

Tejender Pal Singh @ Timma vs State Of Rajasthan on 16 December, 2024

[2024:RJ-JD:34845]

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Misc(Pet.) No. 5005/2024

Tejender Pal Singh @ Timma S/o Late Shri Sardar Surjeet Singh,
Aged About 57 Years, R/o 619, Vinoba Basti, Dist. Sri Ganganagar
(Raj.), India.

----Petition

Versus

1. State Of Rajasthan, Through Pp
2. Lakhvinder Singh S/o Shri Mahendra Singh, Aged About 45
Years, R/o Gulabi Bag, PuraniAabadi, Dist. Sriganganagar
(Raj.) India.

----Respondent

For Petitioner(s)	:	Mr. VikasBalua, Sr. Adv. assisted by Mr. Nitin Goklani.
For Respondent(s)	:	Mr. Vikram Singh Rajpurohit, PP. Mr. Prathvipal Singh, SHO, Kotwali, Sriganganagar. Mr. Himmat Jaggaa/w Ms. Tania. Mr. Deepesh Singh Beniwal. Mr. Deepak Choudhary, AAG.

HON'BLE MR. JUSTICE ARUN MONGA

Order Reserved on : 19/10/2024 Pronounced on : 16/12/2024

1. Lakhvinder Singh (Respondent No. 2/complainant), a citizen of India, asserts that Tejender Pal Singh (the petitioner) poses a threat to India's integrity and sovereignty, thus prompting him to file a police complaint/report. The said complaint was subsequently converted/registered as an FIR, which is assailed herein. The petitioner, calls himself to be a preacher of Sikh religion, claiming to be officially appointed by Sikh Gurudwara Prabandak Committee, Amritsar as co-ordinator of Dharam Pracharak Committee for state of Rajasthan. He, on the other hand, contends that the complainant is a proxy planted by a rival from another Gurdwara to exploit state machinery and settle [2024:RJ-JD:34845] (2 of 32) [CRLMP-5005/2024] personal scores. His stand is that the

allegations against him are baseless and part of a vendetta. More of it, in greater details, later. 1.1. Instant Criminal Misc. Petition is for quashing of F.I.R. No.0239/2024 dated 06.07.2024 registered at Police Station Purani Abadi, District Ganganagar, and all consequential proceedings for alleged offences under Sections 152 and 197(1)(c) of the Bhartiya Nyaya Sanhita, 2023.

FACTS

2. Succinctly, relevant facts, shorn of unnecessary details, are that the complainant lodged a written report with P.S. Purani Abadi, District Sri Ganganagar, alleging that on July 5, 2024, at approximately 3:30 PM, the petitioner posted an audio-video recording on his account Facebook from Baba Deep Singh Gurudwara. In the recording, the petitioner reportedly expressed sympathy for Amritpal Singh, an elected member of Parliament in Lok Sabha. The said MP is currently in judicial custody, lodged in a jail in Assam. According to the complainant, the petitioner's speech was anti-national, advocating for Khalistan, and deeply offensive to his religious sentiments. The petitioner is further accused of disseminating anti-national content on social media i.e. Facebook/WhatsApp, with the complainant expressing concerns that this could incite public unrest. Additionally, it is alleged that the petitioner maintains his association with pro-Khalistan individuals and has been seen displaying Khalistan flags at public events. 2.1. In fact, narrative as given in the police complaint (converted in- verbatim into FIR), being apposite, is translated in English as under :-

"To The Station House Officer, Police Station Purani Abadi, Sri Ganganagar.

[2024:RJ-JD:34845] (3 of 32) [CRLMP-5005/2024] For taking legal action by registering a case against the accused Tejendrapal Singh Timma for hurting religious sentiments on Facebook and WhatsApp groups and instigate sedition by misleading the public and demanding Khalistan by making comments against the country.

The complainant states/reports as under :

1. That the complainant is a Jat Sikh having faith in his religious sentiments. That the complainant is connected on social media with accused Tejendrapal Singh Timma s/o Surjeet Singh through Facebook and WhatsApp groups.
2. That on 05.07.2024 at around 03.00-03:30 pm, a video was made by accused Tejendrapal Singh Timma on his Facebook ID while sitting in the office at Gurudwara Babadeep Singh located in Purani Abadi. In the said video, the accused expressed his sympathy with the so-called Amritpal Singh, who had committed the crime of treason by occupying a police station in Punjab and is imprisoned in the jail of Dibrugarh, Assam for that crime, and is against the country of India. While making comments, he gave provocative speeches, demanding Khalistan that will make the government bawl which has hurt his religious sentiments and addressing the public in the name of treason i.e. demanding Khalistan, due to which there is possibility of unrest or riots in the country. Statements regarding treason are being made continuously on

Facebook and WhatsApp groups by accused Tejendrapal Singh Timma, which has hurt the religious sentiments of the applicant because the applicant is an Indian citizen and the applicant remains loyal to the Constitution of India. If in this way the accused keeps making demand of Khalistan, then at any time, the public can get angry which may lead to any untoward incident. Accused Tejendrapal Singh Timma has relations with the people demanding Khalistan and in this regard, the accused has also made his pictures and videos viral, wherein he is seen roaming around with Khalistan flags in gatherings and programs in whole country. All the photographs and videos in this regard are attached with the application. Now the applicant has also come to know that 25-30 cases are pending against the accused Tejendrapal Singh Timma in various courts.

3. That the video made by the accused on social media Gurudwara Baba Deep Singh is situated in the puraniabadi area of Padampur Road, Sri Ganganagar, which comes under the area of the old abadi police station area.

4. That the accused Tejendra Pal Singh had insulted the Collector and used threatening words in the Collector's Office, Sri Ganganagar, whose videos have been made by the accused. Before this incident, the accused while standing in front of the office of Superintendent of Police has insulted and threatened him and he had said, whoever comes in between, will have to face consequences. Before that, he used threatening words in front of the Collector and said that we are the death warrants who went to Delhi and killed Indra. Therefore, by submitting an application, it is requested that a case should be registered against the accused Tejendrapal Singh Timma for hurting religious sentiments on Facebook and WhatsApp groups, inciting treason by misleading the public and demanding Khalistan by making comments against the country and take legal action.

Please register the FIR and pass appropriate order directing the police officials PS puraniabadi, Sri Ganganagar, for taking further action."

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[CRLMP-5005/2024]

2.2. Basis above complaint/report, the FIR impugned herein was registered.

3. In the aforesaid factual backdrop, I have heard the rival contentions and perused the case file and also gone through the contents of the FIR.

SUBMISSIONS ON BEHALF OF THE PETITIONER

4. Mr. Vikas Balia, learned Senior Counsel for the petitioner at the outset would contend that the FIR is false and frivolous, claiming that it is the result of personal animosity arising out of rivalry between groups of two different gurudwaras located in the same neighbourhood. His argument is that the complainant is a close associate of another individual with whom the petitioner has a dispute and that the FIR is an abuse of the legal process, having been lodged at the instance of a proxy of the rival of the petitioner.

5. He would submit that the complainant had previously also filed two other false FIRs due to this animosity. He asserted that a review of the video in question will show that the petitioner did not demand a separate State or incite violence, but merely criticized political figures. Consequently, he contended that the FIR lacks merit and is an attempt to harass the petitioner.

6. Adumbrating further, learned Senior Counsel for the petitioner would argue that from the bare perusal of the contents of the video dated 05/07/2024, it becomes evident that the same does not constitute offence punishable u/s 152 or 197(1)(c) of the BNS, 2023 as the alleged act of the petitioner cannot be said to amount to excite or attempt to excite secession or armed rebellion or subversive activities or encouragement of separatist activity or endangering the sovereignty or unity and integrity of India. The petitioner has merely criticized the [2024:RJ-JD:34845] (5 of 32) [CRLMP-5005/2024] amendment brought in the parliament regarding the procedure of taking oath right before the oath ceremony of the said Member of Parliament- Amritpal Singh was scheduled.

6.1. Moreover, the explanation to section 152 of BNS, 2023 makes it crystal clear that comments expressing disapprobation of the measures or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred into this section do not constitute an offence under the said section.

6.2. The essential ingredients of the offence are conspicuously missing in the alleged audio-video recording referred to by the complainant in the impugned FIR.

6.3. The complainant has levelled the allegations against the petitioner that he has made statements against India and demanded Khalistan while showing his sympathy towards Amritpal Singh who is an elected member of Parliament. However, a bare perusal of the contents of the alleged AVR makes it crystal clear that none of these allegations leveled by the complainant against the petitioner in the FIR are present in the alleged video and the entire genesis of the FIR lodged against the petitioner is misconceived and distorted.

6.4. The allegations levelled against the petitioner in the impugned FIR on the basis of the remaining AVRs are thus false, vague and are in respect of events of the dates prior to the date on which the BNS, 2023 was brought into effect i.e., prior to 01/07/2024. 6.5. During the course of the arguments, the learned counsel for the complainant played an alleged video of the petitioner before this Court wherein he was in chains and was protesting against the State authorities. He would contend that, what is pertinent is that the [2024:RJ-JD:34845] (6 of 32) [CRLMP-5005/2024] petitioner was merely protesting against the conduct of the State for refusing to release the prisoners who had completed the maximum sentence of the offence that they have been charged with. 6.6.

Furthermore, he would point out that the complainant though claims the aforesaid incident to be at the office of the Superintendent of Police and District Magistrate, Sri Ganganagar, but none of the State authorities have filed any FIR / complaint against the petitioner for the said incident, about which allegations have been levelled by the complainant. This clearly establishes the fact that the version of the said incident as alleged by the complainant is absolutely false and concocted.

6.7. The said video played / shown by the petitioner dates way back to the year 2016. Hence, even if the said allegations contained in the FIR are taken as it is, the same does not constitute an offence under the provisions of BNS 2023 which came into effect from 1 st July, 2024. BNS, 2023 being a substantive criminal law cannot be applied retrospectively. In other words, the petitioner cannot be charged with an offence for under the BNS 2023 for an act which was done at the time when the BNS 2023 was not in force. Hence, the impugned FIR based on those allegations cannot be sustained in the eyes of law, he would emphatically argue.

6.8. Even otherwise, the said allegations contained in the impugned FIR have been levelled after an extraordinarily and unexplained delay of 6-7 years. As no FIR was lodged against the petitioner either by the State authorities or by the complainant at the relevant point of time in year 2016 or later, the allegations pertaining to the same have been added in the present FIR only in order to add artificial gravity to the present case, which is nothing but an abuse of process of law.

[2024:RJ-JD:34845] (7 of 32) [CRLMP-5005/2024] 6.9. He would urge that the petitioner is a social worker with strong religious belief in Sikhism and has received various accolades/appreciation letters from the diverse departments of the State Government as well as the administrative officers. The complainant who is nurturing a grudge against the petitioner cannot be permitted to seek fishing or a roving inquiry against the petitioner by referring to the alleged incidents/videos which are more than 8 years old, since no FIR was lodged against the petitioner at the relevant point of time.

7. In support of his aforesaid arguments, learned Senior Counsel relied on judgments in Mohammad Wajid &Anr. Versus State of U.P.¹, Balwant Singh &Anr. Vs. State of Punjab ², Javed Ahmad Hajam Vs. State of Maharashtra³, Kedar Nath Singh Vs. State of Bihar⁴.

7.1. Learned Senior Counsel for the petitioner thus urged that in light of his arguments and read with judgments *ibid*, the impugned FIR and entire subsequent proceedings may be quashed and set aside. 7.2. Learned Senior Counsel also relied on the Supreme Court judgment rendered in case of *PradmodSuryabhanPawar vs. State of Maharashtra*⁵, in respect of WhatsApp messages wherein it is opined as under:-

"23. Without entering into a detailed analysis of the content of the WhatsApp messages sent by the appellant and the words alleged to have been spoken, it is apparent that none of the offences set out above are made out. The messages were not in public view, no assault occurred, nor was the appellant in such a position so as to dominate the will of the complainant. Therefore, even if the allegations set out by the complainant with respect to the WhatsApp messages and words uttered are

accepted on their face, no offence is made out under the SC/ST Act (as it then 2023 Livelaw (SC) 624 : 2023 INSC 683 [1995] o AIR (SC) 1785 [2024] 3 S.C.R. 317 : 2024 INSC 187 [1962] o AIR (SC) 955 (2019) 9 SCC 608, 2019 INSC 939 [2024:RJ-JD:34845] (8 of 32) [CRLMP-5005/2024] stood). The allegations on the face of the FIR do not hence establish the commission of the offences alleged."

PROSECUTION ARGUMENTS

8. Per contra, Mr. Vikram Singh Rajpurohit, learned Public Prosecutor would argue that he is in receipt of factual report and which reveals that petitioner is a serial offender and as may as 18 FIR in past were registered against him.

8.1. The accused-Petitioner has been consistently making and publishing videos on his Facebook and WhatsApp group against the sovereignty of the State. It was thus that, on the basis of above allegations, that an F.I.R., sought to be quashed herein, was registered. 8.2. During investigation it has also come to light that the Petitioner, through his videos, is carrying out propaganda of being part of the Sikhs who were present in the Golden Temple/Harmandir Sahib Gurudwara during the operation Blue Star against the Defence forces of country for the Sikh Community. He is doing so through digital means, thus instigating others to raise demand of declaring Punjab State as Khalistan State which is against the sovereignty and integrity of the Nation. Due to his such acts, there is an apprehension of disturbance in the sovereignty and integrity of the Nation.

8.3. Petitioner is a habitual offender against whom multiple cases have been registered under the provisions of TADA act, Assault, Destruction of Government Property and hurting the religious sentiments of the public.

8.4. After the investigation, offences under section 152, 197(1)(C) of the Bharatiya Nyaya Sanhita, 2023 are prima facie found to be proved against the Petitioner.

[2024:RJ-JD:34845] (9 of 32) [CRLMP-5005/2024] 8.5. Furthermore, learned PP would point out that the petitioner has been evading to appear before the Investigating Officer. Resultantly, further investigation has not even taken off due to such dilatory tactics. The present petition deserved to be thus dismissed, learned PP would thus contend.

CONTENTIONS ON BEHALF OF THE COMPLAIANT

9. M/s Himmat Jagga and Deepesh Singh Beniwal, learned counsel for the complainant/respondent No.2 would seek dismissal of the petition submitting thus :-

9.1. That the petitioner has admitted the fact that he has made viral the alleged video (video no. 1) on his Facebook account. In this video, he has stated that Amritpal Singh (now a sitting MP from Khadoor Sahib (Punjab) and presently lodged in Central Jail Dibrugarh (Assam) will raise the slogan of Khalistan in Parliament) and now the Government could not do anything except screaming. He has 32K followers

on Facebook account. His video has been seen by 8.4K people and has been shared by 77. He has, therefore, tried to encourage the feelings of separatist activities by electronic communication. He is in close touch of Amritpal Singh and his team as is evident from the photographs. This act of the petitioner comes under Sections 152 and 197(1)(C) of BNS, 2023. Therefore, the impugned FIR ought not to be quashed by this court.

9.2. It was also urged that after getting interim relief from this Court in this very case, the petitioner again uploaded another reel and a photo on his Facebook account with comment "1984 tks/kiqj tsy ns canh vkt njckj lkfgc "kghn xSyjh fo[ks) and "njckj lkfgc fLFkr "kghn xSyjh esa tks/kiqj tsy lkFk;ksa ds lkFk vkt dh ,d ;knxkj rLohjA 1984 dk oks ldk ftlesa dqN "kghn gq,) dqN t[eh gq,) dqN fxjQrkj gq, vksj dqN [2024:RJ-JD:34845] (10 of 32) [CRLMP-5005/2024] Qjkj gq,A tax ds vkye esa gksrk Hkh ;gh gSA ckck cank flag cgknqj ls ysdj canh fla?kksa dh nkLrku gekjs lkeus gSA".

9.3. The said video has been recorded with the portrait of deceased Jarnail Singh Bhindrawala in the background. Same reflects that the petitioner is misusing the interim orders passed by this Court.

Petitioner is again trying to encourage feelings of separatist activities by electronic communication. By the said act he has also tried to pollute the mind of the youth. This act is endangering the sovereignty and integrity of India and comes under the definition of 152 BNS, 2023. Only on this ground alone, the present petition deserves to be dismissed.

9.4. Entire matter is only at a preliminary stage and the investigation has not been proceeded with, except some preliminary effort made on the date of the registration of the case. The evidence has to be gathered after a thorough investigation and placed before the competent trial Court. Basis thereof alone, the Court can come to a conclusion one way or the other on the plea of mala fides. If the allegations are found bereft of truth and made maliciously, the investigation will disclose so. At this stage, when there are only allegations and recriminations, but no evidence, this Court cannot anticipate the result of the investigation and render a finding on the question of mala fides. Therefore, the complaint/FIR should not be thrown overboard on the mere unsubstantiated plea of mala fides. Even assuming that the complainant filed the complaint only on account of his personal animosity, that, by itself, will not be a ground sufficient to discard the complaint containing serious allegations. Same has to be tested and weighed after the evidence is collected. [2024:RJ-JD:34845] (11 of 32) [CRLMP-5005/2024] 9.5. Reliance was placed on Supreme Court in the case of Vinod Raghuvanshi Vs. Ajay Arora⁶. It is held therein that investigation should not be shut out at the threshold, if the allegations have some substance. FIR has to be taken on its face value. There is no question of considering the merits of the allegations contained in the FIR at preliminary stage or testing the veracity of allegations. In the present case, the petitioner himself has admitted that he had made viral the alleged video and he used the word of Khalistan. Therefore, the instant FIR can not be quashed.

9.6. Relying further on judgment rendered in *Satvinder Kaur Vs. State-Govt. of NCT of Delhi* 7, learned counsel for the complainant would lay emphasis on the following extract thereof :-

"14. Further, the legal position is well settled that if an offence is disclosed the court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to be completed. If the FIR, prima facie, discloses the commission of an offence, the court does not normally stop the investigation, for, to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. [*State of W.B. v. Swapan Kumar Guha*, (1982) 1 SCC 561 : 1982 SCC (Cri) 283] It is also settled by a long course of decisions of this Court that for the purpose of exercising its power under Section 482 CrPC to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se; it has no jurisdiction to examine the correctness or otherwise of the allegations. [*Pratibha Rani v. Suraj Kumar*, (1985) 2 SCC 370, 395 : 1985 SCC (Cri) 180]"

9.7. Learned counsel for the complainant would therefore submit that it would not be proper for this Court to analyze the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premise, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to evaluate and assess the material placed before this Court to conclude that the FIR/complaint cannot be proceeded with. (2013) 10 SCC 581 (1999) 8 SCC 728 [2024:RJ-JD:34845] (12 of 32) [CRLMP-5005/2024] 9.8. They would further point out that the petitioner has raised the defence of mala fide against complainant while stating that the complainant along with certain others had lodged the various FIR's against him in which the police has filed negative final reports. Complainant had also lodged another FIR No. 290/2022 at PS Padampur, district Sriganganagar against the petitioner and others. It was reported therein that the petitioner along with others had taken away the holy book of Shri Guru Granth Sahib from Gurudwara and deposited the same with Damdama Sahib. The petitioner has even defied court orders. Despite a status quo directive in Civil Suit No. 119/2019, he issued a video publicly declaring the interim order's applicability. The Guru Granth Sahib was forcibly removed, leading to registration FIR No. 168/2020. It was thus that the police filed the negative final report in FIR No. 290/2022, on the ground that on the same cause of action, one Avtar Singh had already lodged an FIR No. 168/2020 at Police Station Chunawadh, District Sriganganagar. The complainant has moved a protest petition in the matter and same is still pending before the Judicial Magistrate, Padampur, District Sriganganagar.

9.9. That one Jagseer Singh had also lodged FIR No. 222/2020 under Section 295, 295-A, 499, 500 IPC against the petitioner at Police Station Kotwali, Sriganganagar. The police again filed the negative final report in this FIR. But the Complainant therein has also filed protest petition and is contesting the matter.

9.10. Another FIR No. 198/22 under Section(s) 395, 153, 153(a) and 153(b) IPC was registered against the petitioner at Police Station Kotwali, Sriganganagar (available at page no. 25 of the instant Crl. Misc. Petition). In that too, the police filed negative final report. The [2024:RJ-JD:34845] (13 of

32) [CRLMP-5005/2024] complainant therein again filed protest petition and is contesting the matter. In aforesaid two FIRs No. 198/22 and in FIR No. 222/20, the allegations against the petitioner are to raise the slogans of Khalistan, but the police, acting under the pressure of the petitioner, has filed the negative final report. Since his childhood, the petitioner is a staunch supporter of Khalistan and Jarnail Singh Bhindrawala. This act is fortified by the videos, reel and photos submitted by the complainant along with the written submissions. Such type of persons are very harmful for the sovereignty and integrity of the India. 9.11. In yet another FIR No. 88/16, registered under Section 3 of Prevention of Damage to Public Property Act and Section 245 of Rajasthan Municipality Act against the petitioner, he is alleged to have caused illegal encroachment of land of Gurudwara Baba Deep Singh, Srigangangar. In this FIR also, the police filed negative final report without conducting any inquiry under the fear and pressure of the petitioner and other members of the Gurudwara. The complainant therein too has filed the protest petition in this matter also and contesting the matter.

9.12. That once the information is reported at the police station and an FIR is registered, then the question of mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence adduced in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. Reference was made to *Dhanalakshmi v. R. Prasanna Kumar*⁸, *State of Bihar v. P.P. Sharma*⁹, *RupanDeol Bajaj v. [1990 Supp SCC 686 : 1991 SCC (Cri) 142]* [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] [2024:RJ-JD:34845] (14 of 32) [CRLMP-5005/2024] *Kanwar Pal Singh Gill*¹⁰, *State of Kerala v. O.C. Kuttan*¹¹, *State of U.P. v. O.P. Sharma*¹², *Rashmi Kumar v. Mahesh Kumar Bhada*¹³, *Satvinder Kaur v. State (Govt. of NCT of Delhi)*¹⁴ and *Rajesh Bajaj v. State NCT of Delhi*¹⁵. The counsels reiterated the aforesaid position by citing still more case law viz *State of Karnataka v. M. Devendrappa*¹⁶, *State of M.P. v. Awadh Kishore Gupta*¹⁷ and *State of Orissa v. Saroj Kumar Sahoo*¹⁸. 9.13. Relying on the above case law, they would insist that, if the FIR allegations indicate a cognizable offense, the informant's mala fides become irrelevant. The petitioner has himself candidly admitted to making a video go viral, advocating for Khalistan, leaving thus no choice for this Court to entertain the instant petition. 9.14. The petitioner has a history of over 20 criminal cases and has spent more than nine years in jail due to involvement in Operation Blue Star and association with Jarnail Singh Bhindranwale. Referring to various videos, they would, inter alia, urge that a video from the petitioner's Facebook account shows him declaring allegiance to Jarnail Singh Bhindranwale. In another video, alongside Amritpal Singh, he called for establishing Sikh rule and urged readiness for sacrifice. In another video, the petitioner organized a rally where participants displayed Bhindranwale's photos and attempted to influence young Sikhs to follow Bhindranwale's ideology. 9.15. In a TV interview, the petitioner himself admitted to serving over nine years in various jails related to Operation Blue Star and openly advocated for Sikh rule in Punjab.

[(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] [(1999) 2 SCC 651 : 1999 SCC (Cri) 304] [(1996) 7 SCC 705 : 1996 SCC (Cri) 497] [(1997) 2 SCC 397 : 1997 SCC (Cri) 415] [(1999) 8 SCC 728 : 1999 SCC (Cri) 1503] [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] [(2002) 3 SCC 89 : 2002 SCC (Cri) 539] [(2004) 1 SCC 691 : 2004 SCC (Cri) 353] [(2005) 13 SCC 540 : (2006) 2 SCC (Cri) 272] , SCC pp. 547-50,

paras 8-11 [2024:RJ-JD:34845] (15 of 32) [CRLMP-5005/2024] 9.16. The petitioner habitually pressures authorities by mobilizing protests. In one instance, he led a gathering declaring that Sikhs would not tolerate government policies. He even mentioned Indira Gandhi's assassination and stated that Sikhs are one who went to Delhi and killed Indira (Prime Minister Indira Gandhi) (vhl aekSr ns vk ijokus gSaA ftUgksus fnYyh tkds bfUnjk Bksdh).

9.17. The petitioner's actions, in collaboration with Amritpal Singh, aimed at establishing Khalistan and promoting separatism, undermine national unity. His admission of making the video viral precludes quashing the FIR. Section 152 BNS penalizes acts inciting separatism, rebellion and/or threats to India's sovereignty. With a record of incarceration for Operation Blue Star and clear admission of creating and sharing the video advocating for Khalistan, the petitioner is not entitled to any relief from this Court.

10. To sum up, learned counsel for the complainant would argue that the petitioner's conduct and the contents of audio video recordings and the tone and tenor of the petitioner are self-speaking.

10.1. Learned counsel for the complainant and learned Public Prosecutor would re-emphasize, in unison, on petitioner's speech, which he has self-uploaded on Facebook and WhatsApp. They would argue that said speech clearly discloses the statutorily prescribed ingredients under Sections 152 and 197(1)(c) of the Bhartiya Nyaya Sanhita, 2023. Therefore, they urge that the petition be dismissed.

DISCUSSION, ANALYSIS AND OPINION

11. Having heard both sides and perused the record of the case, I shall now proceed to deal with the rival submissions and render my opinion by recording reason thereof in the succeeding part. [2024:RJ-JD:34845] (16 of 32) [CRLMP-5005/2024]

12. First and foremost, let us see the penal sections invoked herein by the prosecution i.e. 152 and 197(1)(c) of the Bhartiya Nyaya Sanhita, 2023 which read as under:

"152. Acts endangering unity and integrity of India.- Whoever, purposely or knowingly, by words, either spoken or written, or by signs, or by visible representation or by use of financial mean, or otherwise, excites or attempts to excite, secession or armed rebellion or subversive activities, or encourages feelings of separatist activities or endangers sovereignty or unity and integrity of India; or indulges in or commits any such act shall be punished with imprisonment for life or with imprisonment which may extend to seven years, and shall also be liable to fine.

Explanation.- Comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in this section do not constitute an offence under this section.

197. Imputations, assertions prejudicial to national integration:-

"(1) Whoever, by words either spoken or written or by signs or by visible representations or through electronic communication or otherwise,--

(a) xxx

(b) xxx

(c) makes or publishes any assertion, counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religious, racial, language or regional group or caste or community, and such assertion, counsel, plea or appeal causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons;

or

(d) xxx shall be punished with imprisonment which may extend to three years, or with fine, or with both. "

12.1. Perusal of section 152, *ibid*, reveals that same is aimed at protecting the unity, sovereignty, and integrity of India. This provision has its genesis to section 124A (sedition) of repealed IPC. Offence of Sedition was originally introduced in year 1870 (after 10 years of enactment of IOC in 1860) by the British Government for punishing the acts of hatred or contempt or disaffection towards Her Majesty or the Crown. The offence of sedition under section 124-A of IPC has though been done away in the BNS, but a new provision in section 152, somewhat similarly worded, has been brought in by the law makers in Parliament. It criminalizes acts or attempts that incite secession, armed [2024:RJ-JD:34845] (17 of 32) [CRLMP-5005/2024] rebellion, or subversive activities, or encourage separatist sentiments that threaten the country's stability. *Prima facie*, it appears to be rather reintroducing section 124-A (sedition) by another name. It is rather debatable as to which of two provisions i.e. the one repealed (sedition) or the one reintroduced is more stringent. Pertinently, punishment under section 124-A of IPC was either imprisonment for life or upto three years in prison to which fine could also be added. Whereas, punishment under section 152 of BNS is either imprisonment for life or upto seven years in prison and shall also have the mandatory liability of fine. Be that as it may, both the provisions are worded stringently, and I am thus of the mind that a high threshold of intent (*mens rea*), ensuring that only deliberate actions with malicious intent would fall under its ambit. Thus the provision (section 152 of BNS) has to be read and meant and interpreted in a way that it mandatorily requires that the act must be committed purposely or knowingly i.e. *Mens Rea* (Intent). Alleged acts which are covered within the ambit of the section are use of words (spoken or written) and/or signs or visible representation and/or financial means or any other methods and/or encouragement of secession, rebellion, or subversive activities and/or acts that directly or indirectly endanger India's sovereignty, unity, or integrity. The provision thus seeks to maintain national integrity and prevent destabilization. Given India's diversity and history of secessionist movements, the legislature aims to curb acts that could fragment the country.

12.2. Appositely, explanation Clause to section 152 provides the requisite safeguard by exempting that lawful criticism of government policies, aimed at reform or alteration through lawful means, does not fall under the ambit of the section. The explanation protects individuals expressing disapproval of government policies as long as their criticism [2024:RJ-JD:34845] (18 of 32) [CRLMP-5005/2024] does not incite rebellion or separatism. This distinction has been carved out for preserving lawful dissent and democratic freedoms, particularly the freedom of speech and expression. Explanatory provision thus provides the balancing Act. It balances national security with individual rights, ensuring that lawful political dissent is not stifled under the pretext of maintaining sovereignty.

12.3. In this context, reference may be had to Supreme Court judgments, rightly cited by learned senior counsel for the petitioner, which are as below :-

Balwant Singh & Anr. Vs. State of Punjab "A plain reading of the above Section would show that its application would be attracted only when the accused brings or attempts to bring into hatred or contempt or excites or attempts to excite disaffection towards the Government established by law in India, by words either written or spoken or visible signs or representations etc. Keeping in view the prosecution evidence that the slogans as noticed above were raised a couple of times only by the appellant and that neither the slogans evoked a response from any other person of the Sikh community or reaction from people of other communities, we find it difficult to hold that upon the raising of such casual slogans, a couple of times without any other act whatsoever the charge of sedition can be founded. It is not the prosecution case that the appellants were either leading a procession or were otherwise raising the slogans with the intention to incite people to create disorder or that the slogans in fact created any law and order problem. It does not appear to us that the police should have attached much significance to the casual slogans raised by two appellants, a couple of times and read too much into them. The prosecution has admitted that no disturbance, whatsoever, was caused by the raising of the slogans by the appellants and that in spite of the fact that the appellants raised the slogans a couple of times, the people, in general, were unaffected and carried on with their normal activities. The casual raising of the Slogans, once or twice by two individuals alone cannot be said to be aimed at exciting or attempting to excite hatred or disaffection towards the Government as established by law in India, Section 124A IPC, would in the facts and circumstances of the case have no application whatsoever and would not be attracted to the facts and circumstances of the case.

9. In so far as the offence under Section 153A IPC is concerned, it provides for punishment for promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever or brings about disharmony or feeling of hatred or ill-will between different religious, racial, language or regional groups or castes or communities. In our opinion only where the written or spoken words have the tendency or intention of creating public disorder or disturbance of law and order or effect public tranquility,

that the law needs to step in to prevent such an activity. The facts and circumstances of this case unmistakably show that there was no [2024:RJ-JD:34845] (19 of 32) [CRLMP-5005/2024] disturbance or semblance of disturbance of law and order or of public order or peace and tranquility in the area from where the appellants were apprehended while raising slogans on account of the activities of the appellants. The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153 A IPC and the prosecution has to prove the existence of mens rea in order to succeed. In this case, the prosecution has not been able to establish any mens rea on the part of the appellants, as envisaged by the provisions of Section 153A IPC, by their raising causally the three slogans a couple of times. The offence under Section 153A IPC is, therefore, not made out."

Javed Ahmad Hajam Vs. State of Maharashtra &Anr. Supreme Court "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-A of the IPC."

Kedar Nath Singh Vs. State of Bihar:

"26.(2). It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction. The provisions of the sections read as a whole along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency, to create disorder or disturbance of public peace by resort to violence. As already pointed out, the explanations appended to the main body of the section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law an order that the law steps in to prevent such activities in the interest of public order, so construed, the section, in our opinion, strikes the correct balance between individual fundamental rights and the interest of public order. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning of the words used, but also take into consideration the antecedent history of the legislation its purpose and the mischief it

seeks to suppress vide (1) Bengal Immunity Co. Ltd. v State of Bihar, 1955- 2 SCR 603 and (2) R. M. D. Chamarbaugwala v. Union of India, 1957 SCR 930 . Viewed in that light, we have no hesitation in so construing the provisions of the sections impugned in these cases as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to violence."

(emphasis supplied) [2024:RJ-JD:34845] (20 of 32) [CRLMP-5005/2024] 12.4. To sum up, laws restricting speech must be narrowly tailored. There must be a direct and imminent connection between the speech and the likelihood of rebellion or secession to invoke such provisions. Legitimate dissent or criticism cannot be equated with sedition or anti- national acts. For instance, in cases involving Section 124A (sedition) of the repealed IPC, casual or rhetorical statements did not amount to sedition, unless, of course, they incite violence or public disorder. To my mind, a similar approach would apply to Section 152. Its broad phrasing necessitates careful application to prevent misuse or overreach. The provision must be interpreted in conjunction with the constitutional rights to free speech and expression to ensure it does not infringe on democratic freedoms. One must stay mindful that the provision is used as a shield for national security and not a sword against legitimate dissent.

13. Moving on now to the other penal section which has been invoked in the FIR i.e. Section 197 of BNS (corresponding with section 153-B of IPC). Said section is a legislative measure aimed at preserving the harmony and cohesion of India's diverse society by criminalizing acts that foster enmity, hatred, or disharmony among different groups. This provision serves as a vital safeguard against divisive and inflammatory expressions that could undermine national integration. The section targets acts done through words (spoken or written), signs, visible representations, electronic communication, or any other means. This wide ambit reflects the need to address modern communication channels such as social media. Subclause (c) thereof prohibits assertions, pleas, appeals, or counsel concerning the obligations of individuals based on their membership in a particular religious, racial, linguistic, regional, caste, or community group, if these acts cause or are likely to cause disharmony, enmity, hatred, or ill-will. [2024:RJ-JD:34845] (21 of 32) [CRLMP-5005/2024] 13.1. The intent (Mens Rea) or likelihood of causing disharmony is central to invoking this provision. If the offending act need does not result in actual disharmony; the mere likelihood of such an outcome is may not be sufficient to establish Mens Rea, in the absence of any other material. The offensive statements urging members of one religious community to boycott another group based on religious differences must impact on Society so as to spark violence, perpetuate stereotypes, and create deep-seated mistrust among communities, leading to long- term societal fragmentation. Strict interpretation thereof has to be adopted, else the law (both section 152 and 197 of BNS) would be fraught with danger of being misapplied to stifle legitimate expressions of dissent or critical opinions, especially in sensitive issues like caste or regional disparities. The provision must be balanced against the constitutional right to freedom of speech and expression under Article 19(1)(a). Speech that is critical but does not incite violence or hatred should not fall under the ambit of this section.

13.2. Thus there has to be a direct nexus between the impugned act and the likelihood of causing disharmony or hatred. A distinction must be drawn between genuine grievances expressed in good

faith and malicious intent to provoke enmity or hatred. For instance, in cases under Section 153A of the IPC (similar in nature), mere expression of unpopular or controversial views does not constitute an offense unless there is a clear intent or likelihood of inciting communal hatred. In modern day times where speech in the digital era is the norm, rise of social media has made such provisions more relevant as platforms are often used to spread divisive content rapidly and widely. The law needs to adapt to tackle anonymous or pseudonymous hate speech effectively. Enforcement authorities must exercise restraint and discretion to avoid stifling constructive dialogue or political dissent. Thus, application of [2024:RJ-JD:34845] (22 of 32) [CRLMP-5005/2024] sections 152 and 197 must be judicious to avoid infringing on free speech and prevent misuse. Proper judicial oversight and clear guidelines on interpreting terms like "disharmony" and "ill-will" are essential to ensure the law achieves its intended purpose without becoming a tool for oppression or suppression of dissent. 13.3. In the light of aforesaid position of law, let us now advert to the specifics of the case in hand. In course of arguments, learned counsel also had brought the uploaded audio video recording dated 05.07.2024 of the petitioner in a pen drive which was played in the Courtroom. The same is in Vernacular (Punjabi). It would also be apposite to have transliteration (in English script) and also the English version of the Vernacular audio-video recording dated 05.07.2024, which are as under:

TRANSLITERATION OF VERNACULAR AVR :

"Parliament de vich Hindu Rasthriya da nara vajiya te bhajpa waleya ne tadiya mark ke mej thap-thapa ke ise gal da swagat kitta. Ajj aa giya bhai Amritpal Singh, sarkar diyan cheekan nikalgiya Om Birla ne ek din pehlan byan jari karta ke nawa amendment kiti gayi haike koi v banda hun sonh chakkan to baad koi nara ni maruga. Pata siga ke aagya patandar jeda Parliament de hik te chadhke Khalistan da nara maruga. Tuhane pehlan kehasiga ke desh kise de piyo da niga, har bande nu jawab dena aunda hai. Ajj jis tara sarkar diyan cheekan nikalian, pani cho kaddi macchi wangu jis taran sarkar tadfi, jehde nare marde si, jehde damgaje marde sige, ajj labhe ni Parliament Ch. Kis taran Amritpal di sonh jhukaun di rasam nibhayi gayi, fotuaan video takht te paun di layi gayi, eh khauf hai khalse da, eh khauf hai Dashmesh di Kaum da, te khauf hona chahida hai. Sarkar nu pata lagna chahidahai, ke jehdi kaumna tusi panga len dye ho, eh Dashmesh di Kaum hai, eh 21 di 31 bhaji moud di hai. Ajj de ghatna karam ne jo wapriya Parliament ch, oh ne sabit karta ki wakiya eh Sheran di Kaum hai, te Sheran di Kaum de muhre, Gidad Kalolan ni kar sakde, khauf ch rehenge, te khauf ch rehna chahida v hai."

ENGLISH TRANSLATION OF THE TRANSCRIPT OF THE ALLEGED VIDEO The slogan of Hindu Rashtra was raised inside the Parliament and BJP people welcomed this by clapping and thumping the tables. Today, brother Amritpal Singh has come and the government is bawling. Om Birla had issued a statement a day before that no person will raise any slogans after taking the oath. They knew that a mischievous person has come, who will go to the gallery of Parliament and raise slogans of Khalistan. I had told [2024:RJ-JD:34845] (23 of 32) [CRLMP-5005/2024] you earlier that the country does not belong to anyone's father, every person knows how to answer. Today the way the government screamed is like a fish taken out from the water. The slogans that the government used

to raise earlier were not found in the Parliament today. The manner in which the swearing ceremony of Amritpal Singh was performed that even the photos and videos of the same were prohibited shows that this is the fear of Khalsa, this is the fear of Dashmesh community and this fear should be there. The governments should know that the community with which you are messing is of Dashmesh. This is a community that returned 31 of 21. Today's event that happened in the Parliament has proved that this is a community of lions and jackals cannot do mischief in front of lions and that they will live in fear and should also remain in fear.

14. Learned Public Prosecutor and the learned counsel for the complainant have relied upon the contents of the AVR, particularly the following utterances in the petitioner's AVR dated 05.07.2024 and contended that the same disclose the commission of offences under sections 152 and 197(1) of the BNS.

"They knew that a mischievous person has come, who will go to the gallery of Parliament and raise slogans of Khalistan.

xxx xxxx xxx I had told you earlier that the country does not belong to anyone's father, every person knows how to answer.

xxx xxx The manner in which the swearing ceremony of Amritpal Singh was performed that even the photos and videos of the same were prohibited shows that this is the fear of Khalsa, this is the fear of Dashmesh community and this fear should be there.

(emphasis supplied)

xxx

xxx

xxx

The governments should know that the community with which you are messing is of Dashmesh. This is a community that returns 31 rupees for 21 rupees. Today's event that happened in the Parliament has proved that this is a community of lions and jackals cannot do mischief in front of lions and that they will live in fear and should also remain in fear."

15. Before dealing with the above, first let us analyse the merits of the argument of learned PP that the petitioner was non-cooperative with investigation by not giving his mobile phone and sharing his user name and password of facebook. However, in course of hearing, learned Public Prosecutor has stated that pursuant to an order dated 09.10.2024 passed by this court, the petitioner provided his mobile phone, user ID and password of the WhatsApp and Facebook accounts [2024:RJ-JD:34845] (24 of 32) [CRLMP-5005/2024] but some of its data has been found deleted. Order dated 09.10.2024 being relevant is reproduced here in under :-

1. Pursuant to previous Court order dated 22.08.2024, on resumed hearing today, learned Public Prosecutor submits that even though the petitioner has joined the investigation, but he is not cooperating with the Investigating Officer. In as much as, despite being directed by the Investigating Officer to hand over his mobile phone to

examine its contents, he has not provided the same.

2. Mr. Vikas Balia, Senior Counsel appearing on behalf of the petitioner, under instructions, submits that the petitioner has not objected to handing over his mobile phone at any stage, but since a corresponding receipt of its seizure was not being issued by the Investigating Officer, he did not give his mobile to him.

3. Apropos, learned Public Prosecutor submits that the Investigating Officer shall issue him a receipt by noting its International Mobile Equipment Identity (IMEI) number of the mobile phone therein, and the same would be returned to him after carrying out the necessary investigation.

4. It appears that the mobile phone is required to access the petitioner's WhatsApp and Facebook accounts, which as per the FIR allegations, are said to have been used by him to upload his video graphed public statement under investigation. Since the petitioner has already volunteered to surrender the mobile phone, he shall do the needful.

5. Though this Court is of the view that, for accessing WhatsApp as well as Facebook accounts of the petitioner, the Investigating Officer does not require physical possession of the mobile phone, as both accounts can be accessed through any platform as long as the user ID and passwords are provided.

6. Be that as it may, the petitioner is also directed to give his user ID and password of the WhatsApp and Facebook accounts, so as to enable the Investigating Officer to look into the same. Let a report be filed on or before the next date of hearing.

7. Post it on 18.10.2024.

8. Meanwhile, subject to the compliance, as above, no coercive steps shall be taken against the petitioner qua the FIR in question.

Sd/-

(Arun Monga), J."

16. Apropos, it transpires that mobile phone was given by the petitioner to the investigation team. At this stage, I may hasten to opine that with aforesaid inputs already provided by the petitioner, the police itself could/can get the deleted meta data retrieved from the concerned service provider and/or cyber experts. In any case, petitioner has a right to remain silent under Article 21 of the Constitution of India and cannot be held guilty for not thus rendering co-operation.

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17. Be that as it may, even after having got the mobile phone of the petitioner, nothing has been placed on record or relied in course of the arguments to establish any mens rea or otherwise being incriminating discovered from the Facebook account or the WhatsApp account of the petitioner. It is not even claimed that the data deleted from the petitioner's mobile phone contains any specific incriminating material against him. In the absence of any pointer/indication at all that the data deleted from the petitioner's mobile phone contains any specific incriminating material against him, in my opinion, it would be sheer wild guess to say whether or not the same, if/when retrieved, would yield any incriminating material against him. It would, therefore, be unfair to the petitioner if he is made to suffer by further prolongation of the police investigation, simply to enable the police to carry out a rowing and fishing exercise in an effort to find something in the deleted data, which might turn out to be incriminating against the petitioner.

18. Pertinently, it needs to be noted that the complainant admits that he had lodged the FIR No. 290/2022 at PS Padampur, district Sriganganagar against the petitioner and others with the allegations that the petitioner along with others had taken away Shri Guru Granth Sahib from Gurudwara and deposited the same with Damdama Sahib; that one Jagseer Singh had also lodged FIR No. 222/2020 under Section 295, 295-A, 499 & 500 IPC against the petitioner at Police Station Kotwali, Sriganganagar; that in another FIR No. 88/16 under Section 3 of Prevention of Damage to Public Property Act and Section 245 of Rajasthan Municipality Act against the petitioner, the matter pertains to the illegal encroachment made by the petitioner in Gurudwara Baba Deep Singh, Sriganganagar and that in all those FIRs, the police has filed the negative final reports in the Courts.

[2024:RJ-JD:34845] (26 of 32) [CRLMP-5005/2024] 18.1. No doubt it is submitted that the protest petitions against those negative final reports have also been filed which are pending. 18.2. Nonetheless, the fact remains that except one, the remaining aforesaid FIRs against the petitioner had been lodged by respondent No. 2 (the complainant in the instant case). Mere filing and pendency of the protest petitions does not also negate the reality that the police have already filed negative final reports in those FIRs registered against the petitioner. A reasonable possibility of the instant impugned FIR being actuated by complainant's motive and malice against the petitioner cannot, therefore, be ruled out. This being the state of affairs, the contents of the impugned FIR need more than ordinary standard of scrutiny.

18.3. Moreover, qua antecedents of petitioner, which has been primary ground of attack by prosecution and complainant, reference may be had to Supreme court judgement in Mohammad Wajid, supra. Relevant part thereof is reproduced hereinbelow:-

"The learned Additional Advocate General appearing for the State in her written submissions has furnished details in regard to the antecedents of the appellants. A bare look at the chart may give an impression that the appellants are history sheeters and hardened criminals. However, when it comes to quashing of the FIR or criminal proceedings, the criminal antecedents of the accused cannot be the sole consideration to decline to quash the criminal proceedings. An accused has a legitimate right to say before the Court that howsoever bad his antecedents may be, still if the FIR fails to disclose commission of any offence or his case falls within one of the parameters as

laid down by this Court in the case of Bhajan Lal (supra), then the Court should not decline to quash the criminal case only on the ground that the accused is a history sheeter. Initiation of prosecution has adverse and harsh consequences for the persons named as accused."

19. Aside all above, having read the contents of and heard the AVR dated 05.07.2024 ascribed to the petitioner in the light of the aforesaid factual background of series of other FIRs lodged by the complainant against the petitioner, I am of the opinion that the same do not attract [2024:RJ-JD:34845] (27 of 32) [CRLMP-5005/2024] the applicability either of section 152 or of section 197(1) of the BNS against the petitioner.

20. Let us now analyze the alleged offending statements which are purportedly the cause of invoking the penal sections, *ibid*. The part of the petitioner's statement that "a mischievous person has come, who will go to the gallery of Parliament and raise slogans of Khalistan" only refers to the likelihood that another person (Amritpal Singh MP) would go the gallery of Parliament and raise slogans of Khalistan. By no stretch of imagination can it be said that thereby the petitioner meant to convey that he (Tejinderpal Singh Timma petitioner herein) himself would raise slogans of Khalistan or purposely or knowingly excite or attempt to excite, secession or armed rebellion or subversive activities, or encouraged feelings of separatist activities or endanger the sovereignty or unity and integrity of India; or indulge in or commit any such act.

21. The next part of petitioner's statement that "I had told you earlier that the country does not belong to anyone's father, every person knows how to answer" only means and conveys that the country belongs all it's citizen, conversely all it's citizens belong to the country and that there is equality of all citizens. Colloquial Punjabi, with its rich and expressive nature, can invariably come across as offensive, even when no malice or intent to offend is present. This characteristic stems from the inherent directness and vigor of the language, which may sometimes be misunderstood. However, for such expressions to be deemed criminal, there must be demonstrable public repercussions or substantive evidence indicating deliberate malicious intent (*mens rea*) to commit any public unrest or incite violence. Merely perceiving a statement as offensive is insufficient without a broader context or tangible harm to substantiate the claim. [2024:RJ-JD:34845] (28 of 32) [CRLMP-5005/2024]

22. The petitioner's further statement that "the manner in which the swearing ceremony of Amritpal Singh was performed that even the photos and videos of the same were prohibited shows that this is the fear of Khalsa, this is the fear of Dashmesh community and this fear should be there" shows that thereby the petitioner was only commenting upon and expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means but without exciting or attempting to excite the activities referred to in this section.

23. The petitioner's next statement is that "the governments should know that the community with which you are messing is of Dashmesh. This is a community that returns 31 rupees for 21 rupees. Today's event that happened in the Parliament has proved that this is a community of lions and jackals cannot do mischief in front of lions and that they will live in fear and should also remain in

fear." It seems only to convey his admiration for the bravery, valour and large heartedness of the followers of the tenth Sikh Guru Gobind Singh (Dashmesh).

24. In my view, the contents of the AVR dated 05.07.2024 taken as a whole do not attract the applicability of section 152 of the BNS, 2023 which came into force from 01.04.2024. The same do not amount to purposely or knowingly, exciting or even an attempt to excite secession or armed rebellion or subversive activities, or encourage feelings of separatist activities or endanger sovereignty or unity and integrity of India; or indulging in or committing of any such act. To my mind, they are not more than comments expressing disapprobation of the measures, or administrative or other action of the Government with a view to obtain their alteration by lawful means without exciting or attempting to excite the activities referred to in the explanation below the section *ibid* and which comments have been specifically excepted from its applicability.

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25. I am of also the opinion that the contents of the AVR dated 05.07.2024, taken in totality, do not attract the applicability of section 197(1) of the BNS as the same do not contain any imputation that any class of persons by reason of their being members of any religion, racial, language or regional group or caste or community, cannot bear true faith and allegiance to the Constitution of India or uphold the sovereignty and integrity of India; OR any assertion, counsel, advice, propagation or publication that any class of persons shall, by reason of their being members of any religion, racial, language or regional group or caste or community be denied or deprived of their rights as citizens of India; OR any assertion or counsel, plea or appeal concerning the obligation of any class of persons, by reason of their being members of any religion, racial, language or regional group or caste or community and such assertion or counsel, plea or appeal, causes or is likely to cause disharmony or feelings of enmity or hatred or ill-will between such members and other persons; OR false and misleading information, jeopardizing the sovereignty, unity and integrity or security of India.

26. All other AVRs (video Nos.1 to 16) referred by the learned counsel for complainant were prepared and published long before 01.07.2024 i.e. prior to the coming into force of the BNS, 2023. The alleged criminal acts thereby committed were before 01.07.2024. They have also been included in the instant impugned FIR No.239/2024 registered on 06.07.2024. In my opinion, the substantive penal provisions of the BNS, 2023 [in this case section 152 and sections 197(1) of the *Bhartiya Nyaya Sanhita, 2023*] cannot be retrospectively invoked against the petitioner for the so-called criminal acts done or committed before 01.07.2024, the date of its coming into force.

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27. In *Vijay Sharma vs. State*¹⁹, a judgement authored by me, I have held, *inter alia*, that qua the offences committed before 01.07.2024 under the Indian Penal Code (IPC), an FIR cannot be registered under (BNS) after enforcement of *Bhartiya Nyaya Sanhita* (BNS) from 01.07.2024. Reproduce:-

"7. For dealing with and adjudicating the rival contentions, the following questions of law need consideration and adjudication:

(a). Whether or not after enforcement of Bhartiya Nyaya Sanhita from 01.07.2024, an FIR can be registered under IPC for offences committed under the Indian Penal Code (IPC) before 01.07.2024?

(b). Whether or not qua offences committed before 01.07.2024 under the Indian Penal Code (IPC), an FIR can be registered under (BNS) after enforcement of Bhartiya Nyaya Sanhita (BNS) from 01.07.2024?

(c). Which procedure would apply to an FIR registered after enforcement of Bhartiya Nagrik Suraksha Sanhita (BNSS) for offences under IPC committed before 01.07.2024?

8. to 11. xxx xxxx xxx

12. In my opinion, a combined reading of Article 20 of the Constitution of India and aforesaid saving provisions of section 358 of the BNS amply show that the IPC shall apply to any obligation, liability, penalty or punishment accrued or incurred before 01.07.2024. In other words, in respect of the offences committed under the Indian Penal Code (IPC) before 01.07.2024, the offender can/has to be dealt with and punished under IPC even after enforcement of Bhartiya Nyaya Sanhita from 01.07.2024. Thus, it seems that for the offences committed under the Indian Penal Code (IPC) before 01.07.2024, FIR has to be registered under the IPC.

13. In this context, a Division Bench Judgment of Allahabad High Court in case of Deepu&Ors. Vs. State of Uttar Pradesh &Ors.20 has held as under:

"16. On the basis of above analysis, this Court is also summarising the law regarding effect of repealing the IPC and Cr.P.C. by BNS and BNSS respectively and same is being mentioned as below:

(i). If an FIR is registered on or after 1.7.2024 for the offence committed prior to 1.7.2024, then FIR would be registered under the provisions of IPC but the investigation will continue as per BNSS.

(ii) In the pending investigation on 01.07.2024 (on the date of commencement of New Criminal Laws), investigation will continue as per the Cr.P.C. till the cognizance is taken on the police report and if any direction 2024 SCC Online Raj. 2897 and 2024:RJ-JD:35171 2024 SCC Online All 4289 :(2024), 129ACC127 and 2024 : AHC : 126843-DB [2024:RJ-JD:34845] (31 of 32) [CRLMP-5005/2024] is made for further investigation by the competent Court then same will continue as per the Cr.P.C.;

(iii) The cognizance on the pending investigation on or after 01.07.2024 would be taken as per the BNSS and all the subsequent proceeding including enquiry, trial or

appeal would be conducted as per the procedure of BNSS.

(iv) Section 531(2)(a) of BNSS saved only pending investigation, trial, appeal, application and enquiry, therefore, if any trial, appeal, revision or application is commenced after 01.07.2024, the same will be proceeded as per the procedure of BNSS.

(v) The pending trial on 01.07.2024, if concluded on or after 01.07.2024 then appeal or revision against the judgement passed in such a trial will be as per the BNSS.

However, if any application is filed in appeal, which was pending on 01.07.2024 then the procedure of Cr.P.C. will apply.

(vi) If the criminal proceeding or chargesheet is challenged before the High Court on or after 01.07.2024, where the investigation was conducted as per Cr.P.C. then same will be filed u/s 528 of BNSS not u/s 482 Cr.P.C."

14. to 17. xxx xxxx xxx

18. Accordingly, question (a) framed above is answered in the affirmative. As a corollary thereto, it is held that qua the offences committed before 01.07.2024 under the Indian Penal Code (IPC), an FIR cannot be registered under (BNS) after enforcement of Bhartiya Nyaya Sanhita (BNS) from 01.07.2024. Question (b) is, therefore, answered in the negative.

xxx

xxxx

xxx"

28. As noted above in present case, except the AVR dated

05.07.2024, the remaining AVRs were prepared and published before 01.07.2024. Offences, if any, thereby committed had been committed before 01.07.2024, to which the provisions of IPC would apply. In that view of the matter, it was impermissible to register the impugned FIR dated 06.07.2024 under the provisions of the BNS, 2023 for the offences, if any, under the IPC which were committed before 01.07.2024. It follows, therefore, that to the extent to the impugned FIR dated 06.07.2024 registered under the provisions of the BNS, 2023 is based on and relates to alleged criminal acts and offences, if any, committed under the IPC by preparing and publishing the AVRs before 01.07.2024, is liable to be quashed.

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29. It seems neither necessary nor appropriate, therefore, to enter into any further discussion about the alleged criminal acts committed by preparing uploading the AVRs prior to 01.04.2024

30. As a result of the aforesaid discussion, I am of the opinion that the continuance of the impugned FIR and the consequential proceedings against the petitioner amounts to abuse of process of law,

cause undue harassment and humiliation to the petitioner and that it is a fit case, in order to secure the ends of justice, to quash the impugned FIR and the consequential proceedings against the petitioner.

31. Accordingly, the petition is allowed and impugned F.I.R. No.0239/2024 dated 06.07.2024 lodged at Police Station Purani Abadi, District Ganganagar and all consequential proceedings for offences under Sections 152 and 197(1)(c) of the Bhartiya Nyaya Sanhita, 2023 against the petitioner are quashed.

32. Pending applications, if any, also stand disposed of.

Jitender

Whether fit for reporting- Yes / No