



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

125

CRM-M-53576-2025 (O&M)

Date of decision: 11.12.2025

Rajat Kalsan

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Arjun Sheoran and
Mr. Tejasvi Sheokand, Advocates,
for the petitioner.

VINOD S. BHARDWAJ, J. (Oral)

CRM-50332-2025

Allowed, as prayed for and accordingly, the video recording as well as its transcript annexed as Annexure P-7 and P-8 is taken on record and the applicant-petitioner is also exempted from filing certified/typed/translated/legible/fair copies of Annexures P-7 & P-8. The same are taken on record. Registry is directed to tag the same at an appropriate place.

Main case

The instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 for seeking quashing of FIR No.238 dated 29.07.2025 registered under Sections 196(1), 352, 353(1), 353(2), 356(2), 49 and 62 of the Bharatiya Nyaya Sanhita, 2023 at Police Station Narnaund, District Hansi, Haryana alongwith all consequential proceedings arising therefrom.

2. Briefly stated, the present proceedings emanate from a complaint submitted by one Sushil Kumar, son of Dharampal, resident of village Budhana, Police Station Narnaund. The complainant stated that his mother, Smt. Krishna Devi, was murdered on 16.11.2024 at the stadium of

village Budhana, in respect whereof FIR No. 452 of 2024 was registered at Police Station Narnaund. It was averred that the challan in the said case has already been presented before the competent Court and that further investigation is being conducted by the State Crime Branch. According to the complainant, Anoop son of Sadhu Ram, Anshu son of Suresh Kala, Maya Devi wife of Sadhu Ram and Sadhu Ram son of Tek Ram, residents of village Budhana, are the principal accused and during the course of further investigation, the DNA sample of accused Anoop had matched, thereby scientifically confirming the offence of rape in addition to murder. The complainant further alleged that on 14.07.2025, while accessing Facebook at his residence, he came across a video uploaded on a Facebook profile under the name “Rajat Kalsan”, who projected himself as an Advocate. The said video pertained to a public meeting held in front of the Hisar Mini Secretariat, wherein statements were made containing false, defamatory and derogatory assertions against the complainant and his family. It was alleged that in the said meeting, Maya Devi, one of the accused in the murder and rape case, was given a platform to address the gathering and the crowd was exhorted to extend support to the accused persons. The complainant alleged that the said Rajat Kalsan thereafter addressed the gathering and made statements to the effect that the murder of Krishna Devi had been committed by her own family members on account of a property dispute; that the accused persons had been falsely implicated by villagers of Budhana after collecting money and by bribing senior police officers; that false allegations had been levelled against the accused to exert pressure for compromise in another incident and that the residents of village Budhana were portrayed as casteist goons, despicable and criminals. Moreover, the accused in the

murder and rape case were projected as innocent and public support was solicited in their favour. On these assertions, the complainant alleged that Rajat Kalsan had indulged in acts amounting to criminal defamation, interference with the administration of justice, influencing the investigation and the Court, inciting public disorder, maligning the police machinery by portraying it as corrupt and misusing the legal profession by projecting himself as an Advocate while glorifying accused persons involved in heinous offences such as murder and rape. It was further alleged that such conduct had the effect of tarnishing the image of the complainant, the victims, the investigating agencies, and the village at large. On the basis of the aforesaid allegations, the complainant sought registration of a criminal case against Rajat Kalsan and prayed for strict legal action.

3. Learned counsel for the petitioner contends that the petitioner was acting in his professional capacity as a counsel for the accused Maya Devi in FIR No. 452 dated 16.11.2024, registered under the relevant provisions of the Bharatiya Nyaya Sanhita, 2023 at Police Station Narnaund and was merely discharging his professional obligation to defend the interests of his client. He submits that the complainant party harbours animosity towards the petitioner solely on account of such professional engagement, hence the present FIR has been lodged as a retaliatory measure, in collusion with the local police machinery. Learned counsel submits that the allegations contained in the FIR are vague, sweeping and generalized and fail to disclose the essential ingredients of any cognizable offence. It is further contended that the speech attributed to the petitioner cannot be construed as a provocative or incendiary speech capable of inciting violence or public disorder, as no specific words, expressions or statements have been

attributed to the petitioner as would prima facie satisfy the offences under Sections 196(1), 353(1), or 353(2) of the Bharatiya Nyaya Sanhita, 2023.

4. It is submitted with vehemence that the petitioner cannot be divested of his fundamental right to freedom of speech and expression as guaranteed under Article 19(1)(a) of the Constitution of India and that the registration of the present case is a targeted attempt to penalise the petitioner for expressing his views and for giving voice to what he perceives as atrocities committed against his clients. He also submits that the initiation of the criminal proceedings is a clear abuse of the process of law and that the FIR along with all consequential proceedings deserves to be quashed.

5. In support of the aforesaid submissions, learned counsel for the petitioner has placed reliance upon the judgment of the Supreme Court in ***Imran Pratapgadhi v. State of Gujarat and another***, reported as **2025 SCC Online SC 678**. The relevant extract thereof reads as under:-

“9. A broad English translation of the said poem reads thus:
“Those who are blood thirsty, listen to us
If the fight for our rights is met with injustice
We will meet that injustice with love
If the drops flowing from a candle are like a flame
(Analogy : if the tears from our face are like a flame) We
will use it to light up all paths
If the bodies of our loved ones are a threat to your throne
We swear by God that we will bury our loved ones
happily
Those who are blood thirsty, listen to us.”

10. On plain reading of the original Urdu version and its English translation, the following conclusions can be drawn:

a) This poem has nothing to do with any religion, community, region or race;

- b) *By no stretch of imagination, the contents affect national integration;*
- c) *It does not jeopardise the sovereignty, unity, integrity or security of India;*
- d) *It suggests that while fighting to secure our rights if we are met with injustice, we will face it with love. We will use our tears as flames to light up all paths;*
- e) *It gives a warning to the throne (the rulers). It states that if the bodies of our loved ones are a threat to the rulers, we will bury our loved ones happily;*
- f) *It preaches non-violence. It says that if the fight for our rights is met with injustice, we will meet injustice with love. This gives a message that injustice should not be retaliated, but it should be met with love;*
- g) *The poem refers to the throne in the context of the fight against injustice. The reference to the throne is symbolic. It is a reference to an entity which is responsible for causing injustice. It gives a warning that if the bodies of loved ones are a threat to the throne, we will happily accept the deaths of our loved ones. It suggests that one should be willing to sacrifice life in the fight against injustice; and*
- h) *Thus, the poem does not encourage violence. On the contrary, it encourages people to desist from resorting to violence and to face injustice with love. It states that if our fight with injustice results into the death of our near and dear ones, we would be happy to bury their bodies.*

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12. The poem does not refer to any religion, caste or language. It does not refer to persons belonging to any religion. By no stretch of imagination, does it promote enmity between different groups. We fail to understand

how the statements therein are detrimental to national unity and how the statements will affect national unity. On its plain reading, the poem does not purport to affect anyone's religious feelings.

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41. In Shreya Singhal v. Union of India, this Court was examining the vires of Section 66A of the Information Technology Act, 2000 which provided for punishment for sending offensive messages through communication service etc. In the above context the Bench referred to Article 19(1)(a), Article 19(2), Preamble to the Constitution of India and the previous decisions of this Court and after a threadbare analysis observed that when it comes to democracy, liberty of thought and expression is a cardinal value that is of paramount significance under our constitutional scheme. It is one of the most basic human rights.

42. Following is the summary of our conclusions:

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(iii) In case of the offence punishable under Section 196 of the BNS to decide whether the words, either spoken or written or by sign or by visible representations or through electronic communication or otherwise, lead to the consequences provided in the Section, the police officer to whom information is furnished will have to read or hear the words written or spoken, and by taking the same as correct, decide whether an offence under Section 196 is made out. Reading of written words, or hearing spoken words will be necessary to determine whether the contents make out a case of the commission of a cognizable offence. The same is the

case with offences punishable under Sections 197, 299 and 302 of BNS. Therefore, to ascertain whether the information received by an officer-in-charge of the police station makes out a cognizable offence, the officer must consider the meaning of the spoken or written words. This act on the part of the police officer will not amount to making a preliminary inquiry which is not permissible under sub-Section (1) of Section 173.

(iv) The police officers must abide by the Constitution and respect its ideals. The philosophy of the Constitution and its ideals can be found in the preamble itself. The preamble lays down that the people of India have solemnly resolved to constitute India into a sovereign, socialist, secular, democratic republic and to secure all its citizens liberty of thought, expression, belief, faith and worship. Therefore, liberty of thought and expression is one of the ideals of our Constitution. Article 19(1)(a) confers a fundamental right on all citizens to freedom of speech and expression. The police machinery is a part of the State within the meaning of Article 12 of the Constitution. Moreover, the police officers being citizens, are bound to abide by the Constitution. They are bound to honour and uphold freedom of speech and expression conferred on all citizens.

(v) Clause (2) of Article 19 of the Constitution carves out an exception to the fundamental right guaranteed under sub-clause (a) of clause (1) of Article 19. If there is a law covered by clause (2), its operation remains unaffected by sub-clause (a) of clause (1). We must remember that laws covered by the clause (2) are protected by way of an exception provided they impose a reasonable restriction. Therefore, when an allegation is of the commission of an offence covered

by the law referred to in clause (2) of Article 19, if sub-Section (3) of Section 173 is applicable, it is always appropriate to conduct a preliminary inquiry to ascertain whether a prima facie case is made out to proceed against the accused. This will ensure that the fundamental rights guaranteed under sub-clause (a) of clause (1) of Article 19 remain protected. Therefore, in such cases, the higher police officer referred to in sub-Section (3) of Section 173 must normally grant permission to the police officer to conduct a preliminary inquiry.

(vi) When an offence punishable under Section 196 of 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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(emphasis supplied)”

6. He further places reliance on the judgment passed in the matter of **‘Balwant Singh and another Vs. State of Punjab’** reported as **(1995) 3 SCC 214**. Relevant extract thereof reads thus:-

“9. Insofar as the offence under Section 153-A IPC is concerned, it provides for punishment for promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever or brings about disharmony or feeling of hatred or ill-will between different religious, racial, linguistic

or regional groups or castes or communities. In our opinion only where the written or spoken words have the tendency or intention of creating public disorder or disturbance of law and order or affect public tranquillity, that the law needs to step in to prevent such an activity. The facts and circumstances of this case unmistakably show that there was no disturbance or semblance of disturbance of law and order or of public order or peace and tranquillity in the area from where the appellants were apprehended while raising slogans on account of the activities of the appellants. The intention to cause disorder or incite people to violence is the sine qua non of the offence under Section 153-A IPC and the prosecution has to prove the existence of mens rea in order to succeed. In this case, the prosecution has not been able to establish any mens rea on the part of the appellants, as envisaged by the provisions of Section 153-A IPC, by their raising casually the three slogans a couple of times. The offence under Section 153-A IPC is, therefore, not made out.”

7. I have heard learned counsel appearing on behalf of the petitioner and have gone through the documents appended along with the present petition including the extract of the speech attributed to the petitioner, which has laid the foundation for the registration of the impugned FIR. The relevant extract reads thus:-

“Rajat: She has two small children, they work as goat and sheep herders, in the village of Budhana. If I speak now, people will say that I target one caste. Those very people murdered a woman over a family property dispute and framed her (Maya Devi's) small children, one 14 years old and one 19 years old. The entire village collected donations and gave lakhs of rupees to the SP of Hansi and the DSP of Narnaund just for this one

thing: that the murder case be filed against her small children instead of the real killers. Do you know what her (Maya Devi's) fault is? Her (Maya Devi's) son was attacked in 2021; accusing him of stealing a chicken, those casteist thugs beat her son all night long and shoved a stick in his rear. She (Maya Devi) had the courage to file an SC and ST case against them. They are killing two birds with one stone. They think that she (Maya Devi) will withdraw the case under pressure, and they pinned the murder they committed on her (Maya Devi's) head. Can you imagine how vile and contemptible the people who did this must be? Can people who herd sheep and goats do such a thing?

“Rajat: इनके दो छोटे बच्चे है भेड़ बकरी चराने का काम करते है, गाँव बुढ़ाना मैं, फिर मैं बोलूंगा तो लोग कहेंगे ये एक कास्ट को टारगेट करता है, उन्ही लोगो ने आपस में अपने परिवार की प्रॉपर्टी विवाद में महिला की हत्या करदी और इस (maya devi) के छोटे-छोटे बच्चों जो एक 14 साल का और एक 19 साल का उनको फसा दिया पूरे गाँव ने चंदा इकट्ठा कर के हाँसी के SP को नारनौद के DSP को लाखो रुपये दिये केवल इस काम के लिए, की जो मर्डर का जो मुकदमा है वो असली कातिल पर ना होते हुये इनके छोटे छोटे बच्चों पर हो जाये। इसका (maya devi) का कसूर पता है क्या है, इसके (maya devi) बेटे पे 2021 में हमला हुआ था, मुर्गी चोरी का आरोप लगा कर सारी रात् उन जाती वादी गुंडों ने इसके बेटे को पीटा था उसके पिछवाड़े मैं डंडा दे दिया था। इसने (maya devi) हिम्मत की थी उनके खिलाफ SC and ST पर्चा दर्ज करवाने की, एक तीर से दो शिकार कर रहे है, वो सोच रहे है की वो (maya devi) मुकदमा वापस लेलेगी दबाव में और जो उन्होंने मर्डर किया था इसके (maya devi) के सर पर डाल दिया, सोच सकते हो कितने नीच जलील लोग होंगे जिन्होंने ऐसा काम किया है। भेड़ बकरी चराने वाले लोग ऐसा काम कर सकते है क्या?

साथियो हमारे बीच मैं हमारे साथी महेंद्र बिधूड़ी आये है लोहारू से मैं इनको भी समय देना चाहता हू की ये भी अपनी बात रखें”

8. In the said background, it would now be relevant also to refer to the statutory provisions under which the FIR herein has been registered against the petitioner. Section 196(1) reads thus:-

“196. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony:-

(1) Whoever-

(a) by words, either spoken or written, or by signs or by visible representations or through electronic communication or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities; or

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

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

regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.”

(emphasis supplied)

9. Section 352 of the Bharatiya Nyaya Sanhita, 2023 reads as under:-

"352. Intentional insult with intent to provoke breach of peace-
Whoever intentionally insults in any manner, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

(emphasis supplied)

10. Section 353 (1) and 353 (2) of Bharatiya Nyaya Sanhita, 2023 reads as under:-

"353. Statements conducing to public mischief. (1) *Whoever makes, publishes or circulates any statement, false information, rumour, or report, including through electronic means-*

(a) xxx xxx xxx

(b) xxx xxx xxx

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

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

imprisonment which may extend to three years, or with fine, or with both."

(emphasis supplied)

11. Section 356(2) of the Bharatiya Nyaya Sanhita, 2023 reads as under:-

"(2) Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both, or with community service."

12. Taking note of the growing tendency among individuals and groups to employ provocative and inflammatory expressions, often couched in insinuations or slender remarks, against particular sections of society with the object of fomenting discord and hatred, the legislature has incorporated stringent provisions in the criminal law to curb such conduct. In this backdrop, Section 196 of the Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to as "the BNS") assumes significance.

13. It is evident from the above that in so far as the offence under Section 196(1)(a) would be committed if the following ingredients are satisfied:-

- (i) The person, by words, either spoken or written etc.;
- (ii) promotes or attempts to promote on grounds of religion, region, race, caste or community;
- (iii) disharmony or feelings of enmity or ill-will between different groups as above.

Similarly for commission of offence under Section 196(1)(b), if the Act was prejudicial to the maintenance of harmony on above grounds and which disturbs or is likely to disturb public tranquility.

14. In order to ascertain as to whether offence under the Section is made out or not, the internal and external circumstances have to be seen in totality alongwith the words and expression and gestures used in a speech or communication before it may be determined as to whether it has the potential to promote disharmony or feelings of ill-will/hatred amongst communities or caste groups etc. The words and gestures etc. or the speech has to be considered in the context, the place, the background as well as the local sentiment and the social circumstances alongwith the mental framework of the people addressed or spoken to. Ignoring any of these factors invariably impacts or alters the meaning/intention behind the words.

15. To illustrate, use of curses or abusive words or language between friends in common conversation may just be a light meaningless and unintended figure of speech, while the same words and expressions may trigger violence under a separate set of circumstances.

16. The external circumstances would generally require evidence to be led and may not be inferred just from written words, alone, in a petition. The emphasis, thus, is not merely on the form of expression but also on its probable impact on social harmony and public order.

17. Similarly, Section 352 of the Bharatiya Nyaya Sanhita, 2023 addresses acts of provocation which are committed either with the intent to or with the knowledge that such conduct is likely to, provoke a breach of public peace or to occasion the commission of an offence. The provision is aimed at penalising conduct which, by its very nature, has the tendency to disturb societal order and tranquillity, even if the actual commission of a further offence does not immediately ensue.

18. Section 353(1)(c) of the BNS further criminalises the making of statements, giving false information or circulation of rumours which are likely to incite any class or community of persons to commit an offence against another class or community or which are of such a nature that they are likely to cause fear or alarm to the public, thereby inducing any person to commit an offence against the State or against public tranquillity. In addition thereto, Section 353(2) of the BNS provides that whoever makes, publishes or circulates any statement, whether orally, in writing or through electronic or digital means, with the intent to create or promote or which is likely to create or promote, feelings of enmity, hatred or ill-will between different religious groups, castes or communities, shall be liable to be punished in accordance with law. The inclusion of electronic and digital modes of communication underscores the influence of social media and online platforms in amplifying divisive narratives and the need to regulate such conduct in the interest of maintaining public harmony and order.

19. The above show that any such speech which may, in knowledge, cause or provoke breach of peace would attract the penal consequences under Section 352 of BNS. Similarly, when any statement or false information has the capacity to incite any class or community to commit offence against the other and further its publication and circulation constitute offences under Section 353(1) & (2) BNS respectively.

20. The use of expressions such as “attempts to promote”; “disharmony or feeling of hatred or ill will”; “likely to disturb public tranquillity”; “gives provocation”; “likely that such provocation cause him to break public peace”; “likely to incite” etc. are consciously invoked in the legislation. While the legislature certainly did not propose or intended an

abuse of the provision, it certainly aimed to check attempts by mischievous people to spread ill-will, promote disharmony, incite people etc. to commit a breach of peace. These sections thus penalize the attempt of such a consequence without awaiting for the consequences. The necessity for the same arose since legislature is aware that while violence germinating from hatred – in the form of hate crimes, may have a long incubation period, the seed for potential commission are sown by prolonged/momentary exposure to information/material fed in public mind, over a period of time. Hence a followed outburst of hate crime, in close proximity, is not the pre-requisite for the above offence but its potential to create hatred and possibility of breach of public harmony or peace becomes the most crucial factor. The intent being that every citizen speaks with responsibility and with awareness about the consequences of what he speaks on a public platform, the spoken words, expression, phrases and other external factors need to be taken into consideration. The principal that law should step into the shoes of the accused applies in all its consequences. It is not just a provision of benevolence only or may also be provision for discussing the intent.

21. Petitioner further submits that his Right to Freedom and Speech has been curtailed as guaranteed to him under Article 19(1)(a) of Constitution of India. The same reads thus:-

*“19. All citizens shall have the right-
(a) to freedom of speech and expression”*

22. Pertinently, the said rights have to be read alongwith Article 19(2) of the Constitution of India. The same reads thus:

“(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions

on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the 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.”

23. Hence, without disputing that every citizen enjoys the fundamental right to freedom of speech and expression, however, such right is not unfettered. The Constitution itself envisages reasonable restrictions on the exercise of this freedom, as may be imposed by law in the interests of public order, decency, morality and the sovereignty and integrity of the nation. These restrictions seek to balance individual liberties with the larger societal interest in maintaining harmony, tranquility and the rule of law.

24. The preservation of public tranquility, social order and national security has always constituted a legitimate and relevant consideration for the State and its instrumentalities to initiate action where the exercise of such freedom transgresses the permissible constitutional boundaries.

25. In the said background, now the speech addressed by the petitioner alongwith the factual background as well as the judgment relied upon by the counsel for the petitioner are being adverted to.

26. It is now relevant to observe that the congregation of public is alleged to have been organized in relation to FIR No.452/2024 pertaining to murder of Smt. Krishna Devi on 16.11.2024. The final report was filed against Anoop s/o Sadhu, Anshu s/o Suresh, Maya Devi w/o Sadhu and Sadhu Ram s/o Tek Ram, all belonging to Scheduled Caste Community (Dhanak). The petitioner claims himself to be an activist against oppression of a disadvantaged segment and marginalized persons. The meeting in question had been held on 14.07.2025 i.e. after nearly 08 months of the

incident and that too at the Mini Secretariat, Hisar. Investigation had already been concluded and chargesheet had already been filed. The counsel for the petitioner however does not disclose about the socio-economic background of the audience, the organizational objective, the relationship of audience with the accused, the caste or community of the audience, any prior history of class/community feud or not. The same would be relevant consideration to ascertain the true purpose and object of the gathering can only be ascertained then. The same would usually give rise to disputed questions of fact.

27. Be that as it may, some of the extracts of the speech are reproduced as under:-

Maya Devi:- I have come to you all so that you all support. I am your daughter.....I want all of your support. Jai Jai Jai Jai Bhim.

Rajat:- If I speak now, people will say I target one caste.

- *The entire village collected donations and gave lakhs of rupees to the SP of Hansi and DSP of Narnaund.*
- *Those casteist thugs beat her son.....*
- *3rd person:- Saluting the ideology of all great saint and great men born in Bahujan Society.*
- *to all my..... who have come to this protest today, a revolutionary Jai Bhim.*

28. It is evident from above that the meeting had been convened of people belonging to a specific caste, to garner support and protest and with revolutionary greetings. In a congregation of such gathering, the petitioner is stated to have uttered remarks of caste and casteist thugs and leveling allegations of scandalous bribery against police officials.

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29. It is evident from the perusal of the same that the petitioner opened a speech by making a reference that people would accuse him of targeting a “specific caste.”

30. Undisputedly and particularly in a rural or hinterland setting, speeches and public utterances must be appreciated in the social, cultural and situational context in which they are delivered. The audience addressed, the prevailing local tensions, the immediacy of the circumstances and the collective sensitivities of the community form an integral backdrop against which the meaning and potential impact of such speech must be assessed. Words spoken in isolation may appear innocuous; however, when delivered in a charged atmosphere, the same words may assume an altogether different connotation and consequence.

31. It is a settled principle of constitutional and criminal jurisprudence that a speech given by a person cannot be dissected and transposed from the place where the same had been set out and be examined under a different set of circumstances. Justice Oliver Wendell Holmes famously observed, the question in matters of speech is often whether the words used create a “clear and present danger” in the circumstances in which they are uttered. In case of *Schenck v. United States* reported as **1919 SCC Online US SC 62**, Justice Oliver Wendell Holmes famously observed that the question in matters of speech is often whether the words used create a “clear and present danger” in the circumstances in which they are uttered. The relevant extract thereof is as under:

6.It well may be that the prohibition of laws abridging the freedom of speech is not confined to previous restraints, although to prevent them may have been the main purpose, as

*intimated in Patterson v. Colorado. We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a **clear and present danger** that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree. When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right. It seems to be admitted that if an actual obstruction of the recruiting service were proved, liability for words that produced that effect might be enforced. The statute of 1917 in section 4 punishes conspiracies to obstruct as well as actual obstruction. If the act, (speaking, or circulating a paper,) its tendency and the intent with which it is done are the same, we perceive no ground for saying that success alone warrants making the act a crime.....*

(emphasis supplied)

32. Likewise, John Stuart Mill, in his seminal essay *On Liberty*, articulated the “harm principle” and cautioned that the liberty of expression may justifiably be restrained where its exercise causes, or is likely to cause, harm to others. The same reads thus:

“That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.”

33. In *Amish Devgan v. Union of India, (2021) 1 SCC 1*, the Supreme Court emphasised that the determination of “hate speech” is intrinsically dependent upon context, which involves a careful consideration of who the speaker is, who the audience is, what is said, and the place, time, occasion, and circumstances in which the speech is delivered. The relevant extract thereof is as under:

“75. The “context”, as indicated above, has a certain key variable, namely, “who” and “what” is involved and “where” and the “occasion, time and under what circumstances” the case arises. The “who” is always plural for it encompasses the speaker who utters the statement that constitutes “hate speech” and also the audience to whom the statement is addressed which includes both the target and the others. Variable context review recognises that all speeches are not alike. This is not only because of group affiliations, but in the context of dominant group hate speech against a vulnerable and discriminated group, and also the impact of hate speech depends on the person who has uttered the words. [Michel

Rosenfeld, Hate Speech in Constitutional Jurisprudence : A Comparative Analysis, 24 Cardozo Law Review 1523 (2002-03).] The variable recognises that a speech by “a person of influence” such as a top government or executive functionary, opposition leader, political or social leader of following, or a credible anchor on a TV show carries a far more credibility and impact than a statement made by a common person on the street. Latter may be driven by anger, emotions, wrong perceptions or misinformation. This may affect their intent. Impact of their speech would be mere indifference, meet correction/criticism by peers, or sometimes negligible to warrant attention and hold that they were likely to incite or had attempted to promote hatred, enmity, etc. between different religious, racial, language or regional groups. Further, certain categories of speakers may be granted a degree of latitude in terms of the State response to their speech. Communities with a history of deprivation, oppression, and persecution may sometimes speak in relation to their lived experiences, resulting in the words and tone being harsher and more critical than usual. Their historical experience often comes to be accepted by the society as the rule, resulting in their words losing the gravity that they otherwise deserve. In such a situation, it is likely for persons from these communities to reject the tenet of civility, as polemical speech and symbols that capture the emotional loading can play a strong role in mobilising. [Myra Mrx Ferree, William A. Gamson, Jurgen Gerhards and Dieter Rucht, “Four Models of the Public Sphere in Modern Democracies”, published in Theory and Society, Vol. 31, No. 3 (June, 2002), pp. 289-324.] Such speech should be viewed not from the position of a person of privilege or a community without such a historical experience, but rather, the courts should be more circumspect when penalising such speech. This is recognition of the denial of dignity in the past, and the effort should be reconciliatory. Nevertheless, such speech should not provoke and “incite” — as distinguished from discussion or

advocacy — “hatred” and violence towards the targeted group. Likelihood or similar statutory mandate to violence, public disorder or “hatred” when satisfied would result in penal action as per law. Every right and indulgence has a limit. Further, when the offending act creates public disorder and violence, whether alone or with others, then the aspect of “who” and question of indulgence would lose significance and may be of little consequence.

(Emphasis supplied)

34. These judicial and philosophical underpinnings underscore the necessity of contextual evaluation rather than textual dissection. Thus, while adjudicating the instant plea for quashing the FIR, this Court cannot ignore the backdrop in which such speech was delivered. The place, occasion, audience and surrounding circumstances are indispensable to determining whether the expression remains within the protective ambit of free speech or crosses the threshold into a conduct barred by the penal law. To transpose such speech from its native context and test it under an entirely different set of assumptions would defeat the very object of the statutory provisions so enacted.

35. The very fact that the petitioner started his address by saying that he would be accused of targeting a caste indicates that he was fully conscious of the nature and tenor of the speech, as well as of the possibility that the congregation and the content of his remarks were intended to advance certain divisive strategies or allegations. Further, while going further he specifically said “उन जाती वादी गुंडों ने इसके बेटे को पीटा था उसके पिछवाड़े मैं डंडा दे दिया था”. The repeated invocation of the expression “casteist or जाती वादी/Jaati Vadi” is not merely casual, accidental or incidental. I am afraid that the reiteration of the aspect ‘Jati Vaadi’, invariably is reaffirming his indication towards a specific caste group.

36. If the portrayal sought to be advanced by the petitioner about the statement having being said with respect to atrocities against his client, is to be accepted, there was no occasion for the petitioner to have often repeated the word caste/casteist gundas again and again. In such situation, a generic expression or a neutral reference to the complainant and the accused would have adequately served the purpose. The petitioner being a trained Advocate is assumed to be fully aware of the import and societal implication of the expression that he chooses while addressing the public. The persistent and deliberate reference to “caste” and “casteist goons” in the speech cannot, therefore, be brushed aside as inadvertent or incidental. It rather shows that there was a deliberate attempt on the part of the petitioner to be using such expression so as to incite people, which had the potential to create a public disorder and posing imminent danger to public tranquility.

37. The portrayal made by the petitioner at this juncture, to argue that the aforesaid remarks have to be examined in isolation and independent of the circumstances, I am afraid that such an argument cannot be accepted. Speeches delivered in a public meeting or before a congregation are required to be assessed in the context of the audience to whom they are addressed and the likely impact it may have upon them. The effect and influence of a public address are linked to the locality, the prevailing social conditions and the sensitivities of the audience present.

38. Besides, the socio-economic background and the mental faculties of the audience to whom such a speech is addressed are equally relevant considerations which cannot be ignored by the Court. The same words may carry vastly different meanings and consequences depending upon whether they are spoken before a discerning audience in an academic

or intellectual setting or before a large public gathering susceptible to emotional appeal and mobilisation. The speech in the present case was not delivered as part of a reasoned discourse in a seminar or an academic forum, where allegations of atrocities might be debated as an expression of opinion within the bounds of informed discussion. On the contrary, the speech was addressed to a public crowd that had assembled in connection with and probably in response to a call for support against caste atrocity. In such a setting, emotive and caste-laden expressions possess a far greater potential to inflame passions, polarise the audience and disturb public tranquility. The nature of the gathering and the circumstances under which the speech was made, therefore, significantly amplify its likely impact and render it incapable of being viewed as a mere abstract or intellectual exercise in free expression.

39. Invariably, the petitioner travelled beyond the scope of his duty as an Advocate while addressing a congregation alleging false implication and uploading the content on the internet. As an Advocate, his job is to defend his client in a Court of Law and not on a public platform by arranging public protests. By choosing to address a congregation and ventilate allegations in a public forum, the petitioner travelled beyond the domain of professional advocacy into the realm of public mobilisation. The same reflects the passionate attachment of the petitioner to the incident thus, making him an interested participant seeking to influence perceptions relating not only to the prosecution but also to the eventual outcome of the case. In these circumstances, the petitioner's role cannot be evaluated on the same footing as that of a dispassionate and independent professional discharging his duties strictly within the confines of the courtroom.

40. In *Amish Devgan v. Union of India (supra)*, the Supreme Court observed that persons of influence, by reason of their reach, authority, and impact upon the public or a particular class, owe a higher duty of responsibility in the use of language. Such individuals are expected to be conscious of the meaning and implications of the words they speak or write, including the likely interpretations conveyed to the audience. The relevant extract is as under:

76. Persons of influence, keeping in view their reach, impact and authority they wield on general public or the specific class to which they belong, owe a duty and have to be more responsible. They are expected to know and perceive the meaning conveyed by the words spoken or written, including the possible meaning that is likely to be conveyed. With experience and knowledge, they are expected to have a higher level of communication skills. It is reasonable to hold that they would be careful in using the words that convey their intent. The reasonable man's test would always take into consideration the maker. In other words, the expression "reasonable man" would take into account the impact a particular person would have and accordingly apply the standard, just like we substitute the reasonable man's test to that of the reasonable professional when we apply the test of professional negligence. [In Bolam v. Friern Hospital Management Committee, (1957) 1 WLR 582 : (1957) 2 All ER 118, it was observed : (WLR p. 587)A doctor is not guilty of negligence if he has acted in accordance with a practice accepted as proper by a reasonable body of medical

men skilled in that particular art. ... Putting it the other way round, a doctor is not negligent, if he is acting in accordance with such a practice, merely because there is a body of opinion that takes a contrary view.] This is not to say that persons of influence like journalists do not enjoy the same freedom of speech and expression as other citizens, as this would be grossly incorrect understanding of what has been stated above. This is not to dilute satisfaction of the three elements, albeit to accept importance of “who” when we examine “harm or impact element” and in a given case even “intent” and/or “content element”.

(Emphasis supplied)

41. Referring to the judgment in the matter of **‘Balwant Singh and another Vs. State of Punjab’** reported as **1995 AIR Hon’ble Supreme Court 1785** relied upon by counsel for the petitioner, the said judgment had not been passed on a petition under Section 482 Cr.P.C. rather, the accused therein had been tried. The judgment in question had been passed on the basis of the evidence that had already been led before the Court and after assessment thereof. The findings recorded by the Hon’ble Supreme Court are thus based upon the consideration of the evidence that had been placed before the Court. The same not being the case herein and the evidence yet to be assessed by the Court, the judgment would not come to the aid of the petitioner at this juncture.

42. Referring next to the judgment in the matter of **‘Imran Pratapgadhi Vs. State of Gujarat and another’** reported as **2025 SCC Online SC 678**, the said judgment was on the context of a recital of a poem

or artistic expression. A specific finding is recorded in Para 10 of the judgment that the poetic expressions has nothing to do with any religion, region or race etc. The present speech is *prima facie* not in the league of any neutral expression of a thought.

43. Rather, this speech is a specific expression, where a caste related submission, which has the potential and likelihood of promoting *inter se* enmity between different castes is apparently made out. The judgment of the Hon'ble Supreme Court in the matter of ***Imran Pratapgadhi Vs. State of Gujarat and another (supra)*** which was rendered in the said context would thus not apply in context in hand.

44. Expressions such as the use of phrases like “casteist gundas”, does not merely criticise the conduct of identifiable individuals; rather, it imputes criminality, moral depravity and collective blame to an entire caste or social group. In doing so, it directly undermines the dignity of individuals who belong to or identify with that group. When such expressions are publicly articulated and normalised, particularly in charged or emotive settings, they carry the real and imminent risk of legitimising prejudice, inciting hostility and disturbing public tranquillity. Freedom of speech cannot be stretched to shield expressions that promote or are likely to promote alienation, public disorder or violence or that challenge the unity and integrity of the nation. Unchecked divisive speech ultimately curtail the liberties of law-abiding citizens.

45. In a nation founded upon the ideals of equality, fraternity and respect for human dignity, caste-based hate speech not only wounds individual dignity but also imperil social harmony and the collective conscience of the country.

46. In *Amish Devgan v. Union of India (supra)*, the Supreme Court observed that the Preamble to the Constitution consciously links fraternity, the dignity of the individual and the unity and integrity of the nation, treating them as interdependent constitutional values. The Court observed that while dignity is secured through individual rights, unity and integrity impose corresponding obligations upon individuals to respect others and preserve social cohesion. Acts or expressions that promote or are likely to promote divisiveness or alienation directly undermine pluralism and diversity and when such conduct is intended or likely to cause public disorder or to demean the dignity of targeted groups, it must be addressed in accordance with law. The relevant extract thereof reads thus :

71. The Preamble to the Constitution consciously puts together fraternity assuring dignity of the individual and the unity and integrity of the nation. Dignity of individual and unity and integrity of the nation are linked, one in the form of rights of individuals and other in the form of individual's obligation to others to ensure unity and integrity of the nation. The unity and integrity of the nation cannot be overlooked and slighted, as the acts that "promote" or are "likely" to "promote" divisiveness, alienation and schematism do directly and indirectly impinge on the diversity and pluralism, and when they are with the objective and intent to cause public disorder or to demean dignity of the targeted groups, they have to be dealt with as per law. The purpose is not to curtail right to expression and speech, albeit not gloss over specific egregious threats to public disorder and in particular the unity and integrity of the nation.

Such threats not only insidiously weaken virtue and superiority of diversity, but cut back and lead to demands depending on the context and occasion, for suppression of freedom to express and speak on the ground of reasonableness. Freedom and rights cannot extend to create public disorder or armour those who challenge integrity and unity of the country or promote and incite violence. Without acceptable public order, freedom to speak and express is challenged and would get restricted for the common masses and law-abiding citizens. This invariably leads to State response and, therefore, those who indulge in promotion and incitement of violence to challenge unity and integrity of the nation or public disorder tend to trample upon liberty and freedom of others.

(emphasis supplied)”

47. Since much reliance has been placed on the conclusions drawn by the Hon’ble Supreme Court in the matter of ***Imran Pratapgadhi Vs. State of Gujarat and another (supra)***, I find that the said conclusions do not actually espouse the cause of the petitioner herein. Clause (iii) of para No.42 thereof clearly says that reading of written words or hearing or spoken words will be necessary to determine whether the content makes out a case of the commission of a cognizable offence or not. Communication invariably has twin perspectives i.e. perception of one who speaks and second from the perception of the one who is the consumer/recipient of the communication. The petitioner has not been able to give any satisfactory explanation as to what were the circumstances or compelling reasons that the expression

casteist hooligans/gundas had to be used by him in a public speech or public gathering, if the idea was only to make a protest against false implication.

48. While examining the issue for quashing of an FIR, the parameters for quashing are on a different footing. It is only in a situation where, upon a plain reading of the FIR and the material placed on record, the allegations do not disclose the commission of any offence or where the proceedings are manifestly frivolous or an abuse of the process of law, that an FIR has to be quashed. Once the allegations/contents *prima facie* satisfy the primary ingredients for commission of offence, at that stage, motive behind implication recedes into insignificance. An illegality or an offence would not be condoned merely because the person reporting such offence had his own axe to grind against any offender. The focus remains on the nature of the allegations rather than on the subjective motivations attributed to the complainant.

49. As the petitioner has not been able to make out a case for quashing of the FIR, the present petition is accordingly *dismissed* at this stage.

50. Pending application(s), if any, shall also stand disposed of.

11.12.2025

Sumit Gusain

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

(VINOD S. BHARDWAJ)
JUDGE