Sri Basanagouda R Patil (Yatnal) vs State Of Karnataka on 30 January, 2025

Author: M.Nagaprasanna

Bench: M.Nagaprasanna

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JANUARY, 2025

BEFORE
THE HON'BLE MR JUSTICE M.NAGAPRASANNA
CRIMINAL PETITION NO. 13650 OF 2024

BETWEEN:

SRI BASANAGOUDA R.PATIL (YATNAL)
S/O RAMANAGOUDA B.PATIL
AGED ABOUT 61 YEARS
OCC: MLA, VIJAYAPURA CONSTITUENCY
OLD IB, STATION ROAD
VIJAYPURA - 586 101, KARNATKA

ALSO AT
SINDAGI ROAD, MAHAL AINAPUR
AINAPURA, BIJAPUR
KARNATAKA - 586 104.

...PETITIONER

(BY SRI. VENKATESH P. DALWAI, ADVOCATE)

AND:

STATE OF KARNATAKA

BY JALANAGARAA POLICE STATION
VIJAYAPURA
REP. BY STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU - 560 001.

...RESPONDENT

(BY SRI JAGADEESHA B.N., Addl.S.P.P.)

THIS CRL.P IS FILED U/S.482 (FILED U/S.528 BNSS) CR.P.C PRAYING TO QUASH FIR IN CRIME NO.110/2024

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NC: 2025:KHC:4434
CRL.P No. 13650 of 2024

REGISTERED BY THE RESPONDENT JALANAGAR POLICE PENDING IN THE FILE OF THE LEARNED 3rd ADDL. CIVIL JUDGE (Sr.Dn.) AND JMFC COURT VIJAPURA FOR THE OFFENCE P/U/S/ 192, 196(1)(a) AND 353(1) OF BNS 2023 PRODUCED AT DOCUMENT NO.1.

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

CORAM: HON'BLE MR JUSTICE M.NAGAPRASANNA

ORAL ORDER

The petitioner is before this Court calling in question registration of a crime in Crime No.110/2024, for offences under Sections 192, 196(1)(a) and 353(1) of the BNS, which were Sections 153, 153A and 505(1) of the IPC - the earlier regime.

2. Heard Sri Venkatesh P. Dalwai, learned counsel appearing for the petitioner and Sri Jagadeesha B.N., learned Additional State Public Prosecutor appearing for the respondent

- State.

3. Facts in brief, germane, are as follows:

> It is the case of the complainant that the petitioner in Vijayapura City spoke on the issue of withdrawal of ration cards by the Government of Karnataka in a selective manner. It is NC: 2025:KHC:4434 the averment in the complaint that, the petitioner alleged that selective withdrawal is done only of Hindu community and not others. Based upon the alleged statement of the petitioner during a public speech, resulted in registration of a suo motu crime for the afore-quoted offences. The registration of the crime is what has driven the petitioner to this Court in the subject petition.

4. The learned counsel appearing for the petitioner, Sri Venkatesh P. Dalwai, would contend that even if averments in the complaint is construed to be true, they would not become offence under Section 353 (1) of the BNS. He therefore, seeks quashment of the crime so registered as it does not

meet of the ingredients of the offence as afore-

quoted.

5. The learned Additional State Public Prosecutor would refute the submissions of the learned counsel for the petitioner to contend that the police have registered a suo motu crime against the petitioner. The crime is now under investigation.

The speech made by the petitioner undoubtedly forms the ingredients of Section 353(1) of the BNS or Section 505(1) of NC: 2025:KHC:4434 the IPC, the earlier regime, as the case would be. He would seek dismissal of the petition.

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

7. The afore-narrated facts are not in dispute and require no reiteration. The issue lies in a narrow compass. What has triggered registration of the suo motu crime is a complaint.

Therefore, I deem it appropriate to notice the complaint. It reads as follows:

> "UÉ, oÁuÁ¢üPÁjUÀ¼ÀÄ «dAiÀÄ¥ÀÄgÀ f.JªÀiï.£ÁAiÀÄPÀ, JJ¸ïL oÁuÉ ªÀAiÀiÁ-48 ªÀµÀð «dAiÀÄ¥ÀÄgÀ ªÉÆ: 9902449051 gÀªÀgÀ PÀqÉ¬ÄAzÀ ¸ÀgÀPÁj vÀ¥Éð ¦AiÀiÁð¢, ¢£ÁAPÀ:20/11/2024.
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> £Á£ÀÄ d®£ÀUÀgÀ ¥ÉÆÃ°Ã¸ï ¡¢ £□¥¥ƒ !" #, $ ¥ÉÆ°Ã¸ï oÁuÁ °À¢ÝAiÀÄ ©Ãmï £ÀA§gÀ 01 jAzÀ 06 gÀªÀgÉUÉ ©Ãmï G¸ÀÄÛªÁjAiÀiÁV £ÉÃªÀÄPÀ % &‹ #,¡‹ ¢ ( ) ¢:05 * ›, ¢‹-. / □ ƒ□° □" .
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> CzÀgÀAvÉ £Á£ÀÄ ¥ÉÆ°Ã¸ï oÁuÉAiÀÄ°è EzÁÝUÀ F ¢ªÀ¸À ¢£ÁAPÀ: 20-11-2024 gÀAzÀÄ 3 ¢. 06-30 ¢4 ƒ % 5$ 6 7" †¢‹ 96 ‡; ¢· 5 ¢‹ = 96 ‡; ¢· , 4 >?$ ƒ ¥ % µ¶‹ •-3 , ‹ C&D · ¢E‹ #¡‹ = □, / G CzÀgÀ°è, F ¢ªÀ¸À ¢£ÁAPÀ: 20-11-2024 gÀAzÀÄ ¸ÀÄªÀiÁgÀÄ ªÀÄzÁå°Àß 12-30 UÀAmÉUÉ «dAiÀÄ¥ÀÄgÀ ‹ H ƒ£* ‹ I- ·ƒ $», K L (=..) ¥ C •N ‰□‹ , , ¢: 29 ¶P K . ƒ‹ƒ NC: 2025:KHC:4434 ¾• ¿ ¥ •-S . T¢‹ (U V ¡ÀX Y ‹ G5 ‰K L °¥ • , G C •N ‰□‹ * ›, ¢‹-. / □ 3 ¥ £, G % µ¶‹ "` ¡‹ =•-H =% , ‹ ¡E C` , [6 ..$ C´]¡^, ‰ &□ µÀÄÖ ` ƒ % □□ ! 3 C . , ´ □ ¥N °‹ % & C¡□P ... , ¥N ~ •`Y E □$ □ C ¥N , G □†ab ~* □• % c d P □ ¥NE/ ¢‹□...a / ¡ ~G‹ #* ¥N¶ ¯¶¢ - f$ □* 4 $ □$ □ C¶□!¡µ g % , C, Y ¥N" •5hi ¢‹□f$ * □¸. , ¡ ~ 6 ‹ .¡¢‹ ¡‹ ´ G" ~¢‹-. ¢$ - ¥ ‹ ¢‹□... = 4 $) % , °" †¢‹ ƒk .h‹ #* ¶ P f" #* ¶$ ¢‹□... P □)6 . G/ , ¥N¡‹ =•-H =% , CY 5$ ¡ ~G" D ¡‹ • , G ¥Nµl ƒ‹ ‹ □ C.¡‹ =% □$ □ C 9‹ " ` 5 % □ &‹ # ° □" $ 6 (mƒ ¥¾" # ‰E¢‹ P □ , ¢•N ... , , ¾" # ‰`¥£, G " n □¡ƒ□o

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vÀªÀÄä «±Áé¹, ¸À»/-

f.JªÀiï.£ÁAiÀÄPÀ, J.J¸ï.L, d®£ÀUÀgÀ ¦.J¸ï, «dAiÀÄ¥ÀÄgÀ."

(Emphasis added) Based upon the said complaint, emerges the impugned crime in crime No.110/2024 for the afore-quoted offences.

8. The issue is, whether the ingredients of the offences under Sections 192, 196(1)(a) and 353(1) of the BNS, which NC: 2025:KHC:4434 were Sections 153, 153A and 505(1) of the IPC - the earlier regime are met in the case at hand.

9. Section 192 of the BNS reads as follows:

> "192. Wantonly giving provocation with intent to cause riot-if rioting be committed; if not committed : Whoever malignantly, or wantonly by doing anything which is illegal, gives provocation to any person intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

The other offence is under Sections 196(1)(a), which is 153A of the earlier regime of the IPC. It reads as follows:

> "196(1)(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 through electronic communication 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;
>
> xxxxx"

NC: 2025:KHC:4434 The remainder of the offence is under Section 353(1) of the BNS, which is Section 505(1) of the earlier regime - the IPC.

It reads as follows:

> "353. Statements conducing to public mischief:
>
> (1) Whoever makes, publishes or circulates any statement, false information, rumour, or report, including through electronic means--
>
> (a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army, Navy or Air Force of India to mutiny or otherwise disregard or fail in his duty as such; or
>
> (b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquillity;

or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both."

(Emphasis supplied) Section 192 deals with wantonly giving provocation with an intention to cause riot, Section 196(1)(a) deals with promoting enemity between different groups and Section 353(1) deals with statements conducing to public mischief. If the complaint so registered is noticed, qua the ingredients that are necessary for the offences as afore-quoted, the unmistakable inference NC: 2025:KHC:4434 that would be drawn is that, none of the ingredients of the offences are met in the case at hand.

10. The issue in the case at hand as what should be the ingredients of the afore-quoted offences need not detail this Court for long or delve deep into the matter as the Apex Court in the case of PATRICIA MUKHIM v. STATE OF MEGHALAYA1 interpreting both Sections 153A and 505(1) of the IPC, has held as follows:

> "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:

"153-A. Promoting enmity between different groups on grounds of religion, race, (2021) 15 SCC 35 NC: 2025:KHC:4434 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 tranquility, 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

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NC: 2025:KHC:4434 ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

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505. Statements conducing to public mischief.--(1) Whoever makes, publishes or circulates any statement, rumour or report--

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(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both."

9. Only where the written or spoken words have the tendency of creating public disorder or disturbance of law and order or affecting public tranquility, 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] .

11. In Bilal Ahmed Kaloo v. State of A.P. [Bilal Ahmed Kaloo v. State of A.P., (1997) 7 SCC 431 : 1997 SCC (Cri) 1094] , this Court analysed the ingredients of Sections 153-A and 505(2)IPC. It was held that Section 153-A covers a case where a person by "words, either spoken or

NC: 2025:KHC:4434 written, or by signs or by visible representations", promotes or attempts to promote feeling of enmity, hatred or ill will. Under Section 505(2) promotion of such feeling should have been done by making a publication or circulating any statement or report containing rumour or alarming news. Mens rea was held to be a necessary ingredient for the offence under Sections 153-A and 505(2). The common factor of both the sections being promotion of feelings of enmity, hatred or ill will between different religious or racial or linguistics or religious groups or castes or communities, it is necessary that at least two such groups or communities should be involved. It was further held in Bilal Ahmed Kaloo [Bilal Ahmed Kaloo v. State of A.P., (1997) 7 SCC 431 : 1997 SCC (Cri) 1094] that merely inciting the feelings of one community or group without any reference to any other community or group cannot attract any of the two sections. The Court went on to highlight the distinction between the two offences, holding that publication of words or representation is sine qua non under Section 505. It is also relevant to refer to the judgment of this Court in Ramesh v. Union of India [Ramesh v. Union of India, (1988) 1 SCC 668 : 1988 SCC (Cri) 266] in which it was held that words used in the alleged criminal speech should be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. The standard of an ordinary reasonable man or as

they say in English law "the man on the top of a Clapham omnibus"

should be applied.

12. This Court in Pravasi Bhalai Sangathan v. Union of India [Pravasi Bhalai Sangathan v. Union of India, (2014) 11 SCC 477 :

> (2014) 3 SCC (Cri) 400] had referred to the Canadian Supreme Court decision in Saskatchewan (Human Rights Commission) v. William Whatcott[Saskatchewan (Human Rights Commission) v. William Whatcott, 2013 SCC OnLine Can SC 6 : (2013) 1 SCR 467] . In that judgment, the Canadian Supreme Court set out what it considered to be a workable approach in interpreting

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NC: 2025:KHC:4434 "hatred" as is used in legislative provisions prohibiting hate speech. The first test was for the Courts to apply the hate speech prohibition objectively and in so doing, ask whether a reasonable person, aware of the context and circumstances, would view the expression as exposing the protected group to hatred. The second test was to restrict interpretation of the legislative term "hatred" to those extreme manifestations of the emotion described by the words "detestation" and "vilification". This would filter out and protect speech which might be repugnant and offensive, but does not incite the level of abhorrence, delegitimisation and rejection that risks causing discrimination or injury. The third test was for the Courts to focus their analysis on the effect of the expression at issue, namely, whether it is likely to expose the targeted person or group to hatred by others. Mere repugnancy of the ideas expressed is insufficient to constitute the crime attracting penalty.

13. In the instant case, applying the principles laid down by this Court as mentioned above, the question that arises for our consideration is whether the Facebook post dated 4-7-2020 was intentionally made for promoting class/community hatred and has the tendency to provoke enmity between two communities. A close scrutiny of the Facebook post would indicate that the agony of the appellant was directed against the apathy shown by the Chief Minister of Meghalaya, the Director General of Police and the DorbarShnong of the area in not taking any action against the culprits who attacked the non-tribals youngsters. The appellant referred to the attacks on non-tribals in 1979. At the most, the Facebook post can be understood to highlight the discrimination against non-tribals in the State of Meghalaya. However, the appellant made it clear that criminal elements have no community and immediate action has to be taken against persons who had indulged in the brutal attack on non- tribal youngsters playing basketball. The Facebook post read in its entirety pleads for equality of non- tribals in the State of Meghalaya. In our understanding, there was no intention on the part of the appellant to promote class/community hatred. As there is no attempt made by the

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NC: 2025:KHC:4434 appellant to incite people belonging to a community to indulge in any violence, the basic ingredients of the offence under Sections 153-A and 505(1)(c) have not been made out. Where allegations made in the FIR or the complaint, even if they are taken on their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, the FIR is liable to be quashed [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 :

1992 SCC (Cri) 426] .

14. India is a plural and multicultural society. The promise of liberty, enunciated in the Preamble, manifests itself in various provisions which outline each citizen's rights; they include the right to free speech, to travel freely and settle (subject to such reasonable restrictions that may be validly enacted) throughout the length and breadth of India. At times, when in the legitimate exercise of such a right, individuals travel, settle down or carry on a vocation in a place where they find conditions conducive, there may be resentments, especially if such citizens prosper, leading to hostility or possibly violence. In such instances, if the victims voice their discontent, and speak out, especially if the State authorities turn a blind eye, or drag their feet, such voicing of discontent is really a cry for anguish, for justice denied -- or delayed. This is exactly what appears to have happened in this case.

15. The attack upon six non-locals, carried out by masked individuals, is not denied by the State; its reporting too is not denied. The State in fact issued a press release. There appears to be no headway in the investigations. The complaint made by the DorbarShnong, Lawsohtun that the statement of the appellant would incite communal tension and might instigate a communal conflict in the entire State is only a figment of imagination. The fervent plea made by the appellant for protection of non-tribals living in the State of Meghalaya and for their equality cannot, by any stretch of imagination, be categorised as hate speech. It was a call for justice -- for action

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NC: 2025:KHC:4434 according to law, which every citizen has a right to expect and articulate. Disapprobation of governmental inaction cannot be branded as an attempt to promote hatred between different communities. Free speech of the citizens of this country cannot be stifled by implicating them in criminal cases, unless such speech has the tendency to affect public order. The sequitur of above analysis of the Facebook post made by the appellant is that no case is made out against the appellant for an offence under Sections 153-A and 505(1)(c)IPC."

(Emphasis supplied) If the complaint as afore-quoted is considered on the touchstone of the principles elucidated by the Apex Court in the judgment afore-quoted, the inevitable inference would be obliteration of the crime.

11. It becomes apposite to refer to the judgment of the Apex Court rendered in the case of STATE OF HARYANA V. BHAJAN LAL reported in 1992 Supp. 1 SCC 335, wherein the Apex Court holds 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

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NC: 2025:KHC:4434 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 noncognizable 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.

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NC: 2025:KHC:4434 (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."

(Emphasis supplied)

12. For the aforesaid reasons, the following:

ORDER a. The criminal petition is allowed.

b. The impugned crime in Crime No.110/2024, pending before the 3rd Additional Civil Judge (Sr. Dn.) and JMFC Court, Vijayapura, qua the petitioner, stands quashed.

_____SD/-_____ JUSTICE M.NAGAPRASANNA NVJ CT:SS