



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 13TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 16031 OF 2024 (GM-RES)

BETWEEN:

1. SRI JAGAT PRAKASH NADDA
AGED ABOUT 63 YEARS
S/O DR. NARAYAN LAL NADDA
VIJAYPUR VILLAGE,
P.O.AUHAR,
TEHSIL JHANDUTTA,
BILASPUR DISTRICT,
HIMACHAL PRADESH.
2. AMIT MALVIYA
S/O COL (RET) K.K.MALVIYA
AGED 47 YEARS,
BHARATIYA JANATA PARTY HEAD OFFICE
NO.6-A, PANDIT DEEN DAYAL UPADHYAYA MARG,
NEAR ITO, RAILWAY COLONY,
MINTO BRIDGE COLONY,
BARAKHAMBA,
NEW DELHI, DELHI – 110 002.

...PETITIONERS

(BY SRI VINOD KUMAR M., ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY KALABURAGI CEN POLICE STATION,
KALABURAGI – 585 101
REPRESENTED BY





STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA
BENGALURU – 560 005.

2. SRI PRAVEEN KUMAR PATIL
AGED 35 YEARS
HARAWAL VILLAGE,
JEWARGI TALUK,
KALBURGI DISTRICT – 585 310.

...RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL.SPP)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO QUASH THE FIR DTD 05.05.2024, IN CRIME NO.-07/2024 OF KALABURAGI CEN POLICE STATION, PENDING IN THE FILE OF THE 1ST ADDL. CIVIL JUDGE (JR.DN.) AND JMFC GULBARGA FOR THE OFFENCES PUNISHABLE UNDER 505(2), 504, 153(A) 171, (C)(F)(G) OF IPC AND 125 OF REPRESENTATION OF PEOPLE ACT R.W SEC 66 (D) OF INFORMATION TECHNOLOGY ACT, PRODUCED AT ANNEXURE-A AS FAR AS THE PETITIONERS ARE CONCERNED, HOLDING THAT IT IS AN ABUSE OF PROCESS OF LAW.

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

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

ORAL ORDER

Petitioners are before this Court calling in question registration of a crime in Crime No.7 of 2024 for offences punishable under Sections 505(2), 504, 153A, 171C, 171F,



171G of IPC, Section 125 of the Representation of People Act and Section 66(D) of the Information Technology Act, 2008.

2. Heard Sri Vinod Kumar M, learned counsel appearing for petitioners and Sri B N Jagadeesha, learned Additional State Public Prosecutor appearing for respondent No.1.

3. Petitioners/accused Nos.1 and 2 were, at the relevant point in time, the office bearers of the political organization. It is the allegation of the 2nd respondent/complainant that on 05-05-2024 in the instagram official account of Bharatiya Janata Party operated by the 2nd petitioner a post comes about which was derogatory and would hurt the religious sentiments of a particular community. Therefore, the crime comes to be registered in Crime No.7 of 2024 for the afore-quoted offences. The registration of the crime is what has driven the petitioners to this Court in the subject petition.

4. The learned counsel appearing for the petitioners Sri Vinod Kumar M, would submit that the post that was on the Instagram account of the political unit does not make out any



ingredient of the offence punishable under Sections 505(2), 153A or 125 of the Representation of People's Act. He would seek to place reliance upon the judgments of the Apex Court in the cases of **JAVED AHMAD HAJAM v. STATE OF MAHARASHTRA**¹ and **SHIV PRASAD SEMWAL v. STATE OF UTTARAKHAND**² to buttress his submission for quashment of the proceedings.

5. The learned Additional State Public Prosecutor would vehemently refute the submissions contending that what is posted on Instagram does amount to the ingredients of section 505(2) of the IPC and therefore it is a matter for investigation and the petitioners to come out clean in a full blown trial. He would seek 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.

¹ (2024) 4 SCC 156

² (2024) 7 SCC 555



7. The afore-narrated facts are not in dispute. Since the entire issue is now triggered from the complaint, I deem it appropriate to notice the complaint and it reads as follows:

"04th May 2024

To
Police Inspector
CEN Crime Police Station
Kalaburagi District.

Sir.

Subject: Complaint against J.P.Nadda, National President- Bharatiya Janata Party, Amit Malviya- National Social Media Incharge Bharatiya Janata Party for using images of Sri.Narendra Modi and Rahul Gandhi and publishing alarming news through Social Media platform "Instagram" with intent to create feelings of enmity, hatred and illwill between different religions.

- 1) I would like to draw your kind attention about an video shared on Social Media platform Instagram from Official account of Bharatiya Janata Party (BJP) @bjp4india which is operated by one Mr.Amit Malviya, the head of IT Cell, BJP
- 2) In the said video post on Social Media platform Instagram, with caption #AbkiBaar400Paar, the video seeks for support of Indians to Mr. Narendra Modi and contains animated images of Sri. Rahul Gandhi and Narendra Modi. In the said video it is stated that **"If Congres Party Comes to Power it will snatch Wealth of all Non Muslims and distribute to Muslims their Favourite Community"**
- 3) Further in said video, an animated image of Sri. Manmohan Singh former Prime Minister and renowned economist is also used and stated he had said that **"Muslims must have first claim in**



resources". The said video further goes on to state that ancientindia was looted by an community (Muslims) time and again and that they are being empowered by Congress Party and that "**Congress Party manifeste is nothing but Muslim League Manifeste**". The said video portrays Sri Rahul Gandhi as holding an book with a religious symbol Muslim Community and states "**Congress Party will snatch wealth of all non muslims**"

- 4) I state that i am an active member of Indian National Congress have gone through the Congress Party Manifesto completely and the claims of Social Media platform Instagram post from Official account of Bharatiya Janata Party (BJP) @bjp4india with the link <https://www.instagram.com/reel/C6XnJthpXUx/?ugsg=NjFhoGMzYtE3ZO==> is completely false and is made elections to Lok Sabha which is under way with an intention to create hatred and illwill between different religions.
- 5) There is no basis for the post on Instagram. Neither the Congress Party Manifesto nor any of the leaders have said that the wealth of non Muslims will be snatched and distributed etc.
- 6) That said, the post amounts to commission of several offences under the Indian Penal Code. Mr. Amit Malviyya is a habitual offender. In the past, his posts have been flagged as "*manipulated media*" by Twitter Inc. Mr. Malviyya has deliberately put out fake news to mislead public and cause false alarm which would lead to clash between communities.
- 7) The publication, distribution, broadcast and/or web-hosting the Incendiary video amounts to commission of several offences under the Indian Penal Code, Representation of Peoples Act and blatant violation of the Model Code of Conduct.
- 8) Section 153A of the Indian Penal Code makes it a punishable offence to promote disharmony, feelings of ill-will, hatred and enmity between different religious groups. The video falsely gives an impression that the Muslim community is given



preferential treatment by the Indian Congress Party. Furthermore, it makes false and bogus claims that the Indian National Congress will take away the wealth of non-Muslims and hand it over to the muslim community. These rumours are being deliberately spread by the BJP and its members to create hatred against the Muslim community in India. Therefore, the BJP media cell, president and its members have committed offences under Section 153A of the Indian Penal Code, 1860.

- 9) Additionally, the publication/ broadcasting of the video also amounts to an offence under Section 125 of the Representation of Peoples Act. The said provision makes it a punishable offence to promote feelings of hatred or enmity between different religious communities in connection with an election. The video deliberately and falsely portrays Congress as unduly favouring Muslims in order to foment hatred against the Congress and the Muslim community. To add to that, the propaganda in the video seeks votes based on this false narrative. Thus, the false allegations are being made to polarize and gain votes in the 2024 Lok Sabha elections. Therefore, the offence under Section 125 of the Representation of People Act is made out.
- 10) Furthermore, the broadcasting, publication and circulation of the video also amounts to offences under Section 171C, 171F and 171G. The BJP is making attempts to unduly influence the voters by falsely painting Congress as a pro-Muslim/ anti-Hindu party. The Congress is a secular organization that respects all religions equally.
- 11) Lastly and most importantly, these actions of the BJP also constitute offences under Section 504 and 505 of the Indian Penal Code. The statements in the video are clearly intended to provoke individuals from the Muslim/ non-Muslim community to break the public peace. That apart, the rumours are being spread by the BJP to incite non-Muslims against Muslim community.
- 12) Hence, in view of the above, we would request you to take suitable action to take down the incendiary



hate speech of BJP posted on their Instagram handle. Also, take action against the BJP and its members for offences under Section 153A, 171C, 171F, 171G, 504 and 505 of the Indian Penal Code and Section 125 of the Representation of Peoples Act.

Yours sincerely

Sd/-

Praveen Kumar Patil
R/o Harawal Village
To-Jewargi Dist: Kalaburagi
Mobile No: 9448200000

Attached 1)-Screen Shot of Instagram Post, 2)-Video downloaded from Instagram, 3)-Congress Party Manifesto"

The complaint then becomes a crime in Crime No. 7 of 2024. Whether the aforesaid post on Instagram would become an offence under section 505(2), 153A or the other offences alleged, need not detain this Court for long or delve deep into the matter. The Apex Court in the case of **JAVED AHMAD HAJAM** supra, interpreting Section 153A of the IPC has held as follows:

"....

Consideration of submissions

6. The only offence alleged against the appellant is the one punishable under Section 153-A IPC. Section 153-A IPC, as it exists with effect from 4-9-1969, reads thus:

"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,

(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.”

In this case, clause (c) of sub-section (1) of Section 153-AIPC is admittedly not attracted.



7. In *Manzar Sayeed Khan* [*Manzar Sayeed Khan v. State of Maharashtra*, (2007) 5 SCC 1: (2007) 2 SCC (Cri) 417], while interpreting Section 153-A, in para 16, this Court held thus: (SCC p. 9)

"16. Section 153-A IPC, as extracted hereinabove, covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, 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 or acts prejudicial to the maintenance of harmony or is likely to disturb the public tranquillity. *The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153-A IPC and the prosecution has to prove prima facie the existence of mens rea on the part of the accused. The intention has to be judged primarily by the language of the book and the circumstances in which the book 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.*"

(emphasis supplied)

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.* [*Bhagwati Charan Shukla v. Provincial Govt.*, 1946 SCC OnLine MP 5 : AIR 1947 Nag 1] A Division Bench of the High Court dealt with the offence of sedition under Section 124-A IPC 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 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’. (*Bhagwati Charan Shukla case* [*Bhagwati Charan Shukla v. Provincial Govt.*, 1946 SCC OnLine MP 5 : AIR 1947 Nag 1] , SCC OnLine MP para 67)”

(emphasis supplied)

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

(emphasis in original and supplied)

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 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)

In a subsequent judgment, the Apex Court in the case of **SHIV PRASAD SEMWAL** *supra* considering the very offence has held as follows:

“....”

20. We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the impugned order [*Shiv Prasad v. State of Uttarakhand*, 2020 SCC OnLineUtt 1360] and the material placed on record.

21. 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 GunanandJakhmola was caused to be published on Parvatjan news portal being operated by the appellant.

22. Thus, essentially, we are required to examine whether the contents of the news report constitute any cognizable offence so as to justify the investigation into the allegations made in the FIR against the appellant.

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

“GunanandJakhmola
17-3-2020 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 wellbeing 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."

24. 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 153-A and 504 read with Sections 34 and 120-B IPC.

25. From a bare reading of the language of Section 153-AIPC, 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.

26. 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.

27. 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. The 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 153-AIPC are totally lacking from the allegations as set out in the FIR.

29. In *Manzar Sayeed Khan v. State of Maharashtra* [*Manzar Sayeed Khan v. State of Maharashtra*, (2007) 5 SCC 1 : (2007) 2 SCC (Cri) 417], this Court held that for applying Section 153-AIPC, 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 504IPC. 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.

31. Since we have found that the foundational facts essential for constituting the substantive offences under Sections 153-A and 504IPC are not available from the admitted allegations of prosecution, the allegations qua the subsidiary offences under Sections 34 and 120-BIPC would also be non est.

32. 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.

33. In State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , 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 482CrPC seeking quashing of criminal proceedings and held as follows : (SCC pp. 378-79, para 102)

"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.”

34. 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 PS 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)

There is not even a semblance of ingredient in the complaint to what the Apex Court has held in the aforesaid cases. As such, if the crime is permitted to be continued against the petitioners, it would become an abuse of the process of the law and result in miscarriage of justice.

8. For the aforesaid reasons, the following:

ORDER

(i) Writ Petition is allowed.



- (ii) FIR registered in Crime No.7 of 2024 pending on the file of I Additional Civil Judge (Jr.Dn.) and JMFC, Gulbarga, stands quashed *qua* the petitioners.

Sd/-
(M.NAGAPRASANNA)
JUDGE

BKP
List No.: 1 Sl No.: 32