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Reserved on : 25.09.2026
Pronounced on : 16.10.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF OCTOBER, 2026

R

BEFORE

THE HON'BLE MR. JUSTICE M.NAGAPRASANNA

CRIMINAL PETITION NO.13010 OF 2026

BETWEEN:

SRI SANDEEP KUMAR
S/O AKHILESHWAR PRASAD
AGED ABOUT 26 YEARS,
ADMIN OF KARNATAKA PORTFOLIO,
RESIDING AT 246-75, 8TH CROSS,
9TH MAIN ROAD, SIRI BUILDING,
HOSALLI ROAD, BENGALURU – 560 109
(ADDRESS AS PER 35(3) NOTICE)

AADHAR ADDRESS
RESIDING AT RCF 103
SECTOR 4, BOOTHNATH ROAD,
SOUTH OF T V ROAD
BAHADURPURA HOUSING COLONY
B.H.COLONY, PATNA
BIHAR – 800 026.

...PETITIONER

(BY SRI GIRISH BHARADWAJ, ADVOCATE)

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AND:

1. STATE OF KARNATAKA
BY PUTTUR TOWN PS,
REPRESENTED BY
STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU – 560 001.

2. SRI MAHAMMAD SHAHANAWAZ
S/O ABDUL BASHEER
AGED ABOUT 21 YEARS
RESIDING AT
INDHIRANAGARA HOUSE,
NARIMOGARU VILLAGE,
PUTTUR, DAKSHINA KANNADA
KARNATAKA – 574 202.

…RESPONDENTS

(BY SMT.DEEPTHI ALVA, HCGP FOR R-1;
R-2 IS SERVED AND UNREPRESENTED)

THIS CRL.P IS FILED U/S 528 OF BNNS PRAYING TO QUASH THE FIR AND COMPLAINT ARISING OUT OF CRIME NO.88/2026, REGISTERED BY THE PUTTUR TOWN POLICE STATION PENDING ON THE FILE OF THE PRL.SR.CIVIL JUDGE AND ACJM, PUTTUR FOR OFFENCES U/S 353(2) OF BNS 2023 (ANNEXURE-A AND B RESPECTIVELY).

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 25.09.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

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

CAV ORDER

The petitioner is before the Court calling in question crime in Crime No.88 of 2026 registered for the offence punishable under Section 353(2) of the BNS, 2023.

2. Heard Sri **Girish Bharadwaj**, learned counsel appearing for the petitioner and Smt. **Deepthi Alva**, learned High Court Government Pleader appearing for respondent No.1. Respondent No.2 is served and unrepresented.

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

3.1. It is the case of the complainant that on 08-07-2026, the 2nd respondent Mahammad Shahanawaz notices a post on an account "Karnataka Portfolio" stating "Law and Order under Fire: Six held after Hindu woman alleges knife threat in Puttur". Thereafter, six young people were taken into police custody on the allegation that they had allegedly threatened a woman on her way to work. The incident had occurred on 8-07-2026 at Purusharakatte

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in Puttur Taluk, Dakshina Kannada. According to the reports, the woman parked her scooter at Purusharakatte to travel to Mangalore for work when a group of youths allegedly approached her, brandished a knife and threatened her. Having got frightened about the incident, the lady is said to have immediately boarded an autorickshaw and left for Puttur. The group allegedly continued to follow the autorickshaw in a Thar SUV. The said incident is captured in the nearby CCTV camera. The 2nd respondent alleged that sharing of the post in which six young people had troubled the woman was targeting the 2nd respondent and his friends and was allegedly aimed at creating chaos with an intention to disturb social harmony of the society and creating communal tension.

3.2. It is further alleged that sharing of such misinformation and news without proper verification may lead to the complainant losing his friends and goodwill in the locality. On the said post but not on the incident, the Police wake up and register a crime against the petitioner for offence punishable under Section 353(2) of the BNS. Not stopping at that, on the said post, which was also carried to other social media platforms, 7 crimes are alleged against the

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petitioner for the same offence before the same Police Station. It is this that drives the petitioner to this Court in the subject petition.

4. The learned counsel Sri **Girish Bharadwaj** appearing for the petitioner would vehemently contend that initially there was a post on social media platform 'X' and news in the platform described the incident of stalking and following a woman by 6 young people in the jeep. The petitioner only shares the information what was already posted in a social media and re-posts the same. The statement of the petitioner do not refer to identifiable groups for an offence under Section 353(2) of the BNS. The petitioner is not the author of the post nor originator of the publication. It is only a re-publication in the social media. This cannot become ingredients of the crime is the submission of the learned counsel. He would contend that the 2nd respondent using his clout in the area, as if the post is targeting him, registers crimes, not one but 7 crimes against all the media journals including the petitioner. He thus seeks quashment of the crime registered against him.

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5. The learned High Court Government Pleader Smt. **Deepthi Alva** appearing for the 1st respondent would however refute the submissions in contending that the crime so registered alleges a mix of certain statements with regard to the incident that has happened in Puttur. All the procedure that is necessary to be followed has been followed in the case at hand. A notice under Section 35(3) of the BNSS is also issued. Therefore, the statement of the petitioner did create certain disharmony and would seek that investigation must be permitted to be continued.

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, dates and link in the chain of events are all a matter of record. They would not require any iteration. The incident that triggers for registration of multiple crimes against all the news channels, social media and the petitioner is necessary to be noticed. It reads as follows:

"ರಿಗೆ

ಠಾಣಾಧಿಕಾರಿಯವರು,

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ಪುತ್ತೂರು ನಗರ ಪೊಲೀಸ್ ಠಾಣೆ,
ಪುತ್ತೂರು, ದ.ಕ. ಜಿಲ್ಲೆ.

ರಿಂದ,

ಮೊಹಮ್ಮದ್ ಶಹಾ ನವಾಜ್ ಪ್ರಾಯ 21 ವರ್ಷ
ತಂದೆ: ಅಬ್ದುಲ್ ಬಶೀರ್
ವಾಸ: ಇಂದಿರಾನಗರ ಮನೆ, ನರಿಮೊಗ್ರು ಗ್ರಾಮ,
ಪುತ್ತೂರು ತಾಲೂಕು
ಮೋ: 8904428403

ವಿಷಯ: ಸಾಮಾಜಿಕ ಜಾಲತಾಣವಾದ ಟ್ವಿಟರ್-ಎಕ್ಸ್ ನಲ್ಲಿ ಕರ್ನಾಟಕ ಪೋರ್ಟ್ ಫೋಲಿಯೋ (Karnataka portfolio @karnatakaportf) ಎಂಬ ಟ್ವಿಟರ್ ಪೇಜ್ನಲ್ಲಿ ನನ್ನ ಹಾಗೂ ನನ್ನ ಸ್ನೇಹಿತರ ವಿರುದ್ಧ ಅವಹೇಳನಕಾರಿ ಪೋಸ್ಟ್ ಹಾಕಿದಾತನ ವಿರುದ್ಧ ಕಾನೂನು ಕ್ರಮಕ್ಕಾಗಿ ಕೋರಿಕೆ.

ಈ ಮೇಲಿನ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ ನಾನು ಈ ಮೇಲಿನ ವಿಳಾಸದಲ್ಲಿ ವಾಸವಾಗಿದ್ದು ನಾನು ಪುರುಷರಕಟ್ಟೆ ಜಂಕ್ಷನ್ ಆಗಿ ಕೆಲಸ ಮಾಡಿಕೊಂಡಿರುತ್ತೇನೆ. ದಿನಾಂಕ 08-07-2026 ರಂದು ಪುತ್ತೂರಿನ ಪುರುಷರಕಟ್ಟೆ ಎಂಬಲ್ಲಿ ನಡೆದ ಘಟನೆಯನ್ನು ಉದ್ದೇಶಿಸಿ "Law and Order Under Fire: Six Held After Hindu Woman Alleges Knife Threat in Puttur, Six youths were taken into police custody after they allegedly threatened a woman with a knife while she was on her way to work. The incident occurred on Wednesday (July 8) at Purusharakatte in Puttur taluk of Dakshin Kannada district. According to reports, the woman had parked her scooter at Purusharakatte as usual to travel to Mangaluru for work when a group of youths allegedly approached her, brandished a knife, and threatened her. Frightened by the incident, she immediately boarded an autorickshaw and left for Puttur. However, the group allegedly continued to pursue her. Around six youths reportedly followed the autorickshaw in a Thar SUV and allegedly threatened her again. The alleged incident of the youths brandishing a knife and intimidating the woman was captured on a nearby CCTV camera." ಎಂಬುದಾಗಿ ಬರಹಗಳಿದ್ದ ಪೊಸ್ಟ್ ಹಾಗೂ ವಿಡಿಯೋವನ್ನು ಸಾಮಾಜಿಕ ಜಾಲತಾಣವಾದ ಟ್ವಿಟರ್ ನಲ್ಲಿ ನೋಡಿದ್ದು, ಸದ್ರಿ ಪೊಸ್ಟ್ ಅನ್ನು ಉದ್ದೇಶಪೂರ್ವಕವಾಗಿ ನನ್ನ ಹಾಗೂ ನನ್ನ ಸ್ನೇಹಿತರ ಬಗ್ಗೆ ಸುಳ್ಳು ಮಾಹಿತಿ ಮತ್ತು ವದಂತಿಗಳನ್ನು ಪ್ರಸಾರ ಮಾಡಿ, ಸಾರ್ವಜನಿಕರಲ್ಲಿ ಭಯ, ಗೊಂದಲ ಹಾಗೂ ಕೋಮು ದ್ವೇಷ ಉಂಟುಮಾಡುವ ಪ್ರಯತ್ನ ನಡೆಸಲಾಗಿದೆ. ಈ ಆಕಸ್ಮಿಕ ಘಟನೆಯನ್ನು ಕೋಮು ಭಾವನೆಯ ಹುನ್ನಾರ ಸೃಷ್ಟಿಸಿರುವುದಾಗಿದೆ ಹಾಗೂ ಈ ಕೃತ್ಯದಿಂದ ನನ್ನ ಹಾಗೂ ನನ್ನ ಸ್ನೇಹಿತರ ಗೌರವ ಮತ್ತು ಪ್ರತಿಷ್ಠೆಗೆ

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ಧಕ್ಕೆಯುಂಟಾಗಿದ್ದು, ಸಾರ್ವಜನಿಕ ಶಾಂತಿ ಮತ್ತು ಸೌಹಾರ್ದತೆಗೆ ಹಾನಿಯಾಗುವ ಸಾಧ್ಯತೆ ಹಾಗೂ ಕೋಮು ಬಣ್ಣ ಸೃಷ್ಟಿಸುವ ಸಾಧ್ಯತೆ ಇದೆ. ಸಾಮಾಜಿಕ ಜಾಲತಾಣದಲ್ಲಿ ವಿವಿಧ ಧಾರ್ಮಿಕ ಸಮುದಾಯಗಳ ನಡುವೆ ಸೌಹಾರ್ದತೆ ಕಾಪಾಡಲು ಪೂರ್ವಾಗ್ರಹ ಪಡಿಸುವ ಮತ್ತು ಸಾರ್ವಜನಿಕ ನೆಮ್ಮದಿಗೆ ಭಂಗ ತರುವ, ಎಲೆಕ್ಟ್ರಾನಿಕ್ ವಿಧಾನಗಳ ಮೂಲಕ ಸುಳ್ಳು ಮಾಹಿತಿ ಮತ್ತು ಆತಂಕಕಾರಿ ಸುದ್ದಿಗಳನ್ನು ಹೇಳಿಕೆಯನ್ನು ನಮ್ಮ ವಿರುದ್ಧ ಪ್ರಚಾರ ಪಡಿಸಿರುವುದಾಗಿದೆ ಆದುದರಿಂದ ಘಟನೆಯ ಬಗ್ಗೆ ಸತ್ಯಾಸತ್ಯತೆಯನ್ನು ತಿಳಿಯದೇ ನನ್ನ ಹಾಗೂ ನನ್ನ ಸ್ನೇಹಿತರ ವಿರುದ್ಧ ಸಾಮಾಜಿಕ ಜಾಲತಾಣದಲ್ಲಿ ಹಾಕಿದ "ಕರ್ನಾಟಕ ಪೋರ್ಟ ಫೋಲಿಯೋ (Karnataka portfolio @karnatakaportf)" ಎಂಬ ಟ್ವಿಟರ್-ಎಕ್ಸ್ ಖಾತೆಯನ್ನು ಹೊಂದಿರುವ ವ್ಯಕ್ತಿಯ ಮೇಲೆ ಸೂಕ್ತ ಕಾನೂನು ಕ್ರಮ ಕೈಗೊಳ್ಳುವರೇ ಕೋರಿಕೆ

ಪುತ್ತೂರು ನಗರ ಪೊಲೀಸ್ ಠಾಣೆ,
ದಿನಾಂಕ : 09-07-2026

ಇತೀ ತಮ್ಮ ವಿಶ್ವಾಸಿ
ಸಹಿ/-"

It is not a stray incident or a generated incident that the petitioner re-posts. It was a serious incident of 6 young men forming a group, following or stalking a woman in their Thar SUV and threatening her time and again. If this should not be reported in the social media what else can be posted. It is not reported by the petitioner. The petitioner only tweets that "law and order under fire". The petitioner has reiterated that agony or reposted the incident that is already reported with agony of anarchy.

8. The entire complaint or entire tweet from the statement that is allegedly made by the petitioner nowhere names any religious groups for generating communal disharmony. The crime

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for the asking is registered against the petitioner and a notice under Section 35(3) is issued. The petitioner then comes to know that on the same incident about 7 crimes are registered in the same police station in Crime Nos. 82 to 88 of 2026. The petitioner is accused in Crime No.88 of 2026. The seven in line are on the same incident.

9. The offence alleged against the petitioner in Crime No.88 of 2026 is the one punishable under Section 353(2) of the BNS. Section 353(2) reads as follows:

> "**353. Statements conducing to public mischief**:
>
> … … …
>
> (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."

Interpretation of Section 353(2) BNS which was Section 505 of the earlier regime, the IPC need not detain this Court for long or delve deep into the matter.

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9.1. The Apex Court in the case of **BILAL AHMED KALOO v. STATE OF ANDHRA PRADESH**[1], while interpreting Section 505(2) of the IPC, has held as follows:

"…. …. ….

> **10.** Section 153-A was amended by the Criminal and Election Laws (Amendment) Act, 1969 (Act No. 35 of 1969). It consists of three clauses of which clauses (*a*) and (*b*) alone are material now. By the same Amending Act sub-section (2) was added to Section 505 of the Penal Code, 1860. Clauses (*a*) and (*b*) of Section 153-A and Section 505(2) are extracted below:
>
> > "153-A. *Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.*—(1) Whoever—
> >
> > (*a*) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill will between different religious, racial, language or regional groups or castes or communities, or
> >
> > (*b*) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or
> >
> > (*c*) ***
> >
> > shall be punished with imprisonment which may extend to three years, or with fine, or with both.
> >
> > ***

[1] **(1997) 7 SCC 431**

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> 505. (2) *Statements creating or promoting enmity, hatred or ill will between classes.*—Whoever makes, publishes or circulates any statement or report containing rumour or alarming news 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."

The common ingredient in both the offences is promoting feeling of enmity, hatred or ill will between different religious or racial or linguistic or regional groups or castes or communities. 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 such feeling. **Under Section 505(2), promotion of such feelings should have been done by making and publishing or circulating any statement or report containing rumour or alarming news.**

11. This Court has held in *Balwant Singh* v. *State of Punjab* [(1995) 3 SCC 214 : 1995 SCC (Cri) 432] that mens rea is a necessary ingredient for the offence under Section 153-A. **Mens rea is an equally necessary postulate for the offence under Section 505(2) also as could be discerned from the words "with intent to create or promote or which is likely to create or promote" as used in that sub-section.**

12. The main distinction between the two offences is that while publication of the words or representation is not necessary under the former, such publication is sine qua non under Section 505. The words "whoever makes, publishes or circulates" used in the setting of Section 505(2) cannot be interpreted disjunctively but only as supplementary to each other. If it is construed disjunctively, anyone who makes a statement falling within the meaning of Section 505 would, without publication or circulation, be liable to conviction. But the same is the effect with Section 153-A also and then that section would have been bad for redundancy. The intention of the

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legislature in providing two different sections on the same subject would have been to cover two different fields of similar colour. The fact that both sections were included as a package in the same amending enactment lends further support to the said construction.

…. …. ….

14. In *Sunilakhya Chowdhury* v. *H.M. Jadwet* [AIR 1968 Cal 266 : 1968 Cri LJ 736] it has been held that the words "makes or publishes any imputation" should be interpreted as words supplementing each other. **A maker of imputation without publication is not liable to be punished under that section. We are of the view that the same interpretation is warranted in respect of the words "makes, publishes or circulates" in Section 505 IPC also."**

9.2. The Apex Court again in the case of **PATRICIA MUKHIM v. STATE OF MEGHALAYA**[2], while interpreting Sections 153A and 505 of the IPC, has held as follows:

"…. …. ….

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**

[2] **(2021) 15 SCC 35**

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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, delegitimisation and rejection that risks

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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] .

…. …. ….

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

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made by the Dorbar Shnong, 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."

9.3. The Apex Court has interpreted Section 153A of the IPC, the ingredients of which are identical to the offence under Section 505(2) IPC or 353(2) BNS as is alleged in the case at hand in the cases of **JAVED AHMAD HAJAM v. STATE OF MAHARASHTRA**[3] and **SHIV PRASAD SEMWAL v. STATE OF UTTARAKHAND**[4]**.** The Apex Court in the case of **JAVED AHMAD HAJAM** 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

[3]**(2024) 4 SCC 156**

[4]**(2024) 7 SCC 555**

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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

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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

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

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

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

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

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9.4. The Apex Court in the case of **SHIV PRASAD SEMWAL** has held as follows:

"…. …. ….

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

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

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

"GunanandJakhmola
17-3-2020 at 30.05

Trivender Uncle what amazing things you are doing?

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

Uncle you are associating the mafias who are violating the decisions of Modi Government.

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

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

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> 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-BIPC.

25. From a bare reading of the language of Section 153-AIPC, it is clear that in order to constitute such offence, the prosecution must come out with a case that the words "spoken" or "written" attributed to the accused, created enmity or bad blood between different groups on the ground of religion, race, place of birth, residence, language, etc. or that the acts so alleged were prejudicial to the maintenance of harmony.

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

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

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

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

30. The other substantive offence which has been applied by the investigating agency is Section 504IPC. The said offence can be invoked when the insult of a person provokes him to break public peace or to commit any other offence. There is no such allegation in the FIR that owing to the alleged offensive post attributable to the appellant, the complainant was provoked to such an extent that he could indulge in disturbing the public peace or commit any other offence. Hence, the FIR lacks the necessary ingredients of the said offence as well.

31. Since we have found that the foundational facts essential for constituting the substantive offences under

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Sections 153-A and 504IPC are not available from the admitted allegations of prosecution, the allegations qua the subsidiary offences under Sections 34 and 120-BIPC would also be non est.

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

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

> "*102*. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
>
> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an

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investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

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

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

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

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

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

34. Tested on the touchstone of the above principles, we are of the firm view that allowing continuance of the proceedings pursuant to the impugned FIR bearing No. 31 of 2020 registered at PS Muni Ki Reti, District Tehri Garhwal against the appellant is nothing but gross abuse of process of law because the allegations as set out in the FIR do not disclose necessary ingredients of any cognizable offence. Hence, the impugned FIR and all proceedings sought to be taken against the appellant are hereby quashed and set aside."

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9.5. Again, the Apex Court in the case of **IMRAN PRATAPGADHI v. STATE OF GUJARAT**[5], while considering the ingredients under Section 196 of the BNS or Section 153-A of the IPC, has held 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.
>
> …. …. ….

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[5] **(2026) 1 SCC 721**

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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**

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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**

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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**

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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. InManzar 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

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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."

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10. Since crime after crime is registered by the very Police Station on an incident of reporting of a particular act, it is shocking as to how for the asking, the crimes are registered by the jurisdictional police on the same incident without there being any ingredient of crime and without holding any preliminary inquiry. It is here the judgments of the Apex Court in **SATENDER KUMAR ANTIL v. CBI**[6] and the High Court of Telangana in **NALLA BALU v. STATE OF TELANGANA**[7]**,** which was subsequently affirmed by the Apex Court in **STATE OF TELANGANA v. NALLA BALU**[8] are required to be noticed.

10.1. The Apex Court in the case of **SATENDER KUMAR ANTIL** has held as follows:

"…. …. ….

> **17.** An arrest, being an act done by a police officer in furtherance of an investigation, is discretionary and optional to be applied on the facts of a particular case. Section 35 of the BNSS, 2023 provides for situations where a person may be arrested by a police officer, without a warrant.

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[6] **2026 SCC OnLine SC 162**

[7] **2025 SCC OnLine TS 855**

[8] **SPECIAL LEAVE PETITION (CRIMINAL) Diary No(s). 71178/2025 disposed on 2.2.2026**

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Section 35 of the BNSS, 2023

"35. When police may arrest without warrant.—(1) **Any police officer may without an order from a Magistrate and without a warrant, arrest any person—**

(*a*) **who commits, in the presence of a police officer, a cognizable offence; or**

(*b*) **against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—**

(*i*) **the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;**

(*ii*) **the police officer is satisfied that such arrest is necessary—**

(*a*) **to prevent such person from committing any further offence; or**

(*b*) **for proper investigation of the offence; or**

(*c*) **to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or**

(*d*) **to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from**

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disclosing such facts to the Court or to the police officer; or

(*e*) **as unless such person is arrested, his presence in the Court whenever required cannot be ensured**,

and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest; or

(*c*) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence; or

(*d*) who has been proclaimed as an offender either under this Sanhita or by order of the State Government; or

(*e*) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(*f*) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(*g*) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(*h*) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or

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otherwise, liable to be apprehended or detained in custody in India; or

(*i*) who, being a released convict, commits a breach of any rule made under sub-section (5) of Section 394; or

(*j*) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(2) Subject to the provisions of Section 39, no person concerned in a noncognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.

(3) The police officer shall, in all cases where the arrest of a person is not required under sub-section (1) issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(4) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(5) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.

(6) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a

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> **competent Court in this behalf, arrest him for the offence mentioned in the notice.**
>
> (7) No arrest shall be made without prior permission of an officer not below the rank of Deputy Superintendent of Police in case of an offence which is punishable for imprisonment of less than three years and such person is infirm or is above sixty years of age."
>
> (emphasis supplied)

18. Section 35(1) of the BNSS, 2023, through the use of the word "may," makes the position of law rather clear that the power of arrest is discretionary and optional. The power of arrest under Section 35(1)(a) to Section 35(1)(j) of the BNSS, 2023 are distinct and different from each other, with the commonality being an offence which is cognizable in nature.

19. To attract the power of arrest under Section 35(1)(b) of the BNSS, 2023, the conditions mentioned thereunder ought to be complied with scrupulously. Section 35(1)(b)(i) and Section 35(1)(b)(ii) of the BNSS, 2023 must be read together, meaning thereby that compliance with Section 35(1)(b)(i) of the BNSS, 2023 is a *sine qua non* in all cases of arrest.

20. Section 35(1)(b)(i) of the BNSS, 2023 speaks about the "reason to believe" on the part of the police officer. Such a reason to believe should be formed on the basis of a complaint, information, or suspicion that the person concerned has committed the offence. However, this alone would not suffice. Additionally, any one of the conditions mentioned under Section 35(1)(b)(ii) of the BNSS, 2023 must also be satisfied. In other words, it is not required that all the conditions mentioned under Section 35(1)(b)(ii) of the BNSS, 2023 should be available, but only the existence of one of them that is required.

21. After being satisfied that there is a necessity of arrest, a police officer is bound to record his reasons either for arrest, as provided for under Section 35(1)(b) of the BNSS,

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2023, or for merely issuing a notice under Section 35(3) of the BNSS, 2023. Section 35(1)(b) of the BNSS, 2023, thus, carves out an exception, with its inbuilt safeguards.

22. Suffice it is to state that an investigation can go on even without an arrest. While undertaking the exercise of collecting the evidence for the purpose of forming his opinion over the commission of a cognizable offence, a police officer shall pose a question, to himself, on the necessity of an arrest. This safeguard is provided as, in any case, the power to arrest an accused person is always available with a police officer even after he records his reasons, in writing, for not doing so at an earlier stage.

Joginder Kumar v. *State of UP*, (1994) 4 SCC 260

> **"20...No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another. The police officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self-esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter.** The recommendations of the Police Commission merely reflect the constitutional concomitants of the fundamental right to personal liberty and freedom. A person is not liable to arrest merely on the suspicion of complicity in an offence. **There must be some reasonable justification in the opinion of the officer effecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police**

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> **officer issues notice to person to attend the Station House and not to leave the station without permission would do."**
>
> (emphasis supplied)

23. Section 35(3) of the BNSS, 2023, once again, reiterates the object of the enactment that an arrest by a police officer is not mandatory in all cases. This provision applies to all cognizable offences. However, insofar as the offences punishable with imprisonment up to a period of 7 years are concerned, this provision will have to be read along with Section 35(1)(b) of the BNSS, 2023, and its proviso which mandates the furnishing of reasons, in writing, for both, making an arrest and when there is no requirement to do so. As stated above, the requirement of not arresting an accused is *qua* the stage of issuing notice under Section 35(3) of the BNSS, 2023. Hence, it is amply clear that a harmonious construction of Section 35(1)(b) and Section 35(3) of the BNSS, 2023 needs to be made.

Satender Kumar Antil v. *Central Bureau of Investigation*, 2025 SCC OnLine SC 1578

> **"22. Section 35(4) of the BNSS, 2023 imposes a duty on the recipient of the notice to the effect that once the notice is served, the person must comply with every term of the notice. Section 35(5) of the BNSS, 2023 provides that as long as the person to whom the notice is issued, appears as is required and continues to comply with the notice, they cannot be arrested in relation to the alleged offence. Arrest may be made only if the Investigating Agency records specific reasons as to why the arrest is necessary."**
>
> (emphasis supplied)

24. Section 35(5) of the BNSS, 2023 facilitates the liberty of a person by imposing an implied prohibition of arrest when a person complies with a notice issued under Section 35(3) of the BNSS, 2023. This provision reiterates the fact that any subsequent arrest, being an exception, is warranted only when a police officer forms an opinion

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for such an arrest, which he is duty bound to record, in writing, by furnishing adequate reasons.

25. With respect to the submission made by the leaned Amicus, *qua* the contradiction in the reasoning of the High Court of Bombay in *Chandrashekhar Bhimsen Naik* (supra), on a reading of the judgment, we did not find any contradiction, as stated. The judgment has clearly dealt with the mandatory compliance of the provisions of Section 35 of the BNSS, 2023, by the police officer.

26. Hence, we give our imprimatur to the views expressed by the High Court of Bombay and, as already observed by us in this order that, as a matter of course, **a notice under Section 35(3) of the BNSS, 2023 is to be issued to an accused or any individual concerned, *qua* an offence punishable with imprisonment up to 7 years and, that, as long as a person to whom a notice under Section 35(3) of the BNSS, 2023 is issued has complied and continues to comply with the terms of the notice then, as per Section 35(5) of the BNSS, 2023, it is not open for the police officer to arrest him unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested.**

Satender Kumar Antil v. *Central Bureau of Investigation*, 2025 SCC OnLine SC 1578

> **"23. Section 35(6) of the BNSS, 2023 lays down the procedure to be followed in case of non-compliance with the notice issued by the Investigating Agency under Section 35(3) of the BNSS, 2023. Non-compliance with a notice does not *ipso facto* mandate arrest, as there lies a discretion with the Investigating Agency, which must be of the opinion that the arrest of the concerned person is necessary for the purpose of investigation. In other words, failure to comply with the notice does not lead to automatic arrest. Rather, it is the last resort available to the Investigating Agency, after due exercise of discretion regarding the necessity of arrest.**

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> 24. Therefore, the **abovementioned provision contains an element of substantivity, which becomes evident from the discretion provided to the Investigating Agency. The substantive element is in the nature of a safeguard, especially when the liberty of an individual is involved.**
>
> 25. The **protection of one's liberty is a crucial aspect of the right to life guaranteed to each and every individual, under Article 21 of the Constitution of India** (hereinafter referred to as the '**Constitution'). The procedure encapsulated in Section 35(6) of the BNSS, 2023, seeks to secure this fundamental right, from encroachment by the relevant Authority, and therefore, any attempt to interpret the provision as a mere procedural one, would amount to rewriting the provision itself."**
>
> (emphasis supplied)

27. We have already clarified the position *qua* Section 35(6) of the BNSS, 2023 in our earlier order dated 16.07.2025 wherein, it has been stated that even assuming that the person to whom a notice under Section 35(3) of the BNSS, 2023 has been issued, fails to comply with the terms of the notice or is unwilling to identify himself, an arrest is not a matter of course.

28. We have also clarified, on the earlier occasion, that the procedure contained in Section 35(6) of the BNSS, 2023 has been introduced on the touchstone of Article 21 of the Constitution of India. These inbuilt safeguards are required to be complied with by the police officer, in letter and spirit.

29. From a conspectus of the above, it is amply clear that even if the conditions mentioned under Section 35(1)(b) of the BNSS, 2023 are in existence, there can be no mandatory arrest, as a police officer still may or may not decide to do so.

30. While making an arrest under Section 35(6) of the BNSS, 2023, after the stage of issuing a notice seeking presence under Section 35(3) of the BNSS, 2023, the circumstances and factors that were in existence at the time of issuing the said notice shall not be taken into

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consideration by a police officer while making an arrest subsequently. In other words, for effecting an arrest under Section 35(6) of the BNSS, 2023, it must be based upon materials and factors which were not available with the police officer at the time of issuing a notice under Section 35(3) of the BNSS, 2023. Therefore, the power of arrest under Section 35(6) of the BNSS, 2023 is to be exercised rather sparingly, only under circumstances as aforementioned."

10.2. The High Court of Telangana in **NALLA BALU v. STATE OF TELANGANA** has held as follows:

"…. …. ….

29. Before parting with this judgment, this Court considers it necessary to make certain observations. Having regard to the factual and legal position discussed herein, and with a view to safeguarding fundamental rights as well as preventing the criminal process from being invoked mechanically or arbitrarily, it is appropriate to prescribe a set of operational guidelines for police authorities and Judicial Magistrates when dealing with proceedings initiated on the basis of social media posts. **These directions are particularly relevant in cases where the registration of First Information Reports (FIRs) is sought in connection with such posts. Accordingly, the police authorities are directed to adhere to the following guidelines:**

i. Verification of locus standi: **Before registering any FIR for alleged defamation or similar offences, the police must verify whether the complainant qualifies as the "person aggrieved" in terms of law. Complaints by unrelated third parties lacking standing are not maintainable, except where the report concerns a cognizable offence.**

ii. Preliminary inquiry in cognizable offences: **Where a representation/complaint discloses a cognizable offence, the police shall, prior to registration of crime,**

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conduct a preliminary inquiry to ascertain whether the statutory ingredients of the alleged offence are, prima facie, made out.

iii. High threshold for media post/speech-related offences: **No case alleging promotion of enmity, intentional insult, public mischief, threat to public order, or sedition shall be registered unless there exists *prima facie* material disclosing incitement to violence, hatred, or public disorder. This threshold must be applied in line with the principles laid down in *Kedar Nath Singh* v. *State of Bihar*, 1962 Supp (2) SCR 769, and *Shreya Singhal* v. *Union of India*, (2015) 5 SCC 1.**

iv. Protection of political speech/post: **The police shall not mechanically register cases concerning harsh, offensive, or critical political speech. Only when the speech amounts to incitement to violence or poses an imminent threat to public order may criminal law be invoked. Constitutional protections for free political criticism under Article 19(1)(a) of the Constitution must be scrupulously enforced.**

v. Defamation as a non-cognizable offence**: Since defamation is classified as a non-cognizable offence, the police cannot directly register an FIR or crime in such matters. The complainant must be directed to approach the jurisdictional Magistrate. Police action may follow only upon a specific order of the Magistrate under Section 174(2) of the BNSS.**

vi. Compliance with arrest guidelines: **In all cases, the police shall strictly comply with the principles laid down in *Arnesh Kumar* v. *State of Bihar*, (2014) 8 SCC 273. Automatic or mechanical arrests are impermissible, and the principle of proportionality in the exercise of criminal process must be observed.**

vii. Prior legal scrutiny in sensitive cases: **In matters involving political speech/post or other sensitive forms of expression, the police shall obtain prior legal opinion from the Public Prosecutor before registering an**

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FIR, to ensure that the proposed action is legally sustainable.

viii. Frivolous or motivated complaints: **Where a complaint is found to be frivolous, vexatious, or politically motivated, the police shall close the matter under Section 176(1) of the BNSS, citing absence of sufficient grounds for investigation.**"

10.3. In **STATE OF TELANGANA v. NALLA BALU** while affirming the findings of the High Court of Telangana, the Apex Court has held as follows:

"…. …. ….

6. However, the State has something to say as regards the broad guidelines laid down by the High Court as contained in para 29 of the impugned judgment is concerned. According to Mr. Luthra, the guidelines issued by the High Court are inconsistent with each other and in such circumstances he urged that this Court should look into the guidelines and rectify the inconsistencies. Para 29 reads thus:-

"29. Before parting with this judgment, this Court considers it necessary to make certain observations. Having regard to the factual and legal position discussed herein, and with a view to safeguarding fundamental rights as well as preventing the criminal process from being invoked mechanically or arbitrarily, it is appropriate to prescribe a set of operational guidelines for 3 police authorities and Judicial Magistrates when dealing with proceedings initiated on the basis of social media posts. These directions are particularly relevant in cases where the registration of First Information Reports (FIRs) is sought in connection with such posts. Accordingly, the police authorities are directed to adhere to the following guidelines:

i. Verification of locus standi: Before registering any FIR for alleged defamation or similar offences, the police must verify whether the complainant qualifies as

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the "person aggrieved" in terms of law. Complaints by unrelated third parties lacking standing are not maintainable, except where the report concerns a cognizable offence.

ii. Preliminary inquiry in cognizable offences: Where a representation/complaint discloses a cognizable offence, the police shall, prior to registration of crime, conduct a preliminary inquiry to ascertain whether the statutory ingredients of the alleged offence are, prima facie, made out.

iii. High threshold for media post/speech-related offences: No case alleging promotion of enmity, intentional insult, public mischief, threat to public order, or sedition shall he registered unless there exists prima facie material disclosing incitement to violence, hatred, or public disorder. This threshold must be applied in line with the principles laid down in Kedar Nath Singh v. State of Bihar, 1962 Supp (2) SCR 769, and Shreya Singhal v. Union of India, (2015) 5 SCC 1.

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v. Defamation as a non-cognizable offence: Since defamation is classified as a non-cognizable offence, the police cannot directly register an FIR or crime in such matters. The complainant must be directed to approach the jurisdictional Magistrate. Police action may follow only upon a specific order of the Magistrate under Section 174(2) of the BNSS.

vi. Compliance with arrest guidelines: In all cases, the police shall strictly comply with the principles laid down in Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273. Automatic or mechanical arrests are impermissible, and the principle of proportionality in the exercise of criminal process must be observed.

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> *vii. Prior legal scrutiny in sensitive cases: In matters involving political speech/post or other sensitive forms of expression, the police shall obtain prior legal opinion from the Public Prosecutor before registering an FIR, to ensure that the proposed action is legally sustainable.*
>
> *viii. Frivolous or motivated complaints: Where a complaint is found to be frivolous, vexatious, or politically motivated, the police shall close the matter under Section 176(1) of the BNSS, citing absence of sufficient grounds for investigation."*
>
> 7. **We have looked into para 29 threadbare. We are of the view that we should not interfere with the impugned judgment and order passed by the High Court including the guidelines issued by the High Court**."

(Emphasis supplied at each instance)

The material placed on record raises two interconnected concerns: the mechanical registration of successive crimes arising from the same incident or social media expression, and the indiscriminate exercise of police powers without adherence to statutory and constitutional safeguards. The afore-quoted judgments in **SATENDER KUMAR ANTIL** *supra* and **NALLA BALU** *supra*, provide the foundation for prescribing operational safeguards against arbitrary invocation of the criminal process.

10.4. In **SATENDER KUMAR ANTIL** *supra*, the Apex Court elucidates the distinction between the existence of the power to

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arrest and the necessity of exercising that power. Section 35 of the BNSS does not contemplate arrest as an automatic consequence of registration of a crime. In offences punishable with imprisonment extending up to seven years, the police must ordinarily resort to notice under Section 35(3), where arrest is not necessary. Even non-compliance with such notice does not invariably justify arrest. The police officer must independently assess its necessity and record reasons in writing. The constitutional guarantee of personal liberty under Article 21 permeates the entire exercise. The power to arrest is statutory; the justification for arrest must be factual, reasonable and constitutionally sustainable.

10.4.1. The Apex Court in **SATENDER KUMAR ANTIL** *supra,* refers to its earlier judgment in the case of **JOGINDER KUMAR v. STATE OF UTTAR PRADESH** reported in **(1994) 4 SCC 260**, wherein the Apex Court cautions that arrest cannot be effected merely because the police possess the legal authority to do so. The genuineness of the complaint, the material connecting the person to the alleged offence and the necessity of custodial intervention must receive independent consideration. An unjustified arrest inflicts

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consequences upon personal liberty, reputation and dignity that cannot be brushed aside as incidental to investigation.

10.5. In **NALLA BALU** *supra,* the High Court of Telangana prescribed guidelines against mechanical registration of crimes arising from social media posts, including scrutiny of the ingredients of alleged offences, protection of political criticism, verification of the complainant's standing in offences requiring an aggrieved complainant, legal scrutiny in sensitive cases and restraint in arrest. The material records that the Apex Court declined to interfere with those guidelines.

11. Therefore, to prevent the mechanical registration of crimes, multiplicity of proceedings arising from the same incident and arbitrary exercise of police powers, this Court deems it appropriate to issue the following guidelines to the jurisdictional police authorities, subject always to the provisions of the BNSS and the law declared by the Apex Court:

(i) Scrutiny of ingredients of the offence: Whenever a complaint is received alleging commission of an offence arising from

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a social media post, statement or expression, the jurisdictional police shall examine whether the allegations, taken at their face value, disclose the essential ingredients of the offence alleged. Mere reproduction of the language of a penal provision shall not substitute for factual allegations disclosing its ingredients.

(ii) Successive complaints concerning the same incident: Where complaints arise from the same incident, transaction or substantially identical social media expression, the jurisdictional police shall ascertain whether a crime has already been registered in relation thereto. Multiple complaints concerning the same occurrence shall be dealt with in accordance with the principles governing successive FIRs. A fresh crime shall not be registered merely because the complainant is different, unless the allegations disclose a legally distinct occurrence or an independently registrable offence.

(iii) Preliminary inquiry wherever permissible: In cases where a preliminary inquiry is permissible under Section 173(3) of the BNSS and the law declared by the Apex Court, the jurisdictional police shall consider its necessity and conduct it in strict conformity

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with the statutory conditions, requisite permission and prescribed timelines. Such inquiry shall not become a device to avoid registration of a cognizable offence where registration is mandated by law.

(iv) Specific scrutiny under Section 353(2) of the BNS: Before invoking Section 353(2) of the BNS, the jurisdictional police shall examine whether the impugned statement, rumour, report or expression satisfies the specific ingredients prescribed under that provision, including the requisite intent and its relationship to the classes or communities contemplated therein. Mere criticism or expression of disagreement shall not be mechanically brought within its ambit.

(v) No mechanical arrest: Registration of a crime shall not automatically result in arrest. The jurisdictional police shall strictly comply with Section 35 of the BNSS and the principles laid down by the Apex Court in **SATENDER KUMAR ANTIL** *supra*, **JOGINDER KUMAR** *supra* and **ARNESH KUMAR v. STATE OF BIHAR** reported in **(2014) 8 SCC 273**. Wherever the statutory conditions

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for arrest are not satisfied, the procedure contemplated under Section 35(3) of the BNSS shall be followed.

(vi) Institutional accountability: The Director General and Inspector General of Police, State of Karnataka, shall ensure that the principles governing registration of crimes, protection of freedom of expression and safeguards against unnecessary arrest are brought to the notice of all jurisdictional police officers through appropriate administrative instructions.

12. For the aforesaid reasons, the following:

O R D E R

(i) Criminal Petition is **allowed.**

(ii) FIR in Crime No.88 of 2026 registered by the Puttur Police Station and pending before the Principal Senior Civil Judge & ACJM, Puttur stands quashed.

(iii) The guidelines elucidated by the Apex Court in **SATENDER KUMAR ANTIL,** the High Court of Telangana in **NALLA BALU** and the ones enumerated in the course of the order shall be scrupulously followed in

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letter and spirit. The Director-General and Inspector General of Police shall ensure strict compliance.

Consequently, I.A.No.1 of 2026 also stands disposed.

Sd/-
(M.NAGAPRASANNA)
JUDGE

bkp