

Sri Basanagouda R Patil (Yatnal) vs State Of Karnataka on 12 December, 2024

Author: M.Nagaprasanna

Bench: M.Nagaprasanna

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Reserved on : 28.11.2024

Pronounced on : 12.12.2024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF DECEMBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No. 10076 OF 2024

BETWEEN:

SRI BASANAGOUDA R.PATIL (YATNAL)
S/O RAMANAGOUDA B.PATIL
AGED ABOUT 60 YEARS
OCC: MLA, VIJAYAPURA CONSTITUENCY
RESIDING AT OLD IB, STATION ROAD
VIJAYAPURA - 586 101
KARNATAKA

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

... PETITIONER

(BY SRI VENKATESH P. DALWAI, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY HIGH GROUND P.S.,
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU - 560 001.

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2. SRI MANOHAR S.,
S/O SUSAINATHAN
AGED ABOUT 52 YEARS
ADDRESS NO.764,
12TH CROSS, INDIRA NAGARA,
WEST OF CORD ROAD
RAJAJINAGARA,
BENGALURU CITY - 560 010.

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL. SPP FOR R1;
SRI SANKET M.YENAGI, ADVOCATE FOR R2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 OF
BHARATIYA NAGARIK SURAKSHA SANHITA, 2023 PRAYING TO
QUASH THE FIR IN CR.NO.206/2024 REGISTERED BY THE HIGH
GROUNDS P.S. PENDING ON THE FILE OF 42ND A.C.M.M
BENGALURU FOR THE OFFENCE P/U/S 192, 196, 353(2) OF BNS
ACT PRODUCED AT DOCUMENT NO.1.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND
RESERVED FOR ORDERS ON 28.11.2024, COMING ON FOR
PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CAV ORDER

The petitioner, a legislator, is knocking at the doors of this
Court, in the subject petition, calling in question registration of a
crime in Crime No.206 of 2024 for offences punishable under
Sections 192, 196, 353(2) of the BNS, 2023.

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2. Heard Sri Venkatesh P. Dalwai, learned counsel appearing
for the petitioner, Sri B.N. Jagadeesha, learned Additional State
Public Prosecutor for respondent No.1 and Sri Sanket M. Yenagi,

learned counsel appearing for respondent No.2.

3. Facts, adumbrated, are as follows:-

The 2nd respondent claiming to be the Secretary of the Karnataka Pradesh Congress Committee ('KPCC') files a complaint on 18-09-2024 before the jurisdictional Police alleging that the petitioner has uttered certain imputations against Sri Rahul Gandhi, Leader of the Opposition in Parliament, and had questioned the ancestral religion of Sri Rahul Gandhi. The complaint made by the KPCC Secretary before the jurisdictional Police becomes a crime in Crime No.206 of 2024. Registration of 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 vehemently contend that the offence so alleged against the petitioner would not even get attracted in the

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case at hand, as the offences are that the Leader of the Opposition in the Indian Parliament, would go beyond the shores of the nation, and criticize India. Therefore, the petitioner had made certain comments. Where from, it would cause disharmony between the religions is ununderstandable. He would emphatically submit that a parliamentarian cannot go outside and speak whatever he wants about this country. He would take this Court through the documents appended to the petition to demonstrate what has been spoken by Sri Rahul Gandhi and dangerous support it generated

immediately. He would contend that none of the ingredients of the offences are even found. At best, it can be a case of defamation and not the ones that are initiated now.

5. Per contra, the learned counsel Sri Sanket M. Yenagi appearing for the complainant would contend that this is a classic case where all the offences are met. He would project outraging the modesty of a woman; the woman in the case at hand is the mother of Sri Rahul Gandhi. It is his contention that the petitioner cannot speak derogatory about the mother of Sri Rahul Gandhi and he would contend that FIR is not an encyclopedia and if investigation

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happens, all other offences can spring other than the ones that are now laid.

6. The learned counsel for the petitioner would join issue to contend that what the petitioner has spoken is a matter of fact. Mother of Sri Rahul Gandhi is of Italian origin and there can be no dispute about it. What the petitioner has uttered is only that. He would seek quashment of proceedings.

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

8. The afore-narrated facts are a matter of record. What

triggers utterances at the hands of the petitioner is what the Leader of the Opposition does on the soil of United States. The titles on the social media of what was spoken by Sri Rahul Gandhi are as follows:

"Even if in good faith, Rahul Gandhi shows India in bad light abroad.

... 6 ...

INDIA NOT A FAIR PLACE, SAYS RAHUL GANDHI

The other Rahul Gandhi statement that has been perceived as a criticism of India on foreign soil was the one on reservations.

While interacting with students and faculty members of Georgetown University in Washington DC, he backed a pan-India caste census and for better participation of the weaker sections in India's institutions.

Elaborating on a question whether there were better ways to strengthen institutions at the grassroots level than caste-based reservations, Rahul Gandhi said, "We will think of scrapping reservations when India is a fair place and India is not a fair place."

No place, even the US, where Rahul was making the statement, is a "fair place". Among other things, there exists a big racial and economic divide in the US.

Any country can be criticized for being unfair on various parameters. The only fair point to ask is if a country is trying to make itself a fairer place? India is, through positive discrimination.

Not just his remarks, the BJP criticized Rahul Gandhi for meeting American Lawmaker Ilhan Omar, who has an ideological basis against India and has worked against the country's interests.

"After spewing venom against Sikhs and running down India on foreign soil, now Rahul Gandhi meets and engages with anti-India Ilhan Omar, who introduced anti-India resolutions in US Congress and has been against abrogation of Art.370," BJP leader Shehzad Poonawalla said on Wednesday.

BJP spokesperson and Rajya Sabha MP Sudhanshu Trivedi said this was "concerning" as Rahul Gandhi was the LoP.

"Rahul Gandhi is known for spewing anti-India venom, but what he has done this time is concerning. He became the

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first Leader of the Opposition to meet US MP llhan, who is infamous for taking an anti-India stand", said Trivedi.

...

...

..."

The afore-quoted is only a few quotations of what is found in the annexures. They are a few pages of it which need not become a part of the judicial record. Based upon this, the petitioner is said to have, in an interview, questioned the origin or orientation of Sri Rahul Gandhi. Then emerges the complaint. The complaint reads as follows:

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Based upon the said complaint, a crime comes to be registered in

Crime No.206 of 2024 for offences punishable under Sections 192,

196 and 353(2) of BNS, 2023.

I deem it appropriate to consider

whether the contents of the complaint would become ingredients of

the aforesaid offences. Section 192 of 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."

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Section 192 of BNS is Section 153 of the earlier regime of IPC. It

provides, whoever malignantly or wantonly by doing anything which

is illegal causes provocation or likely to cause provocation resulting

in the offence of rioting on provocation, would become liable for

punishment. The other provision is under Section 196 of the BNS,

which reads as follows:

"196. 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 communities; or
- (b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity; or
- (c) organises any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or

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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.

(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine."

Section 196 is Section 153A of the earlier regime of IPC. It deals with promoting enmity between two groups on grounds of religion,

race, place of birth so on and so forth and doing acts prejudicial to maintenance of harmony. The third offence is under Section 353(2) of BNS. 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

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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.

(2) Whoever makes, publishes or circulates any statement or report containing false information, rumour or alarming news, including through electronic means, with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(3) Whoever commits an offence specified in sub-section (2) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

Exception.--It does not amount to an offence, within the meaning of this section, when the person making, publishing or circulating any such statement, false information, rumour or report, has reasonable grounds for believing that such statement, false information, rumour or report is true and makes, publishes or circulates it in good faith and without any such intent as aforesaid."

(Emphasis supplied)

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Section 353(2) is Section 505 of the earlier regime of IPC. It punishes a person who publishes or circulates any statement or report containing a false information, rumour or alarming news on grounds of religion, race or place of birth.

9. Now let me analyse the sections qua the allegations.

Section 192 of the BNS, as observed hereinabove, is wantonly provoking with an intent to cause riot. Where from the ingredients would result in the aforesaid offence is a mystery. What is spoken is not capable of any rioting to be committed as they are personal to a person. There is no provocation of any rioting even in the remotest sense in what is alleged. Therefore, the offence is loosely laid. The next offence is under Section 196 of the BNS, which deals with promoting enmity between different groups on grounds of religion. I fail to understand, which two groups which are involved in the case at hand, that too on the ground of religion, race and place of birth. There are no two groups involved in the case at hand. Again, these are personal to a person and there can be no question of the words leading to disharmony. The other offence is Section 353(2) of the BNS. Section 353(2) is rumour or alarming

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news which is false being published or circulated resulting in feeling of enmity, ill-will and hatred between different religions. Here again, it should be between different religions. There is no question of different religions being involved in the statement made by the petitioner. As contended by the learned counsel appearing for the petitioner, he has commented on the orientation and the roots of Sri Rahul Gandhi or his mother, which is a matter of record and is in public domain.

10. Interpretation of afore-quoted provisions need not detain this Court for long or delve deep in the matter. The Apex Court in the case of JAVED AHMAD HAJAM v. STATE OF MAHARASHTRA¹, interpreting Section 153A of the IPC which is 196 of BNS, has held as follows:

"....

Consideration of submissions

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

"153-A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts

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(2024) 4 SCC 156

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prejudicial to maintenance of harmony.--(1)
Whoever--

(a) by words, either spoken or written, or by

signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity,

(c) organises any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity, for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship,
etc.--(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine."

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

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

"16. Section 153-A IPC, as extracted

hereinabove, covers a case where a person by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, disharmony or feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities or acts prejudicial to the maintenance of harmony or is likely to disturb the public tranquillity. The gist of the offence is the intention to promote feelings of enmity or hatred between different classes of people. The intention to cause disorder or incite the people to violence is the sine qua non of the offence under Section 153-AIPC and the prosecution has to prove prima facie the existence of mens rea on the part of the accused. The intention has to be judged primarily by the language of the book and the circumstances in which the book was written and published. The matter complained of within the ambit of Section 153-A must be read as a whole. One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning."

(emphasis supplied)

8. This Court in Manzar Sayeed Khan [Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1: (2007) 2 SCC (Cri) 417] referred to the view taken by Vivian Bose, J., as a Judge of the erstwhile Nagpur High Court in Bhagwati Charan Shukla v. Provincial Govt. [Bhagwati Charan Shukla v. Provincial Govt., 1946 SCC OnLine MP 5 : AIR 1947 Nag 1] A Division Bench of the High Court dealt with the offence of sedition under Section 124-AIPC and Section 4(1) of the Press (Emergency Powers) Act, 1931. The issue was whether a particular article in the press tends, directly or indirectly, to bring hatred or contempt to the Government established in law. This Court has approved this view in its decision in Ramesh v. Union of India [Ramesh v. Union of India, (1988) 1 SCC 668 : 1988 SCC (Cri) 266] . In the said case, this Court dealt with the issue of applicability of Section

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153-AIPC. In para 13, it was held thus : (Ramesh case [Ramesh v. Union of India, (1988) 1 SCC 668 : 1988 SCC (Cri) 266] , SCC p. 676)

"13. ... the effect of the words must be judged from the standards of reasonable, strong-minded, firm and courageous men, and not those of weak and vacillating minds, nor of those who scent danger in every hostile point of view. ... It is the standard of ordinary reasonable man or as they say in English law

'the man on the top of a Clapham omnibus'. (Bhagwati Charan Shukla case [Bhagwati Charan Shukla v. Provincial Govt., 1946 SCC OnLine MP 5 : AIR 1947 Nag 1] , SCC OnLine MP para 67)"

(emphasis supplied)

Therefore, the yardstick laid down by Vivian Bose, J., will have to be applied while judging the effect of the words, spoken or written, in the context of Section 153-AIPC.

9. We may also make a useful reference to a decision of this Court in Patricia Mukhim v. State of Meghalaya [Patricia Mukhim v. State of Meghalaya, (2021) 15 SCC 35] . Paras 8 to 10 of the said decision read thus : (SCC pp. 41-43)

"8. 'It is of utmost importance to keep all speech free in order for the truth to emerge and have a civil society.'-- Thomas Jefferson. Freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution is a very valuable fundamental right. However, the right is not absolute. Reasonable restrictions can be placed on the right of free speech and expression in the interest of sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence. Speech crime is punishable under Section 153-AIPC. Promotion of enmity between different groups on grounds of religion, race, place of birth, residence, language, etc. and doing acts prejudicial to maintenance of harmony is punishable with imprisonment which may extend to three years or with fine or with both under Section 153-A. As we are

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called upon to decide whether a prima facie case is made out against the appellant for committing offences under Sections 153-A and 505(1)(c), it is relevant to reproduce the provisions which are as follows:

* * *

9. Only where the written or spoken words have the tendency of creating public disorder or disturbance of law and order or affecting public tranquillity, the law needs to step in to prevent such an activity. The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153-AIPC and the prosecution has to prove the existence of mens rea in order to succeed. [Balwant Singh v. State of Punjab, (1995) 3 SCC 214 : 1995 SCC (Cri) 432]

10. The gist of the offence under Section 153-AIPC is the intention to promote feelings of enmity or hatred between different classes of people. The intention has to be judged primarily by the language of the piece of writing and the circumstances in which it was written and published. The matter complained of within the ambit of Section 153-A must be read as a whole. One cannot rely on strongly worded and isolated passages for proving the charge nor indeed can one take a sentence here and a sentence there and connect them by a meticulous process of inferential reasoning [Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1 : (2007) 2 SCC (Cri) 417] ."

(emphasis in original and supplied)

10. Now, coming back to Section 153-A, clause (a) of sub-section (1) of Section 153-AIPC is attracted when by words, either spoken or written or by signs or by visible representations or otherwise, an attempt is made to promote disharmony or feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities. The promotion of disharmony, enmity, hatred or ill will must be on the grounds of religion, race, place of birth, residence, language, caste, community or any other analogous grounds. Clause (b) of sub-section (1) of Section 153-AIPC will apply only when an act is committed which is prejudicial to the maintenance of harmony between different religious, racial, language

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or regional groups or castes or communities and which disturbs or is likely to disturb the public tranquillity.

11. Now, coming to the words used by the appellant on his WhatsApp status, we may note here that the first statement is that August 5 is a Black Day for Jammu and Kashmir. 5-8-2019 is the day on which Article 370 of the Constitution of India was abrogated, and two separate Union Territories of Jammu and Kashmir were formed. Further, the appellant has posted that "Article 370 was abrogated, we are not happy". On a plain reading, the appellant intended to criticise the action of the abrogation of Article 370 of the Constitution of India. He has expressed unhappiness over the said act of abrogation. The aforesaid words do not refer to any religion, race, place of birth, residence, language, caste or community. It is a simple protest by the appellant

against the decision to abrogate Article 370 of the Constitution of India and the further steps taken based on that decision. The Constitution of India, under Article 19(1)(a), guarantees freedom of speech and expression. Under the said guarantee, every citizen has the right to offer criticism of the action of abrogation of Article 370 or, for that matter, every decision of the State. He has the right to say he is unhappy with any decision of the State.

12. In Manzar Sayeed Khan [Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1 : (2007) 2 SCC (Cri) 417] , this Court has read "intention" as an essential ingredient of the said offence. The alleged objectionable words or expressions used by the appellant, on its plain reading, cannot promote disharmony or feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities. The WhatsApp status of the appellant has a photograph of two barbed wires, below which it is mentioned that "AUGUST 5 -- BLACK DAY -- JAMMU&KASHMIR". This is an expression of his individual view and his reaction to the abrogation of Article 370 of the Constitution of India. It does not reflect any intention to do something which is prohibited under Section 153-A. At

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best, it is a protest, which is a part of his freedom of speech and expression guaranteed by Article 19(1)(a).

13. Every citizen of India has a right to be critical of the action of abrogation of Article 370 and the change of status of Jammu and Kashmir. Describing the day the abrogation happened as a "Black Day" is an expression of protest and anguish. If every criticism or protest of the actions of the State is to be held as an offence under Section 153-A, democracy, which is an essential feature of the Constitution of India, will not survive.

14. The right to dissent in a legitimate and lawful manner is an integral part of the rights guaranteed under Article 19(1)(a). Every individual must respect the right of others to dissent. An opportunity to peacefully protest against the decisions of the Government is an essential part of democracy. The right to dissent in a lawful manner must be treated as a part of the right to lead a dignified and meaningful life guaranteed by Article 21. But the protest or dissent must be within four corners of the modes permissible in a democratic set up. It is subject to

reasonable restrictions imposed in accordance with clause (2) of Article 19. In the present case, the appellant has not at all crossed the line.

15. The High Court has held [Javed Ahmed Hajam v. State of Maharashtra, 2023 SCC OnLine Bom 819] that the possibility of stirring up the emotions of a group of people cannot be ruled out. The appellant's college teachers, students, and parents were allegedly members of the WhatsApp group. As held by Vivian Bose, J., the effect of the words used by the appellant on his WhatsApp status will have to be judged from the standards of reasonable women and men. We cannot apply the standards of people with weak and vacillating minds. Our country has been a democratic republic for more than 75 years. The people of our country know the importance of democratic values. Therefore, it is not possible to conclude that the words will promote disharmony or feelings of enmity, hatred

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or ill will between different religious groups. The test to be applied is not the effect of the words on some individuals with weak minds or who see a danger in every hostile point of view. The test is of the general impact of the utterances on reasonable people who are significant in numbers. Merely because a few individuals may develop hatred or ill will, it will not be sufficient to attract clause (a) of sub-section (1) of Section 153-AIPC.

16. As regards the picture containing "Chand" and below that the words "14th August-Happy Independence Day Pakistan", we are of the view that it will not attract clause (a) of sub-section (1) of Section 153-AIPC. Every citizen has the right to extend good wishes to the citizens of the other countries on their respective Independence Days. If a citizen of India extends good wishes to the citizens of Pakistan on 14th August, which is their Independence Day, there is nothing wrong with it. It is a gesture of goodwill. In such a case, it cannot be said that such acts will tend to create disharmony or feelings of enmity, hatred or ill will between different religious groups. Motives cannot be attributed to the appellant only because he belongs to a particular religion.

17. Now, the time has come to enlighten and educate our police machinery on the concept of freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution and the extent of reasonable restraint on their

free speech and expression. They must be sensitised about the democratic values enshrined in our Constitution.

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

(Emphasis supplied)

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The Apex Court, in a subsequent judgment, in the case of SHIV

PRASAD SEMWAL v. STATE OF UTTARAKHAND², considering

the very offence has held as follows:

"....

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

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

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

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

"GunanandJakhmola
17-3-2020 at 30.05

Trivender Uncle what amazing things you are doing?

Uncle you are laying foundation stone of Art Gallery which is going to construct by acquiring government land.

Uncle you are associating the mafias who are violating

the decisions of Modi Government.

Don't trap yourself with mafias, have you forgot the problems arisen out of marriage of Gupta brother's.

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Uncle you were not like this, what happened to you? Was the troubles arisen out of marriage of Gupta Brothers was not enough that you are now going to laying foundation stone of the Art Gallery which is going to construct by acquiring government land. Just think over it, or take report from LIU and other agencies about this Art Gallery which is going to construct on the acquired government land. This is a government land which is dismantled by mafias and your officers. Uncle you are innocent, anybody can use you. Advisers and officers surrounding you they are cunning.

This cunning persons have brought you forward against the decisions of Modi Government.

Uncle let I inform you for your knowledge that Modi Government means your honour has given sanction to planning for Singtali Project near Rishikesh. This project will reduce the distance between Kumau and Garhwal and also it will arrange sources of employment in mountains. World Bank is also giving money, but the program of Mafias in which you are going to participate on 20 March, that is an enemy of mountains. It has no concern with the wellbeing of mountains. It is against the proposed project of Modi Government and your officers and advisers are in collusion with that. Please inquire it and then only you go.

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

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

25. From a bare reading of the language of Section 153-AIPC, it is clear that in order to constitute such offence, the prosecution must come out with a case that the words

"spoken" or "written" attributed to the accused, created enmity or bad blood between different groups on the ground of religion, race, place of birth, residence, language, etc. or

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that the acts so alleged were prejudicial to the maintenance of harmony.

26. Upon careful perusal of the offending news article, reproduced (supra), it is crystal clear that there is no reference to any group or groups of people in the said article. The publication focuses totally on the complainant imputing that he had encroached upon public land where the foundation stone laying ceremony was proposed at the hands of Hon'ble Chief Minister of Uttarakhand.

27. Apparently, the post was aimed at frustrating the proposed foundation stone laying ceremony on the land, of which the complainant claims to be the true owner. The post also imputes that the person who was planning the foundation stone ceremony was an enemy of mountains and had no concern with the well-being of the mountains.

28. The learned Standing Counsel for the State tried to draw much water from these lines alleging that this portion of the post tends to create a sense of enmity and disharmony amongst people of hill community and the people of plains. However, the interpretation sought to be given to these words is far-fetched and unconvincing. The lines referred to supra only refer to the complainant, imputing that his activities are prejudicial to the hills. These words have no connection whatsoever with a group or groups of people or communities. Hence, the foundational facts essential to constitute the offence under Section 153-AIPC are totally lacking from the allegations as set out in the FIR.

29. In *Manzar Sayeed Khan v. State of Maharashtra* [Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1 : (2007) 2 SCC (Cri) 417] , this Court held that for applying Section 153-AIPC, the presence of two or more groups or communities is essential, whereas in the present case, no such groups or communities were referred to in the news article.

30. The other substantive offence which has been applied by the investigating agency is Section 504IPC. The said offence can be invoked when the insult of a person

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provokes him to break public peace or to commit any other offence. There is no such allegation in the FIR that owing to the alleged offensive post attributable to the appellant, the complainant was provoked to such an extent that he could indulge in disturbing the public peace or commit any other offence. Hence, the FIR lacks the necessary ingredients of the said offence as well.

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

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

33. In State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , this Court examined the principles governing the scope of exercise of powers by the High Court in a petition under Article 226 of the Constitution of India and under Section 482CrPC seeking quashing of criminal proceedings and held as follows : (SCC pp. 378-79, para 102)

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined

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and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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

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

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

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

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

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

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for

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wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

34. Tested on the touchstone of the above principles, we are of the firm view that allowing continuance of the proceedings pursuant to the impugned FIR bearing No. 31 of

2020 registered at PS Muni Ki Reti, District Tehri Garhwal against the appellant is nothing but gross abuse of process of law because the allegations as set out in the FIR do not disclose necessary ingredients of any cognizable offence. Hence, the impugned FIR and all proceedings sought to be taken against the appellant are hereby quashed and set aside."

(Emphasis supplied)

The Apex Court, in both these cases, has upturned the judgments of respective High Courts. In the case of SHIV PRASAD SEMWAL, the Apex Court notices Sections 196 and 352 of the BNS as well, which are the offences that are alleged in the case at hand.

11. Long before the aforesaid judgments, the Apex Court in the case of PATRICIA MUKHIM v. STATE OF MEGHALAYA³, interpreting both Sections 153A and 505(2) of the IPC which are Sections 196 and 353(2) of BNS 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

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(2021) 15 SCC 35

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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, 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

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such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity, for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community,

shall be punished with imprisonment which may extend to three years, or with fine, or with both.

Offence committed in place of worship,
etc.--(2) Whoever commits an offence specified in sub-
section (1) in any place of worship or in any assembly
engaged in the performance of religious worship or
religious ceremonies, shall be punished with
imprisonment which may extend to five years and shall
also be liable to fine.

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

(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]

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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 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.

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12. This Court in PravasiBhalaiSangathan v. Union of India [PravasiBhalaiSangathan 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 "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

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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 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

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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, Lawsotun 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 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)

12. In the light of afore-mentioned interpretation of the very provisions by the Apex Court and holding that all cases where something is spoken cannot result in hate speech or disturbing the harmony between religions, there is not even a semblance of

ingredient in the complaint to what the Apex Court has held in the aforesaid cases.

13. The learned counsel appearing for the 2nd respondent seeks to generate certain obfuscating contentions which are contrary to the complaint or the offence alleged against the petitioner. He would bring in outrage of the modesty of a woman. Where from it springs, is imaginary. These contentions are preposterous, to say the least. The Court is considering the complaint and the allegations levelled in the complaint and is of the opinion that, it is a reckless registration of crime by the jurisdictional Police, without even looking into what are the contents and what are the offences. It is in such cases, the Apex Court has held that such crimes should be nipped in the bud, in exercise of jurisdiction under Section 482 of the Cr.P.C. It becomes apposite to refer to the judgment of the Apex Court in the case of STATE OF HARYANA v. BHAJAN LAL⁴, wherein it is held as follows:-

"....

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV

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1992 Supp (1) SCC 335

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and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following

categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent

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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

Sri Basanagouda R Patil (Yatnal) vs State Of Karnataka on 12 December, 2024
the aggrieved party.

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

(Emphasis supplied)

14. In the light of the judgment of the Apex Court in the case of BHAJAN LAL quoted supra, even if the complaint is taken as true, it would not meet the ingredients of offences alleged. It is necessary to observe that protection of the integrity of the nation, both locally and globally, is the duty of every citizen of the nation, more so, of the representatives of those citizens. In such a case, the crime cannot be permitted to be continued, as it would become an abuse of the process of the law and result in miscarriage of justice. The result of preceding analysis is obliteration of crime.

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15. For the aforesaid reasons, the following:

ORDER

(i) Criminal Petition is allowed.

(ii) First Information Report in Crime No.206 of 2024 registered by the High Grounds Police Station and pending before 42nd Additional Chief Metropolitan Magistrate, Bengaluru stands quashed.

Consequently, I.A.No.1 of 2024 also stands disposed.

Sd/-

(M. NAGAPRASANNA) JUDGE Bkp CT:SS