

Reserved on : 02.09.2026

Pronounced on : 16.10.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.7434 OF 2025

BETWEEN:

1. SRI AMITH MALVIYA
C/O KAUSHLENDRA KUMAR MALVIYA,
AGED ABOUT 47 YEARS,
RESIDING AT NO.H.NO.06
OFFICERS FLATS, MEENA BAGH,
NARIMAN BHAVAN,
CENTRAL DELHI
PIN CODE - 110 011.

...PETITIONER



(BY SRI M.ARUNA SHYAM, SR.ADVOCATE A/W
SRI SUYOG HERELE E., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
THROUGH HIGH GROUND PS,
REPRESENTED BY SPP,
HIGH COURT OF KARNATAKA BUILDING,
BENGALURU - 560 001.

2. SRI SHRIDHAR M.M.,
S/O MUNIRAO
AGED ABOUT 34 YEARS
RESIDING AT NO 45,
MALLAHALLI VILLAGE,
MALURU TALUK, KOLAR,
KARNATAKA – 563 114.

...RESPONDENTS

(BY SRI B.N.JAGADEESHA, SPP-I FOR R-1;
SRI C.M.DHANANJAYA, ADVOCATE FOR R-2)

THIS CRL.P IS FILED U/S 528 OF BNSS., PRAYING TO ALLOW THIS CRIMINAL PETITION AND QUASH THE FIR AND COMPLAINT IN CR.NO.0133/2025 FOR THE ALLEGED OFFENCES P/U/S 192 AND 353 OF THE BNS, 2023 REGISTERED BY THE RESPONDENT HIGH GROUNDS P.S., ON THE FILE OF (LEARNED 1ST ADDL. CMM COURT, NRUPATUNGA ROAD, BANGALORE CITY) ALONG WITH OTHER CONSEQUENTIAL RELIEFS, PRODUCED AT DOCUMENT NO.1 AND 2.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 02.09.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

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

CAV ORDER

The petitioner is before the Court calling in question registration of a crime in Crime No.133 of 2025 registered for offences punishable under Sections 192 and 353 of the BNS.

2. Heard Sri M. Aruna Shyam, learned senior counsel appearing for the petitioners, Sri B.N. Jagadeesha, learned State Public Prosecutor-I appearing for respondent No.1 and Sri C.M. Dhananjaya, learned counsel appearing for respondent No.2.

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

The 2nd respondent is the complainant. A complaint comes to be registered on 20-05-2025 alleging that the petitioner on the said day had posted an edited photo of Sri Rahul Gandhi, leader of the opposition in the Loksabha on his 'X' handle and also posted that, despite clarification given by the DGMO, Sri Rahul Gandhi is speaking the language of Pakistan and its beneficiary, by

questioning the Armed Forces regarding the fighter jets that were lost during Operation Sindoor and that the leader of the opposition did not enquire the loss and damage incurred by Pakistan. Based upon the aforesaid fulcrum, the crime for the afore-quoted offences comes to be registered. The registration of the crime drives the petitioner to this Court in the subject petition.

4. The learned senior counsel representing the petitioner would vehemently contend that the registration of crime is an abuse of the process of law as, what the petitioner had posted on his 'X' handle was, despite the clarification given by the DGMO, the language of Pakistan was being spoken by the leader of the opposition. The learned senior counsel would contend that registration of crime itself is an abuse of the process of law. He would thus seek quashment of the proceedings.

5. *Per contra*, the learned State Public Prosecutor - I and the learned counsel appearing for the complainant would in unison contend that the crime is registered on 20-05-2025, the petition is filed on 22-05-2025 and an interim order of stay is granted on the same day before the Vacation Bench. They would, therefore,

contend that investigation, in the least, must be permitted in the case at hand.

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

7. The afore-narrated facts lie in a narrow compass, as what has triggered registration of crime is the complaint so registered by the 2nd respondent which reads as follows:

"Sridhara M.M.,

Date:20.5.2025

State vice president
Youth congress legal cell karnataka

To,

The police inspector high grounds
police station bangalore

Subject: Complaint to register _FIR against Mr. Amit Malviya (National Convener, IT Cell, BJP) for spreading false & malicious information against Shri Rahul Gandhi ji (Member of Lok Sabha).

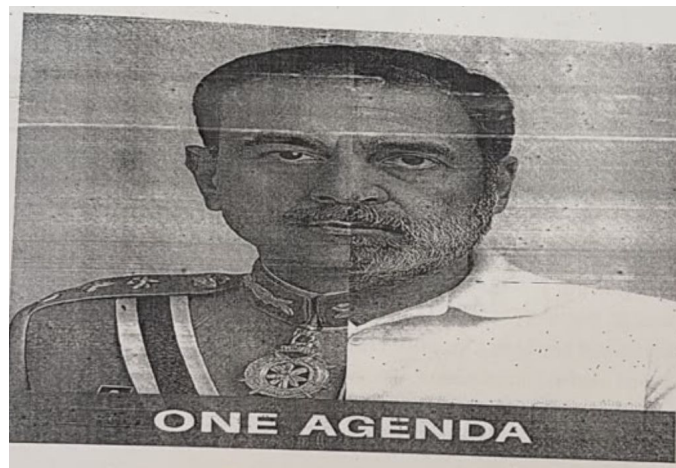
Sir,

I am writing this to bring to your notice the false, malicious and provocative post by Mr. Amit Malviya (National Convener, IT Cell, BJP) on X (formerly known as Twitter) on 20.05.2025. The post and photo posted by Mr. Amit Malviya from his X handle

'@amitmalviya' along with the link to the post are reproduced below:

https://x.com/amitmalviya/status/1924681557639627225?t=UQenX97dNr8GilIV9_V9 kw&s=08%0A

"It is not surprising that Rahul Gandhi is speaking the language of Pakistan and its benefactors. He hasn't congratulated the Prime Minister on the flawless #OperationSindoor, which unmistakably showcases India's dominance. Instead, he repeatedly asks how many jets we lost- a question that has already been addressed in the DGMO briefings. Curiously, he hasn't once inquired about how many pakistani jets were shot down during the conflict, or how many were destroyed while parked in their hangars when Indian forces pounded Pakistani air bases. What's next for Rahul Gandhi? The Nishan-e-Pakistan?"



It can be clearly seen in this poster that Shri Rahul Gandhi ji is being portrayed as a counter part to Pakistan's Army Chief Mr. Asim Munir which is clearly false, malicious, provocative and has the tendency to incite feelings of enmity towards Shri Rahul Gandhi ji & the Indian National Congress.

Our country is going through testing times with the ongoing violent conflict with Pakistan in which several Indian Citizens and Military Officers have lost their lives. During such war like situation, Mr. Amit Malviya by posting such malicious content which not only has the tendency to incite violence against Shri

Rahul Gandhi ji and to promote enmity towards the Congress Party, but is also prejudicial towards national integrity and peace & harmony in the society in such testing times.

The Congress party has made it unequivocally clear in its official statements that it whole heartedly stands behind the Indian Armed Forces and supports the Indian Government in its efforts to give a befitting reply in response to the terror attack in Pahalgam. Shri Rahul Gandhi ji had raised questions pursuant to the External Affairs Minister Shri S.Jaishankar's interview in which he told the media that he had passed on information to Pakistan about India's Military Operations even before Operation Sindoor began. Therefore, Shri Rahul Gandhi ji had acted to protect National Interests by questioning the External Affairs Minister conduct.

Mr. Amit Malviya by making such statements has clearly acted against national interests at a time when the whole country needs to stay united and leave aside political differences and political ideologies and back our Armed Forces whole heartedly. Such false propaganda by Mr. Amit Malviya is clearly part of a larger conspiracy to gain political mileage out of the bravery shown by the Indian Armed Forces

Therefore, it becomes imperative to clamp down on such anti-national elements in order to maintain peace and harmony in the society in these testing times.

In view of the above, it is requested that a FIR be lodged against Mr. Amit Malviya under section 192, 196, 197, 353 and 356 of the Bharatiya Nyaya Sanhita."

Whether this would attract the ingredients of Sections 192 and 353 of the BNS need not detain this Court for long or delve deep into the matter.

8.1. The Apex Court in the case of **IMRAN PRATHAPGADHI v. STATE OF GUJARAT**¹ has interpreted the ingredients of the offence under Section 196 of the BNS, which is identical to the offences alleged in the case at hand. The Apex Court holds as follows:

"....

15. The offence under Section 196 is attracted when the words, either spoken or written, or by signs or visible representations, promote enmity between different groups, on the grounds of religion, race, place of birth, residence, language, caste or, community or any other ground. The offence will be attracted when the words either spoken or written, or signs or visible representation, promote or attempt to promote disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities. On a plain reading of the poem, we find that the same has nothing to do with any religion, caste, community or any particular group. The poem's words do not bring about or promote disharmony or feelings of hatred or ill-will. It only seeks to challenge the injustice made by the ruler. It is impossible to say that the words used by the appellant disturb or are likely to disturb public tranquillity. Therefore, neither clause (a) nor clause (b) of Section 196(1) are attracted. There is no allegation against the appellant of organising any exercise, movement, drill or similar activity. There is no allegation against the appellant that he uttered the words in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies. Hence, clause (c) will have no application. The appellant has put a video of a mass marriage function, and in the background, the words are uttered. Therefore, Section 196 can have no application.

....

¹ (2026) 1 SCC 721

42. This Court in *Javed Ahmad Hajam* [*Javed Ahmad Hajam v. State of Maharashtra*, (2024) 4 SCC 156 : (2024) 2 SCC (Cri) 383] , was dealing with an offence punishable under Section 153-AIPC. Section 153-AIPC is in pari materia with Section 196 BNS. The only difference is that the words "or through electric communication" have been added in clause (a) of Section 196 BNS, which were not in clause (a) of Section 153-AIPC. When an offence punishable under Section 196 BNS is alleged, the effect of the spoken or written words will have to be considered based on standards of reasonable, strong-minded, firm and courageous individuals and not based on the standards of people with weak and oscillating minds. The effect of the spoken or written words cannot be judged on the basis of the standards of people who always have a sense of insecurity or of those who always perceive criticism as a threat to their power or position.

Ingredient of mens rea

43. In *Manzar Sayeed Khan* [*Manzar Sayeed Khan v. State of Maharashtra*, (2007) 5 SCC 1 : (2007) 2 SCC (Cri) 417] and *Patricia Mukhim v. State of Meghalaya* [*Patricia Mukhim v. State of Meghalaya*, (2021) 15 SCC 35] , the ingredient of mens rea has been read into Section 153-AIPC by this Court. Paras 8 to 14 of the decision in *Javed Ahmad Hajam* [*Javed Ahmad Hajam v. State of Maharashtra*, (2024) 4 SCC 156 : (2024) 2 SCC (Cri) 383] , which analyses both the above decisions, read thus: (*Javed Ahmad Hajam case* [*Javed Ahmad Hajam v. State of Maharashtra*, (2024) 4 SCC 156 : (2024) 2 SCC (Cri) 383] , SCC pp. 161-64)

"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., C.P. & Berar* [*Bhagwati Charan Shukla v. Provincial Govt., C.P. & Berar*, 1946 SCC OnLine MP 5] . 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 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".'

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

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

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

punishable with imprisonment which may extend to three years or with fine or with both under Section 153-A. As we are called upon to decide whether a prima facie case is made out against the appellant for committing offences under Sections 153-A and 505(1)(c), it is relevant to reproduce the provisions which are as follows:

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

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

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

when an act is committed which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities and which disturbs or is likely to disturb the public tranquillity.

11. Now, coming to the words used by the appellant on his WhatsApp status, we may note here that the first statement is that August 5 is a Black Day for Jammu and Kashmir. 5-8-2019 is the day on which Article 370 of the Constitution of India was abrogated, and two separate Union Territories of Jammu and Kashmir were formed. Further, the appellant has posted that "Article 370 was abrogated, we are not happy". On a plain reading, the appellant intended to criticise the action of the abrogation of Article 370 of the Constitution of India. He has expressed unhappiness over the said act of abrogation. The aforesaid words do not refer to any religion, race, place of birth, residence, language, caste or community. It is a simple protest by the appellant against the decision to abrogate Article 370 of the Constitution of India and the further steps taken based on that decision. The Constitution of India, under Article 19(1)(a), guarantees freedom of speech and expression. Under the said guarantee, every citizen has the right to offer criticism of the action of abrogation of Article 370 or, for that matter, every decision of the State. He has the right to say he is unhappy with any decision of the State.

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

part of his freedom of speech and expression guaranteed by Article 19(1)(a).

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

14. The right to dissent in a legitimate and lawful manner is an integral part of the rights guaranteed under Article 19(1)(a). Every individual must respect the right of others to dissent. An opportunity to peacefully protest against the decisions of the Government is an essential part of democracy. The right to dissent in a lawful manner must be treated as a part of the right to lead a dignified and meaningful life guaranteed by Article 21. But the protest or dissent must be within four corners of the modes permissible in a democratic set up. It is subject to reasonable restrictions imposed in accordance with clause (2) of Article 19. In the present case, the appellant has not at all crossed the line."

(emphasis in original and supplied)

....

53.6. When an offence punishable under Section 196 BNS is alleged, the effect of the spoken or written words will have to be considered based on standards of reasonable, strong-minded, firm and courageous individuals and not based on the standards of people with weak and oscillating minds. The effect of the spoken or written words cannot be judged on the basis of the standards of people who always have a sense of insecurity or of those who always perceive criticism as a threat to their power or position."

8.2. Earlier to the afore-quoted judgment, the Apex Court in the case of **JAVED AHMAD HAJAM v. STATE OF**

MAHARASHTRA², while interpreting Section 153A of the erstwhile regime - the IPC, has held as follows:

"....

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

11. Now, coming to the words used by the appellant on his WhatsApp status, we may note here that the first statement is that August 5 is a Black Day for Jammu and Kashmir. 5-8-2019 is the day on which Article 370 of the Constitution of India was abrogated, and two separate Union Territories of Jammu and Kashmir were formed. Further, the appellant has posted that "Article 370 was abrogated, we are not happy". On a plain reading, the appellant intended to criticise the action of the abrogation of Article 370 of the Constitution of India. He has expressed unhappiness over the said act of abrogation. The aforesaid words do not refer to any religion, race, place of birth, residence, language, caste or community. It is a simple protest by the appellant against the decision to abrogate Article 370 of the Constitution of India and the further steps taken based on that decision. The Constitution of India, under Article 19(1)(a), guarantees freedom of speech and expression. Under the said guarantee, every citizen has the right to offer criticism of the

² (2024) 4 SCC 156

action of abrogation of Article 370 or, for that matter, every decision of the State. He has the right to say he is unhappy with any decision of the State.

12. In *Manzar Sayeed Khan [Manzar Sayeed Khan v. State of Maharashtra, (2007) 5 SCC 1 : (2007) 2 SCC (Cri) 417]*, this Court has read "intention" as an essential ingredient of the said offence. The alleged objectionable words or expressions used by the appellant, on its plain reading, cannot promote disharmony or feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities. The WhatsApp status of the appellant has a photograph of two barbed wires, below which it is mentioned that "AUGUST 5 — BLACK DAY — JAMMU&KASHMIR". This is an expression of his individual view and his reaction to the abrogation of Article 370 of the Constitution of India. It does not reflect any intention to do something which is prohibited under Section 153-A. At best, it is a protest, which is a part of his freedom of speech and expression guaranteed by Article 19(1)(a).

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

14. The right to dissent in a legitimate and lawful manner is an integral part of the rights guaranteed under Article 19(1)(a). Every individual must respect the right of others to dissent. An opportunity to peacefully protest against the decisions of the Government is an essential part of democracy. The right to dissent in a lawful manner must be treated as a part of the right to lead a dignified and meaningful life guaranteed by Article 21. But the protest or dissent must be within four corners of the modes permissible in a democratic set up. It is subject to reasonable restrictions imposed in accordance with clause (2) of Article 19. In the present case, the appellant has not at all crossed the line.

15. The High Court has held [*Javed Ahmed Hajam v. State of Maharashtra*, 2023 SCC OnLine Bom 819] that the possibility of stirring up the emotions of a group of people cannot be ruled out. The appellant's college teachers, students, and parents were allegedly members of the WhatsApp group. As held by Vivian Bose, J., the effect of the words used by the appellant on his WhatsApp status will have to be judged from the standards of reasonable women and men. We cannot apply the standards of people with weak and vacillating minds. Our country has been a democratic republic for more than 75 years. The people of our country know the importance of democratic values. Therefore, it is not possible to conclude that the words will promote disharmony or feelings of enmity, hatred or ill will between different religious groups. The test to be applied is not the effect of the words on some individuals with weak minds or who see a danger in every hostile point of view. The test is of the general impact of the utterances on reasonable people who are significant in numbers. Merely because a few individuals may develop hatred or ill will, it will not be sufficient to attract clause (a) of sub-section (1) of Section 153-AIPC.

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

17. Now, the time has come to enlighten and educate our police machinery on the concept of freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution and the extent of reasonable restraint on their free speech and expression. They must be sensitised about the democratic values enshrined in our Constitution.

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

8.3. Both these judgments followed the judgment of the Apex Court in **PATRICIA MUKHIM v. STATE OF MEGHALAYA**³ wherein it is held 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 tranquility, the law needs to step in to prevent such an activity. The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153-AIPC and the prosecution has to prove the existence of mens rea in order to succeed. [*Balwant Singh v. State of Punjab*, (1995) 3 SCC 214: 1995 SCC (Cri) 432]

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

³ (2021) 15 SCC 35

***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.**

12. This Court in *Pravasi Bhalai Sangathan v. Union of India* [*Pravasi Bhalai Sangathan v. Union of India*, (2014) 11 SCC 477 : (2014) 3 SCC (Cri) 400] had referred to the Canadian Supreme Court decision in *Saskatchewan*

(Human Rights Commission) v. William Whatcott [Saskatchewan (Human Rights Commission) v. William Whatcott, 2013 SCC OnLine Can SC 6 : (2013) 1 SCR 467]
 . In that judgment, the Canadian Supreme Court set out what it considered to be a workable approach in interpreting “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, delegitimation and rejection that risks causing discrimination or injury. The third test was for the Courts to focus their analysis on the effect of the expression at issue, namely, whether it is likely to expose the targeted person or group to hatred by others. Mere repugnancy of the ideas expressed is insufficient to constitute the crime attracting penalty.

13. In the instant case, applying the principles laid down by this Court as mentioned above, the question that arises for our consideration is whether the Facebook post dated 4-7-2020 was intentionally made for promoting class/community hatred and has the tendency to provoke enmity between two communities. A close scrutiny of the Facebook post would indicate that the agony of the appellant was directed against the apathy shown by the Chief Minister of Meghalaya, the Director General of Police and the Dorbar Shnong 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 blind eye, or drag their feet, such voicing of discontent is really a cry for anguish, for justice denied — or delayed. This is exactly what appears to have happened in this case.

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

8.4. Again, the Apex Court in the case of **MITHUN CHAKRAVARTY DEVIDAS SHET v. STATE OF KARNATAKA**⁴ has held as follows:

“O R D E R

1. Leave granted.

2. We have heard learned senior counsel for the appellant and learned counsel appearing for the State. Despite notice being served, there was no representation on behalf of the contesting respondent, on the earlier occasion. The same position continues even today.

3. The proceedings have been initiated against the appellant at the instance of the contesting respondent for making the derogatory remark of ‘ayogya’.

4. Learned senior counsel appearing for the appellant submitted that the said statement is not derogatory and has to be seen contextually.

5. Learned counsel for the State submitted that whether the offence is made out or not is a matter for trial.

6. The appellant has been charged for the offences punishable under Sections 153-A, 153-B and 505 of the Indian Penal Code, 1860 along with the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short the ‘SC/ST Act’).

⁴ S.L.P.No.14305 of 2024 decided on 25-07-2025

7. The High Court itself has quashed the charges with respect to the provisions of the SC/ST Act. What remains and is now before us are the other provisions of the Indian Penal Code, 1860 with which the appellant has been charged.

8. As rightly submitted by the learned senior counsel appearing for the appellant, on a perusal of the very complaint, we do not find that the ingredients are made out. Continuing the proceedings against the appellant would be a gross abuse of the process of law. The statement made is subject to the interpretation in different ways.

9. Considering the above and by taking note of the fact that the contesting respondent is not interested in prosecuting the matter, we are inclined to set aside the impugned order.

10. Accordingly, the impugned order stands set aside. The proceedings initiated against the appellants stand quashed.

11. The appeal is allowed accordingly.

12. Pending application(s), if any, shall stand disposed of."

The Apex Court in **MITHUN CHAKRAVARTY DEVIDAS SHET's** case holds that since the complaint did not make out basic ingredients of offence, permitting investigation even, would not be necessary. The said finding would, on the face of it, become applicable to the cases at hand. Therefore, permitting further

investigation even, against the petitioners, would become an abuse of the process of law and result in miscarriage of justice.

9. It now becomes apposite to refer to decision of the Apex Court in **STATE OF HARYANA v. BHAJAN LAL**⁵ wherein it is held as follows:

" "

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it 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.

⁵ **1992 Supp (1) SCC 335**

- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.**
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(Emphasis supplied at each instance)

9. For the aforesaid reasons, the following:

ORDER

- (i) Criminal Petition is **allowed**.
- (ii) FIR in Crime No.133 of 2025 registered before High Grounds Police Station and pending before the I Additional Chief Metropolitan Magistrate, Bengaluru stands quashed.

Pending applications, if any, stand disposed as a consequence.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

Bkp
CT:MJ