. State of Meghalaya and Others** reported in **(2021) 15 SCC 35** wherein it is held that even if the allegations made

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in the FIR or complaint are taken on their face value and accepted in their entirety, same do not prima facie constitute any offence or make out a case against the accused and the FIR is liable to be quashed.

[12.1] Considering the aforesaid proposition in consonance with the facts of the case on hand, to continue such proceeding against the present petitioners would be abuse of process of law and hence, present is a fit case to exercise powers under Section 482 of the CrPC.

[13.0] In wake of aforesaid discussion, present petitions are allowed. Impugned FIRs being CR Nos. (1) 11822021202449/2020 registered with Navsari Rural Police Station, Navsari; (2) 11200010201748/2020 registered with Valsad Town Police Station, Valsad; (3) 11214023201364/2020 registered with Kadodara GIDC, Surat Rural; (4) 11824001201061/2020 registered with Vyara Police Station, Tapi and (5) 11219002200780/2020 registered with Aahva Police Station, Dang alongwith all its consequential proceedings are hereby quashed and set aside ***qua*** **the respective petitioners viz. (1) Kalpesh Vaghabhai Chaudhary, (2) Vadher Rajesh Hamir and (3) Kapil Bhagvanbhai Desai only**. Rule is made absolute to the aforesaid extent only. Direct service is permitted.

(HASMUKH D. SUTHAR, J.)

Ajay